INDEX OF COUNTRY CONDITIONS DOCUMENTING PERSECUTION AGAINST LGBTQ INDIVIDUALS IN GUATEMALA

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- “The local NGO National Network for Sexual Diversity and HIV and the Lambda Association reported that as of October, a total of 20 LGBTI persons had been killed, including several transgender individuals the NGOs believed were targeted due to their sexual orientation. Several were killed in their homes or at LGBTI spaces in Guatemala City.” (p. 22)
- “LGBTI groups claimed women experienced specific forms of discrimination, such as forced marriages and forced pregnancies through ‘corrective rape,’ although these incidents were rarely, if ever, reported to authorities. In addition, transgender individuals faced severe discrimination.” (p. 22)
- “According to LGBTI activists, gay and transgender individuals often experienced police abuse.” (p. 22)
- “The law does not extend specific antidiscrimination protections to LGBTI individuals based on their sexual orientation, gender identity or expression, or sex
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<td>• “The local NGO National Network for Sexual Diversity and HIV and the Lambda Association reported that from April 20 through November 11, 19 LGBTI persons were killed, including several transgender individuals the NGOs believed were targeted due to their sexual orientation. In May major media outlets reported that an unknown assailant shot and killed two LGBTI persons inside a home in Guatemala City. The case remained under investigation.” (p. 22)</td>
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<td>• “The NGO Somos reported 35 violent attacks against LGBTI individuals during the year. LGBTI groups claimed women experienced specific forms of discrimination, such as forced marriages and forced pregnancies through ‘corrective rape,’ although these incidents were rarely, if ever, reported to authorities. In addition transgender individuals faced severe discrimination.” (p. 22)</td>
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<td>• “According to LGBTI activists, gay and transgender individuals often experienced police abuse.” (p. 22)</td>
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<td>• “LGBTI human rights groups stated police officers regularly engaged in extortion and harassed male and transgender individuals whom they alleged to be sex workers.” (p. 22)</td>
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<td>• “Human rights issues included reports of…crimes involving violence or threats thereof targeting lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons….” (p. 1)</td>
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<p>|     | “The most significant human rights issues included: . . . police violence against lesbian, gay, bisexual, transgender, and intersex individuals . . . .” (p. 1) |
|     | “LGBTI groups claimed women experienced specific forms of discrimination such as forced marriages and forced pregnancies through ‘corrective rape,’ although these incidents were rarely, if ever, reported to authorities. In addition transgender individuals faced severe discrimination.” (p. 21) |
|     | “According to LGBTI rights groups, gay and transgender individuals often experienced police abuse.” (p. 21) |
|     | “Lesbian, gay, bisexual, transgender, and intersex (LGBTI) rights groups stated that other prisoners often sexually assaulted LGBTI individuals and that there were insufficient facilities to protect LGBTI individuals in custody.” (pp. 4-5) |
|     | “The country’s antidiscrimination laws do not apply to LGBTI individuals.” (p. 21) |</p>
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<th>INTER-GOVERNMENTAL SOURCES</th>
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- “[P]olice officers regularly engaged in extortion and harassed male and transgender individuals they believed to be sex workers.” (p. 21)
- “There was general societal discrimination against LGBTI persons in access to education, health care, employment, and housing. The government undertook minimal efforts to address this discrimination.” (p. 21)

- “In relation to violence and insecurity, the situation of…LGBTI persons…is of concern.” (p. 12)
- “LGBTI persons face major roadblocks to gain access to justice. The IACHR received information indicating that obstacles persist in Guatemala in terms of respect for and guarantee of due process rights in cases linked to acts of discrimination and violence based on the sexual orientation or gender identity of the victims. In fact, according to the information provided, 85% of LGBTI victims of violence and discrimination filed a report for the assaults, and only 26% received a response from the authorities.” (p. 66)
- “[T]he Office of the United Nations High Commissioner expressed his concern over the ‘persistent discrimination and violence against persons based on their sexual orientation and gender identity’ in Guatemala.” (pp. 66-7)
- “The Commission received worrisome information from civil society about introduction of legislative bill in the Congress of the Republic, Law No. 5272, the content of which is about the ‘protection of life and family.’ This bill, if approved, would prohibit teaching about gender and sexual diversity in schools; would reaffirm the institution of marriage as the exclusive right of persons of opposite sexes; and would do away with the criminal offense of discrimination, when it is directed at LGBTI persons.” (p. 67)
- “The Commission also received information about…cases of displacement of the LGBTI population as a consequence of prevailing homophobic and lesbophobic attitudes.” (p. 111)
- “During its visit, the IACHR received information indicating that violence against LGBTI persons is a structural issue, as illustrated by persistent forms of discrimination and prejudice. In this regard, the Commission has become aware of the high incidence of violence against trans women, and of the high risk faced by human rights defenders of LGBTI rights.” (p. 191)
- “Additionally, the IACHR has received information regarding human rights matters linked to the right to health of trans persons, which warrant being addressed by the State, such as lack of medicine in hospitals for the treatment of
HIV for whom require it, and the absence of a public health care policy from a gender perspective.” (p. 191)

• “Based on accounts received by the Commission, trans women sex workers have been murdered by individuals, who use their services or at the hands of gangs and criminal groups.” (p. 191)

• “On a related note, the IACHR has received worrying reports that indicate that defenders of the rights of LGBTI persons are subject to violence, threats and harassment because of the work they do.” (p. 191)

• “On this score, the Commission cites the murder of the trans leader and activist Evelyn Zulm, who was a beneficiary of precautionary measures requested by the IACHR, in November 2016. In this same period, the IACHR received reports of three other murders of trans women in Guatemala, which were characterized by alarming degrees of cruelty; a view shared by the Human Rights Ombudsman of Guatemala and the Office of the United Nations High Commissioner for Human Rights. The two entities have voiced their concern over the evident ‘troubling trend of attacks on trans women.’” (p. 192)

• “The Commission also learned about the serious situation that trans women confront in their access to health services because of the lack of HIV medications for hospitals in the public health network….The IACHR was apprised as well during its on-site visit by civil society organizations on August 1, 2017 that the Ministry of Health was only purchasing medications once inventories are completely exhausted. This situation reportedly causes breaks in treatment for persons with HIV, particularly affecting trans women, who make up nearly 22% of the HIV positive population of the country.” (p. 192)

5. **INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, IAHCR CONDEMNS MURDER OF TRANS WOMAN IN GUATEMALA, (Dec. 2, 2016),**


• “The Inter-American Commission on Human Rights (IACHR) repudiates the murder of Evelyn Zulma, a trans leader and activist who belonged to the organization OTRANS Reinas de la Noche (“Queens of the Night”) in Guatemala.” (p. 1)

• “According to information received by the IACHR, the body of Evelyn Zulma Alegria Robles was found in her home on November 18, with bruises on her arms and around her jaw, her teeth missing, and her hair pulled out. The Guatemalan National Institute of Forensic Sciences (INACIF) informed the family that Evelyn Zulma Alegria Robles’ throat had been cut and that the toxicology report showed traces of high toxicity apparently consistent with the administration of poison.” (p. 1)

• “The Commission is dismayed by the information it has received regarding an exponential increase in recent killings of trans women in Guatemala. Last week, there were three such deaths, characterized by disturbing levels of brutality and
extreme cruelty. Moreover, the IACHR continues to receive troubling information concerning the situation of human rights defenders who advocate for the rights of LGBT persons in Guatemala. Various LGBT rights organizations in that country have said publicly that they are targets of violence, threats, attacks on their premises, and harassment because of their work as activists.” (p. 1)


- “Aside from the context of violence and insecurity, there is the situation of those whose role in society or because they have been subjected to a historic discrimination are disproportionately affected by the violence and discrimination. They include…LGBTI persons, people with disabilities, and persons deprived of liberty.” (pp. 14-15)
- “During 2015, the IACHR continued to receive information regarding the grave situation of violence and discrimination against lesbian, gay, bisexual and transgender (LGBT) persons, in Guatemala.” (p. 144)
- “As [it] regards [to] the LGTBI population, the State mentioned that in Guatemala there is no express recognition of the rights of the LGTBI community.” (p. 144)
- “On June 4, 2015 the murder of Sandra Caal Morán, a trans woman in San Cristóbal, was reported. According to the Observatory on Murdered Trans Persons in absolute numbers, Guatemala ranks 6th, with 39 cases recorded (The Top 5 are Brazil with 689, Mexico with 194, Colombia with 85, Venezuela with 85, and Honduras with 77). Guatemala likewise ranks in second place in relative terms (% of trans persons murdered per 1,000,000 inhabitants), averaging 2.83 per every million inhabitants (In Honduras the average is 5.12, in Puerto Rico 2.43. in Brazil 2.35, in Colombia 1.41, and in Mexico 0.94).” (pp.144-45)
- “In August 2014, civil society organizations told the IACHR that LGBT persons or individuals perceived as such continue to be assaulted and harassed, including raids on their organizations.” (p. 145)
- “OHCHR-Guatemala reported that in 2014 there were several instances of discrimination against LGBTI persons….“ (p. 145)
- “The IACHR reported that between January 2013 and March 2014, according to the Register of Violence against LGBTI Persons in America, under Attacks on Life and Bodily Integrity, three trans women were murdered in Guatemala (two cases in 2013 and one in 2014).” (p. 145)

### Non-Governmental Sources

### TAB SUMMARY


- “In August 2018 Guatemalan Congress approved a preliminary version of the ‘Life and Family Protection’ bill….The bill…contains provisions that discriminate against lesbian, gay, bisexual, and transgender (LGBT) people. It defines marriage as a union between people who were a man and a woman according to their sex assigned at birth, thus excluding many transgender people in addition to prohibiting same-sex unions.” (p. 245)

- “The bill defines ‘sexual diversity’ as ‘incompatible with the biological and genetic aspects of human beings.’ It also establishes that ‘freedom of conscience and expression’ protect people from being ‘obliged to accept non-heterosexual conduct or practices as normal.’ This provision could be interpreted to mean that people can be denied services on the basis of sexual orientation or gender identity, in violation of international human rights law.” (pp. 244-5)

- “Guatemala does not have legislation specifically protecting the rights of LGBT people. Incoming President Giammatei stated during the election campaign that he supported the [‘Life and Family Protection’] bill.” (p. 245)


- “[D]iscrimination, human rights violations and persecution [against lesbian, gay, bisexual, trans and intersex (LGBTI) individuals] is particularly severe in the North of Central America (NCA), where LGBTI people are disproportionately impacted by the high levels of generalised violence. (p. 1)

- “[T]he available existing evidence shows that LGBTI people face rejection from their families, communities and wider society, and additional barriers in accessing basic services such as health and education, as well as employment. As reported by LGBTI rights organisations, this is exacerbated by the absence of a protective legal framework, the guarantee of basic rights, and persecution from criminal groups and state actors.” (p. 1)

- “These different forms of violence impede access to education, employment and basic services.” (p. 1)

- “During the first 6 months of the year, 327 aggressions and 12 assassinations of human rights advocates have been registered.” (p. 3)

- “In Guatemala, 80% of the general population, and 90% of the LGBTI population, consider that LGBTI persons are discriminated against in their country. In the three countries, approximately 88% of the general public opposes equal marriage….In recent years, hate speech, promoted by anti-LGBTI rights,
### SUMMARY

Conservative and/or religious groups, have increasingly played a more prominent role, finding support in right-wing parties, and rolling back existing rights of LGBTI people. In Guatemala, for example, the president, who is evangelical, declared that, ‘our government and Guatemala believe in the family based on the marriage of a man and a woman’. His government has supported a draft law – the Law for the Protection of Life and Family – to prohibit same-sex marriage and abortion, moreover establishing that ‘no one is obliged to accept non-heterosexual conducts and practices as normal’. The dissemination of information about LGBTI people in schools and the discussion of other forms of sexuality that do not correspond to heterosexuality would be prohibited. According to OHCHR, this law could lead to increased hate crimes against LGBTI people, and according to the LGBTI organisation Visibles, could lead to the criminalisation of girls, women and LGBTI people. According to an organisation interviewed for this snapshot, during the recent electoral campaign, neither of the candidates referenced the LGBTI population in their campaigns. In fact, both candidates signed a commitment to halt any advancements in LGBTI rights.” (p. 4)

- “In Guatemala, the state has publically acknowledged that there is no official recognition or codification of the rights of LGBTI people, and that the Penal Code does not specify causes of discrimination, nor protect people against discrimination due to sexual orientation or gender identity in areas such as employment, education, housing, healthcare or treatment in public establishment.” (p. 5)

- “In April 2019, two lesbians were murdered in Jalapa, Guatemala, with an [sic] homophobic message left on their bodies.” (p. 6)

- “In general, organisations working in the NCA speak of a structural violence, where discrimination against LGBTI people affects their access to basic services, including, education, healthcare, justice and employment, exposing them to greater risks and increasing their vulnerability. Moreover, in the context of generalised and criminal violence, discrimination and homophobia exacerbates and aggravates their protection risks. (p. 7)

- “In many cases, violence begins at an early age, in the family and community. According to interviews for this snapshot, in some communities with low educational levels, the lack of knowledge regarding different sexualities and gender identities, as well as the influence of conservative religions, reinforce the rejection toward LGBTI people in their homes and communities. In these cases, people (particularly girls and trans youth) are expelled from their homes at an early age at 12 or 13 years old. In other cases, rejection can lead to abuse and
psychological violence, also known as ‘corrective violence’. An organisation interviewed working with LGBTI population in Guatemala, reported several cases of people accused of being ‘sinners’ by their families.” (p. 7)

- “According to several organisations interviewed, churches (Catholic and evangelical) in some communities act as the agents of persecution, particularly in Honduras and Guatemala. In other cases, community groups implement cleansing politics and patrols and provoke the displacement of people they do not consider part of the community.” (p. 7)

- “Some schools expel or deny entrance to students who manifest their sexual orientation or gender identity.” (p. 7)

- “In Guatemala, conversion therapies persist and there is strong social pressure to participate in these activities.” (p. 7)

- “What with rejection from their families, schools and churches, there are few places left for LGBTI people to find safety and protection. This marginalisation and lack of opportunities results in a high proportion of LGBTI people forced to take on sex work. Many have to survive in the streets, exposed to organised crime, human trafficking for sexual exploitation, as well as physical safety risks and health problems. According to REDLACTRANS, 58% of trans women in Guatemala do not finish elementary school, and 76% work in informal employment, including sex work, in order to survive.” (p. 7)

- “Gangs controlling territories of a great number of urban communities in the NCA are visibly machistas (macho), and as a result, LGBTI people are at higher risk of attack and persecution. Attacks and homicides of LGBTI people (or those perceived as being part of the population) often have signs of torture, mutilation of genitalia or homophobic messages written on the victims’ bodies¹.” (p. 7)

- “Different criminal groups have different ways of abusing LGBTI rights. Some consider that they do not have ‘total control if LGBTI+ people are present in territories’, and therefore they threaten, displace or murder LGBTI persons. (p. 7)

- “In other cases, gangs extort LGBTI people, particularly sex workers. In other cases, criminal groups manipulate and exploit LGBTI people, recruiting them for drug trafficking....According to some of the organisations interviewed, there is the perception that trans women can go unnoticed before authorities or will not be searched by male police officers. Organisations have attended several cases of trans women that have been recruited into criminal gangs and have trafficked drugs across borders, based on the promise of surgeries (breast augmentation or sex reassignment surgery) upon reaching the other country. In some cases, gangs or narcotraffickers finance breast augmentations, but implants are filled with drugs in order to cross borders. An organisation interviewed recently provided a response to a trans woman left alone in the street bleeding, after gang members cut her breast open to recover their merchandise.” (p. 7)
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<td>• “Homophobic discourses and social attitudes have harmful effects on state institutions….These attitudes can lead to violence acts: attacks, abuse of authority and arbitrary detentions. The IACHR has received an important number of reports of human rights violations by security forces including torture, demeaning or inhumane treatment, excessive use of force, and illegal detentions. According to some organisations, these attacks affect people working on the streets the most. Reports have been made of authorities extorting people in exchange for ‘protection’. In other cases, during arbitrary detentions, people are subject to blackmail and sexual violence.” (p. 8)</td>
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<td>• “According to several organisations, this rejection worsens the displacement cycle, and LGBTI people are often forcibly displaced several times without finding safety. The migratory route is long and there is a high risk of attacks, human trafficking and smuggling, labour exploitation and sexual abuse.“ (p. 10)</td>
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<td>• “For those who abandon the asylum process because of… detention conditions, or have their requests rejected, returning to the NCA can be a death sentence. There is no adequate response or identification of protection needs for those deported, and even less so for LGBTI people.” (p. 11)</td>
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- “Taking advantage of failed governments that have impoverished large swaths of the population, the evangelical churches have offered support to marginalised sectors, tending to their basic needs and constructing a social fabric that pivots itself to the defence of the interests of their religion, whilst at the same time demonising alternative expressions, principally in gender and sexuality.” (pp. 110-11)
- “Guatemala, confronts a condition of mixed violence where police repression and delinquency appear to be united against the population, but where conservative forces propel an initiative on the protection of life and the family. This implies grave setbacks and limitation on the advancement of the rights of women and LGBT persons.” (p. 111)
- “In this geopolitical panorama, the struggle for human rights – in particular for LGBT people – appears uncertain.” (p. 111)


- “Sexual and gender-based violence (SGBV) forces many women, girls, and LGBTI persons to flee El Salvador, Guatemala, and Honduras. Family members,
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<td>gangs, and drug traffickers most frequently perpetrate SGBV, but violence by police and other authorities is also widespread.” (p.1)</td>
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<td>• “Despite pervasive SGBV in the three countries, staggering impunity levels persist, with an average of less than 10 percent of cases resulting in conviction.” (p. 1)</td>
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<td>• “Civil society organizations in Guatemala, El Salvador, and Honduras report that LGBTI people are at high risk for violence and extortion by gangs and organized criminal groups, hate crimes, and abuse by authorities, leading many LGBTI individuals to migrate in search of safety.” (p. 3)</td>
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<td>• “According to the UN High Commissioner for Human Rights, in Guatemala ‘LGBTI people are stigmatized, dehumanized even, by Guatemalan society and media, leaving them particularly vulnerable to violence and ill-treatment. They face discrimination at all levels,’ including in access to health care, education, and employment. While reliable statistics are not available, hate crimes against LGBTI individuals are widespread, as is discrimination and violence committed by state authorities.” (p. 3)</td>
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<td>• In El Salvador, Guatemala, and Honduras, LGBTI victims do not report violent crimes because they fear discrimination and abuse by authorities, and the vast majority of reported crimes against LGBTI people are not investigated. (p. 4)</td>
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<td>• “Guatemalan legislators should reject an extraordinarily dangerous “Life and Family Protection” bill that would seriously undermine the rights of women and LGBT people in the country, Human Rights Watch said today.” (p. 1)</td>
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<td>• “The bill…includes definitions of ‘family’ and ‘sexual diversity’ that are openly discriminatory and run counter to basic rights of lesbian, gay, bisexual, and transgender (LGBT) people. (p. 1)</td>
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<td>• “The bill also contains provisions that discriminate against LGBT people. For example, it ‘expressly prohibits’ same-sex marriage and defines ‘family’ as being limited to a ‘father, mother, and children.’” (p. 2)</td>
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<td>• “The bill defines marriage as a union between people who were a man and a woman ‘by birth,’ excluding transgender people. While same-sex marriage is currently not recognized in Guatemala, the bill would entrench and reinforce that unacceptable reality, Human Rights Watch said.” (p. 2)</td>
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|     | • “Moreover, the proposal establishes that freedom of conscience and expression’ protect people from being ‘obliged to accept non-heterosexual conduct or practices as normal.’ This seems intended to expressly permit discrimination on
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<td>the basis of sexual orientation, in clear violation of Guatemala’s international obligations.” (p. 2)</td>
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<td>• “‘Freedom of conscience and expression are not a blank check to discriminate against LGBT people,’ Vivanco said. ‘The ‘family protection’ provisions in this bill amount to nothing more than the promotion of homophobia.’” (p. 2)</td>
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<td>• “Although it is difficult to obtain official and accurate figures on attacks against LGBTI people in El Salvador, Guatemala and Honduras, different non-governmental organizations (NGOs) and international organizations have documented that they are particularly affected by the widespread climate of violence and insecurity in the Northern Triangle of Central America.” (p. 7)</td>
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<td>• “LGBTI people are frequently the target of different forms of violence due to their real or perceived sexual orientation and/or gender identity, such as, for example, intimidation, threats, physical aggression, sexual violence and even murder.” (p. 7)</td>
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<td>• “Amnesty International received a number of statements from gay men and trans women testifying to having been raped in their countries.</td>
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<td>• “According to UNHCR, 88 percent of LGBTI asylum seekers and refugees from the Northern Triangle interviewed in the context of a study reported having suffered sexual and gender-based violence in their countries of origin.” (p. 7)</td>
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<td>• “Violence towards LGBTI people is rooted in the environment of discrimination and stigma that is prevalent in society generally towards these people, who differ from the traditionally established patriarchal social norms and gender roles. This situation is reflected in the testimonies received by Amnesty International, which bear witness to multiple acts of verbal and physical violence and exclusion in different arenas of daily life; from within their own family, community and society more generally, including at school and, later, in the workplace.” (p. 8)</td>
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<td>• “It has been documented that [the ‘maras’ or gangs in the Northern Triangle of Central America] are governed by highly sexist codes of conduct, and they often attack LGBTI people for real or perceived their gender identity or sexual orientation, subjecting them to acts of physical and sexual violence, as well as blackmail.” (p. 8)</td>
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|     | • “The serious violence and discrimination suffered by LGBTI people [in Guatemala] has been highlighted on a number of occasions by international human rights bodies. For example, at the end of 2016, five trans women were reported murdered within a six-week period. For its part, the NGO Transgender
Europe indicated that 40 trans people were murdered in Guatemala during 2016.” (p. 9)

- “In a study conducted into impunity for such attacks, the NGO Cattrachas noted that, of the 225 violent deaths of LGBTI people recorded during the period 2008 to 2015, only 13 had resulted in a conviction.” (p. 18)

- “In the countries of the Northern Triangle, where high levels of impunity are common, LGBTI people very rarely obtain justice when they report the serious attacks they have suffered.” (p. 18)

- “This lack of effective access to justice only perpetuates the circle of violence to which LGBTI people are subjected and increases their lack of protection. Silence and escape are therefore often the only alternatives they have to protect their lives and physical integrity.” (p. 18)

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- “Sexual and gender-based violence [SGBV], including sexual violence, domestic violence, human trafficking, femicide, and violence against LGBTI people, permeates the lives of women and children in El Salvador, Honduras, and Guatemala, disproportionately affecting girls and young women. These forms of violence have deep roots in “patriarchal attitudes and a machista culture,” as well as structural forms of inequality that marginalize women, girls, and LGBTI people, and justify discrimination and violence against them.” (p. 4)

- “While SGBV affects women, children, and LGBTI people throughout El Salvador, Honduras, and Guatemala, those who live in gang-controlled areas experience widespread and extremely brutal forms of gender-based violence.” (p. 4)

- “Gangs often target LGBTI people based on their actual or perceived gender identity or sexual orientation, subjecting them to physical and sexual violence as well as extortion and forced labor. These cases are extremely difficult to document. LGBTI people in El Salvador, Honduras, and Guatemala rarely report abuse or exploitation to authorities, due to abuse and discrimination by government authorities directed at LGBTI communities, as well as widespread discrimination and stigma against them.” (p. 7)

- “In all three countries, violence against LGBTI people is rarely investigated or prosecuted, and the vast majority of cases end in impunity.” (p. 7)

- “Police have been suspected of colluding with gangs in perpetrating violence against LGBTI people, further eroding the confidence of LGBTI communities that authorities will protect them.” (p. 8)
https://www.amnesty.org/download/Documents/AMR0148652016ENGLISH.PDF

- “The Northern Triangle states have often sought to minimize the link between violence and forced migration…[b]ut skyrocketing asylum applications throughout the region indicate a very real shift in reasons to migrate….The desperate situation has been reflected in the new demographics of the people making the journey, who increasingly come from society’s most vulnerable groups and whose basic rights states have repeatedly failed to protect: women, young people, children…and lesbian, gay, bisexual, transgender and intersex (LGBTI) people.” (p. 6)

- “The pervasiveness of the violence in the Northern Triangle countries affects all of society, but it affects people differently according to their gender identity and/or their sexual orientation. While the vast majority of murder victims are young men, women and lesbian, gay, bisexual, transgender and intersex (LGBTI) people are also subjected to differentiated forms of violence.” (p. 14)

- “LGBTI people are frequently targeted for abuse, intimidation and violence because of their sexual orientation and/or their gender identity. They not only rarely see justice but are often ignored, belittled or victimized by law enforcement officers.” (p. 15)

- “While government statistics of murders of LGBTI people are hard to come by, the Inter-American Commission on Human Rights (IACHR) has found that in this climate of extreme violence, marginalized groups like LGBTI people are often targeted for abuse. Transgender women, who because of patriarchal social norms are particularly stigmatized, are especially subjected to violence and extortion by gangs because they often face greater obstacles to access justice, due to discrimination.” (p. 15)

- “Local activists told Amnesty International that employment discrimination means transgender people often turn to sex work, which requires them to work late at night in environments and conditions that can expose them to higher risks of crime and violence.” (p. 15)

- “They also face harassment and intimidation by the police and authorities because of their gender identity and/or their sexual orientation and, when crimes occur, they face serious obstacles to access justice from law enforcement officials who discriminate against them.” (p. 15)

- “[G]angs’ control of broad swaths of territory affects all of society and has different impacts on different groups, such as…specific targeting of LGBTI people.” (p. 45)

15. **OTRANS, Human Rights Situation of Travesti, Transgender and Transsexual Persons in Guatemala, (August 2015),**
“Between 2009 and 2010, at least 30 trans persons were murdered. A few examples are the three trans women murdered between late October and early November 2009, two in Guatemala City and one in the North of the country. One of them was repeatedly run over by a car, while another one was lapidated. These figures do not include those persons whose gender identity was not correctly recorded at the time of their murder being reported.” (pp. 2-3)

“Attacks and murders of trans people have increased in an alarming manner in recent years. Security forces do not protect trans people and have often perpetrated those attacks themselves.” (p. 3)

“Attacks against trans activists follows a pattern of growing attacks against human rights defenders in Guatemala that, in these cases, is expressed in conjunction with transphobia. Johana Esmeralda Ramírez, Organización Trans Reinas de la Noche's Executive Director, was arbitrarily arrested in Quetzaltenango (Western Guatemala) on March 17, 2012, and taken to a male detention facility where she was abused.” (p. 3)

“In Guatemala, the trans community lives under the constant threat of being physically attacked. In 2010, Johana Ramírez suffered an attempted murder by a group of men, in a public place. After realizing that one of the attackers had a gun and was about to shoot her, Johana managed to flee.” (p. 3)

“Trans women have been subjected to forced disappearances that constitute torture. For instance: on February 23, 2010, a witness saw how a young man traveling in a blue jeep kidnapped a trans woman called Catherine Mitchell Barrios in Guatemala City's Historical Downtown. Five years later, Catherine has not appeared. The State has taken no steps to find Catherine or to investigate what happened to her.” (pp. 3-4)

“An epidemiological study has defined trans (travesti, transgender and transsexual) women as a population with high levels of exclusion and limited human development, even when compared to other population groups that are equally excluded in society and whose human rights are being violated. Their life expectancy is approximately 35 years.” (p. 6)

“In Guatemala, trans women suffer from lack of proper access to health services as they are usually subjected to rejection and arbitrary treatment from health facilities of all levels making up the national health system.” (p. 6)

Among the received complaints during the project of documentation carried out by REDLACTRANS and OTRANSRN, we have received a considerable number of cases that involve high levels of violence. In effect, 44% of the cases were murders and beatings.” (p. 37)

Firstly, we have received different complaints of murders as a result of firearms from moving cars. One of them is the case of S., a trans sexual worker. According to the witnesses, a car approached S. and fired with a gun. However, instead of escaping, the driver sped up to her in order to run her over and make sure that she was dead.” (p. 37)

In addition, homicides and assaults by gangs and criminal bands are frequent among the received cases. For instance, G. a trans sexual worker was attacked by a gang, who approached, hit her and stoned her until they confirmed she was dead. Another case is that of J., a trans woman who also did sex work. According to what her colleagues informed, J. was constantly bullied and harassed in her working area by a cisgender gang of women that frequently hit her and stole her belongings. Tired of these aggressions, she decided to make a complaint to the police. Despite this, one night while she was working, she was stabbed five times which caused her death.” (p. 37)

This impunity allows the occurrence and repetition of cases such as the one of F., who informed that one day while she was on the public road walking with other trans women was suddenly physically assaulted by a man who was driving a motorcycle. This man hit her head with his helmet and in her breast implants, spat at her and verbally assaulted her making reference to her gender identity and expression. Her friends asked for help to some agents of the National Civil Police that were nearby. Inexplicably, the officers arrested the trans women and told the aggressor to make a complaint against them.” (pp. 38-39)

One of the factors that cause deep concern among the organizations that belong to the network REDLACTRANS is the validity of dispositions that make reference to “public morals”, “decency” or “public scandal” which are used discretionally and arbitrarily by police officers as a persecution tool against trans women, particularly those who are in the sex work. These regulations, which are formulated in vague and ambiguous terms, are used as the basis for arbitrary detentions, expulsion from public areas and the imposition of fines, at the same time generating scenarios where other violations and abuses take place such as, physical, sexual and psychological aggressions. These kinds of regulations have also been a cause for concern among different international human rights protection organizations such as the Human Rights Committee, the Committee against Torture, and the IACHR. (pp. 39-40)

In the particular case of Guatemala, the Penal Code sets forth in section 489 the “offences against morals.” In fact, there is a pattern that appears in the complaints for intimidation or threats perpetrated by security agents. There are many cases in which trans women are threatened by police officers to arrest them due to their gender identity, because they are “men dressed as women.” This was the case of
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<td>Y. who was a victim of abuse and police harassment on a daily basis. On one occasion the National Civil Police arbitrarily deprived of her liberty on her gender expression and identity when she was in a shopping center.” (p. 40)</td>
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<th>MEDIA SOURCES</th>
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<td>• “Few places in Latin America are outwardly gay-friendly and Guatemala is no different. Technically, homosexuality is legal for persons over 18 years, but the reality can be another story, with harassment and violence against gays too often poisoning the plot. Don’t even consider testing the tolerance for homosexual public displays of affection here.” (p. 1)</td>
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<p>| • “A 29-year-old transgender woman from El Salvador who fled to Guatemala was murdered on Aug. 1.” (p. 1) |
| • “The woman…had sought refugee status because of violence and persecution from gangs that she suffered because of her gender identity.” (p. 1) |
| • “Bianca Rodriguez, director of COMCAVIS Trans, a trans advocacy group…highlighted the urgent need to protect LGBTQ people in Central America’s Northern Triangle that includes Guatemala, El Salvador and Honduras. ‘LGBTI people in the region are often targeted for harassment and violence by gangs….Many of them are eventually forced to cross an international border in search of protection. I call upon governments to do what they can to protect LGBTI people, especially those who feel they have no other choice but to flee their countries to safeguard their right to life....’” (pp. 1-2) |
| • “This murder underscores how national justice mechanisms in Central America are not responding to the need to preserve the life of trans people in the region,’ said Organizacion [Organization] Trans Reina de la Noche, a Guatemalan trans advocacy group, in a press release.” (p. 2) |
| • “‘The Guatemalan state has the constitutional mandate to protect people’s lives, and unfortunately it is doing the opposite,’ added Valdes, who cited Initiative 5272, a measure conservative groups promoted in 2017 that he said sought to limit LGBTQ people’s rights.” (p. 2) |</p>
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<td>• “The lack of rights and violence against the LGBTQ community and especially against trans women has increased during the coronavirus pandemic.” (p. 2)</td>
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<td>• “Lambda Guatemala statistics indicate there were 20 reported hate crimes against LGBTQ Guatemalans in 2019. The group said there have been 11 anti-LGBTQ attacks so far in 2020.” (p. 2)</td>
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- “Guatemala swears in Alejandro Giammattei, a conservative physician opposed to gay marriage…” (p. 2)


- “[E]ight armed police officers forced their way into another post-Pride event at the offices of a group that advocates for access to essential medicines for people living with HIV. Without a warrant, they entered the building on the premise that licensing hours for alcohol sales (which don’t apply to private events) end at 1 am. Once inside, witnesses told me, the officers intimidated attendees and pressured organisers to end the party.” (p. 2)
- “In Guatemala…same-sex marriage and civil unions are not legal; LGBTIQ+ people aren’t specifically included in most anti-discrimination laws; ultra-conservative religious movements are politically influential; and hate crimes continue to take a violent toll on the community.” (p. 3)
- “In their campaigns, each of these candidates [Sandra Torres and Alejandro Giammattei] committed to passing a so-called ‘Protection of the Family Law’ to prohibit the possibility of marriage equality, criminalise “sodomy” and all education on questions of sexual diversity….This bill, drafted by religious conservative groups, is waiting for its third and final vote in Congress. (p. 3)
- “Ahead of the Pride celebrations this year, LGBTIQ+ people had been attacked publicly by almost all political parties, and influential religious lobby groups. Their discourse was amplified through social media, said Vásquez, describing ‘ever more violent comments, including threats to attack or murder people from our communities.’ There were also reports of extreme, physical violence.” (p. 5)
- “In March, José Roberto Díaz, an 18-year-old volunteer with an LGBTIQ+ rights group called Working Together, was murdered in Huehuetenango, a city in the country’s western highlands. The next month, Betzi Esmeralda Có Sagastume...
(also 18) and Kelli Maritza Villagrán (26), a lesbian couple, were found murdered in El Progreso, about an hour’s drive from Guatemala City. In each case, their bodies were found with homophobic slurs cut into their skin.” (p. 5)

- “[T]he fact that hate crimes against LGBTIQ+ people are not specifically recognised under Guatemalan law means that there is no official registry of such crimes - and little political support for initiatives to prevent them.” (pp. 5-6)
- “[W]e know from civil society monitoring that last year between 24 and 33 members of the LGBTIQ+ community were murdered in Guatemala alone.” (p. 6)


- “Several especially violent assassinations of LGBTI individuals have called attention to homophobia and transphobia in the Central American country [Guatemala] within weeks of the general elections.” (p. 1)
- “They were killed for [being] lesbians. In the early morning of this past April 23, the bodies of two women were found near Jalapa, east of the capital, with signs of torture and violence. Along with the corpses, a photograph of one of them was found with a message of an incontestable nature: "we killed them for being lesbians." (p. 1)
- “The double assassination, which was immediately condemned by, among others, the country’s Office of the UN High Commissioner - which highlighted the ‘lesbian-phobic’ message - is only the latest macabre chapter in the worrisome situation of lesbian, gay, bisexual, trans and intersex (LGBTI) people in Guatemala.” (p. 1)
- “On March 24, a month earlier, an 18-year-old boy disappeared in Huehuetenango. He was found dead a day later, also with signs of torture. On his skin they had used a knife to write ‘hollow and snout,’ local homophobic insults, on his skin”. (p. 1)
- “One of the main problems is that there is no reliable record of hate crimes against sexual minorities. According to activist organizations, most victims are afraid to report, or families give up doing so to avoid giving visibility to their sexual orientation or gender identity, given the social stigma that still hangs over the issue. On the other hand, these groups add, often the authorities themselves consider them ordinary crimes or assume that the victim is the guilty party.” (p. 2)
- “According to a United Nations report, 24 LGBTI people were killed in Guatemala last year. The association “Somos,” meanwhile, raises this figure to
### 33. Trans women are the main victims of this deadly violence, according to this data.” (p. 2)

- Everything, however, points to the fact that the Guatemalan political and social climate is increasingly heading against the human rights of sexual minorities. As in other parts of Latin America, the Central American country is witnessing the rise of a religious conservatism that is championing the opposition against the collective demands of feminists and LGBTI collectives. (p. 2)

- ‘From a year and half ago until now, the issue has become highly politicized and the population has access to the negative discourse, but not to information and educational resources regarding sex, gender, etc.” Luis Barrueto, president of the NGO Visibles, tells DW. The imminence of this year's important electoral appointment has motivated the political forces to position themselves in search of support. (p. 2)

- "'That the State itself is generating a good part of the negative discourse is quite concerning, because they are precisely the ones who should be defending the minimum rights of the population,’ stresses the young activist Barrueto. The activists fear that the political polarization against the human rights of a particularly vulnerable minority add fuel to a "dynamic of violence" which is already in existence. That this hatred will continue to take lives.” (p. 3)


- “A group of LGBT migrants was among the first members of the so-called caravan to arrive in Tijuana this week, seeking asylum from some of the most violent countries in the world where gay and trans people are particularly targeted, according to Amnesty International.” (p. 1)

- “[T]heir group included about 80 people, including children, from Honduras, Nicaragua, El Salvador and Guatemala.” (p. 4)

- “[F]or LGBT migrants, the threat of violence is, in many cases, even greater, a 2017 Amnesty International report found, and "gay men and trans women are exposed to gender-based violence at every point on their journey in search of protection.” (p. 3)


- “Morales would like to have his name, sex on his identification, and appearance match so that he isn’t vulnerable to this kind of discrimination. But legally he
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<td>can’t do anything about it. Guatemala does not allow transgender people to change their sex on their legal documents.” (p. 2)</td>
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<td>• “[G]uatemala is a dangerous country to even identify as trans. According to a study by the Ministry of Public Health 71 percent of transgender women in Guatemala report being victim to discrimination, 60 percent have reported physical abuse and 61 percent earn less than minimum wage. Another study by the organization noted that as many as 70 percent of transgender people say they were kicked out of their family homes.” (p. 2)</td>
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<td>• “Despite the prevalence of violence and discrimination of transgender people in Guatemala, there are few legal protections for the LGBTQ community.” (p. 2)</td>
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<td>• “They [the federal prosecutors] don’t know what a trans man is so it was my job to explain it to them,’ says Morales. ‘And they asked me if a trans man is the same as a lesbian, or if I’m a man that wants to become a woman.’” (p. 2)</td>
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<td>• “Humiliated but undeterred, Morales explained what gender identity is and asked to file the report against the bank. But the employee at the prosecutor’s office told him he didn’t think a crime had been committed. ‘I told him that they went through my personal information. That’s a crime’ Morales said. The government employee asked if the bank was blackmailing him. Morales explained that no, the bank was not blackmailing him but they were revealing his personal information to strangers. ‘And he told me, ‘I’m sorry, but for people like you there is no law.’” (p. 2)</td>
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<td>• “To drive home a point about LGBTQ lives being in danger in [Guatemala], Romero played a grainy surveillance video that shows two men sitting in a bar in Guatemala holding hands. A man walks in, pulls out a gun and shoots them both point blank. Romero explained that this is the type of violence that LGBTQ people face all the time in Guatemala and much of it goes unreported because people often feel stigmatized at police stations and in government offices.” (p. 4)</td>
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- “Over the course of 30 years, more than 150 members of Guatemala’s LGBTI community were persecuted for their sexual orientation, according to a new investigation by the Historical Archive of the National Police (AHPN) – despite the fact homosexuality wasn't considered a crime.” (p. 1) |
<p>|     | “Researchers gathered files from 1960 to 1996 and found that 156 people were targeted for their sexual preferences by the National Police (1881-1997), citing incidents of ‘police aggravation’ going back as far as 1950.” (p. 1) |
|     | “According to AHPN researcher Katia Orantes, the National Police referred to the LGBTI community as the ‘internal enemy.’” (p. 1) |</p>
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<td>• “Killings and violence against LGBT people in Central America are driving hundreds to flee their homes each year, but they have no safe sanctuary to run to, Amnesty International said on Monday.” (p. 1)</td>
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<td>• “Lesbian, gay, bisexual and transgender people are being forced to leave El Salvador, Honduras and Guatemala to escape ‘epidemic levels of violence’ and threats by criminal gangs and security forces, the rights group said in a report.” (p. 1)</td>
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<td>• “’People are facing vicious discrimination in Central America due to their gender identities, and have absolutely nowhere to run for safety,’ Erika Guevara-Rosas, Americas director at Amnesty International said in a statement. ‘Terrorized at home, and abused while trying to seek sanctuary abroad, they are now some of the most vulnerable refugees in the Americas.’” (p. 1)</td>
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<td>• “Last week the Inter-American Commission of Human Rights (IACHR) stressed its concern about the ‘high levels of violence against transgender people’ and their low life expectancy.” (p. 1)</td>
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<td>• “LGBTI people are stigmatized, dehumanized even, by Guatemalan society and media, leaving them particularly vulnerable to violence and ill-treatment,” said [U.N. High Commissioner for Human Rights Zeid Ra’ad] al-Hussein. “They face discrimination at all levels, discrimination that prevents them from accessing education and justice, getting decent jobs and receiving adequate health care.” (p. 1)</td>
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<td>• “In his speech, [al-Hussein] highlighted the fact that the Office of the U.N. High Commissioner for Human Rights (OHCHR) in the country documented the murders of 11 trans women over the past year, but the Guatemalan government continues to document their cases as the deaths of men.” (p. 2)</td>
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| | • “A judge on Tuesday granted asylum to a transgender woman who fled persecution in Guatemala. The trans woman . . . in a court filing said she moved to Guatemala City, the country’s capital and largest city, when she was 17-years-
old to ‘avoid further bullying, harassment and discrimination’ she said she experienced in her hometown.” (p. 1)

- “Activists with whom the Washington Blade spoke in Guatemala City in January said violence and discrimination based on gender identity remains commonplace in the Central American country that borders Mexico, El Salvador, Honduras and Belize. They also said police officers either do not investigate allegations of anti-trans violence or are among those who carry it out.” (p. 2)

- “The trans woman in a separate court filing said Guatemalan police ‘targeted’ her because she was a sex worker. She also said police officers forced her to have oral and anal sex with them at least five times.” (p. 2)


- “In June, LAMBDA Guatemala, an LGBTQI human rights organization based in Guatemala City, in partnership with the Guatemalan chapter of the United Nations High Commissioner for Refugees, published the first report looking into the violent displacement of LGBTQI people in the Central American country.” (p. 6)

- “The [LAMBDA Guatemala] report says violence against LGBTQI people begins at home and in school. ‘When I was 10 years old, my father, with a gun in hand, said: ‘I’d rather have my son die than for him to be a homosexual,’” a gay man from Guatemala said in the report.” (p. 6)

- “There’s also lack of job opportunities, because employers won’t hire openly gay and lesbian people, or transgender men and women. Guatemala does not have a law that protects LGBTQI people from discrimination at the workplace, or any public realm.” (p. 6)

- “[M]ost of those interviewed in the report said they had suffered physical assault, and about one-third said they had survived sexual violence, and mentioned this as the reason they fled.” (p. 6)


- “Gang members are using rape, kidnapping, torture, sexual violence and other crimes, predominantly against women and girls and people who are lesbian, gay, bisexual or transgender, as a main tactic to expand their control of territory in Central America, according to Kids In Need of Defense (KIND).” (p. 2)
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<td>• Moran filed a complaint with Guatemala’s Office of Human Rights Monday over a petition hosted on the conservative portal CitizenGo that attacks her based on her sexual orientation. The petition, launched Sept. 1 by a user named Alejandro Berganza, argues that Moran should not be appointed as the president of the Parliamentary Forum of Women in Congress because she is a lesbian, saying the appointee ‘must be a woman in the full sense.’ (pp. 1-2)</td>
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<td>• ‘What’s more, conservative attacks have been on the rise against Moran for her sexuality, past involvement with an armed guerrilla movement, and feminist, socialist, anti-imperialist political agenda.’ (p. 2)</td>
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<td>• “[G]uatemala remains a deeply conservative and machismo society, with one of the highest murder rates in the world. Within this challenging context lesbians are raped as punishment and violent hate crimes force transgender people to flee overseas.” (p. 3)</td>
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<td>• “In recent years there have been some notable victories for same-sex marriage campaigners in the Americas, but it is a long way off in Guatemala. The new president, Jimmy Morales, an evangelical Christian, has made his opposition clear, and it’s not a battle the Guatemalan LGBT community has so far taken to the courts.” (p. 3)</td>
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<th>32. Michael K. Lavers, <em>Report documents anti-trans violence in Central America</em>, (January 2016), WASHINGTON BLADE,</th>
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“A new report indicates transgender women in Central America remain particularly vulnerable to discrimination and violence. The report indicates the life expectancy of trans women in El Salvador is less than 35 years because of rampant violence.” (p. 1)

“'[The report’s] primary objective is to generate documented evidence about the violence suffered by our trans counterparts in the region,’ reads the report.” (p. 2)

“‘The life expectancy of trans people is very short,’ said Johana Esmeralda Ramirez of Guatemala.” (p. 2)

“The report notes trans women and gay men were among the most likely to lose their lives to anti-LGBT violence. The Inter-American Commission on Human Rights also concluded the average life expectancy of trans people in the Western Hemisphere is between 30-35 years.” (p. 3)

“‘The report highlighted to us the most serious manifestations of violence against trans people,’ said Inter-American Commission on Human Rights Commissioner James Cavallaro on Wednesday. ‘It urges the Organization of American States’ member states to adopt all the necessary measures to prevent, investigate and punish as well as reduce murders and other acts of violence against trans people in the Americas.’” (p. 3)

“A gay Guatemalan immigrant who recently moved to D.C. said he fled his homeland earlier this year after he was gang raped because of his sexual orientation.” (p. 1)

“Milton Amezquita-Guzman, 27, told the Washington Blade last week during a telephone interview that men he described as gang members in the city of Quetzaltenango where he sold clothing and other items in March extorted money from him because he is gay. Amezquita-Guzman said the men called him a ‘faggot piece of shit’ and a ‘whore’ before they forced him to perform oral sex on them.” (p. 1)

“Amezquita-Guzman said he had been raped twice before prior to the March incident. He fled Guatemala in March while in disguise shortly after the third alleged sexual assault took place. . . . The judge in Amezquita-Guzman’s case last month granted his asylum request.” (p. 1)
Dated: [DATE]                     Respectfully submitted,
[CITY, STATE]

[FIRM]
_Pro Bono_ Counsel for Respondent________

By: _________________________
[NAME]
[FIRM]
[ADDRESS]
[PHONE NUMBER]
[FAX NUMBER]
Tab 1
GUATEMALA 2019 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Guatemala is a multiparty constitutional republic. In 2016 James Ernesto Morales Cabrera of the National Convergence Front party was sworn into office for a four-year term as president. On August 11, Alejandro Giammattei was elected president for a four-year term set to begin on January 14, 2020. International observers considered the presidential election held in 2019 as generally free and fair.

The National Civil Police (PNC), which is overseen by the Ministry of Government and headed by a director general appointed by the minister, is responsible for law enforcement and maintenance of order in the country. The Ministry of National Defense oversees the military, which focuses primarily on operations in defense of the country, but the government also used the army in internal security and policing as permitted by the constitution. The defense ministry completed its drawdown of 4,500 personnel from street patrols to concentrate its forces on the borders in 2018. Civilian authorities at times did not maintain effective control over the security forces.

Significant human rights issues included: harsh and life-threatening prison conditions; substantial problems with the independence of the judiciary, including malicious litigation and irregularities in the judicial selection process; widespread corruption; trafficking in persons; crimes involving violence or threats thereof targeting lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons, persons with disabilities, and members of other minority groups; and use of forced or compulsory or child labor.

Corruption and inadequate investigations made prosecution difficult. The government was criticized by civil society for refusing to renew the International Commission Against Impunity in Guatemala’s (CICIG) mandate, which expired on September 3. Impunity continued to be widespread for ongoing human rights abuses, endemic government corruption, and for mass atrocities committed during the 1960-1996 internal armed conflict.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings
There were reports that the government or its agents committed arbitrary or unlawful killings. As of August 31, the Public Ministry as well as the PNC and its Office of Professional Responsibility, the mechanism for investigating security force abuses, reported two complaints of homicide by police, in contrast with none in 2018.

At least 12 rural and indigenous activists were killed or died under disputed circumstances between January and July, according to the nongovernmental organization (NGO) Unit for the Protection of Human Rights Defenders (UDEFEGUA). Some of the killings appeared to be politically motivated, and all the cases remained under investigation at year’s end (see section 6, Indigenous People). In 2018 a total of 26 activists or human rights defenders were killed.

The case continued of former intelligence chief Jose Mauricio Rodriguez Sanchez regarding the genocide involving the Maya Ixil community during the country’s 30-year internal armed conflict (1960-1996). The prosecution appealed the September 2018 ruling of a three-judge panel that found Rodriguez not guilty. On June 16, Luis Enrique Garcia Mendoza, operations commander under Rios Montt, was arrested for allegedly having planned and executed military plans against the Maya Ixil community. On June 25, the prosecution filed a request to remove Judge Claudette Dominguez of High-Risk Court A from the case for alleged conflict of interest. The recusal was granted, and Judge Jimmi Bremer of High-Risk Court C indicted Garcia Mendoza on November 29 on charges of genocide and crimes against humanity.

The Public Ministry presented another case of genocide against the Maya Ixil community from the last months of Romeo Lucas Garcia’s government (1978-82). Three high-ranking military officers, Cesar Octavio Noguera Argueta, Manuel Callejas y Callejas, and Benedicto Lucas Garcia, were charged in the case. Manuel Callejas and Benedicto Lucas were both convicted in the Molina Theissen case and are serving 58-year sentences. According to the ministry, this case involved a minimum of 32 massacres, 97 selected killings, 117 deaths due to forced displacement, 37 cases of sexual assault, and 80 cases of forced disappearance. Many victims were children. On November 25, Judge Miguel Angel Galvez ruled there was sufficient evidence to bring the case to trial.

Congress made multiple attempts to advance an amnesty law to grant blanket amnesty to, and release from prison, former military officials and others convicted of war crimes and crimes against humanity during the civil war and also prevent
those accused of war crimes, crimes against humanity, and genocides from being prosecuted.

Negotiations for collective reparations continued in the case of families affected by the Chixoy hydroelectric dam. As of October the government had paid approximately 98 percent of the 200 million quetzals ($26 million) in individual reparations to families affected by the dam. During the dam’s construction from 1975 to 1985, more than 400 individuals died, and thousands were displaced.

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities. The government took actions to investigate and prosecute cases of forced disappearances from the internal armed conflict period. The government did not comply, however, with an order from the High-Risk Chamber to create a national commission on the search for disappeared persons and a national registry of victims.

The case known as CREOMPAZ continued of former military officers indicted in 2017 on charges of forced disappearance and crimes against humanity during the armed conflict. Several appeals and recusal motions filed in 2016 needed to be resolved before a full trial could begin. The prosecution filed a request to remove Judge Dominguez from the case for alleged bias and partiality toward members of the army. On October 4, the First High Risk Appellate Court denied the motion. The same appellate court had granted a similar request on September 12 to remove Dominguez from the Maya Achi sexual violence case for alleged bias.

One of the military officers linked to the CREOMPAZ case was Edgar Justino Ovalle Maldonado, a retired colonel who was elected to Congress with the National Convergence Front party in 2015. Ovalle went into hiding when the Supreme Court lifted his immunity from prosecution in 2017.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture and other cruel, inhuman, or degrading treatment or punishment, but there were reports alleging government workers employed them at the Federico Mora National Hospital for Mental Health (see section 6). The Office of the UN High Commissioner for Human Rights (OHCHR) noted that documentation and reporting mechanisms for torture and other cruel, inhuman, or
degrading treatment or punishment remained weak, thereby hindering a full understanding of the prevalence of the problem.

Prison and Detention Center Conditions

Prison conditions were harsh and potentially life threatening, with multiple instances of inmates killing other inmates. Sexual assault, inadequate sanitation and medical care, and gross overcrowding placed prisoners at significant risk. Authorities occasionally held pretrial detainees together with convicted prisoners, juveniles with adults, and male with female detainees.

**Physical Conditions:** Prison overcrowding was a problem. As of October 1, according to prison authorities, there were 25,297 inmates, including 2,806 women, held in facilities designed to hold 6,800 persons. As of October 2, there were 708 juvenile inmates in four traditional detention centers and the halfway house, which were designed for 529 inmates. Another 1,242 inmates were held in three new alternative measures facilities. Despite a reduction in the overcrowding, there were 303 inmates in the Las Gaviotas juvenile detention facility, designed for 155 individuals. Approximately 28 percent of juvenile inmates had not been sentenced and were awaiting trials.

Physical conditions including sanitation and bathing facilities, dental and medical care, ventilation, temperature control, and lighting were wholly inadequate. Prisoners had difficulty obtaining potable water, complained of inadequate food, and often had to pay for additional sustenance. Illegal drug sales and use was widespread.

Prison officials reported safety and control problems, including escape attempts, gang fights, inability to control the flow of contraband goods into prisons, inmate possession of firearms and grenades, and the fabrication of weapons. Prisoners conducted criminal activity both inside and outside of prisons. Media reported that transnational criminal gangs and drug trafficking groups controlled major prison centers. According to prison authorities, from January through August 31, at least 26 inmates died of unnatural causes while in prison. On May 7, seven inmates were killed and almost 20 injured in a riot in Pavon prison. On July 5, another riot at the prison left one dead and three injured.

Media and NGOs reported female inmates faced continuing physical and sexual abuse. Female inmates reported unnecessary body searches and verbal abuse by prison guards. Children younger than age four could live in prison with their
mothers, but the penitentiary system provided inadequate food for young children, and many suffered from illness. LGBTI rights groups stated that other prisoners often sexually assaulted LGBTI individuals and there were insufficient facilities to protect LGBTI individuals in custody. NGOs claimed admittance procedures for LGBTI prisoners were not implemented, noting particular concern regarding procedures for transgender individuals.

**Administration:** While the law requires authorities to permit prisoners and detainees to submit complaints to judicial authorities without censorship and request investigation of credible allegations of inhuman conditions, authorities failed to investigate most allegations of inhuman conditions and treatment or to document the results of such investigations.

**Independent Monitoring:** The government permitted visits by local and international human rights groups, the Organization of American States, public defenders, and religious groups. The Office of the Human Rights Ombudsman (PDH) and the National Office for the Prevention of Torture, both independent government bodies responsible for ensuring that the rights and wellbeing of prisoners are respected, also periodically visited prison facilities.

**Improvements:** The Secretariat of Social Welfare significantly reformed the four juvenile detention centers. Reform to the juvenile justice system resulted in more sentences to alternative measures such as work programs and fewer detainees, which eased prison overcrowding. The secretariat divided the juvenile prisons to ensure minors were held in separate wings from adults.

**d. Arbitrary Arrest or Detention**

The law prohibits arbitrary arrest and detention, but there were credible reports of extrajudicial arrests, illegal detentions, and denial of timely access to a magistrate and hearing as required by law. Suspects are entitled to challenge in court the legal basis or arbitrary nature of their detention. There was no compensation for those ruled unlawfully detained.

**Arrest Procedures and Treatment of Detainees**

The law requires presentation of a court-issued warrant to a suspect prior to arrest unless police apprehend a suspect while in the act of committing a crime. Police may not detain a suspect for more than six hours without bringing the case before a judge. Authorities did not regularly respect this right. After arraigning suspects,
the prosecutor generally has three months to complete the investigation if the defendant is in pretrial detention, and six months to complete the investigation if the defendant is granted house arrest. The law prohibits the execution of warrants between 6 p.m. and 6 a.m. unless the government has declared a state of siege. Judges may order house arrest for some suspects. The law provides for access to lawyers and bail for most crimes. The government provides legal representation for indigent detainees, and detainees have access to family members. A judge has the discretion to determine whether bail is permissible for pretrial detainees.

**Arbitrary Arrest:** As of August 31, the Office of Professional Responsibility had received 26 complaints of illegal detention by police. Reports indicated police ignored writs of habeas corpus in cases of illegal detention, particularly during neighborhood antigang operations.

**Pretrial Detention:** As of October 1, prison system records indicated 48 percent of prisoners were in pretrial detention. The law establishes a one-year maximum for pretrial detention, regardless of the stage of the criminal proceeding, but the court has the legal authority to extend pretrial detention without limits as necessary. Authorities regularly held detainees past their legal trial or release dates. Lengthy investigations and frequent procedural motions by both defense and prosecution often led to lengthy pretrial detentions, delaying trials for months or years. Observers noted the slow pace of investigations and lack of judicial resources hampered efforts to reduce pretrial detention and illegal incarceration. Authorities did not release some prisoners after they completed their full sentences due to the failure of judges to issue the necessary court order or other bureaucratic delays.

A culture of indifference to detainee rights put the welfare of detainees at risk. On August 22, Ronald Estuardo Fuentes Cabrera was held in confinement while awaiting trial for personal injury charges after a car accident. Fuentes died from internal thoracic injury hours before his scheduled trial and without having received a medical exam, while his wife and the passenger of the other vehicle were taken for medical care.

**e. Denial of Fair Public Trial**

The constitution and the law provide for an independent judiciary. The judicial system generally failed to provide fair or timely trials due to inefficiency, corruption, and intimidation of judges, prosecutors, and witnesses.
Judges, prosecutors, plaintiffs, and witnesses continued to report threats, intimidation, and surveillance, most often from drug trafficking organizations. By the end of August, the special prosecutor for crimes against judicial workers received 70 complaints of threats or aggression against workers in the judicial branch, compared with 157 from January to August 2018.

On September 16, the Constitutional Court halted the postulation process for selecting the 13 Supreme Court and 135 appellate court magistrates. The court provisionally ruled that certain necessary procedures were not followed, including the omission of a performance evaluation for judges and magistrates. As of December the court had not issued its final ruling on the injunction. The existing postulation process permits widespread manipulation of the postulation committees by politicians, judicial operators, and other influential citizens, resulting in a judiciary that lacked full independence.

**Trial Procedures**

The constitution provides for the right to a fair and public trial, the presumption of innocence, the defendant’s right to be present at trial, and the right to legal counsel in a timely manner. The law requires the government to provide attorneys for defendants facing criminal charges if the defendant cannot find or afford an attorney. Defendants and their attorneys may confront adverse witnesses and present their own witnesses and evidence. The law provides for “abbreviated processing,” similar to plea bargaining, for minor offenses with short-term prison sentences and the right of appeal. Three-judge panels render verdicts. The law provides for oral trials and mandates free language interpretation for those needing it; however, interpreters were not always available. Officials conduct trials in Spanish, the official language, although many citizens speak only one of the 23 officially recognized indigenous languages.

The Public Ministry, acting semi-independently of the executive branch, may initiate criminal proceedings on its own or in response to a complaint. Private parties may participate in the prosecution of criminal cases as plaintiffs.

The judiciary added 19 judges during the year, including a judge dedicated to relieving court backlogs. International and domestic observers considered the number of judges insufficient.

**Political Prisoners and Detainees**
There were no reports of political prisoners or detainees.

**Civil Judicial Procedures and Remedies**

Individuals and organizations have access to administrative and judicial remedies to submit lawsuits seeking damages for, or cessation of, a human rights violation or other alleged wrongs. While the judiciary was generally impartial and independent in civil matters, it suffered from inefficiencies and a legal system that often permits spurious complaints.

**f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence**

The constitution and the law prohibit such actions, and the government generally respected these prohibitions.

**Section 2. Respect for Civil Liberties, Including:**

**a. Freedom of Expression, Including for the Press**

The law provides for freedom of expression, including for the press, and the government generally respected this right. The intimidation of and violence against journalists resulted in significant self-censorship, however.

Freedom of Expression: On March 21, a court dismissed a case in which President Morales filed a criminal complaint against social activist Roberto Rimola. Morales accused Rimola of defamation and insult after Rimola verbally insulted him. The court ruled that insulting leaders of the three branches of government could not be considered a crime due to limitations to freedom of expression. Morales appealed the court decision and attended a May 29 hearing in court. As of October 1, the case remained open, and a lower court declared the case must be judged specifically under the freedom of expression act, normally reserved for cases involving journalists.

Press and Media, Including Online Media: Independent media were active and expressed a wide variety of views. Nonetheless, reporters covering organized crime, including its links to corrupt public officials, acknowledged practicing self-censorship, recognizing the danger investigative journalism posed to them and their families. Public security forces continued imposing more stringent
identification checks on journalists covering government events and activities, a practice initiated in August 2018.

On May 9, presidential candidate Sandra Torres filed a criminal complaint against the daily newspaper *elPeriodico* after it published several editorials against her. Torres based her lawsuit on the law against femicide and violence against women for attempted violation of her physical and psychological integrity. On May 13, she tried to rescind the lawsuit, but the femicide law does not permit withdrawal of cases, and consequently the Public Ministry must conclude an investigation.

**Violence and Harassment:** Members of the press reported receiving pressure, threats, and retribution from public officials regarding the content of their reporting. Online attacks against independent journalists and media outlets continued throughout the year. These included hacking of journalists’ private accounts, publishing stolen or falsified personal information, and apparent coordinated attempts to undermine specific journalists and the press. On May 20, a blog page appeared against Henry Bin, journalist for the radio and weekend television program *ConCriterio*, and several other independent journalists, alleging Bin was gay and engaged in pedophilia and child pornography. Several attacks against journalists in April and May included videos alleging various forms of corruption and immorality by journalists Juan Luis Font, Claudia Mendez, and Pedro Trujillo.

Members of the press continued to report threats and violence from public officials and criminal organizations, which impaired the practice of free and open journalism. The government failed to establish a journalist protection program, a voluntary commitment the country accepted in 2012 during the Universal Periodic Review of the UN Human Rights Council. According to the Public Ministry, 51 complaints were filed for attacks or threats against journalists; none were killed by the end of August, compared with two killings in 2018.

On June 4, Judge Miguel Angel Galvez of High-Risk Court B found sufficient cause to bring to trial the case of Julio Antonio Juarez Ramirez, accused of ordering the killing of journalist Danilo Efrain Zapon Lopez in 2015 in Mazatenango, Suchitepequez Department.

The Public Ministry employed a unit dedicated to the investigation of threats and attacks against journalists, but the NGO Center for Reporting in Guatemala noted it had few prosecutions.
Nongovernmental Impact: Organized crime exerted influence over media outlets and reporters, frequently threatening individuals for reporting on criminal activities.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority.

Human rights defenders, as well as judges and lawyers on high-profile cases, reported social media attacks, including the hacking of their private accounts, publishing of stolen or falsified personal information, publishing of photographic surveillance of them and family members, and online defamation and hate speech. The government took little action to protect these individuals.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedoms of Peaceful Assembly and Association

The constitution provides for the freedoms of peaceful assembly and association, and the government generally respected these rights, with a few exceptions. On September 4, in response to the killing of three soldiers in the municipality of El Estor, Izabal Department, President Morales declared a state of siege in 22 municipalities across five departments. Congress ratified the measure, which limited the freedom of peaceful assembly, freedom of association, and the right to protest for more than one million citizens living in the area under siege. The president and congress renewed the state of siege for a second 30-day period ending on November 4.

Freedom of Peaceful Assembly

The law provides for freedom of assembly, and the government generally respected this right, except during the declared state of siege noted above.

Freedom of Association
The law provides for freedom of association, and the government generally respected this right, except during the declared state of siege noted above. There were reports, however, of significant barriers to organizing in the labor sector (see section 7.a.).

c. Freedom of Religion

See the Department of State’s International Religious Freedom Report at https://www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

The constitution and the law provide for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. The state of siege in Izabal and parts of four other departments temporarily limited rights to freedom of movement (see section 2.b.).

e. Internally Displaced Persons

The Office of the UN High Commissioner for Refugees (UNHCR) expressed concern regarding violence against internally displaced persons (IDPs) and strengthened its efforts to monitor the problem and provide assistance to the displaced. The country does not officially recognize the existence of IDPs within its borders, with the exception of those displaced by climate change and natural disasters. The Inter-American Commission on Human Rights characterized as IDPs 400 farmers the government evicted from the Maya Biosphere Reserve in 2017. Media and civil society groups reported the evictees did not receive adequate government assistance and continued to struggle with poverty and landlessness.

f. Protection of Refugees

Access to Asylum: The laws provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. UNHCR reported that identification and referral mechanisms for potential asylum seekers were inadequate. Migration authorities lacked adequate training concerning the rules for establishing refugee status. The government and UNHCR signed a memorandum of understanding, published on September 4, to significantly strengthen the asylum and protection system and increase capacity to process asylum seekers.
Access to Basic Services: UNHCR reported access to education for refugees was difficult due to the country’s onerous requirements for access to formal education, including documentation from the country of origin.

g. Stateless Persons

Not applicable.

Section 3. Freedom to Participate in the Political Process

The constitution provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on nearly universal and equal suffrage for those ages 18 and older. Members of the armed forces, police, and incarcerated individuals are not eligible to vote.

Elections and Political Participation

Recent Elections: In August, Alejandro Giammattei of the VAMOS for a Different Guatemala party defeated National Unity of Hope candidate Sandra Torres in a second round of voting and was to be sworn in as president in January 2020. The Organization of American States and other international observers found some irregularities in the electoral process, but none were significant enough to discredit the legitimacy and validity of the elections. During the presidential campaign, however, two of the top candidates in the polls were disqualified from being placed on the ballot. Zury Rios, daughter of former president Efrain Rios Montt, and Thelma Aldana, former attorney general, both claimed the rulings against them were politically motivated. The Attorney General’s Office continued to investigate allegations of illicit campaign financing in the 2015 elections, including a case against Sandra Torres and the National Unity of Hope party.

Participation of Women and Minorities: No laws limit participation of women or members of minorities in the political process, and they did participate. Traditional and cultural practices, in addition to discrimination and institutional bias, however, limited the political participation of women and members of indigenous groups.

There was one woman serving in the 13-member cabinet, 30 in the 158-member Congress, and 10 among the 340 municipal mayors. While the indigenous population constituted an estimated 43 percent of the population, according to the
2018 government census, indigenous representation in national government was minimal. There was one indigenous member on the Constitutional Court and one on the Supreme Court. There were approximately 18 indigenous members of Congress, of whom two were women. Indigenous individuals composed a larger share of elected local government officials, filling approximately one-third (113 of 333) of the mayoral seats elected in 2015.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption, but officials frequently engaged in corrupt practices with impunity. There were numerous reports of government corruption during the year, many of which the Public Ministry, with support from CICIG, investigated and prosecuted on charges including money laundering, illegal political party financing, and bribery.

Corruption: On July 16, the Public Ministry brought charges against more than 50 persons, including 10 members of Congress, for receiving kickbacks from construction and medical supply procurement and for awarding public jobs by irregular means. Those charged included a former presidential candidate and a former minister of health. Charges included the acceptance of bribes for hospital construction after the 2012 earthquake in the western region, the acceptance of bribes in the purchase of unnecessary medical equipment, and the creation of phantom positions at the Ministry of Health. The case continued in the pretrial stage, and some of the accused remained at large.

In the Odebrecht case, involving bribes allegedly paid to former presidential candidate Manuel Baldizon and former communications minister Alejandro Sinibaldi, on July 23, High Risk Court A sentenced three persons close to Baldizon and Sinibaldi to six years in prison for money laundering, and two of them to an additional eight years for illicit association. Baldizon continued to be detained in the United States on an international arrest warrant on separate money laundering and conspiracy charges. Sinibaldi remained a fugitive and was implicated in another case of bribery and influence peddling linked to former president Otto Perez Molina’s administration.

The government was criticized by civil society for refusing to renew CICIG’s mandate, which expired on September 3. Despite the government’s request for CICIG to transfer capacity to the Public Ministry by the end its mandate, many in civil society believed the Public Ministry did not yet have the capacity to investigate corruption cases on its own and the decision to terminate CICIG’s
mandate was made for political reasons. At the end of CICIG’s mandate, it had a public approval rating of approximately 70 percent.

**Financial Disclosure:** Public officials who earn more than 8,000 quetzals ($1,040) per month or who manage public funds are subject to financial disclosure laws overseen and enforced by the Comptroller General’s Office. The financial disclosures were available to the public upon request. Administrative and criminal sanctions apply for inadequate or falsified disclosures of assets.

**Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights**

A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were often cooperative and responsive to their views.

A number of NGOs, human rights workers, and trade unionists reported threats, violence, and intimidation. UDEFEGUA reported 12 killings of human rights defenders from January through July. The NGO also reported 361 attacks against human rights defenders in the same period, compared with 392 attacks in all of 2018. According to human rights NGOs, many of the attacks were related to land disputes and exploitation of natural resources and involved mainly indigenous communities. NGOs asserted the government did little to investigate the reports or prevent further incidents.

NGOs also reported the government, fringe groups, and private entities used threats of legal action as a form of intimidation. According to UDEFEGUA, from January to July, there were 28 retaliatory judicial cases filed against human rights defenders. On March 22, the president of the Supreme Court, Nester Mauricio Vasquez Pimental, filed a criminal case against Claudia Samayoa, president of UDEFEGUA, and Jose Manuel Martinez, member of the civil society group Justicia Ya (Justice Now), for alleged theft, deviation of correspondence, and trafficking of influence. UDEFEGUA and other civil society groups stated this case occurred after Samayoa and Martinez’s participation in a complaint before Guatemala City’s criminal, drug trafficking, and environment court against 11 Supreme Court justices on January 17.

**The United Nations or Other International Bodies:** The government had refused to renew the visas of the CICIG commissioner and investigators since early 2018,
making it difficult for CICIG to resume normal functions. CICIG’s mandate expired on September 3, and CICIG cases were transferred to the Special Prosecutor’s Office Against Impunity in the Public Ministry. Subsequently, Guatemalan former CICIG employees complained about being subject to systemic harassment and spurious lawsuits for simply having performed their duties for CICIG.

**Government Human Rights Bodies:** The PDH monitors the human rights set forth in the constitution and reports to Congress. The PDH opposed several congressional bills during the year, including an amnesty bill for human rights violators during the armed conflict period. On October 2, several congressional deputies submitted a petition to the Congressional Committee on Human Rights calling for the ombudsman to be removed from his position. While the PDH attempted to operate independently and issued public reports and recommendations as in past years, Congress applied significant political pressure, including threats to withhold the PDH’s funding. NGOs generally considered the PDH to be an effective institution with limitations in rural areas due to lack of resources.

The Congressional Committee on Human Rights drafts and provides guidance on legislation regarding human rights. The law requires all political parties represented in Congress to have a representative on the committee. Some NGOs did not consider the committee to be an effective forum for human rights promotion and protection.

The President’s Commission on Human Rights (COPREDEH) formulates and promotes human rights policy. COPREDEH also led coordination of police protection for human rights and labor activists. COPREDEH generally benefited from the administration’s cooperation and operated without political or party interference. Some NGOs claimed COPREDEH was not an effective interlocutor on human rights issues.

For the first time in its post-civil war history, the government failed to participate in the meeting on human rights convened by the Inter-American Commission on Human Rights in September. During this meeting the PDH and civil society organizations discussed challenges related to human rights. On behalf of the government, COPREDEH issued a letter claiming the commission’s meeting constituted a challenge to the country’s sovereignty.

**Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**
Women

Rape and Domestic Violence: The law criminalizes rape of men or women, including spousal rape, and sets penalties between five and 50 years in prison. Police had minimal training or capacity to investigate sexual crimes or assist survivors of such crimes, and the government did not enforce the law effectively.

Rape and other sexual offenses remained serious problems. The government took steps to combat femicide and violence against women. The judiciary continued to operate a 24-hour court in Guatemala City to offer services related to violence directed toward women, including sexual assault, exploitation, and trafficking of women and children. The judiciary also operated specialized courts for violence against women throughout the country, but not in every department. The Public Ministry maintained a 24-hour victim service center to provide medical, psychosocial, and legal support to victims, including restraining orders for their immediate protection. The ministry also maintained a national alert system for finding disappeared women. Sexual violence remained widespread despite these advances. The ministry reported that 6,231 women were victims of aggravated rape from January to August, compared with 549 cases filed during the same period in 2018.

The law establishes penalties for femicide of 25 to 50 years in prison without the possibility of reducing the sentence; however, femicide remained a significant problem. The NGO Mutual Support Group reported that from January to August, 477 women were killed. Despite a generally decreasing homicide rate for men since 2010, the rate of femicide remained essentially the same.

Violence against women, including sexual and domestic violence, remained widespread and serious. The law establishes penalties of five to eight years for physical, economic, and psychological violence committed against women due to their gender. The Public Ministry recorded 40,993 instances of violence against women from January to August. The ministry noted that the judicial system convicted 1,149 perpetrators of violence against women. In December 2018 the bodies of former congressional deputy Joaquin Humberto Bracamonte Marquez and his wife Zulma Vyanka Subillaga Dubon, former secretary against sexual violence, exploitation, and human trafficking, were found in their missing vehicle. The Public Ministry investigation, concluded in June, determined Bracamonte had murdered his wife before committing suicide.
In May 2018 authorities arrested seven former members of the civil defense patrols and charged them with sexual violence against 36 Maya Achi women in Rabinal, between 1981 and 1985. On June 21, Judge Claudette Dominguez ruled there was insufficient evidence to send the defendants to trial and ordered them released. The prosecution filed recusal motions against Judge Dominguez, and in September the First High Risk Appellate Court granted the recusal motion and transferred the case to Judge Miguel Angel Galvez; however, the case remained mired in a series of unresolved appeals.

**Sexual Harassment:** No single law, including laws against sexual violence, deals directly with sexual harassment, although several laws refer to it. Human rights organizations reported sexual harassment was widespread.

**Coercion in Population Control:** There were no reports of coerced abortion or involuntary sterilization.

**Discrimination:** Although the law establishes the principle of gender equality and criminalizes discrimination, women, and particularly indigenous women, faced discrimination and were less likely to hold management positions.

**Children**

**Birth Registration:** Children derive citizenship by birth within the country’s territory or from their parents. UNICEF described low birth registration as a “serious problem,” and UNHCR reported problems in registering births were especially acute in indigenous communities due to inadequate government registration and documentation systems. Lack of registration restricted children’s access to some public services and created conditions that could lead to statelessness.

**Education:** While primary education is compulsory through age 14, access was limited in many rural areas; education through the secondary level is not obligatory. Boys were prioritized for high school education in rural communities due to the need to travel long distances and girls’ perceived value in the home.

**Child Abuse:** Child abuse remained a serious problem. A unit under the Office of the Special Prosecutor for Crimes against Children and Adolescents handled child abuse cases. The Public Ministry opened an integrated 24-hour care model providing medical, psychosocial, and legal support to children and adolescent victims of violence. The ministry reported 7,089 reports of minor abuse of all
types, approximately 2,000 fewer than in 2018. The ministry reported 54 convictions for child abuse from January through August, compared with 82 during the same period in 2018.

NGOs supporting at-risk youth reported adolescents detained by police were subject to abusive treatment, including physical assaults.

**Early and Forced Marriage:** The legal age for marriage is 18. There were reports of early and forced marriages in some rural indigenous communities and in the Lev Tahor religious community. A 2017 decree prohibits underage marriage. The National Registry of Persons reported no attempted registration of underage marriage since enactment of the decree.

**Sexual Exploitation of Children:** The law provides sentences ranging from 13 to 24 years in prison, depending on the victim’s age, for engaging in sex with a minor. The minimum age of consensual sex is 18.

The law prohibits child pornography and establishes penalties of six to 10 years in prison for producing, promoting, and selling child pornography and two to four years’ imprisonment for possessing it. The Public Ministry and the PNC conducted several raids against alleged online child pornography networks. The Regional Unit against Trafficking in Persons, responsible for eight departments in the Western Highlands and launched in 2018, was expanding the government’s investigative capacity against child pornography offenders. The commercial sexual exploitation of children, including child sex tourism, remained a problem, including in privately run orphanages.

**Displaced Children:** Criminals and gangs often recruited street children, many of them victims of domestic abuse, for purposes of stealing, extortion, prostitution, transporting contraband, and conducting illegal drug activities.

**Institutionalized Children:** More than 500 children and adolescents lived in shelters run by the Secretariat for Social Welfare (SBS). During the year the Secretariat against Sexual Violence, Exploitation, and Trafficking in Persons transferred control of three shelters to the SBS, as mandated by the government.

Overcrowding was common in shelters, and government funding for orphanages remained limited. Local and international human rights organizations, including Disability Rights International, raised concerns that child abuse was rampant. A
2018 investigative report claimed children with disabilities were consistently mistreated and neglected, including by being locked in cages.

On August 22, a judge denied house arrest for former SBS secretary Carlos Rodas and former deputy secretary for protection and shelter Anahi Keller, and they remained in prison. The two, former shelter director Santos Torres, and four others were charged with murder, abuse of authority, breach of duty, and abuse against minors in relation to the deaths of 41 girls in a 2017 fire at the Hogar Seguro orphanage. As of November the public trial, which was the final stage of the criminal proceeding, had not begun. The government did not make significant structural changes to the national shelter system.


Anti-Semitism

The Jewish population numbered approximately 1,500 persons. There were no reports of anti-Semitic acts.

Trafficking in Persons

See the Department of State’s Trafficking in Persons Report at https://www.state.gov/trafficking-in-persons-report/.

Persons with Disabilities

The constitution contains no specific prohibitions against discrimination based on physical, sensory, intellectual, and mental disabilities. The law, however, mandates equal access to public facilities and provides some other legal protections. In many cases, however, the law was not enforced. The law does not mandate that persons with disabilities have access to information or communications.

The National Council for Persons with Disabilities reported few persons with disabilities attended educational institutions or held jobs. The council, composed of representatives of relevant government ministries and agencies, is the principal
government entity responsible for protecting the rights of persons with disabilities. Most schools and universities did not have facilities accessible to persons with disabilities, and there was no reliable data on the prevalence of disabilities in the school-age population.

The Federico Mora National Hospital for Mental Health, the only public health-care provider for persons with mental illness, lacked basic supplies, equipment, hygienic living conditions, and adequate professional staff. Media and human rights organizations reported mistreatment of residents, including physical, psychological, and sexual violence by other residents, guards, and hospital staff, especially with respect to women and children with disabilities. Multiple legal actions were pending against the hospital.

**Indigenous People**

The government’s National Institute of Statistics estimated indigenous persons from 24 ethnic groups comprised 44 percent of the population. The law provides for equal rights for indigenous persons and obliges the government to recognize, respect, and promote the lifestyles, customs, traditions, social organizations, and manner of dress of indigenous persons. The government does not recognize particular indigenous groups as having a special legal status provided by national law.

Multiple local NGOs raised concerns over the killings of at least six indigenous leaders from January through September. According to NGO assessments, at least three of the victims may have been targeted because of their political involvement and advocacy for indigenous rights. On July 5, Isidro Perez and Melesio Ramirez were killed near Livingston by an armed group alleged to be connected to a former government minister. The Committee for Rural Development (CODECA) and indigenous leaders reported that Perez and Ramirez were killed during a CODECA protest and targeted due to their indigenous land rights activism. On September 14, Maya Achi Ancestral Authority representative Paulina Cruz Ruiz was killed in Baja Verapaz by unidentified gunmen in front of her house. Ruiz was active in organizing the March for Dignity in 2018 and had assisted the Maya Achi Ancestral Authorities to bring legal actions against mining projects in the area.

Indigenous representatives claimed actors in a number of regional development projects failed to consult meaningfully with local communities. In some cases indigenous communities were not able to participate in decisions affecting the exploitation of resources in their communities, including energy, minerals, timber,
rivers, or other natural resources. They also lacked effective mechanisms for dialogue with the state to resolve conflicts, as Congress had not approved a legislative proposal to guide the implementation of prior consultation, as required by International Labor Organization (ILO) Convention 169. In 2018 the Constitutional Court ordered the Ministry of Energy and Mines to hold ILO Convention 169-compliant consultations with Xinka populations and upheld the suspension of the operating license of the San Rafael Mine until after conclusion of the consultations. As of October the government and Xinka authorities were negotiating who would represent the Xinka community in the consultations.

In July the Constitutional Court ordered the provisional closure of the Fenix nickel mine in Izabal Department, near the border with Honduras, until the Ministry of Energy and Mines conducted ILO 169-compliant consultations with local communities. The Russian conglomerate Solway, which bought the mine in 2014, was accused of violence against indigenous activists and illegal extraction of undeclared materials. The OHCHR reported the mine continued operations despite the court order to suspend activities. The OHCHR also reported the mine began operations in the Barrio Nuevo area despite a lack of consultations with local communities during the September state of siege declared by the government.

Indigenous communities were underrepresented in national politics and remained largely outside the political, economic, social, and cultural mainstream. This was mainly due to limited educational opportunities (contrary to law), limited communication regarding their rights, and pervasive discrimination. Government agencies dedicated to supporting indigenous rights lacked political support. These factors contributed to disproportionate poverty and malnutrition among most indigenous populations.

Indigenous lands lacked effective demarcation, making the legal recognition of titles to the land problematic. Indigenous rights advocates asserted that security authorities lacked familiarity with indigenous norms and practices, which engendered misunderstandings. In February the government established the “Road to Prosperity,” a program to facilitate and implement an inclusive, participatory, and transparent dialogue between government officials and indigenous peoples to analyze and identify local needs and gaps in government services and to improve the quality and coverage of public services and projects.

**Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**
The law does not extend specific antidiscrimination protections to LGBTI individuals based on their sexual orientation, gender identity or expression, or sex characteristics. Efforts to pass laws against such discrimination, including a gender identity law, encountered severe opposition among legislators.

LGBTI human rights groups stated police officers regularly engaged in extortion and harassed male and transgender individuals whom they alleged to be sex workers. There was general societal discrimination against LGBTI persons in access to education, health care, employment, and housing. The government made minimal efforts to address this discrimination. Aldo Davila, elected in June and the first openly gay member of Congress, reported receiving constant death threats during and after the elections due to his sexual orientation, activism, and heightened public image. Several attacks targeted journalists for supposed membership in the LGBTI community. PNC officials visited one local LGBTI NGO’s office in August and stayed outside for hours, which the group claimed was an attempt to intimidate LGBTI victims of violence who were seeking shelter in the office.

According to LGBTI activists, gay and transgender individuals often experienced police abuse. The local NGO National Network for Sexual Diversity and HIV and the Lambda Association reported that as of October, a total of 20 LGBTI persons had been killed, including several transgender individuals the NGOs believed were targeted due to their sexual orientation. Several were killed in their homes or at LGBTI spaces in Guatemala City. LGBTI groups claimed women experienced specific forms of discrimination, such as forced marriages and forced pregnancies through “corrective rape,” although these incidents were rarely, if ever, reported to authorities. In addition, transgender individuals faced severe discrimination.

**HIV and AIDS Social Stigma**

The law includes HIV/AIDS status among the categories prohibited from discrimination. Societal discrimination against persons with HIV/AIDS remained a problem, however, despite efforts by the Ministry of Health to address it. Forms of discrimination included being required by some government authorities to reveal HIV/AIDS test results to receive certain public benefits or from employers in order to be hired. In addition, HIV/AIDS patients experienced discrimination from medical personnel when receiving services at some public hospitals and clinics, and had their right to confidentiality violated by disclosure of their status. Discrimination against LGBTI persons with HIV/AIDS was particularly common.
and affected access to HIV-prevention programs, especially for transgender individuals.

Other Societal Violence or Discrimination

Several times vigilante mobs attacked and killed those suspected of crimes such as rape, kidnapping, theft, or extortion. The NGO Mutual Support Group reported three persons were lynched and 22 injured in attempted lynchings by vigilante groups from January through June.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right of workers, with the exception of security force members, to form and join trade unions, conduct legal strikes, and bargain collectively. The law, however, places some restrictions on these rights. For example, legal recognition of an industrywide union requires that the membership constitute a majority of the workers in an industry and restricts union leadership to citizens. Ministries and businesses are required to negotiate only with the largest union, as determined by annual membership. The law prohibits antiunion discrimination and employer interference in union activities and requires employers to reinstate workers dismissed for organizing union activities. A strike must have the support of the majority of a company’s workforce. Workers are not restricted to membership in one union or one industry.

The president and cabinet may suspend any strike deemed “gravely prejudicial to the country’s essential activities and public services.” The government defined “essential services” more broadly than international standards, thus denying the right to strike to a large number of public workers, such as those working in education, postal services, transport, and the production, transportation, and distribution of energy. Public employees may address grievances by means of conciliation for collective disputes and arbitration directly through the labor courts. For sectors considered essential, arbitration is compulsory if there is no agreement after 30 days of conciliation.

The law prohibits employer retaliation against workers engaged in legal strikes. If authorities do not recognize a strike as legal, employers may suspend or terminate workers for absence without leave. A factory or business owner is not obligated to negotiate a collective bargaining agreement unless at least 25 percent of workers in
The factory or business are union members and request negotiations. Once a strike occurs, companies are required to close during negotiations. Strikes were extremely rare, but work stoppages were common.

The government did not effectively enforce the law. Government institutions, such as the Ministry of Labor and the labor courts, did not effectively investigate, prosecute, or punish employers who violated freedom of association and collective bargaining laws. Labor courts also failed to compel compliance with reinstatement orders, including payment of back wages, for workers illegally dismissed for engaging in union activities. The Public Ministry was ineffective in responding to labor court referrals for criminal prosecution in cases where employers refused to comply with labor court orders. Inspectors often lacked vehicles or fuel to carry out inspections, and in some cases they failed to take effective action to gain access to worksites in response to employers’ refusal to permit labor inspectors access to facilities. Inspectors were encouraged to seek police assistance as required. Inspections were generally not comprehensive, and if complaint driven, focused on investigating the alleged violation, rather than attempting to maximize limited resources to determine compliance beyond the individual complaint. Penalties for labor law violations were inadequate and rarely enforced.

A 2017 decree restored sanction authority to the Ministry of Labor, but the decree did not go into effect until January 2018. Business groups complained the shortened time frame to investigate and verify compliance with Ministry of Labor remediation orders resulted in more cases being referred to the labor courts without an opportunity to conciliate. Worker representatives reported no significant improvement in compliance with the law as a result of the new sanction authority, noting that the inspectorate emphasized collection of fines, which now go to the labor inspectorate, over remediation of the underlying violations. The ministry’s labor inspectorate indicated it had collected 1,864,800 quetzals ($240,000) from fines imposed in 2018, and approximately 3,044,000 quetzals ($395,000) from January 1 to November 15, 2019. Lack of information about the law’s implementation made it difficult to assess its impact on improving labor law enforcement.

The Unit for Crimes against Unionists within the Office of the Special Prosecutor for Human Rights in the Public Ministry was responsible for investigating attacks and threats against union members as well as for noncompliance with judicial orders in labor cases. Staffing for the unit increased, but successful prosecutions remained a challenge. The unit reported approximately 2,000 referrals of
noncompliance with labor court orders, most of which involved mass dismissals in the public sector and remained under investigation.

On September 20, the government submitted its first report to the ILO Governing Body, as required in the ILO’s November 2018 decision to close a 2012 complaint alleging the country had failed to meet its commitments under Convention 87 on Freedom of Association. Under the terms of the decision, a National Tripartite Commission on Labor Relations and Freedom of Association, which was formed in 2017 to monitor and facilitate implementation of the 2013 ILO roadmap and its 2015 indicators, would report annually to the Governing Body and publicly on progress implementing the ILO roadmap until 2020. The decision also called on the government and its social partners to develop and adopt a consensus legislative proposal that would address the long-standing ILO recommendations on freedom of association, collective bargaining, and the right to strike. Unions submitted their report to the Governing Body on implementation of the roadmap on September 30.

The reports demonstrated a lack of progress in all nine elements of the roadmap. After being inactive from November 2018 through April, the National Tripartite Commission met five times from May to September but failed to achieve concrete progress on the roadmap. For example, a lack of consensus remained between employers and workers on legislation seeking to address ILO recommendations, particularly to allow for industry-wide unions. Three subcommissions established under the National Commission were equally ineffective--on legislation and labor policy, on mediation and dispute settlement, and on implementation of the roadmap.

In August the National Tripartite Commission approved a technical assistance program proposed by the ILO with three objectives and a number of outcomes. The first objective was to strengthen the capacity in negotiations of the commission and its subcommissions. The second objective was to develop consensus legislative proposals to address the long-standing ILO recommendations. The third objective was to strengthen the capacity of institutions responsible for freedom of association to prevent, investigate, prosecute, process, and execute administrative and judicial decisions, as well as to improve access to information by civil society so they could take actions to defend and promote their labor rights.

The Ministry of Government convened the Interagency Committee to Analyze Attacks Against Human Rights Defenders, including trade unionists, on a regular basis. NGO participants complained the ministry imposed restrictions on civil
society participation in the committee and reduced working-level officials’ authorities to respond to attacks.

The country did not demonstrate measurable progress in the effective enforcement of its labor laws, particularly those related to freedom of association and collective bargaining. In February the ILO noted the need for additional urgent action in several areas related to the roadmap, including investigation and prosecution of perpetrators of trade union violence; the adoption of protection measures for union officials; passage of legislative reforms to remove obstacles to freedom of association and the right to strike; expedited union registrations; and a national media campaign to raise awareness of the rights to freedom of association and collective bargaining.

Violence and threats against trade unionists and labor activists remained serious problems, with one killing of a trade unionist, two violent attacks, and 19 documented threats reported during the year. Authorities did not thoroughly investigate most acts of violence and threats, and by often discarding trade union activity as a motive from the outset of the investigation, allowed these acts to go unprosecuted. Several labor leaders reported death threats and other acts of intimidation. The Public Ministry reported that by August 31, it had received 487 complaints of crimes or offenses against trade unionists and labor activists and issued 20 convictions, including those related to cases opened in previous years. In February the ILO noted with regret continued impunity in cases of violence against trade union leaders and members.

Procedural hurdles, union formation restrictions and delays, and impunity for employers refusing to receive or ignoring court orders limited freedom of association and collective bargaining. Government statistics on attempted union registrations indicated most registrations were initially rejected, and when they were issued, it was done outside the legally established period. In addition, credentials of union leaders were regularly rejected and delayed. As a result, union members were left without additional protections against antiunion retaliation.

Employers routinely resisted attempts to form unions, delayed or only partially complied with agreements resulting from direct negotiations, and ignored judicial rulings requiring the employer to negotiate with recognized unions. There were credible reports of retaliation by employers against workers who tried to exercise their rights, including numerous complaints filed with the Ministry of Labor and the Public Ministry alleging employer retaliation for union activity. Common practices included termination and harassment of workers who attempted to form
unions, creation of illegal company-supported unions to counter legally established unions, blacklisting of union organizers, and threats of factory closures. Local unions reported businesses used fraudulent bankruptcies, ownership substitution, and reincorporation of companies to circumvent legal obligations to recognize newly formed or established unions, despite legal restrictions on such practices.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor. The government failed to enforce the law effectively. Reports persisted of men and women subjected to forced labor in agriculture and domestic service. Penalties were inadequate to deter violations and rarely enforced. Criminal penalties for forced labor range from eight to 18 years’ imprisonment. The government had specialized police and prosecutors handle cases of human trafficking, including forced labor, although local experts reported some prosecutors lacked adequate training. There were also reports of forced child labor (see section 7.c.).

Also see the Department of State’s *Trafficking in Persons Report* at https://www.state.gov/trafficking-in-persons-report/.

c. Prohibition of Child Labor and Minimum Age for Employment

The law does not prohibit all of the worst forms of child labor. The Ministry of Labor issued Ministerial Agreement 260-2019 in June to provide effective implementation of ILO 138 Convention on Minimum Age for Work, which raises the minimum age for employment to 15 years. The law bars employment of minors younger than age 15, although it allows the ministry to authorize children younger than 15 to work in exceptional cases. The ministry’s inspectorate reported it did not authorize any exceptions during the year. The law prohibits persons younger than 18 from working in places that serve alcoholic beverages, in unhealthy or dangerous conditions, at night, or beyond the number of hours permitted. The legal workday for persons younger than 14 is six hours; for persons 14 to 17, the legal workday is seven hours. Despite this ministerial agreement, child labor was prevalent in the agricultural sector, in dangerous conditions, and with parents’ knowledge and consent.

The Ministry of Labor’s Child Worker Protection Unit is responsible for enforcing restrictions on child labor and educating minors, their parents, and employers on the rights of minors. Penalties were not sufficient to deter violations. The government did not effectively enforce the law, a situation exacerbated by the
weakness of the labor inspection and labor court systems. The government devoted insufficient resources to prevention programs.

Child labor was a widespread problem. The NGO Conrad Project Association of the Cross estimated the workforce included approximately one million children ages five to 17. Most child labor occurred in rural indigenous areas of extreme poverty. The informal and agricultural sectors regularly employed children younger than 14, usually in small family enterprises, including in the production of broccoli, coffee, corn, fireworks, gravel, and sugar. Indigenous children also worked in street sales and as shoe shineers and bricklayer assistants.

An estimated 39,000 children, primarily indigenous girls, worked as domestic servants and were often vulnerable to physical and sexual abuse and sex trafficking. Traffickers exploit Guatemalan children in forced begging and street vending, particularly within Guatemala City and along the border with Mexico. Criminal organizations, including gangs, exploited girls in sex trafficking and coerced young males in urban areas to sell or transport drugs or commit extortion.

Also see the Department of Labor’s Findings on the Worst Forms of Child Labor at https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings and the Department of Labor’s List of Goods Produced by Child Labor or Forced Labor at https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods.

d. Discrimination with Respect to Employment and Occupation

The law explicitly prohibits discrimination with respect to employment or occupation based on race, color, sex, religion, political opinion, national origin or citizenship, age, and disability. The government did not effectively enforce the law and related regulations. Penalties for violations were not sufficient to deter violations.

Discrimination in employment and occupation occurred. Anecdotally, wage discrimination based on race and sex occurred often in rural areas.

e. Acceptable Conditions of Work

The law sets national minimum wages for agricultural and nonagricultural work and for work in garment factories. The minimum wage for agricultural and nonagricultural work and for work in export-sector-regime factories did not meet the minimum food budget for a family of five.
The legal workweek is 48 hours with at least one paid 24-hour rest period. Workers are not to work more than 12 hours a day. The law provides for 12 paid annual holidays and paid vacation of 15 working days after one year’s work. Daily and weekly maximum hour limits do not apply to domestic workers. Workers in the formal sector receive the standard pay for a day’s work for official annual holidays. Time-and-a-half pay is required for overtime work, and the law prohibits excessive compulsory overtime.

The government sets occupational health and safety standards that were inadequate, not current for all industries, and poorly enforced. The law does not provide for the right of workers to remove themselves from situations that endangered health or safety without jeopardy to their employment.

The Ministry of Labor conducted inspections to monitor compliance with minimum wage law provisions but often lacked the necessary vehicles or fuel to enable inspectors to enforce the law, especially in the agricultural and informal sectors. The ministry did not employ a sufficient number of labor inspectors to deter violations, and many of them performed reviews on paper or administrative duties rather than clearly defined inspection duties.

Labor inspectors reported uncovering numerous instances of overtime abuse, but effective enforcement was undermined due to inadequate fines and labor courts’ reluctance to use compulsory measures, such as increased fines and referrals to the criminal courts, to obtain compliance. Other factors contributing to the lack of effective enforcement included labor court inefficiencies, employer refusal to permit labor inspectors to enter facilities or provide access to payroll records and other documentation, and inspectors’ lack of follow-up inspections in the face of such refusals. Due to inefficient and lengthy court proceedings, the resolution of labor court cases was often delayed, in many instances for several years. Employers failing to provide a safe workplace were rarely sanctioned, and a law requiring companies with more than 50 employees to provide onsite medical facilities for their workers was not enforced.

Trade union leaders and human rights groups reported employers required workers to work overtime without legally mandated premium pay. Management often manipulated employer-provided transportation to worksites to force employees to work overtime, especially in export processing zones located in isolated areas with limited transportation alternatives. Noncompliance with minimum wage provisions in the agricultural and informal sectors was widespread. Advocacy
groups estimated the vast majority of workers in rural areas who engaged in daylong employment did not receive the wages, benefits, or social security allocations required by law. Many employers in the agricultural sector reportedly conditioned payment of the minimum daily wage on excessive production quotas that workers generally were unable to meet. To meet the quota, workers felt compelled to work extra hours, sometimes bringing family members, including children, to help with the work. Because of having to work beyond the maximum allowed hours per day, workers received less than the minimum wage for the day and did not receive the required overtime pay. According to ILO statistics, 74 percent of the workforce worked in the informal sector and outside the basic protections afforded by law.

On June 3, the Ministry of Labor issued regulations implementing ILO Convention 175 on Part-Time Work, ratified in 2017. In October the Constitutional Court temporarily suspended key provisions of the regulations. While the business community was in favor of these regulations as a tool to generate employment, workers expressed concern the regulations would further reduce minimum wage, overtime pay, and employment benefits such as social security. They also expressed concern that employers would forcefully convert full-time workers to part time.

Local unions highlighted and protested violations by employers who failed to pay employer and employee contributions to the national social security system despite employee contribution deductions from workers’ paychecks. These violations, particularly common in export and agricultural industries, resulted in limiting or denying employees’ access to the public health system and reducing or underpaying workers’ pension benefits during their retirement years.

Many employers of domestic servants routinely paid below minimum wage, failed to register their employees with the Guatemalan Institute of Social Security, and demanded 16-hour days for six or more days a week for live-in staff.
Tab 2
EXECUTIVE SUMMARY

Guatemala is a multiparty constitutional republic. In January 2016 James Ernesto Morales Cabrera of the National Convergence Front party was sworn into office for a four-year term as president. International observers considered the presidential election held in 2015 as generally free and fair.

Civilian authorities at times did not maintain effective control over the security forces.

Human rights issues included reports of harsh and life-threatening prison conditions; widespread corruption; trafficking in persons; crimes involving violence or threats thereof targeting lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons, persons with disabilities, and members of other minority groups; and use of forced or compulsory or child labor.

Corruption and inadequate investigations made prosecution difficult, and impunity continued to be widespread. Parts of the government collaborated with the International Commission against Impunity in Guatemala (CICIG) (an entity created by agreement between the government and the UN) to prosecute the worst forms of corruption. On August 31, however, President Morales announced he would not renew the CICIG mandate, which expires in September 2019. On September 4, authorities barred CICIG commissioner Ivan Velasquez from re-entry for reasons of “national security.” The government asked CICIG to transfer capacity to the Public Ministry by the end of its mandate.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were no reports that the government or its agents committed arbitrary or unlawful killings. As of August 31, the Public Ministry as well as the National Civil Police (PNC) and its Office of Professional Responsibility (ORP), the mechanism for investigating security force abuses, reported no complaints of homicide by police.
At least nine rural, indigenous activists and human rights defenders were killed or died under disputed circumstances between May and September. Some of the killings appeared to be politically motivated, and all of the cases remained under investigation at year’s end.

In 2017 two separate trials began against former head of state Efrain Rios Montt and former intelligence chief Jose Mauricio Rodriguez Sanchez in the case of genocide involving the Maya Ixil community. In 2013 Rios Montt was found guilty of genocide and crimes against humanity committed during his presidency (1982-83) and sentenced to 80 years in prison. The Constitutional Court overturned the conviction on procedural grounds and returned the case for retrial. On April 1, Rios Montt died before the trial concluded. On September 26, a high-risk court--created in 2009 to hear cases that posed a serious risk to the security of judges, the prosecutor, the defense, or any other individuals involved in the case--ruled that genocide and crimes against humanity were perpetrated against the indigenous Ixil community between 1982 and 1983, but a majority of the three-judge panel found Rodriguez not guilty and attributed responsibility for genocide to the military high command, including the then president, minister of defense, and defense chief of staff.

The 1982 Dos Erres massacre case against Rios Montt did not conclude due to Rios Montt’s death in April. The Dos Erres trial against former special forces officer Santos Lopez Alonzo opened on October 1. On November 21, a high-risk court sentenced Lopez to 5,160 years in prison for the massacre of 171 persons.

As of November the government had paid approximately 95 percent of the 200 million quetzals ($26.7 million) in individual reparations to families affected by the Chixoy hydroelectric dam. During the dam’s construction from 1975 to 1985, more than 400 individuals died and thousands were displaced.

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities. The government took actions to investigate and prosecute cases of forced disappearances from the internal armed conflict period. On May 23, a high-risk court sentenced four high-ranking former military officers to 58 years in prison each for rape, forced disappearance, and crimes against humanity in the Molina Theissen case. Prosecutors had charged the group in 2016 for the 1981 forced disappearance of 14-year-old Marco Antonio Molina Theissen in retaliation for his sister’s escape from their captivity. The conviction of high-ranking former
military officers for crimes committed during the internal armed conflict was unprecedented.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The constitution and law prohibit torture and other cruel, inhuman, or degrading treatment or punishment but there were reports alleging government workers employed them at the Federico Mora National Hospital for Mental Health (see section 6). The Office of the High Commissioner for Human Rights (OHCHR) noted that documentation and reporting mechanisms for torture and other cruel, inhumane, or degrading treatment or punishment remain weak, thereby hindering a full understanding of the prevalence of the issue.

Prison and Detention Center Conditions

Prison conditions were harsh and potentially life threatening, with multiple instances of inmates killing other inmates. Sexual assault, inadequate sanitation and medical care, and gross overcrowding placed prisoners at significant risk.

Physical Conditions: Prison overcrowding was a problem. As of September 24, according to prison authorities, there were 24,314 inmates, including 2,645 women, held in facilities designed to hold 6,800 persons. Physical conditions including sanitation and bathing facilities, dental and medical care, ventilation, temperature control, and lighting were wholly inadequate. Prisoners had difficulty obtaining potable water, complained of inadequate food, and often had to pay for additional sustenance. Illegal drug sales and use was widespread. Prison officials reported safety and control problems, including escape attempts, gang fights, inability to control the flow of contraband goods into prisons, inmate possession of firearms and grenades, and the fabrication of weapons. Prisoners conducted criminal activity both inside and outside of prisons. According to prison authorities, from January through August 31, at least 14 inmates died of unnatural causes while in prison. On April 27, a riot at Granja Penal Canada Prison left eight inmates dead and 25 injured. On August 20, a separate riot at Granja de Rehabilitacion Cantel Prison left four inmates dead and four injured. Both riots started with a fight between two gangs inside the prison. On September 30, a riot at Pavoncito Prison left seven inmates dead and four wounded.

Media reported that transnational criminal gangs and drug trafficking groups controlled major prison centers. In November 2017 a judge indicted 17 individuals
in connection with the 2016 killing of 14 inmates in Pavon Prison; the case remained pending at year’s end.

Conditions for male and female prisoners were generally comparable throughout the country. Media and nongovernmental organizations (NGOs) reported female and juvenile inmates faced continuing physical and sexual abuse. Female inmates reported unnecessary body searches and verbal abuse by prison guards. Children younger than age four could live in prison with their mothers, although the penitentiary system provided inadequate food for young children and many suffered from illness. LGBTI rights groups stated other prisoners often sexually assaulted LGBTI individuals and that there were insufficient facilities to protect LGBTI individuals in custody. NGOs claimed admittance procedures for LGBTI prisoners were not implemented, noting particular concern regarding procedures for transgender individuals. Occasionally authorities held pretrial detainees together with convicted prisoners, juveniles with adults, and male with female detainees.

In March 2017 authorities opened the first corrections center based on a new model to address corruption and overcrowding. In January the new minister of government, Enrique Degenhart, implemented significant changes, including a complete overhaul of the previously vetted and trained leadership of the new correctional model, which undermined the model’s effectiveness and hindered adult penitentiary system reforms.

Media reported similar conditions of abuse and overcrowding at the four juvenile detention centers administered separately by the Secretariat of Social Welfare. Crowding led to holding nonviolent juvenile offenders with violent adult offenders. As of September 25, there were 753 inmates in the Las Gaviotas juvenile detention facility designed for 525 individuals. More than 30 percent of the inmates had not been sentenced and were awaiting trials.

Administration: The government’s Office of the Human Rights Ombudsman (PDH) and the National Office for the Prevention of Torture (NOPT), both independent entities, are responsible for prisoner rights, receiving complaints, and conducting oversight of the prison system. The PDH and NOPT may submit recommendations to the prison system based on complaints. No independent agency or unit, however, has a mandate to change or implement policy or to act on behalf of prisoners and detainees. Congress delayed the election of three NOPT rapporteurs by more than 16 months, finally appointing them on August 1, while the PDH and civil society reported former rapporteurs were inactive and
ineffective in their oversight mandate. The Office of the UN High Commissioner for Human Rights noted deficiencies in the NOPT mechanism and the selection process for the three NOPT rapporteurs.

While the law requires authorities to permit prisoners and detainees to submit complaints to judicial authorities without censorship and request investigation of credible allegations of inhuman conditions, authorities failed to investigate most allegations of inhuman conditions and treatment or to document the results of such investigations.

Independent Monitoring: The government permitted visits by local and international human rights groups, the Organization of American States, public defenders, and religious groups. The PDH and the NOPT also periodically visited prison facilities. The PDH reported it was sometimes difficult to gain access to the juvenile detention centers administered by the Secretariat of Social Welfare.

d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention, but there were credible reports of extrajudicial arrests, illegal detentions, and denial of timely access to a magistrate and hearing as required by law. Suspects are entitled to challenge in court the legal basis or arbitrary nature of their detention. If successful, their release usually took several days. There was no compensation for those ruled unlawfully detained.

Role of the Police and Security Apparatus

The PNC, which is overseen by the Ministry of Government and headed by a director general appointed by the ministry, is responsible for law enforcement and maintenance of order in the country. The Ministry of National Defense oversees the military, which focuses primarily on operations in defense of the country, but the government also used the army in internal security and policing as permitted by the constitution. On March 31, the defense ministry withdrew 4,500 personnel from street patrols to concentrate its forces on the borders. The drawdown process began in 2016.

Civilian authorities in some instances failed to maintain effective control over the PNC, and the government lacked effective mechanisms to investigate and punish abuse and corruption. On August 31, the Ministry of Government, with the support of the Ministry of Defense, deployed a convoy of armed jeeps at various
points in the capital, including in front of an embassy, CICIG headquarters, and a prominent local human rights organization. The jeeps were mobilized from Interagency Task Forces and were donated for the purpose of counternarcotics operations. Local NGOs pointed out the jeep deployment coincided with President Morales’ announcement he would not extend the CICIG mandate and was intended as a show of force, intimidation, and an attempt to repress civil society.

There were reports of impunity involving security forces. In cases involving police forces, the ORP is responsible for internal investigations and the Public Ministry is responsible for external investigations. A police reform commission, established by a previous administration, has a legal mandate to make necessary changes to reform police forces. On May 20, Police Reform Commissioner Adela Torrebiarte resigned, alleging that the Ministry of Government purposefully blocked police reform initiatives.

The ORP reported that from January through August, there were six complaints of police extortion and 135 for abuse of authority, compared with 17 and 290, respectively, during the same period in 2017. The PNC routinely transferred officers suspected of wrongdoing rather than investigating them.

Critics accused police of indiscriminate and illegal detentions when conducting antigang operations in some high-crime neighborhoods.

The ORP conducted internal investigations of misconduct by police officers. During the first eight months of the year, the ORP reported receiving 362 complaints of misconduct by police.

All new PNC and soldiers receive training in human rights and professional ethics. The Ministry of Defense Human Rights Directorate collaborated with other government human rights offices to provide internal and interagency human rights trainings to soldiers.

**Arrest Procedures and Treatment of Detainees**

The law requires presentation of a court-issued warrant to a suspect prior to arrest unless police apprehend a suspect while in the act of committing a crime. Police may not detain a suspect for more than six hours without bringing the case before a judge. Authorities did not regularly respect this right and did not promptly inform some detainees of the charges against them. After arraigning suspects, the prosecutor generally has three months to complete the investigation if the
defendant is in pretrial detention, and six months to complete the investigation if the defendant is granted house arrest. The law prohibits the execution of search warrants between 6 p.m. and 6 a.m. unless the government has declared a state of siege. Judges may order house arrest for some suspects. The law provides for access to lawyers and bail for most crimes. The government provides legal representation for indigent detainees, and detainees have access to family members. A judge has the discretion to determine whether bail is permissible for pretrial detainees.

** Arbitrary Arrest: ** There were no reliable data on the number of arbitrary detentions. Most accounts, however, indicated that police ignored writs of habeas corpus in cases of illegal detention, particularly during neighborhood antigang operations.

** Pretrial Detention: ** As of August 31, prison system records indicated 52 percent of prisoners were in pretrial detention. The law establishes a one-year maximum for pretrial detention, regardless of the stage of the criminal proceeding, but the court has the legal authority to extend pretrial detention without limits as necessary. Authorities regularly held detainees past their legal trial or release dates. Lengthy investigations and frequent procedural motions by both defense and prosecution often led to lengthy pretrial detentions, delaying trials for months or years. Observers noted the slow pace of investigations, lack of judicial resources, and a culture of indifference to detainee rights hampered efforts to reduce pretrial detention and illegal incarceration. Authorities did not release some prisoners after they completed their full sentences due to the failure of judges to issue the necessary court order or other bureaucratic delays. Former medical school dean Jesus Oliva committed suicide on June 11 after having been in trial detention since May 2015, most of that in pretrial detention before his trial opened in August 2017. A few days before his death, Oliva’s attorney requested house arrest for him because he suffered depression, but a judge rejected the request. Oliva was charged in a corruption case involving the government health system that concluded on September 26. Other defendants in the case were sentenced to six years in prison and immediately released on bail after having already served more than three years in prison.

** e. Denial of Fair Public Trial **

The constitution and the law provide for an independent judiciary. The judicial system generally failed to provide fair or timely trials due to inefficiency, corruption, and intimidation of judges, prosecutors, and witnesses.
Judges, prosecutors, plaintiffs, and witnesses continued to report threats, intimidation, and surveillance, most often from drug trafficking organizations. By the end of August, the special prosecutor for crimes against judicial workers received 157 complaints of threats or aggression against workers in the judicial branch, compared with 129 through August 2017.

**Trial Procedures**

The constitution provides for the right to a fair and public trial, the presumption of innocence, the defendant’s right to be present at trial, and the right to legal counsel in a timely manner. The law requires the government to provide attorneys for defendants facing criminal charges if the defendant cannot find or afford an attorney. Defendants and their attorneys may confront adverse witnesses and present their own witnesses and evidence. The law provides for plea bargaining for minor offenses with short-term prison sentences and the right of appeal. Three-judge panels render verdicts. The law provides for oral trials and mandates free language interpretation for those needing it; however, interpreters were not always available. Officials conduct trials in Spanish, the official language, although many citizens only speak one of the 23 officially recognized indigenous languages.

The Public Ministry, acting semi-independently of the executive branch, may initiate criminal proceedings on its own or in response to a complaint. Private parties may participate in the prosecution of criminal cases as plaintiffs.

**Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

**Civil Judicial Procedures and Remedies**

Individuals and organizations have access to administrative and judicial remedies to submit lawsuits seeking damages for, or cessation of, a human rights violation or other alleged wrongs. While the judiciary was generally impartial and independent in civil matters, it suffered from inefficiencies and a legal system that often permits spurious complaints. The judiciary estimated the country had a ratio of 2.46 judges for every 100,000 inhabitants, which international and domestic observers considered insufficient.
f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The constitution and the law prohibit such actions, and the government generally respected these prohibitions. In 2016 President Morales dismissed Jorge Lopez, the secretary of administrative and security matters of the president, and his deputy, Cesar Sagastume, for alleged illegal surveillance. At year’s end the case remained under investigation by the Public Ministry. In August a local newspaper published an investigative series alleging that former president Otto Perez Molina created an illegal surveillance network in 2012 to listen to calls, mirror mobile phones, and access social media accounts. According to the article, the Ministry of Government dismantled the network in 2015.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The constitution and law provide for freedom of expression, including for the press, and the government generally respected this right. The intimidation of and violence against journalists resulted in significant self-censorship, however.

Freedom of Expression: Following President Morales’ August 31 press conference announcing he would not renew CICIG’s mandate, several prominent human rights defenders and activists reported the PNC visited them ostensibly to inquire about their protection measures. Several journalists also reported suspected surveillance of their homes and offices in the days following the August 31 press conference. The activists and journalists interpreted these actions as an effort to intimidate them from criticizing the administration’s measures with respect to CICIG.

Press and Media Freedom: There were no legal restrictions on the editorial independence of the media. Reporters covering organized crime, including its links to corrupt public officials, acknowledged practicing self-censorship, recognizing the danger investigative journalism posed to them and their families. Independent media were active and expressed a wide variety of views. Since August 31, public security forces have imposed more stringent identification checks on journalists covering government events and activities.

Violence and Harassment: Online attacks against independent journalists and media outlets increased throughout the year. These included hacking of journalists’ private accounts, publishing stolen or falsified personal information,
and apparent coordinated attempts to undermine specific journalists and the press. Members of the press continued to report threats and violence from public officials and criminal organizations, which impaired the practice of free and open journalism. The government failed to establish a journalist protection program, a voluntary commitment the country accepted in 2012 during the Universal Periodic Review of the UN Human Rights Council.

According to the Public Ministry, 54 complaints were filed for attacks or threats against journalists, and two journalists were killed from January through the end of August, compared with 116 complaints and three killings in all of 2017.

In November 2017 the Supreme Court lifted the parliamentary immunity of Congressman Julio Antonio Juarez Ramirez based on allegations from the Public Ministry and CICIG that he ordered the killing of journalist Danilo Efrain Zapon Lopez in 2015 in Mazatenango, Suchitepequez. Journalist Federico Benjamin Salazar Geronimo was also killed in the attack and reporter Marvin Tunches was injured. At year’s end the case was at the intermediary public trial phase.

The Public Ministry employed a unit dedicated to the investigation of threats and attacks against journalists, but the NGO Center for Reporting in Guatemala noted it had few prosecutions.

Censorship or Content Restrictions: Members of the press reported receiving pressure, threats, and retribution from public officials regarding the content of their reporting. Some owners and members of media accused the government of following a discriminatory advertising policy that penalized or rewarded print and broadcast media based on whether the government perceived the news or commentary as supportive or critical. Significant self-censorship occurred as a result.

Nongovernmental Impact: Organized crime exerted influence over media outlets and reporters, frequently threatening individuals for reporting on criminal activities.

**Internet Freedom**

The daily newspaper *elPeriodico* experienced a two-day denial of service attack and another three-day attack starting on September 1. The source of the attacks remained unknown.
A local newspaper reported former president Otto Perez Molina’s administration created a surveillance network in 2012 to access social media accounts of diplomats, government officials, politicians, journalists, students, and academics.

According to the International Telecommunication Union, 41 percent of the population used the internet in 2017.

**Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom or cultural events.

**b. Freedoms of Peaceful Assembly and Association**

The constitution provides for the freedoms of peaceful assembly and association, and the government generally respected these rights, with a few exceptions.

**Freedom of Peaceful Assembly**

The law provides for freedom of association, and the government generally respected this right.

On September 12, the congressional spokesperson reported that more than 2,100 police were present at Congress during a commemoration of the country’s independence, led by President Morales. A protest scheduled to converge at Congress on the same day was not able to approach the perimeters of Congress. The heavy police presence ostensibly serving as presidential security and crowd control received widespread criticism and media as a form of intimidation against the protesters. Civil society groups expressed concern over the presence of Kaibiles, military special forces who were implicated in war crimes during the country’s internal armed conflict from 1960-96.

On September 14, when President Morales and his cabinet attended a ceremony at the cathedral on the central plaza, NGOs and journalists accused the government of using excessive security measures to intimidate citizens and restrict their right to assemble. Observers stated security measures included the deployment of antiriot military police; the registration of all pedestrians entering the plaza, including children; and excessive security checks. On September 14, a Public Ministry prosecutor stated publicly he would investigate for possible violations of freedom of movement.
Freedom of Association

The law provides for freedom of association, and the government generally respected this right. There were reports, however, of significant barriers to organizing in the labor sector (see section 7.a.).

c. Freedom of Religion

See the Department of State’s International Religious Freedom Report at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

The constitution and the law provide for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

An immigration law in effect since 2017 overhauled the country’s migration system and defined the term “refugee” as well as listing refugees’ rights in accordance with international instruments. The preparation of regulations to implement the law, including on the refugee application process and refugee rights, was underway at year’s end. Government agencies made limited progress in implementing the Protection Council mandated by the new migration code, which would support the protection, reception, and reintegration of returned children.

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, asylum seekers, stateless persons, or other persons of concern, including during the mid-October surge of Central American migrants that passed through the country.

Internally Displaced Persons (IDPs)

UNHCR expressed concern regarding violence against IDPs and strengthened its efforts to monitor the problem and provide assistance to the displaced. The country does not officially recognize the existence of IDPs within its borders, with the exception of those displaced by climate change and natural disasters. The Inter-American Commission on Human Rights characterized as IDPs 400 farmers the government evicted from the Maya Biosphere Reserve in 2017. Media and
civil society groups reported the evictees did not receive government assistance in a timely manner.

**Protection of Refugees**

*Access to Asylum:* The laws provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. UNHCR, however, reported that identification and referral mechanisms for potential asylum seekers were inadequate. Both migration and police authorities lacked adequate training concerning the rules for establishing refugee status.

*Access to Basic Services:* UNHCR reported access to education for refugees was challenging due to the country’s onerous requirements for access to formal education, including documentation from the country of origin.

**Section 3. Freedom to Participate in the Political Process**

The constitution provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on nearly universal and equal suffrage for those ages 18 and older. Members of the armed forces, police, and incarcerated individuals are not eligible to vote.

**Elections and Political Participation**

*Recent Elections:* In 2015 James Ernesto Morales Cabrera of the National Convergence Front party defeated National Unity of Hope candidate Sandra Torres in a second round of voting and was sworn in as president in January 2016. An Organization of American States international election observation mission characterized the elections as generally free and fair. The Attorney General’s Office continued to investigate allegations of illicit campaign financing in the 2015 elections and petitioned for immunity reviews against two parties’ secretaries general, including President Morales. An additional immunity review from 2017 against Morales for illicit campaign financing remained pending.

*Participation of Women and Minorities:* No laws limit participation of women or members of minorities in the political process, and they did participate. Traditional and cultural practices, in addition to discrimination and institutional bias, however, limited the political participation of women and members of indigenous groups.
While the indigenous population constituted 44 percent of the population, according to the latest 2002 government census, indigenous representation in national government was minimal. There was one indigenous female member on the Constitutional Court and one on the Supreme Court. In September the first and only female indigenous cabinet member, former labor minister Leticia Teleguario, resigned, citing personal reasons and not being able to continue supporting originally prioritized policies. There were approximately 20 indigenous members of Congress. Indigenous individuals comprised a larger share of elected local government officials, filling one-third (113 of 333) of the mayoral seats elected in 2015.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption, but officials frequently engaged in corrupt practices with impunity. There were numerous reports of government corruption during the year, many of which the Public Ministry, with support from CICIG, investigated and prosecuted on charges including money laundering, illegal political party financing, and bribery.

**Corruption:** On February 13, the Public Ministry brought charges against former president Alvaro Colom and nine former members of his cabinet after a long-running investigation into fraud involving a bus system in Guatemala City known as Transurbano. Prosecutors claimed that in local currency equaling approximately $35 million, government funds were paid to a consortium of private bus companies in charge of the Transurbano system in a deal approved by Colom’s cabinet without proper legal oversight. According to prosecutors, almost one-third of the money was spent on equipment that was never used. On March 1, a judge found sufficient evidence to charge the defendants, and Colom and the former members of his cabinet were placed under house arrest.

On January 20, the Public Ministry, accompanied by CICIG personnel, conducted raids as part of an investigation of the Brazilian company Odebrecht, which allegedly paid local currency worth $17.9 million in bribes to local officials. The investigation led to charges against former presidential candidate Manuel Baldizon, who was detained in Florida on an international arrest warrant on September 18 on separate money laundering and conspiracy charges. Baldizon was accused of accepting in local currency at least $1.3 million in bribes from Odebrecht to help it win public works contracts. Authorities also sought the arrest of former communications minister Alejandro Sinibaldi, who allegedly distributed the bribes and embezzled at least nine million dollars. Sinibaldi remained a
fugitive and was implicated in another case of bribery and influence peddling linked to former president Otto Perez Molina’s administration.

Financial Disclosure: Public officials who earn more than 8,000 quetzals ($1,070) per month or who manage public funds are subject to financial disclosure laws overseen and enforced by the Comptroller General’s Office. The financial disclosures were available to the public upon request. Administrative and criminal sanctions apply for inadequate or falsified disclosures of assets.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were often cooperative and responsive to their views.

A number of NGOs, human rights workers, and trade unionists, however, reported threats, violence, and intimidation. The local human rights NGO Unit for the Protection of Human Rights Defenders (UDEFEGUA) reported 24 killings of human rights defenders from January through October. The NGO also reported 303 attacks against human rights defenders from January through September, compared with 493 attacks in all of 2017. According to human rights NGOs, many of the attacks related to land disputes and exploitation of natural resources. NGOs asserted the government did little to investigate the reports or prevent further incidents.

NGOs also reported the government, fringe groups, and private entities used threats of legal action as a form of intimidation. UDEFEGUA reported 158 cases of criminalization of human rights defenders from January through August.

Government Human Rights Bodies: The PDH monitors the human rights set forth in the constitution and reports to Congress. The government cooperated generally with the ombudsman. The office operated independently and issued public reports and recommendations, including an annual report to Congress on the fulfillment of its mandate. NGOs generally considered the PDH to be an effective institution with limitations in rural areas due to lack of resources.

The President’s Commission on Human Rights (COPREDEH) formulates and promotes human rights policy. COPREDEH also led coordination of police
protection for human rights and labor activists. COPREDEH generally benefited from the administration’s cooperation and operated without political or party interference. Some NGOs claimed the COPREDEH was not an effective interlocutor on human rights issues.

The Congressional Committee on Human Rights drafts and provides guidance on legislation regarding human rights. The law requires all political parties represented in Congress to have a representative on the committee. Some NGOs did not consider the committee to be an effective forum for human rights promotion and protection.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: The law criminalizes rape of men or women, including spousal rape, and sets penalties between five and 50 years in prison. Police had minimal training or capacity to investigate sexual crimes or assist survivors of such crimes, and the government did not enforce the law effectively.

Rape and other sexual offenses remained serious problems. The government took steps to combat femicide and violence against women. The judiciary maintained a 24-hour court in Guatemala City to offer services related to violence directed toward women, including sexual assault, exploitation, and trafficking of women and children. The judiciary also operated specialized courts for violence against women throughout the country, but not in every department. In March the Public Ministry established a 24-hour victim service center to provide medical, psychosocial, and legal support to victims, including restraining orders for their immediate protection. On August 6, in compliance with a finding from the Inter-American Court on Human Rights, the Public Ministry launched the Isabel-Claudina Alert, a national alert system for finding disappeared women. According to the Public Ministry, 428 women were reported missing via the alert through November 26, with 294 women found and 134 alerts remaining active.

The law establishes penalties for femicide of 25 to 50 years in prison without the possibility of reducing the sentence; however, femicide remained a significant problem. Unknown assailants murdered indigenous Maya women’s rights leader Juana Ramirez in Nebaj on September 21. The PDH reported Ramirez and her organization, the Ixil Women’s Network, had received multiple death threats for supporting female victims of violence.
Violence against women, including sexual and domestic violence, remained serious problems. The law establishes penalties of five to eight years for physical, economic, and psychological violence committed against women because of their gender. There were numerous examples of the PNC’s failure to respond to requests for assistance related to domestic violence. As of September 8, the PNC reported 48 open investigations against PNC officials for violence or discrimination against women or children.

**Sexual Harassment:** No single law, including laws against sexual violence, deals directly with sexual harassment, although several laws refer to it. Human rights organizations reported sexual harassment was widespread. On June 18, former minister of foreign affairs Edgar Gutierrez alleged that President Morales had abused at least one young woman. Civil society expressed concern about the allegations, but no formal abuse charges were filed against President Morales. Gutierrez did not make public the evidence he claimed to have.

**Coercion in Population Control:** There were no reports of coerced abortion or involuntary sterilization.

**Discrimination:** Although the law establishes the principle of gender equality and criminalizes discrimination, women faced discrimination and were less likely to hold management positions. Two women in high-level government positions claimed critics often used gender to undermine their credibility publicly or privately block their ability to do their jobs.

**Children**

**Birth Registration:** Children derive citizenship by birth within the country’s territory or from their parents. UNICEF described low birth registration as a “serious problem,” and UNHCR reported problems in registering births were especially acute in indigenous communities due to inadequate government registration and documentation systems. Lack of registration restricted children’s access to some public services and created conditions that could lead to statelessness.

**Education:** While primary education is compulsory through age 14, access was limited in many rural areas; education through the secondary level is not obligatory.
Child Abuse: Child abuse remained a serious problem. A unit under the Special Prosecutor for Crimes against Children and Adolescents handled child abuse cases. The Public Ministry reported 8,930 reports of minor abuse of all types, more than triple the number from the same period last year. The ministry reported 82 convictions for child abuse from January through August.

The NGO Mutual Support Group (GAM) reported 417 minors suffered violent deaths nationwide from January through June. While deaths of minors decreased overall, GAM reported an increase in the number of girls killed compared with the same period in the previous year. NGOs dealing with gangs and other youths reported young persons detained by police were subject to abusive treatment, including physical assaults.

Early and Forced Marriage: The legal age for marriage is 18. There were reports of early and forced marriages in some rural indigenous communities and in the Lev Tahor religious community. UNICEF reported 30 percent of women ages 20 to 24 years were first married or in union by age 18 (7 percent of them by age 15) between 2008 and 2014.

Sexual Exploitation of Children: The law provides sentences ranging from 13 to 24 years in prison, depending on the victim’s age, for engaging in sex with a minor. The minimum age of consensual sex is 18.

The law prohibits child pornography and establishes penalties of six to 10 years in prison for producing, promoting, and selling child pornography and two to four years’ imprisonment for possessing it. The Public Ministry and the PNC conducted several raids against alleged online child pornography networks. A new Regional Unit against Trafficking in Persons responsible for eight departments in the Western Highlands was launched in April, expanding the government’s investigative capacity against child pornography actors. The commercial sexual exploitation of children, including child sex tourism, remained a problem, including in privately run orphanages.

Displaced Children: Criminals and gangs often recruited street children, many of them victims of domestic abuse, for purposes of stealing, extortion, transporting contraband, prostitution, and conducting illegal drug activities.

Institutionalized Children: As of September more than 500 children and adolescents lived in shelters run by the Secretariat for Social Welfare (SBS). The Secretariat against Sexual Violence, Exploitation, and Trafficking in Persons
(SVET) continued temporarily to manage three shelters for children and adolescents, each with a capacity for 30 children. A government-mandated transfer of the three SVET shelters to SBS had not taken place by late November.

Overcrowding was common in shelters, and federal funding for orphanages remained limited. Local and international human rights organizations, including Disability Rights International, raised concerns that child abuse was rampant. A July investigative report claimed children with disabilities were consistently mistreated and neglected, including by being locked in cages. The Public Ministry received 22 formal reports of abuse or mistreatment of institutionalized minors during the year. In April adolescents rioted in a shelter, denouncing abuse by SBS employees and improper living conditions.

A March 2017 fire at the Hogar Seguro orphanage resulted in the deaths of 41 girls and severe injuries for 14 others. Authorities charged seven individuals with murder, abuse of authority, breach of duty, and abuse against minors in relation to the deaths of the 41 girls. Among those facing charges were former SBS secretary Carlos Rodas, former deputy secretary for protection and shelter Anahi Keller, and former shelter director Santos Torres. Trials continued, but there had been no convictions. On August 22, Congress approved a monthly government pension for the 15 survivors of the fire. The government did not make significant structural changes to the national shelter system, however.


**Anti-Semitism**

The Jewish population numbered approximately 1,500 persons. There were no reports of anti-Semitic acts.

**Trafficking in Persons**

See the Department of State’s *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

**Persons with Disabilities**
The constitution contains no specific prohibitions against discrimination based on physical, sensory, intellectual, and mental disabilities. The law, however, mandates equal access to public facilities and provides some other legal protections. In many cases, however, the law was not enforced. The law does not mandate that persons with disabilities have access to information or communications.

The National Council for Persons with Disabilities reported few persons with disabilities attended educational institutions or held jobs. The council, composed of representatives of relevant government ministries and agencies, is the principal government entity responsible for protecting the rights of persons with disabilities. Most schools and universities did not have facilities accessible to persons with disabilities. In July, Congress published the Law against Sexual Violence, Exploitation, and Trafficking in Persons in braille, the first time a law was translated into braille and published.

The Federico Mora National Hospital for Mental Health, the only public health-care provider for persons with mental illness, lacked basic supplies, equipment, hygienic living conditions, and adequate professional staff. Media and human rights organizations reported mistreatment of residents, including physical, psychological, and sexual violence by other residents, guards, and hospital staff, especially with respect to women and children with disabilities. Multiple legal actions were pending against the hospital.

**Indigenous People**

The government’s National Institute of Statistics estimated indigenous persons from 22 ethnic groups comprised 44 percent of the population. The law provides for equal rights for indigenous persons and obliges the government to recognize, respect, and promote the lifestyles, customs, traditions, social organizations, and manner of dress of indigenous persons. The government does not recognize particular indigenous groups as having a special legal status provided by national law.

Multiple local NGOs raised concerns over the killings of at least nine indigenous leaders from May through September. According to Public Ministry investigations and NGO assessments, at least three of the leaders killed may have been targeted because of their political involvement and advocacy for indigenous rights. The
ministry was in the process of forming a technical working group charged with investigating the killings.

Indigenous representatives claimed actors in a number of regional development projects failed to consult meaningfully with local communities. In some cases indigenous communities were not able to participate in decisions affecting the exploitation of resources in their communities, including energy, minerals, timber, rivers, or other natural resources. They also lacked effective mechanisms for dialogue with the state to resolve conflicts. On September 3, the Constitutional Court ordered the Ministry of Energy and Mines to hold International Labor Organization (ILO) Convention 169-compliant consultations with Xinka populations, upholding the suspension of the operating license of Tahoe Resources’ San Rafael Mine until after conclusion of the consultations. Previously, businesses carried out consultations independently without government oversight. A 2017 ruling allowed a hydroelectric project to continue operations concurrently during consultations led by the energy and mines ministry.

Indigenous communities were underrepresented in national politics and remained largely outside the political, economic, social, and cultural mainstream. This was mainly due to limited educational opportunities (contrary to law), limited communication regarding their rights, and pervasive discrimination. Government agencies dedicated to supporting indigenous rights lacked political support. These factors contributed to disproportionate poverty and malnutrition among most indigenous populations.

Indigenous lands lacked effective demarcation, making the legal recognition of titles to the land problematic. Indigenous rights advocates asserted that security authorities lacked familiarity with indigenous norms and practices and this engendered misunderstandings. PNC and indigenous leaders in the Western Highlands worked together to establish 37 model police precincts to better serve indigenous-majority communities, reduce violence, expand government services, and establish rule of law. The PNC established substations in three indigenous villages, Salacuim, Teleman, and Tierra Blanca, at the request of communities.

Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

The law does not extend specific antidiscrimination protections to LGBTI individuals based on their sexual orientation, gender identity or expression, or sex characteristics. Efforts to pass laws against such discrimination, including a
gender identity law, encountered severe opposition among legislators. LGBTI human rights groups stated police officers regularly engaged in extortion and harassed male and transgender individuals whom they alleged to be sex workers. There was general societal discrimination against LGBTI persons in access to education, health care, employment, and housing. The government made minimal efforts to address this discrimination. Sandra Moran, the first openly lesbian member of Congress, was harassed and intimidated based on her sexual orientation. Several attacks targeted journalists for supposed membership in the LGBTI community. LGBTI activists groups reported increased social media attacks against them following President Morales’ August 31 decision to end CICIG’s mandate. PNC officials visited one local LGBTI NGO’s office on September 8, which the group claimed was an intimidation attempt.

According to LGBTI activists, gay and transgender individuals often experienced police abuse. The local NGO National Network for Sexual Diversity and HIV and the Lambda Association reported that from April 20 through November 11, 19 LGBTI persons were killed, including several transgender individuals the NGOs believed were targeted due to their sexual orientation. In May major media outlets reported that an unknown assailant shot and killed two LGBTI persons inside a home in Guatemala City. The case remained under investigation. The NGO Somos reported 35 violent attacks against LGBTI individuals during the year. LGBTI groups claimed women experienced specific forms of discrimination, such as forced marriages and forced pregnancies through “corrective rape,” although these incidents were rarely, if ever, reported to authorities. In addition transgender individuals faced severe discrimination.

**HIV and AIDS Social Stigma**

The law includes HIV/AIDS status among the categories prohibited from discrimination. Societal discrimination against persons with HIV/AIDS remained a problem, however, despite efforts by the Ministry of Health to address it. Forms of discrimination included being required by some government authorities to reveal HIV/AIDS test results to receive certain public benefits or from employers in order to be hired. In addition HIV/AIDS patients experienced discrimination from medical personnel when receiving services at some public hospitals and clinics and had their right to confidentiality violated by disclosure of their status. Discrimination against LGBTI persons with HIV/AIDS was particularly common and affected access to HIV-prevention programs, especially for transgender individuals.
Other Societal Violence or Discrimination

Several times vigilante mobs attacked and killed those suspected of crimes such as rape, kidnapping, theft, or extortion. The NGO Mutual Support Group reported three persons were killed and 41 injured in public assaults by vigilante groups from January through June.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right of workers, with the exception of security force members, to form and join trade unions, conduct legal strikes, and bargain collectively. The law, however, places some restrictions on these rights. For example, legal recognition of an industrywide union requires that the membership constitute a majority of the workers in an industry and restricts union leadership to citizens. The law prohibits antiunion discrimination and employer interference in union activities and requires employers to reinstate workers dismissed for organizing union activities. A strike must have the support of the majority of a company’s workforce. Workers are not restricted to membership in one union or one industry.

The president and cabinet may suspend any strike deemed “gravely prejudicial to the country’s essential activities and public services.” The government defined “essential services” more broadly than international standards, thus denying the right to strike to a large number of public workers, such as those working in education, postal services, transport, and the production, transportation, and distribution of energy. Public employees may address grievances by means of conciliation for collective disputes and arbitration directly through the labor courts. For sectors considered essential, arbitration is compulsory if there is no agreement after 30 days of conciliation.

The law prohibits employer retaliation against workers engaged in legal strikes. If authorities do not recognize a strike as legal, employers may suspend or terminate workers for absence without leave. A factory or business owner is not obligated to negotiate a collective bargaining agreement unless at least 25 percent of workers in the factory or business are union members and request negotiations. Once a strike occurs, companies are required to close during negotiations. Strikes have been extremely rare, but work stoppages were common.
The government did not effectively enforce the law. Government institutions, such as the Ministry of Labor and the labor courts, did not effectively investigate, prosecute, or punish employers who violated freedom of association and collective bargaining laws or reinstate workers illegally dismissed for engaging in union activities. The Public Ministry was ineffective in responding to labor court referrals for criminal prosecution in cases where employers refused to comply with labor court orders. Inspectors often lacked vehicles or fuel to carry out inspections, and in some cases they failed to take effective action to gain access to worksites in response to employers’ refusal to permit labor inspectors access to facilities. Inspectors were encouraged to seek police assistance as required. Inspections were generally not comprehensive, and if complaint driven, focused on investigating the alleged violation, rather than attempting to maximize limited resources to determine compliance beyond the individual complaint. Penalties for labor law violations were inadequate and rarely enforced.

In June 2017 passage of Decree 07-2017 restored sanction authority to the Ministry of Labor. Business groups complained the shortened time frame to investigate and verify compliance with Ministry of Labor remediation orders resulted in more cases being referred to the labor courts, without an opportunity to conciliate. The ministry indicated it had collected 1.06 million quetzals in fines ($141,000), but the lack of information about the law’s implementation made it difficult to assess its impact on improving labor law enforcement.

The Special Prosecutor’s Unit for Crimes against Unionists within the Office of the Special Prosecutor for Human Rights in the Public Ministry was responsible for investigating attacks and threats against union members as well as for noncompliance with judicial orders in labor cases. Staffing for the unit has increased, but successful prosecutions remained a challenge. The government reported some 2,000 cases involving noncompliance with labor court orders were under investigation.

An ILO special representative continued to monitor the 2013 roadmap, which includes indicators on increased compliance with reinstatement orders, increased prosecution of perpetrators of violence against trade unionists, reforms to national legislation to conform to Convention 87, and unimpeded registration of trade unions. In November 2017 a tripartite agreement was reached at the ILO, which calls for the formation of a National Tripartite Commission on Labor Relations and Freedom of Association, which would monitor and facilitate implementation of the 2013 ILO roadmap and its 2015 indicators. The commission would report, annually to the governing board and publicly, on progress implementing the ILO
roadmap until 2020. In addition to establishing the commission, the parties also committed to submitting to Congress a consensus legislative proposal that would address the long-standing ILO recommendations on freedom of association, collective bargaining, and the right to strike.

The tripartite commission was established in February, but a lack of consensus remained between employers and workers on legislation seeking to address long-standing ILO recommendations related to freedom of association, collective bargaining, and the right to strike, particularly in industry-wide unions. The Ministry of Government convened the Interagency Committee to Analyze Attacks Against Human Rights Defenders, including trade unionists, on a regular basis. NGO participants complained the ministry imposed restrictions on civil society participation in the committee and reduced working-level officials’ authorities to respond to attacks.

Despite these efforts, the country did not demonstrate measurable progress in the effective enforcement of its labor laws, particularly those related to freedom of association and collective bargaining. The ILO noted the need for additional urgent action in several areas related to the roadmap, including investigation and prosecution of perpetrators of trade union violence; the adoption of protection measures for union officials; passage of legislative reforms to remove obstacles to freedom of association and the right to strike; and raising awareness of the rights to freedom of association and collective bargaining, particularly in the apparel and textile industries. The ILO also called for greater compliance with reinstatement orders in cases of antiunion dismissals. Based in large part on the 2017 tripartite agreement, the ILO Governing Body closed the case in November.

Violence and threats against trade unionists and labor activists remained serious problems, with four killings of trade unionists, 20 documented threats, and two violent attacks reported during the year. Authorities did not thoroughly investigate most acts of violence and threats, and by often discarding trade union activity as a motive from the outset of the investigation, allowed these acts to go unprosecuted. Several labor leaders reported death threats and other acts of intimidation. The Public Ministry reported one conviction during the year related to a trade unionist killed in 2012.

Procedural hurdles, union formation restrictions, and impunity for employers refusing to receive or ignoring court orders limited freedom of association and collective bargaining. Government statistics on attempted union registrations indicated most registrations were initially rejected, and when they were issued, it
was done outside the legally established period. In addition credentials of union leaders were regularly rejected and delayed. As a result union members were left without additional protections against antiunion retaliation.

Employers routinely resisted union formation attempts, delayed or only partially complied with agreements resulting from direct negotiations, and ignored judicial rulings requiring the employer to negotiate with recognized unions. There were credible reports of retaliation by employers against workers who tried to exercise their rights, including numerous complaints filed with the Ministry of Labor and the Public Ministry alleging employer retaliation for union activity. Common practices included termination and harassment of workers who attempted to form unions, creation of illegal company-supported unions to counter legally established unions, blacklisting of union organizers, and threats of factory closures. Local unions reported businesses used fraudulent bankruptcies, ownership substitution, and reincorporation of companies to circumvent legal obligations to recognize newly formed or established unions, despite legal restrictions on such practices.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor. The government failed to enforce the law effectively in some cases. Reports persisted of men and women subjected to forced labor in agriculture and domestic service. Penalties were inadequate and rarely enforced. Criminal penalties for forced labor range from eight to 18 years’ imprisonment. The government had specialized police and prosecutors handle cases of human trafficking, including forced labor, although local experts reported some prosecutors lacked adequate training. In July 2017 the Public Ministry arrested two sisters who forced six children to beg in the streets for money. The case remained pending at year’s end. There were also other reports of forced child labor (see section 7.c.).

Also see the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

The law bars employment of minors younger than age 14, although it allows the Ministry of Labor to authorize children younger than age 14 to work in exceptional cases. The ministry’s inspectorate reported it did not authorize any exceptions during the year. The law prohibits persons younger than age 18 from working in places that serve alcoholic beverages, in unhealthy or dangerous conditions, at
night, or beyond the number of hours permitted. The legal workday for persons younger than age 14 is six hours; for persons ages 14 to 17, the legal workday is seven hours.

The Ministry of Labor’s Child Worker Protection Unit is responsible for enforcing restrictions on child labor and educating minors, their parents, and employers on the rights of minors. Penalties were not sufficient to deter violations. The government did not effectively enforce the law, a situation exacerbated by the weakness of the labor inspection and labor court systems. The government devoted insufficient resources to prevention programs.

Child labor was a widespread problem. The NGO Conrad Project Association of the Cross estimated the workforce included approximately one million children ages five to 17. Most child labor occurred in rural indigenous areas of extreme poverty. The informal and agricultural sectors regularly employed children younger than age 14, usually in small family enterprises, including in the production of broccoli, coffee, corn, fireworks, gravel, and sugar. Indigenous children also worked in street sales and as shoe shiners and bricklayer assistants.

An estimated 39,000 children, primarily indigenous girls, worked as domestic servants and were often vulnerable to physical and sexual abuse. In the Mexican border area, there were reports of forced child labor in municipal dumps and in street begging.

Also see the Department of Labor’s Findings on the Worst Forms of Child Labor at www.dol.gov/ilab/reports/child-labor/findings/.

d. Discrimination with Respect to Employment and Occupation

The law explicitly prohibits discrimination with respect to employment or occupation based on race, color, sex, religion, political opinion, national origin or citizenship, age, and disability. The government did not effectively enforce the law and related regulations.

Discrimination in employment and occupation occurred. Anecdotally, wage discrimination based on race and sex occurred often in rural areas.

e. Acceptable Conditions of Work
The law sets national minimum wages for agricultural and nonagricultural work and for work in garment factories. The minimum wage for agricultural and nonagricultural work and for work in export-sector-regime factories did not meet the minimum food budget for a family of five. Minimum wage earners are due a mandatory monthly bonus of 250 quetzals ($33), and salaried workers receive two mandatory yearly bonuses (a Christmas bonus and a “14th month” bonus), each equivalent to one month’s salary.

The legal workweek is 48 hours with at least one paid 24-hour rest period. Workers are not to work more than 12 hours a day. The law provides for 12 paid annual holidays and paid vacation of 15 days after one year’s work. Daily and weekly maximum hour limits do not apply to domestic workers. Workers in the formal sector receive the standard pay for a day’s work for official annual holidays. Time-and-a-half pay is required for overtime work, and the law prohibits excessive compulsory overtime.

The government sets occupational health and safety standards that were inadequate, not current for all industries, and poorly enforced. The law does not provide for the right of workers to remove themselves from situations that endangered health or safe ty without jeopardy to their employment.

The Ministry of Labor conducted inspections to monitor compliance with minimum wage law provisions but often lacked the necessary vehicles or fuel to enable inspectors to enforce the law, especially in the agricultural and informal sectors. The ministry did not employ a sufficient number of labor inspectors to deter violations, and many of them performed conciliation or administrative duties rather than clearly defined inspection duties.

Labor inspectors reported uncovering numerous instances of overtime abuse, but effective enforcement was undermined due to inadequate fines and labor courts’ reluctance to use compulsory measures, such as increased fines and referrals to the criminal courts, to obtain compliance. Other factors contributing to the lack of effective enforcement included labor court inefficiencies, employer refusal to permit labor inspectors to enter facilities or provide access to payroll records and other documentation, and inspectors’ lack of follow-up inspections in the face of such refusals. Labor inspectors were not authorized to sanction employers but had to refer alleged violations to the labor courts. Due to inefficient and lengthy court proceedings, the resolution of cases was often delayed, in many instances for several years. Employers failing to provide a safe workplace were rarely
sanctioned, and legislation requiring companies with more than 50 employees to provide onsite medical facilities for their workers was not enforced.

Trade union leaders and human rights groups reported employers required workers to work overtime without legally mandated premium pay. Management often manipulated employer-provided transportation to worksites to force employees to work overtime, especially in export processing zones located in isolated areas with limited transportation alternatives. Noncompliance with minimum wage provisions in the agricultural and informal sectors was widespread. Advocacy groups estimated the vast majority of workers in rural areas who engaged in daylong employment did not receive the wages, benefits, or social security allocations required by law. Many employers in the agricultural sector reportedly conditioned payment of the minimum daily wage on excessive production quotas that workers generally were unable to meet. In order to meet the quota, workers felt compelled to work extra hours, sometimes bringing family members, including children, to help with the work. Because of having to work beyond the maximum allowed hours per day, workers received less than the minimum wage for the day and did not receive the required overtime pay. According to ILO statistics, 74 percent of the workforce worked in the informal sector and outside the basic protections afforded by law.

Local unions highlighted and protested violations by employers who failed to pay employer and employee contributions to the national social security system despite employee contribution deductions from workers’ paychecks. These violations, particularly common in export and agricultural industries, resulted in limiting or denying employees’ access to the public health system and reducing or underpaying workers’ pension benefits during their retirement years.
Tab 3
GUATEMALA 2017 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Guatemala is a multiparty constitutional republic. In January 2016 Jimmy Morales of the National Convergence Front party was sworn into office for a four-year term as president. International observers considered the presidential election held in 2015 as generally free and fair.

Civilian authorities at times did not maintain effective control over the security forces.

The most significant human rights issues included: harsh and life-threatening prison conditions; arbitrary arrest and detention; corruption and intimidation of judges; threats against journalists, including by criminal organizations and corrupt public officials, resulting in significant self-censorship; widespread government corruption; violence against persons with disabilities in public care; cases of killing of women because of their gender, which authorities were prosecuting; police violence against lesbian, gay, bisexual, transgender, and intersex individuals; trafficking in persons; children engaged in the worst forms of child labor; and violence and threats against trade unionists and labor activists.

Corruption and inadequate investigation made prosecution difficult, and impunity continued to be widespread. Parts of the government collaborated with the UN-backed International Commission against Impunity in Guatemala (CICIG) to strengthen the rule of law and prosecute officials who committed abuses. On August 27, however, President Jimmy Morales declared CICIG commissioner Ivan Velasquez persona non grata, negatively affecting domestic and international confidence in the administration’s commitment to anti-impunity and anticorruption efforts. The Constitutional Court blocked the expulsion order, and Commissioner Velasquez remained in his position.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were no reports that the government or its agents committed arbitrary or unlawful killings. As of August 31, the National Civil Police (PNC) and its Office
of Professional Responsibility (ORP), the mechanism for investigating security force abuses, reported no complaints of homicide.

On August 16, Mara Salvatrucha criminal gang members entered one of the largest public hospitals and killed five civilian bystanders and two prison guards. The assailants freed a fellow gang member who was being treated at the hospital. The PNC arrested five suspects and the Public Ministry linked four to the case, which was under investigation at year’s end.

The case regarding the 2015 killing of Hector Donaldo Contreras Sanchez was in the intermediary pretrial phase at year’s end. In 2016 authorities arrested 13 members of the San Juan Sacatepequez military brigade for the alleged extrajudicial killing.

In January 2016 the Public Ministry arrested 14 high-ranking former military officers on charges of human rights violations for hundreds of extrajudicial killings during the 1960-96 internal armed conflict. The charges were based on the discovery of mass graves in Coban, Alta Verapaz, at the Regional Training Command for Peacekeeping Operations (CREOMPAZ), formerly the Military Zone 2 base during the conflict. Known as the CREOMPAZ case, it was assigned to a special high-risk court created in 2009 with competence to hear cases that posed a serious risk to the security of judges, the prosecutor, the defense, or any other individual involved in the case. In 2016 the court found sufficient evidence to send eight individuals to trial, but the Public Ministry appealed the exclusion of a number of charges in the proceedings. At year’s end the trial was pending resolution of the various appeals by the Public Ministry, joint complainants in the case, and defense lawyers. In March the Supreme Court ruled to remove the immunity of Congressman Edgar Ovalle, one of the suspects in the case. Ovalle disappeared before authorities were able to arrest him and remained a fugitive at year’s end.

On October 13, two separate trials began against former head of state Efrain Rios Montt and former intelligence chief Jose Mauricio Rodriguez Sanchez in the case of genocide involving the Maya Ixil community. In 2013 Rios Montt was found guilty of genocide and crimes against humanity during his presidency (1982-83) and sentenced to 80 years in prison. The Constitutional Court later overturned the conviction on procedural grounds and returned the case to be retried. In 2015 a high-risk court determined Rios Montt was mentally unfit for public trial but ordered the trial be held behind closed doors and with a guardian present. It also ruled any verdict could be used only to determine reparations to the victims and
that Ríos Montt could not be sentenced to prison. In May the Center for Human Rights Legal Action filed a complaint against former constitutional court magistrates for breach of legal duty after obtaining videos of their deliberations during the decision to annul Ríos Montt’s genocide sentence. At year’s end the Public Ministry had not moved the case forward for an initial hearing.

In 2016 a high-risk court dismissed a motion in the 1982 Dos Erres massacre case by the defense team to suspend criminal prosecution for genocide and crimes against humanity. The defense argued that Ríos Montt was mentally unfit to stand trial. The case remained in the intermediary pretrial phase, and a date for the next hearing had not been set by year’s end.

As of August the government had paid approximately 23.9 million quetzales ($3.26 million) in individual reparations to families affected by the Chixoy hydroelectric dam. The government also appropriated 121.3 million quetzales ($16.5 million) for collective reparations, which government authorities believed could be delayed until early 2018 due to the fact the proposed community projects were undergoing feasibility studies. During the dam’s construction from 1975 to 1985, more than 400 individuals died and thousands were displaced. As part of a 2014 reparations agreement, the government agreed to pay 1.15 billion quetzales ($156 million) over 15 years in individual and community reparations.

b. Disappearance

There were no reports during the year of disappearances by or on behalf of government authorities. The government took actions to investigate and prosecute cases of forced disappearances from the internal armed conflict period. In 2016, four high-ranking retired army officers were arrested for the 1981 forced disappearance of minor Marco Antonio Molina Theissen. The Attorney General’s Office presented additional charges against retired army general Benedicto Lucas Garcia, who was also charged in the CREOMPAZ mass graves case. In July the final phase of the preliminary hearings concluded. The trial date for the case was set for March 2018.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

Although the constitution and law prohibit torture and other cruel, inhuman, or degrading treatment or punishment, there were credible reports of abuse and other mistreatment by PNC members.
On September 18, trial proceedings began for PNC agents Carlos Baten Perez, Rogelio Perez Hernandez, Nancy Evelia Rodriguez Alai, and Cesar Augusto Funes Morales for the torture and illegal detention of four suspects in 2015 in the Villa Nueva suburb of Guatemala City.

**Prison and Detention Center Conditions**

Prison conditions were harsh and potentially life threatening, with multiple instances of inmates killing other inmates. Sexual assault, inadequate sanitation and medical care, and gross overcrowding placed prisoners at significant risk.

**Physical Conditions**: Prison overcrowding was a problem. As of August 25, according to the prison system registry, there were 22,660 inmates, including 2,240 women, held in facilities designed to hold 6,800 persons. Physical conditions including sanitation and bathing facilities, dental and medical care, ventilation, temperature control, and lighting were wholly inadequate. Prisoners had difficulty obtaining potable water, complained of inadequate food, and often had to pay for additional sustenance. Illegal drug sales and use was widespread. Prison officials reported safety and control problems, including escape attempts, gang fights, inability to control the flow of contraband goods into prisons, and the fabrication of weapons. Prisoners conducted criminal activity both inside and outside of prisons. From January through August 25, at least 13 inmates died of unnatural causes while in prison.

Media reported that transnational criminal gangs and drug trafficking groups controlled major prison centers. In 2016 prisoner Byron Lima Oliva, a former army captain charged with the murder of human rights defender Bishop Juan Jose Gerardi, was killed along with 13 others in the Pavon prison. On August 2, the PNC arrested six suspects. On November 23, a judge indicted 17 individuals arrested in the case. At year’s end the Public Ministry, with CICIG support, moved the case forward to preliminary hearings.

Conditions for male and female prisoners were generally comparable throughout the country. Media and nongovernmental organizations (NGOs) reported female and juvenile inmates faced continuing physical and sexual abuse. Female inmates reported unnecessary body searches and verbal abuse by prison guards. Children under age four could live in prison with their mothers, although the penitentiary system provided inadequate food for young children and many suffered from illness. Lesbian, gay, bisexual, transgender, and intersex (LGBTI) rights groups
stated that other prisoners often sexually assaulted LGBTI individuals and that there were insufficient facilities to protect LGBTI individuals in custody. The Ministry of Government approved initial admittance procedures for LGBTI prisoners in 2015. NGOs claimed, however, the protocols were not being implemented and noted particular concern regarding admittance procedures for transgender individuals. Frequent leadership turnover in the prison system exacerbated these problems. Occasionally authorities held pretrial detainees together with convicted prisoners, juveniles with adults, and male with female detainees.

Media reported similar conditions of abuse and overcrowding at the four juvenile detention centers administered separately by the Secretariat of Social Welfare. Crowding led to nonviolent juvenile offenders being held with violent adult offenders. On July 3 and July 24, riots occurred at the Las Gaviotas juvenile detention facility, resulting in injuries to dozens of prisoners. The riots were sparked by the killing of two inmates. The facility received citations in 2016 for housing 460 inmates in a facility designed for 250 and for dangerous and inhuman conditions.

**Administration:** The government’s Office of the Human Rights Ombudsman (PDH) and the National Office for the Prevention of Torture (NOPT), both independent entities, are responsible for prisoner rights, receiving complaints, and conducting oversight of the prison system. The PDH and NOPT may submit recommendations to the prison system based on complaints. No independent agency or unit, however, has a mandate to change or implement policy or to act on behalf of prisoners and detainees. Congress delayed the election of NOPT rapporteurs by more than six months, while the PDH and civil society reported former rapporteurs were inactive and ineffective in their oversight mandate.

While the law requires authorities to permit prisoners and detainees to submit complaints to judicial authorities without censorship and request investigation of credible allegations of inhuman conditions, authorities failed to investigate most allegations of inhuman conditions and treatment or to document the results of such investigations in a publicly accessible manner.

**Independent Monitoring:** The government permitted visits by local and international human rights groups, the Organization of American States, public defenders, and religious groups. The PDH and the NOPT also periodically visited prison facilities. The PDH reported it was sometimes difficult to gain access to the juvenile detention centers administered by the Secretariat of Social Welfare.
Improvements: During the year authorities implemented a correctional model to address corruption and overcrowding as well as the lack of personnel, equipment, and infrastructure in the penitentiary system. The model provided opportunities for the rehabilitation, education, and social reintegration of inmates and improved recruitment, selection, and training of staff. In March the first model correction center opened; it housed 63 female inmates by year’s end.

d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention, but there were credible reports of extrajudicial arrests, illegal detentions, and denial of timely access to a magistrate and hearing as required by law. Suspects are entitled to challenge in court the legal basis or arbitrary nature of their detention. If successful, their release usually took several days. There was no compensation for those ruled unlawfully detained.

Role of the Police and Security Apparatus

The PNC, which is overseen by the Ministry of Government and headed by a director general appointed by the ministry, is responsible for law enforcement and maintenance of order in the country. The Ministry of National Defense oversees the military, which focuses primarily on operations in defense of the country, but the government also used the army in internal security and policing as permitted by the constitution.

Civilian authorities in some instances failed to maintain effective control over the PNC, and the government lacked effective mechanisms to investigate and punish abuse and corruption. At times the PNC struggled to deploy its resources effectively across the country.

There were reports of impunity involving security forces. In cases involving police forces, the ORP is responsible for internal investigations and the Public Ministry is responsible for external investigations. Authorities arrested approximately 210 police officials from January through September, compared with 376 in all of 2016. A police reform commission, established by a previous administration, has a legal mandate to make necessary changes to reform police forces. The commission’s infrastructure unit provided design support for the establishment of model police precincts throughout the country.
The ORP reported that from January through August, there were 17 complaints of police extortion and 290 for abuse of authority, compared with 747 and 206, respectively, in all of 2016, according to the Public Ministry’s Strategic Planning Office. The PNC routinely transferred officers suspected of wrongdoing rather than investigating them.

Critics accused police of indiscriminate and illegal detentions when conducting antigang operations in some high-crime neighborhoods. For example, security officials allegedly arrested and imprisoned suspected gang members without warrants or on fabricated drug charges. The local press also reported police involvement in kidnappings for ransom.

In September, Guilber Josue Barrios, a soldier who allegedly drugged and raped a 14-year-old student at a civil military institute administered by the Ministry of Defense in March 2016, was captured in Mexico. On October 9, he was indicted.

The ORP conducted internal investigations of misconduct by police officers. During the first eight months of the year, the ORP reported receiving 1,222 complaints alleging misconduct by police.

All new PNC and soldiers receive some training in human rights and professional ethics. During the year the Ministry of Defense increased its Human Rights Directorate personnel from eight to 13 staff members and incorporated a gender integration unit.

**Arrest Procedures and Treatment of Detainees**

The law requires presentation of a court-issued warrant to a suspect prior to arrest unless police apprehend a suspect while in the act of committing a crime. Police may not detain a suspect for more than six hours without bringing the case before a judge. Authorities did not regularly respect this right and did not promptly inform some detainees of the charges against them. After arraigning suspects, the prosecutor generally has three months to complete the investigation and file a case in court or seek a formal extension of the detention period. The law prohibits the execution of search warrants between 6 p.m. and 6 a.m. unless the government has declared a state of siege. Judges may order house arrest for some suspects. The law provides for access to lawyers and bail for most crimes. The government provides legal representation for indigent detainees, and detainees have access to family members. A judge has the discretion to determine whether bail is permissible for pretrial detainees.
Arbitrary Arrest: There were no reliable data on the number of arbitrary detentions. Most accounts, however, indicated that police ignored writs of habeas corpus in cases of illegal detention, particularly during neighborhood antigang operations.

Pretrial Detention: As of August 25, prison system records indicated 50.6 percent of prisoners were in pretrial detention. The law establishes a three-month limit for pretrial detention, but authorities regularly held detainees past their legal trial or release dates. Lengthy investigations and frequent procedural motions by both defense and prosecution often led to lengthy pretrial detentions, delaying trials for months or years. Authorities did not release some prisoners after completing their full sentences due to the failure of judges to issue the necessary court order or other bureaucratic delays.

e. Denial of Fair Public Trial

The constitution and the law provide for an independent judiciary. The judicial system failed to provide fair or timely trials due to inefficiency, corruption, insufficient personnel, and intimidation of judges, prosecutors, and witnesses.

Judges, prosecutors, plaintiffs, and witnesses continued to report threats, intimidation, and surveillance, most often from drug trafficking organizations. By the end of August, the special prosecutor for crimes against judicial workers received 129 complaints of threats or aggression against workers in the judicial branch, compared with 192 through September 2016.

The CICIG assisted the Ministry of Government and Public Ministry with the investigation of cases including allegations of extrajudicial executions, extortion, trafficking in persons, improper adoptions, corruption, and drug trafficking.

The Supreme Court continued to pursue the suspension of judges and conduct criminal investigations of improprieties or irregularities in cases under its jurisdiction. From January through October 6, the Judicial Disciplinary Board investigated 573 complaints against judges of wrongdoing, held hearings on 105 complaints, and applied sanctions in 20 cases. During the same period, the Judicial Disciplinary Unit investigated 1,167 complaints of wrongdoing against technicians and judiciary administrative staff, held hearings on 519 complaints, and applied sanctions in 360 cases, including disciplinary suspension without pay (277 cases) and recommending dismissal (34 cases).
Trial Procedures

The constitution provides for the right to a fair and public trial, the presumption of innocence, the defendant’s right to be present at trial, and the right to legal counsel in a timely manner. The law requires the government to provide attorneys for defendants facing criminal charges if the defendant cannot find or afford an attorney. Defendants and their attorneys may confront adverse witnesses and present their own witnesses and evidence. The law provides for plea bargaining and the right of appeal. Three-judge panels render verdicts. The law provides for oral trials and mandates free language interpretation for those needing it; however, interpreters were not always available. Officials conduct trials in Spanish, the official language, although many citizens only speak one of the 23 officially recognized indigenous languages.

The Public Ministry, acting semi-independently of the executive branch, may initiate criminal proceedings on its own or in response to a complaint. Private parties may participate in the prosecution of criminal cases as plaintiffs.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Individuals and organizations have access to administrative and judicial remedies to submit lawsuits seeking damages for, or cessation of, a human rights violation or other alleged wrongs. While the judiciary was generally impartial and independent in civil matters, it suffered from inefficiencies, excessive workload, and a legal system that often permits time-consuming but spurious complaints.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The constitution and the law prohibit such actions, and the government generally respected these prohibitions. In September 2016 President Jimmy Morales dismissed Jorge Lopez, the secretary of administrative and security matters of the president, and his deputy, Cesar Sagastume, for alleged illegal surveillance. At year’s end the case was under investigation by the Public Ministry. Media sources reported that former presidential advisor and member of congress Herbert Melgar’s
name also appeared in the criminal complaint filed with the Public Ministry. Melgar was not charged, however, and continued to serve in congress.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including of the Press

The constitution and law provide for freedom of expression, including of the press, and the government generally respected these rights. The intimidation of journalists resulted in significant self-censorship, however.

Press and Media Freedom: There were no legal restrictions on the editorial independence of the media. Reporters covering organized crime, including its links to corrupt public officials, acknowledged practicing self-censorship, recognizing the danger investigative journalism posed to them and their families. Independent media were active and expressed a wide variety of views.

Violence and Harassment: Members of the press continued to report violence and impunity impaired the practice of free and open journalism. Members of the press reported numerous threats by public officials, and criminal organizations increased journalists’ sense of vulnerability.

According to the Public Ministry, 40 complaints were filed for attacks or threats against journalists, and three journalists were killed from January through the middle of September, compared with 87 complaints and eight killings in all of 2016.

The investigation remained open at year’s end regarding the 2016 killing of radio journalist Alvaro Alfredo Aceituno Lopez.

On November 7, the Supreme Court lifted the parliamentary immunity of congressman Julio Antonio Juarez Ramirez based on allegations from the Public Ministry and CICIG that he ordered the killing of journalist Danilo Efrain Zapon Lopez in 2015 in Mazatenango, Suchitepequez. Journalist Federico Benjamin Salazar Geronimo was also killed in the attack and reporter Marvin Tunches was injured. On October 12, Sergio Waldemar Cardona Reyes and German Morataya were convicted and sentenced to 30 and two years in prison, respectively, for their involvement in the Lopez killing.
The Public Ministry employed a unit dedicated to the investigation of threats and attacks against journalists. The NGO Center for Reporting in Guatemala noted that the unit had few resources.

Civil society organizations reported that sexual harassment of female journalists was widespread but rarely reported.

Censorship or Content Restrictions: Members of the press reported receiving pressure, threats, and retribution from various public officials regarding the content of their reporting. Some owners and members of media also accused the government of following a discriminatory advertising policy that penalized or rewarded print and broadcast media based on whether the government perceived the news or commentary as supportive or critical.

The online newsmagazine Nomada reported threats against individual reporters and magazine leadership. Editors used armored vehicles due to fear of attack. After reporting on undisclosed bonuses given by the Ministry of Defense to President Morales, Nomada’s website was targeted in a denial-of-service attack for several days. Nomada published the story on its Facebook account until service was restored. Nomada had experienced similar attacks previously.

Nongovernmental Impact: Organized crime exerted influence over media outlets and reporters, frequently threatening individuals for reporting on criminal activities.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority.

According to the International Telecommunication Union, 35 percent of the population used the internet in 2016.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

b. Freedoms of Peaceful Assembly and Association
The constitution provides for the freedoms of peaceful assembly and association, and the government generally respected these rights.

**Freedom of Association**

The law provides for freedom of association, and the government generally respected this right. There were reports, however, of significant barriers to organizing in the labor sector (see section 7.a.).

**c. Freedom of Religion**

See the Department of State’s *International Religious Freedom Report* at [www.state.gov/religiousfreedomreport/](http://www.state.gov/religiousfreedomreport/).

**d. Freedom of Movement**

The constitution and the law provide for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. An immigration law passed in September 2016 overhauled the country’s migration system and defined the term “refugee” as well as listing refugees’ rights in accordance with international instruments. The preparation of regulations to implement the law, including on the refugee application process and refugee rights, was underway at year’s end.

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, asylum seekers, stateless persons, or other persons of concern.

**Internally Displaced Persons (IDPs)**

The country does not have laws in place to protect internally displaced persons in line with the UN Guiding Principles on Internal Displacement. UNHCR expressed concern regarding violence against IDPs and strengthened its efforts to monitor the problem and provide assistance to the displaced. The country does not officially recognize the existence of IDPs within its borders, with the exception of those displaced by climate change. In June the government evicted an estimated 400 farmers for illegally settling within the Maya Biosphere Reserve. The Inter-American Commission on Human Rights (IACHR) characterized the evictees as
IDPs. Media and civil society reported that the evictees did not receive government assistance in a timely manner.

**Protection of Refugees**

**Access to Asylum:** The laws provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. The country approved 39 refugee applications from January through September. The number of asylum applications from El Salvador increased between 2016 and 2017. UNHCR, however, reported that identification and referral mechanisms for potential asylum seekers were inadequate. Both migration and police authorities lacked awareness of the rules for establishing refugee status.

UNHCR reported that access to education for refugees was challenging due to the country’s sometimes onerous requirements for access to formal education, including documentation from the country of origin.

**Section 3. Freedom to Participate in the Political Process**

The constitution provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on nearly universal and equal suffrage for those ages 18 and older. Members of the armed forces, police, and incarcerated individuals are not eligible to vote.

**Elections and Political Participation**

**Recent Elections:** In 2015 Jimmy Morales of the National Convergence Front (FCN) party defeated National Unity of Hope candidate Sandra Torres in a second round of voting and was sworn in as president in January 2016. An Organization of American States international election observation mission characterized the elections as generally free and fair. The Attorney General’s Office continued to investigate allegations of illicit campaign financing in the 2015 elections and petitioned for immunity reviews against three parties’ secretaries general, including Morales. In July the Supreme Electoral Tribunal imposed a fine of 441,000 quetzales ($60,000) on the FCN for campaign finance irregularities.

**Participation of Women and Minorities:** No laws limit participation of women or members of minorities in the political process, and they did participate. Traditional and cultural practices, in addition to discrimination and institutional
bias, however, limited the political participation of women and members of indigenous groups.

While the indigenous population constituted 44 percent of the population, according to the latest 2002 government census, indigenous representation in national government was minimal. There was one indigenous female member of the cabinet, one on the Constitutional Court, and one on the Supreme Court. There were approximately 20 indigenous members of Congress. Indigenous individuals comprised a larger share of elected local government officials, filling 113 of the 333 mayoral seats elected in 2015.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for official corruption, but officials frequently engaged in corrupt practices with impunity. There were numerous reports of government corruption during the year, many of which the Public Ministry and CICIG investigated and prosecuted on charges including money laundering, illegal political party financing, and bribery.

Corruption: On July 17, the CICIG and Public Ministry brought charges against Julio Ligorria, former ambassador to the United States, and Alejandro Sinibaldi, former communications minister, in connection with a wide-reaching corruption investigation of jailed former president Otto Perez Molina. According to the investigators, Ligorria and Sinibaldi organized a network of construction companies to funnel two million dollars from a telecommunications company to support the election campaigns of Perez Molina’s Patriotic Party. Sinibaldi was linked with several additional cases of bribery and influence trafficking during the Perez Molina administration. Spanish authorities arrested Ligorria in Madrid in September. Sinibaldi remained a fugitive.

On February 2, at the request of the Public Ministry and CICIG, congress revoked the immunity of Supreme Court Justice Blanca Aida Stalling Davila. On February 8, she was arrested on influence peddling charges for pressuring the judge overseeing a criminal case against her son. Since May 2016, three Supreme Court justices were removed from office to face criminal charges.

Financial Disclosure: Public officials who earn more than 8,000 quetzales ($1,090) per month or who manage public funds are subject to financial disclosure laws overseen and enforced by the Comptroller General’s Office. The financial
disclosures were available to the public upon request. Administrative and criminal sanctions apply for inadequate or falsified disclosures of assets.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were often cooperative and responsive to their views.

A number of NGOs, human rights workers, and trade unionists, however, reported threats, violence, and intimidation. Local human rights NGO Unit for the Protection of Human Rights Defenders (UDEFEGUA) reported 49 killings of human rights defenders from January through August, compared with 14 killings in all of 2016 (Note: The 41 girls who perished in the Hogar Seguro government shelter fire were included in the 2017 figure). The NGO also reported 282 attacks against human rights defenders from January through August, compared with 263 attacks in all of 2016. According to various human rights NGOs, many of the attacks related to land disputes and exploitation of natural resources. NGOs asserted the government did little to investigate the reports or prevent further incidents.

NGOs also reported the government, fringe groups, and private entities used threats of legal action as a form of intimidation. UDEFEGUA reported 126 cases of criminalization of human rights defenders from January through August. On February 4, authorities arrested land rights defender Abelino Chub Caal on charges of aggravated usurpation, arson, coercion, illicit association, and belonging to multiple illicit armed groups. In June a local court ruled that Chub Caal must remain in detention, despite the prosecutor’s request to suspend the criminal case for 12 months and release Chub Caal in the absence of evidence against him.

Lack of resources prevented the Office of the Special Prosecutor for Human Rights from investigating the majority of complaints in a timely manner. Other cases languished in the court system.

Government Human Rights Bodies: The Office of the Human Rights Ombudsman (PDH) monitors the human rights set forth in the constitution and reports to Congress. The ombudsman operated with government cooperation and issued
public reports and recommendations, including an annual report to congress on the fulfillment of its mandate. The office lacked adequate resources.

The President’s Commission on Human Rights (COPREDEH) has responsibility to formulate and promote the government’s human rights policy. COPREDEH also led coordination of police protection for various human rights and labor activists. COPREDEH generally benefited from the administration’s cooperation and operated without political or party interference. Resources for the commission were not adequate for compliance with IACHR recommendations and reparation rulings. The COPREDEH budget steadily decreased during the past five years from 43.7 million quetzales ($5.94 million) in 2013 to 31.2 million quetzals ($4.24 million) during the year.

The lack of PDH and COPREDEH resources significantly limited their ability to operate outside of Guatemala City and engage effectively with marginalized communities, particularly on land conflict issues.

The Congressional Committee on Human Rights drafts and provides advice on legislation regarding human rights. The law requires all political parties represented in Congress to have a representative on the committee. NGOs did not consider the committee to be an effective public forum for promoting and protecting human rights during the year.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: The law criminalizes rape of men or women, including spousal rape, and sets penalties between five and 50 years in prison. Police had minimal training or capacity to investigate sexual crimes or assist survivors of such crimes, and the government did not enforce the law effectively.

Rape and other sexual offenses remained serious problems. The government took steps to combat femicide and violence against women. The judiciary maintained a 24-hour court in Guatemala City to offer services related to violence directed toward women, including sexual assault, exploitation, and trafficking of women and children. The judiciary also operated specialized courts for violence against women throughout the country, but not in every department. On November 22, the Public Ministry established a special prosecutor for femicide.
The law establishes penalties for femicide of 25 to 50 years in prison without the possibility of reducing the sentence; however, femicide remained a significant problem.

Violence against women, including sexual and domestic violence, remained serious problems. The law establishes penalties of five to eight years for physical, economic, and psychological violence committed against women because of their gender. The PNC often failed to respond to requests for assistance related to domestic violence.

Sexual Harassment: No single law, including laws against sexual violence, deals directly with sexual harassment, although several laws refer to it. Human rights organizations reported sexual harassment was widespread.

Coercion in Population Control: There were no reports of coerced abortion, involuntary sterilization, or other coercive population control methods. Estimates on maternal mortality and contraceptive prevalence are available at: www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/.

Discrimination: Although the law establishes the principle of gender equality and criminalizes discrimination, women faced discrimination and were less likely to hold management positions.

Children

Birth Registration: Children derive citizenship by birth within the country’s territory or from their parents. UNICEF described low birth registration as a “serious problem,” and UNHCR reported problems in registering births were especially acute in indigenous communities due to inadequate government registration and documentation systems. Lack of registration restricted children’s access to some public services and created conditions that could lead to statelessness.

Education: While primary education is compulsory through age 14, access was limited in many rural areas; education through the secondary level is not obligatory.

Child Abuse: Child abuse remained a serious problem. A unit under the Special Prosecutor for Crimes against Children and Adolescents handled child abuse cases.
The Public Ministry reported 2,571 reports of minor abuse of all types and 16 convictions from January through August.

As of September, 520 children and adolescents lived in shelters run by the Secretariat for Social Welfare (SBS). Overcrowding was common in shelters.

On several occasions in 2016, groups of adolescent girls escaped from Hogar Seguro shelter, alleging abuse and mistreatment. On March 7, approximately 60 adolescent girls escaped and, according to media reports, some were apprehended and returned to Hogar Seguro. They were locked in a room and guarded by police. On March 8, one of the girls started a fire inside the room in protest, resulting in the deaths of 41 girls and severe burns to 14 others.

At year’s end seven persons had been charged in relation to the deaths of the 41 girls, including former SBS secretary Carlos Rodas, former deputy secretary for protection and shelter Anahi Keller, and former shelter director Santos Torres. On April 7, they were charged with murder, abuse of authority, breach of duty, abuse against minors, and serious injury. On April 28, the SBS announced the closure of the shelter and plans to renovate it into a facility to house juvenile offenders.

For additional information, see Appendix C.

Early and Forced Marriage: The legal age for marriage is 18. There were reports of early and forced marriages in some rural indigenous communities. UNICEF reported 30 percent of women ages 20 to 24 years were first married or in union by age 18 (7 percent of them by age 15) between 2008 and 2014.

Sexual Exploitation of Children: The law provides sentences ranging from 13 to 24 years in prison, depending on the victim’s age, for engaging in sex with a minor. The minimum age of consensual sex is 18.

The law prohibits child pornography and establishes penalties of six to 10 years in prison for producing, promoting, and selling child pornography and two to four years’ imprisonment for possessing it. The Public Ministry and PNC conducted several raids against alleged online child pornography networks. The commercial sexual exploitation of children, including child sex tourism, remained a problem.

Displaced Children: Criminals and gangs often recruited street children, many of them victims of domestic abuse, for purposes of stealing, transporting contraband, prostitution, and conducting illegal drug activities. The NGO Mutual Support
Group reported 683 minors suffered violent deaths nationwide from January through August. NGOs dealing with gangs and other youth reported youth detained by police were subject to abusive treatment, including physical assaults.

The SBS, responsible for the care of both returned migrant children and unaccompanied foreign migrant children, reported seven cases of sexual abuse of children under its care during the year.

**International Child Abductions:** The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State’s *Annual Report on International Parental Child Abduction* at [travel.state.gov/content/childabduction/en/legal/compliance.html](travel.state.gov/content/childabduction/en/legal/compliance.html).

**Anti-Semitism**

The Jewish population numbered approximately 1,500 persons. There were no reports of anti-Semitic acts.

In April a court found the former mayor of San Juan La Laguna, Antonio Adolfo Perez y Perez, guilty of forcing out a community of ultraorthodox Jews in 2014 and sentenced him to one year in prison.

**Trafficking in Persons**

See the Department of State’s *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](www.state.gov/j/tip/rls/tiprpt/).

**Persons with Disabilities**

The constitution contains no specific prohibitions against discrimination based on physical, sensory, intellectual, and mental disabilities. The law, however, mandates equal access to public facilities and provides some other legal protections. In many cases, however, the law was not enforced. The law does not mandate that persons with disabilities have access to information or communications.

The National Council for Persons with Disabilities reported few persons with disabilities attended educational institutions or held jobs. The council, composed of representatives of relevant government ministries and agencies, is the principal government entity responsible for protecting the rights of persons with disabilities.
Most schools and universities did not have facilities accessible to persons with disabilities.

The Federico Mora National Hospital for Mental Health, the only public healthcare provider for persons with mental illness, lacked basic supplies, equipment, hygienic living conditions, and adequate professional staff. Media reported mistreatment of residents, including physical, psychological, and sexual violence by other residents, guards, and hospital staff, especially with respect to women and children with disabilities. Multiple legal actions were pending against the hospital.

**Indigenous People**

The government’s National Institute of Statistics estimated indigenous persons from 22 ethnic groups comprised 44 percent of the population. The law provides for equal rights for indigenous persons and obliges the government to recognize, respect, and promote the lifestyles, customs, traditions, social organizations, and manner of dress of indigenous persons. The government does not recognize particular indigenous groups as having a special legal status provided by national law.

Indigenous representatives claimed actors in a number of regional development projects failed to consult meaningfully with local communities. In some cases indigenous communities were not regularly or adequately consulted or able to participate in decisions affecting the exploitation of resources in their communities, including energy, minerals, timber, rivers, or other natural resources. They also lacked effective mechanisms for dialogue with the state to resolve conflicts. During the year courts suspended the operating licenses of several hydroelectric and mining projects for not complying with requirements for consultations with indigenous communities prior to project implementation as required by International Labor Organization (ILO) Convention 169, recognizing the convention’s requirement that the government must play a role in the process. Previously, businesses carried out consultations independently without government oversight.

Indigenous communities were underrepresented in national politics and remained largely outside the political, economic, social, and cultural mainstream. This was mainly due to limited educational opportunities (contrary to law), limited communication regarding their rights, and pervasive discrimination. These factors contributed to disproportionate poverty among most indigenous populations.
Indigenous lands lacked effective demarcation, making the legal recognition of titles to the land problematic. Indigenous rights advocates asserted that pervasive ignorance by security authorities of indigenous norms and practices engendered misunderstandings. PNC and indigenous leaders in the village of Salacuim, Alta Verapaz, worked together to establish a model police precinct to better serve the 100 percent indigenous community, prevent and reduce violence, and establish rule of law.

Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

The country’s antidiscrimination laws do not apply to LGBTI individuals. LGBTI rights groups stated that police officers regularly engaged in extortion and harassed male and transgender individuals they believed to be sex workers. There was general societal discrimination against LGBTI persons in access to education, health care, employment, and housing. The government undertook minimal efforts to address this discrimination. Sandra Moran, the first openly lesbian member of Congress, was harassed and intimidated based on her sexual orientation. Online campaigns calling for her removal from congress based solely on her orientation were constant and increased in September after her vote to remove immunity from President Morales.

According to LGBTI rights groups, gay and transgender individuals often experienced police abuse.

LGBTI groups claimed women experienced specific forms of discrimination such as forced marriages and forced pregnancies through “corrective rape,” although these incidents were rarely, if ever, reported to authorities. In addition transgender individuals faced severe discrimination.

HIV and AIDS Social Stigma

The law does not expressly include HIV/AIDS status among the categories prohibited from discrimination. There was societal discrimination against persons with HIV/AIDS. Forms of discrimination included being required by government authorities to reveal HIV/AIDS test results to receive certain public benefits or from employers in order to be hired. In addition HIV/AIDS patients experienced discrimination from medical personnel when receiving treatment in public hospitals and had their right to confidentiality violated by disclosure of their status.
Discrimination against LGBTI persons with HIV/AIDS was common and affected their access to HIV-prevention programs.

**Other Societal Violence or Discrimination**

Several times vigilante mobs attacked and killed those suspected of crimes such as rape, kidnapping, theft, or extortion. The NGO Mutual Support Group reported nine persons were killed in public lynchings and 38 were injured through May.

**Section 7. Worker Rights**

**a. Freedom of Association and the Right to Collective Bargaining**

The law provides for the right of workers, with the exception of security force members, to form and join trade unions of their choice, conduct legal strikes, and bargain collectively. The law, however, places some restrictions on these rights. For example, legal recognition of an industrywide union requires the membership constitute a majority of the workers in an industry and restricts union leadership to citizens. The law prohibits antiunion discrimination and employer interference in union activities and requires employers to reinstate workers dismissed for organizing union activities. A strike must have the support of the majority of a company’s workforce.

The president and cabinet may suspend any strike deemed “gravely prejudicial to the country’s essential activities and public services.” The government defined “essential services” more broadly than international standards, thus denying the right to strike to a large number of public workers, such as those working in education, postal services, transport, and the production, transportation, and distribution of energy. Public employees may address grievances by means of conciliation for collective disputes and arbitration directly through the labor courts. For sectors considered essential, arbitration is compulsory if there is no agreement after 30 days of conciliation.

The law prohibits employer retaliation against workers engaged in legal strikes. If authorities do not recognize a strike as legal, employers may suspend or terminate workers for absence without leave. A factory or business owner is not obligated to negotiate a collective bargaining agreement unless at least 25 percent of workers in the factory or business are union members and request negotiations.
The government did not effectively enforce the law. Government institutions, such as the Ministry of Labor and the labor courts, did not effectively investigate, prosecute, or punish employers who violated freedom of association and collective bargaining laws or reinstate workers illegally dismissed for engaging in union activities. In addition the Public Ministry was ineffective in responding to labor court referrals for criminal prosecution in cases where employers refused to comply with labor court orders. Inspectors often lacked vehicles or fuel to carry out inspections, and in some cases they failed to take effective action to gain access to worksites in response to employers’ refusal to permit labor inspectors access to facilities, including failing to seek police assistance as required. Penalties for labor law violations range from two to 18 minimum monthly salaries ($665 to $6,000), but the penalties were inadequate and rarely enforced.

The Labor Ministry lacked the capability to impose fines or otherwise sanction employers for labor law violations discovered during inspections until June, when sanction authority was restored via the passage of law 07-2017. Until that point, the Labor Ministry had to refer the cases to the labor court. Employers frequently refused to respect court decisions favorable to workers and were rarely sanctioned for doing so. Reinstatement proceedings were frequently prolonged due to appeals and employers’ widespread use of tactics such as reincorporation as a different entity. For example, courts faced difficulties in providing notification of their orders when employers listed incorrect addresses or refused access to the court official delivering notification. The length of time to process cases for the reinstatement of workers and other labor law violations was excessive, often taking two to four years and sometimes longer.

The Special Prosecutor’s Unit for Crimes against Unionists within the Office of the Special Prosecutor for Human Rights in the Public Ministry was responsible for investigating attacks and threats against union members as well as for noncompliance with judicial orders in labor cases. Staffing for the unit increased from 12 in 2016 to 19. According to Public Ministry statistics, the unit won two convictions in cases involving violence against union members. The CICIG highlighted several factors that negatively affected investigations, including a lack of methodological planning and continuity among prosecutors, delays in conducting the criminal investigation, and witnesses’ fear of making declarations. In cases of noncompliance with labor court orders, the government reported that, of 2,312 cases referred (including a backlog from previous years), only four resulted in convictions, with the vast majority of cases still under investigation.
The Ministry of Government operated a personal protection program that included some trade unionists. The ministry reported two union members received personal security protection measures during the year, and 28 received perimeter security measures. In October 2016 the ministry revised a 2014 Protocol for the Implementation of Immediate and Preventive Security Measures for Human Rights Activists, with input from the trade unions, but union confederations indicated the protocol had not been applied, and there was minimal progress toward ensuring the protection of threatened trade union officials and members. The unions and the ILO called for increased personal security for union leaders and members, ensuring the beneficiaries of such protection did not have to bear any costs related to their protection. Local unions and the ILO urged authorities to more effectively investigate the killings of 87 trade unionists since 2004, including consideration of antiunion motives. This included more effective application of General Instruction No. 1-2015, adopted in 2015 to improve the effectiveness of such investigations.

In 2013 the government and the unions signed a Memorandum of Understanding and developed a roadmap to implement it. An ILO special representative monitored the roadmap, which includes indicators on increased compliance with reinstatement orders, increased prosecution of perpetrators of violence against trade unionists, reforms to national legislation to conform to Convention 87, and unimpeded registration of trade unions. The instruments were developed for each indicator to avoid the establishment of an ILO Commission of Inquiry based on a complaint filed in 2012 that stated the government had not complied with ILO Convention 87 on Freedom of Association. In 2015, in part due to the lack of progress in implementing the roadmap, there was tripartite agreement between the government, unions, and employers to develop a set of key indicators to measure progress on the roadmap. During the year the government took some steps to implement the roadmap. In November the government submitted two legislative proposals related to the ILO roadmap to Congress (i.e., legislation to restore sanction authority to the Ministry of Labor and legislation to address long-standing ILO recommendations related to freedom of association and the right to strike). The Public Ministry increased the personnel for the Special Prosecutor’s Unit for Crimes against Unionists, and the Ministry of Government convened the Interagency Committee to Analyze Attacks Against Human Rights Defenders (INSTANCIA), including trade unionists on a regular basis.

Despite these efforts, the country did not demonstrate measurable progress in the effective enforcement of its labor laws, particularly those related to freedom of association and collective bargaining. The ILO noted the need for additional urgent action in several areas related to the roadmap, including investigation and
prosecution of perpetrators of trade union violence; the adoption of protection measures for union officials; passage of legislative reforms to remove obstacles to freedom of association and the right to strike; and raising awareness of the rights to freedom of association and collective bargaining, particularly in the apparel and textile industries. The ILO also called for greater compliance with reinstatement orders in cases of antiunion dismissals. During its most recent session in November, based in large part on the submission of the above-referenced legislative initiatives, the ILO Governing Body deferred a decision on establishing a commission of inquiry until March 2018.

Violence and threats against trade unionists and labor activists remained serious problems, with three killings of trade unionists and two violent attacks with a firearm reported in 2016. Authorities did not thoroughly investigate most acts of violence and threats, and by often discarding trade union activity as a motive from the outset of the investigation, allowed these acts to go unprosecuted. Several labor leaders reported death threats and other acts of intimidation.

Procedural hurdles, union formation restrictions, and impunity for employers refusing to receive or ignoring court orders limited freedom of association and collective bargaining. Government statistics on attempted union registrations indicated most registrations were initially rejected, and when they were issued, it was done outside the legally established timeframes. In addition credentials of union leaders were regularly rejected and delayed. As a result union members were left without additional protections against antiunion retaliation.

Employers routinely resisted union formation attempts, delayed or only partially complied with agreements resulting from direct negotiations, and ignored judicial rulings requiring the employer to negotiate with recognized unions. There were credible reports of retaliation by employers against workers who tried to exercise their rights, including numerous complaints filed with the Ministry of Labor and the Public Ministry alleging employer retaliation for union activity. Common practices included termination and harassment of workers who attempted to form unions, creation of illegal company-supported unions to counter legally established unions, blacklisting of union organizers, and threats of factory closures. If workers joined a union or refused to disaffiliate, employers threatened not to renew their contracts or offer subcontracted workers permanent employment.

There were reports that management or its agents harassed and threatened workers who did not accept employer dismissals or refused to forfeit their right to reinstatement. According to government statistics, employers failed to comply
with 62 percent of labor courts’ reinstatement orders issued in 2014-16, and in 18 percent of cases, the labor court could not carry out the reinstatement, at times due to incorrect addresses. In some cases employers did not reinstate workers to their prior positions and often failed to pay the back wages owed to them, as well as court-ordered fines. Local unions reported businesses used fraudulent bankruptcies, ownership substitution, and reincorporation of companies to circumvent legal obligations to recognize newly formed or established unions, despite legal restrictions on such practices.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor. The government failed to enforce the law effectively in some cases. Reports persisted of men and women subjected to forced labor in agriculture and domestic service. Penalties ranging from two to 18 minimum monthly salaries ($665 to $6,000) were inadequate and rarely enforced. Criminal penalties for forced labor range from eight to 18 years’ imprisonment. The government lacked sufficient resources (e.g., labor inspectors, vehicles, equipment) to conduct effective and regular inspection or to pursue remediation for forced labor cases. The government had specialized police and prosecutors handle cases of human trafficking, including forced labor, although local experts reported some prosecutors lacked adequate training. In July the Public Ministry arrested two sisters who forced six children to beg in the streets for money. The case remained pending at year’s end. There were also other reports of forced child labor (see section 7.c.).

Also see the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

The law bars employment of minors below age 14, although it allows the Ministry of Labor to authorize children below 14 to work in exceptional cases. The ministry’s inspectorate reported it did not authorize any exceptions during the year. The law prohibits persons under age 18 from working in places that serve alcoholic beverages, in unhealthy or dangerous conditions, at night, or overtime. The legal workday for persons under age than 14 is six hours; for persons ages 14 to 17, the legal workday is seven hours.

The Ministry of Labor’s Child Worker Protection Unit is responsible for enforcing restrictions on child labor and educating minors, their parents, and employers on
the rights of minors. Penalties are not sufficient to deter violations. The government did not effectively enforce these laws, a situation exacerbated by the weakness of the labor inspection and labor court systems. The government devoted insufficient resources to prevention programs.

Child labor was a widespread problem. The NGO Conrad Project Association of the Cross estimated the workforce included approximately one million children ages five to 17. Most child labor occurred in rural indigenous areas of extreme poverty. The informal and agricultural sectors regularly employed children below 14, usually in small family enterprises, including in the production of broccoli, coffee, corn, fireworks, gravel, and sugar. Indigenous children also worked in street sales and as shoe shiners and bricklayer assistants.

An estimated 39,000 children, primarily indigenous girls, worked as domestic servants and were often vulnerable to physical and sexual abuse. In the Mexican border area, there were reports of forced child labor in municipal dumps and in street begging.

Also see the Department of Labor’s Findings on the Worst Forms of Child Labor at www.dol.gov/ilab/reports/child-labor/findings/.

d. Discrimination with Respect to Employment and Occupation

The law explicitly prohibits discrimination with respect to employment or occupation based on race, color, sex, religion, political opinion, national origin or citizenship, age, and disability. The government did not effectively enforce the law and related regulations.

Discrimination in employment and occupation occurred. Anecdotally, wage discrimination based on race and sex occurred often in rural areas.

e. Acceptable Conditions of Work

The law sets national minimum wages for agricultural and nonagricultural work and for work in garment factories. The minimum wage for agricultural and nonagricultural work and for work in export-sector-regime factories did not meet the minimum food budget for a family of five. Minimum wage earners are due a mandatory monthly bonus of 250 quetzales ($34), and salaried workers receive two mandatory yearly bonuses (a Christmas bonus and a “14th month” bonus), each equivalent to one month’s salary.
The legal workweek is 48 hours with at least one paid 24-hour rest period. Workers are not to work more than 12 hours a day. The law provides for 12 paid annual holidays and paid vacation of 15 days after one year’s work. Daily and weekly maximum hours limits do not apply to domestic workers. Workers in the formal sector receive the standard pay for a day’s work for official annual holidays. Time-and-a-half pay is required for overtime work, and the law prohibits excessive compulsory overtime.

The government sets occupational health and safety standards that were inadequate, not current for all industries, and poorly enforced. The law does not provide for the right of workers to remove themselves from situations that endangered health or safety without jeopardy to their employment.

The Ministry of Labor conducted inspections to monitor compliance with minimum wage law provisions but often lacked the necessary vehicles or fuel to enable inspectors to enforce the law, especially in the agricultural and informal sectors. The ministry employed a sufficient number of labor inspectors to deter violations, although many of them performed conciliation or administrative duties rather than clearly defined inspection duties.

Labor inspectors reported uncovering numerous instances of overtime abuses, but effective enforcement was undermined due to inadequate fines and labor courts’ reluctance to use compulsory measures, such as increased fines and referrals to the criminal courts, to obtain compliance. Other factors contributing to the lack of effective enforcement included labor court inefficiencies, employer refusal to permit labor inspectors to enter facilities or provide access to payroll records and other documentation, and inspectors’ lack of follow-up inspections in the face of such refusals. Labor inspectors were not authorized to sanction employers but had to refer alleged violations to the labor courts. Due to inefficient and lengthy court proceedings, the resolution of cases was often delayed, in many instances for several years. Employers failing to provide a safe workplace were rarely sanctioned, and legislation requiring companies with more than 50 employees to provide onsite medical facilities for their workers was not enforced.

Trade union leaders and human rights groups reported employers required workers to work overtime without legally mandated premium pay. Management often manipulated employer-provided transportation to worksites to force employees to work overtime, especially in export processing zones located in isolated areas with limited transportation alternatives. Noncompliance with minimum wage
provisions in the agricultural and informal sectors was widespread. Advocacy groups estimated the vast majority of workers in rural areas who engaged in daylong employment did not receive the wages, benefits, or social security allocations required by law. Many employers in the agricultural sector reportedly conditioned payment of the minimum daily wage on excessive production quotas that workers generally were unable to meet. In order to meet the quota, workers felt compelled to work extra hours, sometimes bringing family members, including children, to help with the work. Because of having to work beyond the maximum allowed hours per day, workers received less than the minimum wage for the day and did not receive the required overtime pay. According to ILO statistics, 74 percent of the workforce worked in the informal sector and outside the basic protections afforded by law.

Local unions highlighted and protested violations by employers who failed to pay employer and employee contributions to the national social security system despite employee contribution deductions from workers’ paychecks. These violations, particularly common in export and agricultural industries, resulted in limiting or denying employees’ access to the public health system and reducing or underpaying workers’ pension benefits during their retirement years.
Tab 4
Situation of Human Rights in Guatemala
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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María Claudia Pulido
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EXECUTIVE SUMMARY
EXECUTIVE SUMMARY

1. This report addresses the human rights situation of Guatemala, and provides recommendations aimed at assisting the State of Guatemala in strengthening its efforts to protect and guarantee human rights in the country.

2. The Interamerican Commission on Human Rights (IACHR, Commission) conducted an on-site visit to Guatemala from July 31 to August 4, 2017, for the purpose of observing on the ground the human rights situation in the country. The Commission is grateful to President Jimmy Morales and his Government for the invitation to conduct his visit, and for all the logistical assistance provided in order to complete the visit satisfactorily.

3. The IACHR has followed with special attention the situation of human rights in Guatemala since its early years of operation, particularly in response to the serious violations of human rights perpetrated during the internal armed conflict that took place between 1960 and 1996. The information received consistently by the Commission during the visit indicates that, fundamentally, more than twenty years after the signing of the Peace Accords, several of the reasons that generated the internal armed conflict persist: an economy based on the concentration of economic power in few hands persists, a weak State structure, with few resources due to scarce fiscal collection and high levels of corruption. Structural problems also persist, such as racial discrimination, social inequality, entrenched poverty and exclusion, and lack of access to justice, which constitute an obstacle to full respect for human rights in Guatemala. In addition, the IACHR received repeated information about the persistence of parallel power structures that prevent the fight against impunity, corruption and the consolidation of the rule of law.

4. The socioeconomic situation in Guatemala is still characterized by poverty, racism, exclusion, violence and impunity. As an example, the extreme poverty rate is three times higher among the indigenous population than among the non-indigenous population. Guatemala has become the country most affected by chronic malnutrition in Latin America, and is one of the countries with the highest rates of chronic malnutrition worldwide. This dire situation is framed in a weak State structure, institutions with
insufficient resources, and a persistent problem of corruption and high levels of violence. The low levels of tax collection in Guatemala hinders the State’s ability to provide basic public services and adopt public policies that guarantee the rights of the most resource-strapped sectors.

5. During the on site visit, the IACHR noted that the problem of impunity derives from the lack of capacity of the Guatemalan State to provide an adequate and efficient system of administration of justice, and an independent and impartial justice in cases from the past as well as the present. Historically marginalized sectors of the population, such as women, indigenous peoples and communities, children and adolescents, LGBTI persons and afrodescendants, among others, face particular obstacles that limit their effective access to justice.

6. In relation to the cases arising from the internal armed conflict, progress has been made in some cases, but they are limited compared to the number of human rights violations perpetrated during the conflict and the obligations of the State to protect the rights to truth, justice and reparation for the victims. During the visit, the Commission was informed of the abusive use of *amparo* proceedings as a delaying strategy in some criminal proceedings, requests for amnesty and prescription, as delaying tactics to protect the accused. Also, some justice operators who are aware of these matters are subject to constant threats, intimidation, and even criminal complaints levied against them.

7. The Commission notes that the Guatemalan State has made progress in the fight against impunity in recent years, thanks to the work of the International Commission against Impunity in Guatemala (CICIG), which together with the Public Prosecutor’s Office has played a key role in the fight against corruption and impunity in the country. The contribution of CICIG has been significant, both in its research work and in support of training and promotion of legal reforms aimed at improving the efficiency of the administration of justice. These advances have come with reports, even from the highest levels of the State, on pressures directed to the CICIG Commissioner, Iván Velásquez, as well as Attorney General, Thelma Aldana. After the visit, events took place in the country that unleashed institutional instability. The IACHR highlights the declaration of *persona non grata* as to Iván Velásquez, issued by the President of Guatemala, as well as the order for his immediate expulsion from the country. On that occasion, the decision taken by the President was rendered null and void through an appeal granted by the Constitutional Court.

8. This serious situation led the IACHR to issue a resolution on human rights and the fight against corruption and impunity, wherein the Commission
reaffirmed the importance of the fight against corruption to combat impunity through a strengthened, independent and impartial system of justice; as well as the fundamental importance of the full exercise of the rights to freedom of expression and access to public information, and the rights to peaceful association and assembly, for the investigation and denunciation of corruption. The IACHR called for the independent exercise of the Public Powers in order to guarantee the Rule of Law and urged the State of Guatemala to take the necessary measures to ensure compliance with the order of the Constitutional Court and, consequently, allow Commissioner Velásquez to continue carrying out his duties with the required guarantees. The IACHR reiterates its recognition of the work of CICIG and the Public Prosecutor's Office regarding the measures and efforts to combat corruption and impunity in Guatemala over the past three years, a process in which society and international cooperation have played a fundamental role.

9. The Commission also highlights the importance of the judicial reform, currently pending in the Guatemalan Congress, regarding the organization of the work of the Supreme Court of Justice the processes for the selection and appointment of judges and magistrates, among other topics. Various sectors of civil society, specialized organizations, academics, and even members of the Executive, Legislative and Judicial Branches have spoken in favor of this reform. However, as of the date of approval of this report, it was still not approved.

10. In the framework of access to justice in relation to prior consultation, the IACHR recalls that it is the obligation of the State of Guatemala to abide by the standards of the Inter-American Commission and Court in matters of justice for indigenous peoples in general, and prior consultation in particular. The participation of indigenous peoples and communities in the processes, in accordance with their uses, customs and methods of participation, is fundamental to ensure that they achieve full access to justice in Guatemala. In a country where more than half of the population identifies as indigenous, the importance of complying with these standards becomes even more of a priority.

11. During the visit, the IACHR verified the serious situation faced by human rights defenders in Guatemala. The Commission was informed of acts of violence and aggressions to which they are constantly subject, ranging from murders, threats, harassment, criminalization, arbitrary arrests and harassment. Another important cause of concern in the country is the stigmatization and defamation of human rights defenders, which undermines their public reputation and delegitimizes social justice work. The IACHR highlights the importance of preventing and punishing attacks
and intimidation against human rights defenders, in light of the valuable work they perform and given the multiplying impact that such attacks have on the protection of human rights in the country.

12. The IACHR received extensive information on the actions of forced evictions and the risk faced by a significant number of peasant and indigenous communities of being evicted by the Guatemalan State in the course of the execution of judicial orders. According to the information gathered during the visit, behind the execution of the evictions there are often interests of corporations and private companies that have various investment projects such as monocultures, mining, hydroelectric projects, oil, or tourism, among others. During recent years it has been observed how legal and illegal interests have forced the population to be displaced or to resist and defend their territories. The Commission was informed of the existence of the large number of eviction requests that exist, especially in the Petén department. The IACHR notes that evictions affect people who are most vulnerable and intensify inequality, social conflicts, segregation and the creation of ghettos. Forced evictions are often linked to the lack of legal certainty about the land, which is an essential element of the right to adequate housing.

13. In relation to violence and insecurity, the situation of women, children, indigenous peoples, afrodescendants, human rights defenders, LGBTI persons and journalists is of concern. Despite having had a slight decrease in the last ten years, the overall homicide rate in the country remains one of the highest in Latin America and the Caribbean. Most of the crimes are attributed to gangs, drug cartels and organized crime, which represent one of the most important security problems in the country. The IACHR hopes that with the installation of the Inter-Institutional Technical Board formed by the Public Prosecutor’s Office, the INACIF, the PNC and other institutions that administer statistical information in the security and justice system, standardized figures will be generated on violent deaths and other crimes in the country to facilitate temporal, regional and disaggregated analysis of crime trends in Guatemala.

14. Regarding the situation of journalists, the IACHR observed that Guatemala is undergoing a context of violence, characterized by murders, threats and a discourse that seeks to stigmatize media and communicators committed to combating corruption and abuse of power. According to the information received, especially in the interior of the country, journalists and social communicators are in a “high degree of vulnerability” to practice their profession. The IACHR highlights the announcement made by President Jimmy Morales during the on-site visit regarding a Program to Protect Journalists and Social Communicators, which would be approved shortly
and which is reportedly being worked on in consultation with journalists’ organizations. Nonetheless, the Commission notes with concern that since the date of that announcement, there has been no tangible progress in the creation of said program.

15. Regarding persons deprived of liberty, the Inter-American Commission observed that the Guatemalan prison system is mainly characterized by overcrowding, the excessive use of preventive detention, and the delay of justice. Furthermore, it is characterized by the deplorable conditions of detention, the high levels of violence, the lack of effective programs for social reintegration, corruption, and the absence of effective control of the authorities at the interior of the detention centers.

16. The rights of children and adolescents in the country received special attention during 2017 after the tragedy in the Virgen de la Asunción Home, where 41 girls and adolescents died in State custody. This tragedy brought to light the insecure conditions of the homes where children are housed, as well as the deplorable situation of detention centers for children and adolescents in contact or conflict with the criminal justice system. The Commission visited some of these centers and verified these conditions. The IACHR notes that the serious situation of children and adolescents in Guatemala stems from the weakness and disarticulation among the institutions in charge of children’s rights, as well as from the lack of a National Public Policy that focuses on guaranteeing the rights of children, girls and adolescents that is neither reductionist nor protectionist.

17. In light of the human right situation observed, the Commission recommends the State, as immediate measures, to double down on its commitment to continue with the fight against impunity, violence, intolerance and corruption, through policies and programs of prevention and respect for human rights, as well as a strengthened, independent and impartial justice system. Similarly, the State must deepen its efforts to adopt laws, policies and programs in order to close the gap of persistent inequality and exclusion, so that all persons, particularly those who have been historically excluded, can exercise their human rights. The Commission expresses its willingness and disposition to contribute and collaborate with the State of Guatemala in the implementation of a human rights agenda aimed at guaranteeing and protecting the rights of all its inhabitants. In this context, the IACHR makes a series of recommendations to the State of Guatemala.

18. This report is divided into eight chapters. The first contains the introduction to the report. Chapter Two analyzes the system of administration of justice in Guatemala. The third chapter addresses the
situation of human rights defenders and justice operators in the country. The fourth chapter addresses ... The fifth chapter looks at the situation of freedom of expression. Chapter Six deals with citizen security issues. Chapter Seven covers the situation of people in State custody. Chapter Eight contains the report’s conclusions and recommendations. The Commission offers a series of recommendations intended to assist the Guatemalan State in its efforts to ensure human rights in the country.
CHAPTER 1

INTRODUCTION
Chapter 1: Introduction

INTRODUCTION

19. The Commission has monitored the human rights situation in Guatemala with particularly close attention since its inception, especially in response to the gross human rights violations perpetrated during the internal armed conflict. As a result, it has been the subject of the most on-site visits and country reports by the IACHR.

20. After the armed conflict began in 1962, the Commission started receiving many communications denouncing alleged violations of fundamental individual rights. The Commission’s monitoring of the situation during the early years of the conflict led to the publication in 1966 of its “Requests for Information Conveyed to the Government of Guatemala.” The Commission’s monitoring of the situation in the country continued both during and after the conflict with the publication of 8 special country reports and 16 follow-up reports on the overall situation. The Commission has made a total of 11 on-site visits to Guatemala since 1982, and has processed and published in its annual reports many reports on individual cases, among other activities. The most recent report, entitled Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion, was adopted by the IACHR on December 31, 2015, with a follow-up report published in 2016.

21. On February 26, 2016, the State of Guatemala extended an invitation for the Commission to visit the country. In Guatemala City on March 14, 2016, Commissioners James Cavallaro and Enrique Gil Botero presented the IACHR report Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion. During that visit, the President of the Republic, Jimmy Morales, who took office on January 14, 2016, reiterated to the commissioners the invitation for the IACHR to visit Guatemala. Owing to the financial crisis afflicting the Commission, the IACHR had to postpone the visit.

22. In its observations on the implementation of the recommendations of the IACHR in the 2015 country report, which were presented on October 10, 2016, the State of Guatemala renewed the invitation for the IACHR to visit Guatemala.
the country in the course of 2017, which was, in turn, reiterated in a communication dated January 13, 2017. On January 18, 2017, the IACHR accepted and advised the State of the proposed dates of the visit.

23. The IACHR visited the country from July 31 to August 4, 2017. The IACHR observed the situation of human rights in the country firsthand, giving attention to issues relating to justice, citizen security, inequality, discrimination, the legacy of the internal armed conflict, and freedom of expression. The Commission also received information on the situation of indigenous peoples, human rights defenders, and justice operators, as well as on persons deprived of their liberty and persons in other state institutions.

24. The delegation was led by the President of the IACHR, Francisco José Eguiguren Praeli; the First Vice President, Margarette May Macaulay; the Second Vice President, Esmeralda Arosemena de Troitiño; and Commissioners José de Jesús Orozco Henríquez, Paulo Vannuchi, James Cavallaro, and Luis Ernesto Vargas Silva. Other members of the delegation included the IACHR Executive Secretary, Paulo Abrão; the Special Rapporteur for Freedom of Expression, Edison Lanza; and specialists from the Executive Secretariat.

25. The Inter-American Commission had meetings with officials from all the three branches of government, representatives of civil society, human rights defenders, indigenous authorities, autonomous organs, international agencies, scholars, and journalists. The Commission also gathered testimony from victims of human rights violations and their family members. In the course the visit, the IACHR was able to visit various parts of the country without restrictions, including Alta Verapaz, Petén, and Huehuetenango. It also visited prisons and other facilities under state custody. The IACHR visited the Aleluya Children’s Home; the Male Juvenile Detention Center (CEJUPLIV “Etapa II”) in San José Pinula; the Female Juvenile Detention Center (CEJUPLIM-“Gorriones”); the jails located in Basement 1 of the Courts of Justice; Santa Teresa Pretrial Detention Center for Women; the Women’s Guidance Center (COF); Pavón Criminal Rehabilitation Unit; and Federico Mora National Mental Health Hospital. It also visited the Regional Command for Training in Peacekeeping Operations (CREOMPAZ) and the National Police Historical Archive.

26. The IACHR met with the the President of the Republic of Guatemala, Jimmy Morales Cabrera; the Minister of Foreign Affairs, Carlos Raul Morales Moscoso; the Minister of the Interior, Francisco Rivas Lara, and the Deputy Minister of the Interior, Ricardo Guzmán; the Minister of Defense, Williams Mansilla; the Deputy Minister of Public Health and Social Assistance, Adrián
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Estuardo Chávez; the President of the Presidential Coordinating Commission for Executive Policy on Human Rights (COPREDH), Víctor Hugo Godoy; the Secretary of Communication of the Office of the President, Alfredo Brito, and the Deputy Secretary of Communication, Luz Arminda Barrios; the Secretary for Social Welfare, Cándida Rabanales, and staff from that agency; Supreme Court Justices Delia Marina Dávila Salazar, María Eugenia Morales de Sierra, and Josué Felipe Baquía Baquía; the President of the Constitutional Court, José Francisco de Mata Vela; Constitutional Court Judges Dina Ochoa, Gloria Porras, María Consuelo Porras, María Cristina Fernández, Bonerje Mejía, Neftaly Aldana, Henry Comte, and José Mynor Par; the President of the Congress of the Republic, Óscar Chinchilla; the Second Vice-President, Eduardo Ramiro de Matta; the Third Vice-President of Congress, Marvin Orellana; the President of the congressional Human Rights Commission, Patricia Sandoval; Deputies Nineth Montenegro, Sandra Móran, Amilcar de Jesús Pop Ac, Boris España, Jaime José Regalado, and Oliverio García Rodas; the Attorney General of the Republic, Thelma Aldana Hernández; the Human Rights Prosecutor in the Public Prosecutor's Office, Hilda Pineda; the Human Rights Ombudsman, José Eduardo de León Duque; the Ombudsman-elect, Jordan Rodas, and Staff from the Office of the Human Rights Ombudsman; the Rapporteur for the National Mechanism for the Prevention of Torture, Silvia Villalta; the head of the Defender’s Office for Indigenous Women, María Roselia Pop Cal, and staff from that agency; the Deputy Secretary for Peace, Hugo Rigoberto Casasola; the Deputy Secretary for Planning, Luis Ovando; the Interim Director of the Prison System, Mirna Fajardo; the Director of the General Archive of Central America, Anna Carla Ericastilla; the Executive Secretary of the PDH Commission on Access to Public Information, Violeta Mazariegos; the Superintendent of Telecommunications, José Raúl Solares Chiu, and staff from his agency; the Coordinator of the National Police Historical Archive, Gustavo Meoño; the Executive Director of the National Reparations Program, Rodolfo Martínez Mérida; prosecutors Rosa Lidia Navarro and Luis Daniel Ordoñez; Congressman Leocadio Juracán; and the Director of the Public Criminal Defense Institute (IDPP), Nydia Arévalo Flores Abril. The Commission also met with staff from the Ministry of the Environment and Natural Resources; the Ministry of Education; the Ministry of Energy and Mines; the Ministry of Public Health and Social Assistance; the Ministry of Labor; the Secretariat for Food and Nutritional Security of the Office of the President; the Presidential Secretariat for Women; the Secretariat against Sexual Violence, Exploitation, and Human Trafficking; the Executive Secretariat of the Commission against Drug Addiction and Illegal Drug Trafficking; the National Council of Protected Areas; the Presidential Commission against Discrimination and Racism; the National Commission on Children and Adolescents; the National Adoption Council; the Registry of Cadastral Information; the General Registry of
Property; and the Secretariat for Agrarian Affairs, as well as judges who enforce sentences for adolescent offenders. The Commission also met with prosecutors from the Unit for Crimes against Journalists in the Office of the Public Prosecutor.

27. In its visits to departments of Guatemala, the IACHR met with the following authorities: the Governor of Alta Verapaz, Estela Ventura; the Governor of Huehuetenango, Ramiro Estuardo Varillas; the Mayor of Cobán, Koky Córdoba; the Mayor of San Andrés, Milton Méndez; the Municipal Corporation of Santa Eulalia; the District Prosecutor of Alta Verapaz, Lauro Oliver Ruiz; Iliana Alvarado, the head of COPREDEH for Huehuetenango; Miriam Judith Juárez, the head of COPREDEH for Petén; members of the Municipal Corporation of Santa Eulalia; and personnel from the Armed Forces of Guatemala, the National Civilian Police, and the National Council of Protected Areas.

28. The IACHR also met with the following civil society organizations: 8Tijax, 12 Comunidades San Juan Sacatepéquez, A.B.J.P. Rabinal, AAICAVCAI Cobán, Abogados Moyoy, Acoguate, Aconapamy, Actenesta Social, ActionAid Guatemala, Actividad Central, ADICI, ADICAV, AFAIDEL, AFAMIDEG, AIN, Aj Tierra – Xbenil San Pedro, Aldea Chirrequis, Aldea Cocop, Aldeas Infantiles SOS, ANH Chisec de Alta Verapaz, APCR, Articulación de Mujeres, Articulación Nacional, Asamblea Nacional de las Abuelas Comadronas del Movimiento Nim Alaxik, Asociación MIRIAM, Asís, Asociación Camilo Pacheco, Asociación Pro-Municipio Zona Reyna, Asociación Abogados Mayas, Asociación Achi, Asociación Ajkemab Rech Kaslema, Asociación de Comunidades Campesinas para el Desarrollo Integral del Municipio de La Libertad (ACCODIL), Asociación Centro de Análisis Forense y Ciencias Aplicadas (CAFCA), Asociación Awil Ricd, Asociación Ch’ortí Nuevo Día, Asociación Cristiana de Guatemala, Asociación de Abogados Mayas, Asociación de Estudios de Investigación y Estudios Sociales (ASIES), Asociación de Generadores con Energía Renovable (AGER), Asociación Kumol, Asociación de Lambda, Asociación de Migrantes Desaparecidos, Asociación de Servicios Comunitarios de Salud (ASECSA), Asociación Familiares de Detenidos-Desaparecidos de Guatemala (FAMDEGU), Asociación de Familias de Migrantes Desaparecidos, Asociación Fomento, Asociación Gente Positiva, Asociación Guatemala de Hipertensión Pulmonar, Asociación Guatemalteca de Pacientes con Enfermedades Autoinmunes Reumáticas (ARTRILUP), Asociación Iseri Ibagari, Asociación Ixmukane, Asociación K’amalb’e, Asociación Kumool IsnTzal Quiché, Asociación La Alianza, Asociación MOLOJ, Asociación Mujeres Transformando el Mundo, Asociación Nuevo Día, Asociación Organización de Ayuda Solidaria contra la injusticia Social (OASIS), Asociación para el Desarrollo Integral de las Víctimas de la
Violencia en las Verapaces, Maya Achí (ADIVIMA), Asociación Héroes de Esperanza, Asociación Pop No’j, Asociación Pro-Municipios, Asociación PROCREE, Asociación SOMOS, Asociación Vidas Paralelas, Asolación de Fomento para el Desarrollo Integral, Asociación Voces por la Justicia, ASOCIDENEB, Azoder Cobán, Bancada Convergencia, Bufete de Derechos Humanos, Bufete jurídico de Derechos Humanos (BDH), Cahiobón, Caschibal Instancia, Campaña Guatemala Sin Hambre, Camma Addarti, Campaña Libertad, Campaña Guatemala Sin Nombre, Carchá Aldexalital, Carchá AV, Cardina Chiseo SANK, Casa de la Cultura 4 de Noviembre, Casa del Migrante Ala, Catholic Relief Services, CCC Nuevo Día, CECOMS, CEIFA, Central General de Trabajadores de Guatemala (CGTG), CCP Arusa, Centro de Acción Legal, Ambiental y Social de Guatemala (CALAS), Centro de Análisis Forense y Ciencias Aplicadas (CAFCA), Centro de Capacitación Misional de Guatemala (MTC), Centro de Estudios de Guatemala (CEG), Centro Internacional para Investigaciones en Derechos Humanos (CIIDH), Centro para la Acción de la Responsabilidad Social en Guatemala (CENTRARSE), Centro para la Acción Legal en Derechos Humanos (CALDH), Centro para la Defensa de la Constitución, Centro por la Justicia y el Derecho Internacional (CEJIL), Chamil Chamelco Codevi, Chamelco A.V. SANK, CHILDFUND, Childfund Guatemala, Cheachamil, Chicoyguito CPT, Chisee A.V., Chiquixhi Corchá, Chiol Sqa.Be Cahlbón, CHILDHOPE, Children’s Fund, Chool SabeChikajbom, CICIDE, Cladem Enlace Guatemala, Cocahich, CODEMI, Colectivo 8 Tijax, CONSEDONC, Colectivo Artesana, Colectivo Independiente LGTBI, Colectivo Madreselva, Colectivo Vida Independiente, Colectivo de Educación, Colectivo Vida Independiente, Comisión de Verificación de Violaciones a Derechos Humanos de Laguna del Tigre y Sierra de Lacandón, Comisión de Derechos Humanos en Guatemala, Comisión Interamericana de los Derechos Humanos (CIDH), Comisión Nacional contra el Maltrato Infantil (CONACMI), Comisión por la Defensa de la Vida y la Naturaleza, Comité de Campesinos del Altiplano (CCDA), Comité de Familias Desaparecidas, Comité Coordinador de Asociaciones Agrícolas, Comerciales, Industriales y Financieras (CACIF), Comité de Desarrollo Campesino (CODECA), Comité de Familias Independientes DS, Comité de Migrantes Desaparecidos, Comité de Unidad Campesina (CUC), Comité de Ciegos y Sordos, Comunidad Chabán, Comunidad Cristiano Guerreros de Dios (CCGD), Comunidad de Población en Resistencia (CPR), Comunidad Indígena de Comunidades, Comunidad Judía Lev Tahor, Comunidades de Laguna del Tigre y Sierra de Lacandón, Comunidad Indígena la Campana, Comunidades Afectadas por TRECSA, Comunidades Petén, CONACMI, Concejo Mam, Confederación de Unidad Sindical de Guatemala (CUSG), Consejo del Pueblo Maya (CPO), Consejo Maya Achi, Consejo Nacional de Comadronas Mum Alaxik, Convergencia Nacional Maya Waqib’ Kej, Convergencia por los Derechos Humanos, Cooperación Indígena para el Desarrollo Integral (COINDI), Coordinadora de Víctimas (CODEVI),
29. The Commission also had meetings with the following international agencies: the representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Guatemala, Liliana Valiña, and OHCHR staff; and Iván Velásquez Gómez, a member of the International Commission against Impunity in Guatemala (CICIG). It also held meetings with the Coordinator of the International Organization for Migration (IOM) in Guatemala, José Diego Cárdenas, and IOM personnel; representatives of the United Nations Population Fund (UNFPA); the Deputy Representative of UNICEF in Guatemala, Mariko Kagoshima, and UNICEF personnel; and UNHCR representatives.

30. In preparing this report, the IACHR systematized and analyzed information that it has received on the situation of human rights in Guatemala in recent years. The IACHR relied on information received before, during, and after the on-site visit, from investigations conducted *sua sponte*, from input produced by the various mechanisms through which the IACHR has followed the situation in the country, such as public hearings, thematic visits, requests for information under Article 41 of the American Convention on Human Rights, precautionary measures, journalists’ reports, and decisions and recommendations of specialized international agencies, among other sources.

31. On November 22, 2017, the IACHR submitted a copy of the preliminary draft of this report to the State according to its Rules of Procedure, and requested that it provide any comments. On December 22, 2017, the IACHR received the State’s comments, which were incorporated, as deemed pertinent, into the final version approved by the Commission on December 31, 2017. In its comments to the draft of this report, the State of Guatemala indicated that it provided observations “regarding the complete and very professional” draft report submitted by the IACHR.

32. The Commission is grateful to President Jimmy Morales and his government for the invitation to conduct this visit. The Commission also appreciates all the logistical support and assistance provided for the visit to be carried out in a satisfactory manner, especially by the Presidential Coordinating Commission for Executive Policy on Human Rights (COPREDEH). The Commission values the information provided by State authorities and their openness to engage in constructive dialogue with the IACHR. The Commission appreciates the efforts made by victims of human rights violations and their families and by groups, civil society

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4 Ibid.
organizations, and indigenous authorities to meet with the delegation and present their testimony, complaints, and communications.

A. The Legacy of the Armed Conflict

33. The IACHR has monitored the human rights situation in Guatemala with particularly close attention since its inception, especially in response to the gross human rights violations perpetrated during the internal armed conflict that went on from 1960 to 1996. The conflict was notable for the systematic execution of people, massacres, forced disappearances, rapes, and scorched-earth operations designed to at least partially eliminate the Maya people. During the armed conflict, women suffered violence in a differentiated way, as rape was a widespread, massive, and systematic practice used by agents of the State as part of the counter-insurgency policy. According to the report of the Commission for Historical Clarification (CEH), Guatemala: Memory of Silence, multiple coinciding factors caused the internal armed conflict in Guatemala, including structural impunity, the closing of political spaces, racism, the increasingly exclusionary and anti-democratic nature of institutions, as well as a reluctance to promote substantive reforms that could have reduced structural conflicts.

34. The CEH concluded in its report that throughout Guatemala’s history, but particularly during the armed conflict “the violence was fundamentally directed by the State against the excluded, the poor and above all, the Mayan people, as well as against those who fought for justice and greater social equality.” The commission, for its part, has stated on several occasions that the dramatic exclusion and discrimination to which indigenous peoples, who account for more than half the population of Guatemala, were subjected became evident during the armed conflict, when 83% of the victims were Mayans, and against whom acts of genocide were performed. In its comments to the draft of this report, the State of Guatemala indicated that “it did not seek the elimination of the Mayan People” and that “both groups that fought in the internal war were indigenous.”

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5 CEH, Memory of Silence, Volume I (in Spanish only), Causas y orígenes del enfrentamiento armado interno, p. 80
7 CEH, Guatemala, Memory of Silence, Conclusions and of recommendations.
35. With the signing of the Accord for a Firm and Lasting Peace in December 1996, the government of then-president Álvaro Arzú and Guatemala National Revolutionary Unity (URNG) brought an end to 36 years of civil war. The Peace Accords were an opportunity for profound change in Guatemala. The succeeding administrations since the end of the armed conflict have made efforts to implement the accords. However, more than 20 years since signing of the Peace Accords the commitments adopted by the State in the areas of reparation, truth, justice, and non-repetition have not been fully met.

36. The information the IACHR received consistently during the visit indicates that more than 20 years after the Peace Accords were signed some of the fundamental reasons behind the internal armed conflict persist: an economy that is still based on the concentration of economic power in the hands of a few, and a weak State structure with few resources due to low tax collection and high levels of corruption. Guatemala still has structural problems such as racial discrimination, social inequality, deep poverty, exclusion, and lack of access to justice, which constitute obstacles to the full respect of human rights. The Commission has also repeatedly received information regarding the persistence of parallel power structures that hinder the fight against impunity and corruption and stand in the way of strengthening the rule of law.

B. Poverty, Inequality, and Exclusion

37. Guatemala is a country in Central America with an area of 108,809 km² and a population of around 16 million, most of whom live in rural areas. According to data from the most recent census, taken in 2002, 40% of the population identifies as indigenous; other sources say that 60% of the

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9 The Accord for a Firm and Lasting Peace was signed and entered into force on December 29, 1996.
10 Information presented by the following civil society organizations with the request for a thematic hearing on “Reparation in Guatemala,” October 10, 2016: Coordinadora de Víctimas de Alta Verapaz (CODEVI), Coordinadora de Víctimas de El Petén (COVIP), Asociación Campesina para el Desarrollo Nebajense (ASOCDENEB), Comunidades de Población en Resistencia (CPR-Sierra), Comunidades de Víctimas de Cotzal El Quiché, Centro de Análisis Forense y Ciencias Aplicadas (CAFCA).
11 In its comments to the draft of this report, the State of Guatemala stated: “we respect what [the Commission] has observed, but we suggest noting the change that is being generated for the benefit of the population.” Communication from the State of Guatemala, “Submission of the State of Guatemala to Include in the Draft Report on the Human Rights Situation in Guatemala,” December 22, 2017.
12 According to the census, in 2002 Guatemala’s population numbered 15,073,375, 48.8% of whom were male and 51.2% female. INE, Caracterización Estadística de la República de Guatemala.
13 51.0% of the population resided in rural areas. INE, Caracterización Estadística de la República de Guatemala.
population falls under to that category. It is a multiethnic, pluricultural, multilingual society in which indigenous Mayan, Xinka and Garífuna peoples and Ladinos coexist. Guatemala's cultural diversity is evinced by the 25 different languages spoken in the country: Spanish and 24 indigenous languages.

38. Its history has been scarred by colonialism, wars, subjugation, serfdom, and military dictatorships. Poverty, racism, exclusion, violence, and impunity continue to feature large in the social and economic situation in Guatemala. This situation occurs in a framework of weak state apparatus with few resources as a result of a meager tax take, persistent corruption, and high levels of violence. The Guatemalan state’s low tax revenues hamper its ability to provide basic public services and ensure policies to guarantee the rights of the neediest sectors. According to the Economic Commission for Latin America and the Caribbean (ECLAC), Guatemala's tax revenue, measured as a percentage of GDP, was the region’s lowest from 1990 to 2013, managing only 13 percent compared to the regional average of 23 percent. In 2016, the executive branch exempted delinquent taxpayers from paying more than 10 million quetzales (approximately US$1.3 million) in fines and interests, a decision decried by a number of sectors of the population.

39. In the context of the Sustainable Development Goals, Guatemala remains one of the most unequal countries in the world in terms of health, education, and income distribution, which has the effect of reducing its human development index by 30 percent, according to the United Nations Development Programme. Based on the National Living Standards Survey

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15 The mestizo or mixed-race hispanicized community that only speaks Spanish (Central America). Dictionary of the Spanish Royal Academy. The Maya group comprises 22 distinct sociolinguistic communities. Ministry of Education of Guatemala, Un país con Diversidad Étnica, Cultural y Lingüística
published in 2015 (the most recent version), 59.3 percent of Guatemalans live in poverty.\textsuperscript{21} 23.4 percent of them in extreme poverty.\textsuperscript{22} The national poverty rate grew 8 percentage points between 2006 and 2014,\textsuperscript{23} in spite of GDP growth of 3.1 percent in 2016.\textsuperscript{24}

40. Nearly 4 out of 5 indigenous people live in poverty.\textsuperscript{25} Extreme poverty is three times higher in the indigenous population than in the nonindigenous population.\textsuperscript{26} Alta Verapaz and Sololá are the departments with the highest poverty rates—above 80 percent—followed by Totonicapán with 77.5 percent. The population in all three is mostly indigenous.\textsuperscript{27} Poverty in rural areas is almost double that (1.8 times higher) of urban zones.\textsuperscript{26} In light of these rates of poverty and extreme poverty, particularly in the indigenous population, the Commission has expressed concern at the State’s failure to allocate sufficient resources to address this issue among indigenous children.\textsuperscript{29}

41. In this context, the situation of chronic malnutrition in children is alarming. Guatemala has become the country worst affected by chronic malnutrition in Latin America;\textsuperscript{30} indeed, its situation in that regard is among the worst globally.\textsuperscript{31} The food and nutrition insecurity situation reaches critical levels in rural areas, mainly affecting children under 5 years old, the school

\textsuperscript{21} In other words, they make less than 10,218 quetzales per year, aproximadamente US$1,400 at 2017 prices. Poverty is "a human condition characterized by the continuous or chronic deprivation of resources, capacity, options, security and the power necessary to enjoy an adequate standard of living and other civil, cultural, political and social rights." Extreme poverty is "a combination of scarcity of resources, lack of human development and social exclusion," where a prolonged lack of basic security affects several aspects of people's lives simultaneously, severely compromising their chances of exercising or regaining their rights in the foreseeable future. United Nations, Guiding Principles on Extreme Poverty and Human Rights, Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda. Adopted by the Human Rights Council on September 27, 2012, par 2.


\textsuperscript{23} Ibid.


\textsuperscript{25} National Living Standards Survey (ENCOVI) 2014, National Statistics Institute.

\textsuperscript{26} Id., pp. 49-58. Information from the organizations Campaña Guatemala Sin Hambre and IAN International (International Secretariat), August 25, 2017. In the IACHR archive.

\textsuperscript{27} National Living Standards Survey (ENCOVI) 2014, National Statistics Institute.

\textsuperscript{28} Ibid.

\textsuperscript{29} IACHR, Annual Report 2016, Chapter V. Available online: www.oas.org/en/iachr/docs/annual/2016/TOC.asp.


population, and pregnant and nursing women, and worsens to an alarming degree in the indigenous population.\textsuperscript{32} In context of high poverty and extreme poverty, 48 percent—that is, practically half—of Guatemalan children are chronically malnourished.\textsuperscript{33} The highest rates of chronic malnutrition and food insecurity occur in rural areas, where the population is predominantly indigenous.\textsuperscript{34} According to Information Provided by the United Nations Children’s Fund (UNICEF), in Guatemala chronic malnutrition affects eight of every ten indigenous children (80%); it causes lower school retention rates, lower productivity, a propensity to contract diseases, and even a loss of I.Q., with irreversible effects throughout life.\textsuperscript{35} The mortality rate from malnutrition is 9.1\% nationwide and has trended downward (by 20.7\%) since 2005.\textsuperscript{36} The areas with the highest levels of chronic malnutrition and food insecurity are the Departments of Alta Verapaz and Baja Verapaz, as well as the municipalities in the Chortí area of the Department of Chiquimula, all of them with predominantly indigenous populations.\textsuperscript{37} Given such challenges, the IACHR encourages the State of Guatemala’s efforts to implement food distribution programs, particularly through the creation of the Presidential Commission to Reduce Chronic Malnutrition\textsuperscript{38}. In its comments to the draft of this report, the State highlighted that as part of the Program for Food Assistance, between 2012 and June 2017 618,117 food rations were delivered in areas affected by natural disasters.\textsuperscript{39}

\textsuperscript{32} Secretariat for Food and Nutrition Security, Strategic Plan for Food and Nutrition Security, p. 1. The Secretariat for Food and Nutrition Security reported a drop in levels of chronic and acute malnutrition in children under five years old between 1995 and 2015.

\textsuperscript{33} United Nations Development Programme in Guatemala, Guatemala en breve, 2017. Available online: http://www.gt.undp.org/content/guatemala/es/home/countryinfo/.

\textsuperscript{34} This occurs in the Departments of the Altiplano Nor-occidental, Alta Verapaz, and Baja Verapaz, and the municipalities in Chortí area of Chiquimula Department. Secretariat for Food and Nutrition Security. Strategic Plan for Food and Nutrition Security, p. 4.


\textsuperscript{36} National Living Standards Survey (ENCOVI) 2014, National Statistics Institute.

\textsuperscript{37} Ibid.

\textsuperscript{38} In its comments to the draft of this report, the State also referenced the Family Agriculture Program for the Strengthening of the Rural Economy, within the Ministry of Agriculture, Cattle Raising and Food. It indicated that this Program constitutes the primary objective of the Agricultural Policy for 2016-2020, and contribute to the reduction in chronic malnutrition in children under two years of age. It also iniated that since 2016, it is strengthening the National Program for Feeding in Schools, which guarantees the rights to food and nutrition of students through food that is healthy, varied, safe and with cultural pertinence. Communication from the State of Guatemala, “Submission of the State of Guatemala to Include in the Draft Report on the Human Rights Situation in Guatemala,” December 22, 2017.

In 2017, these levels of malnutrition caused the death of at least one girl beneficiary of court-ordered protection. The Commission learned of the death from malnutrition of Mabelita Lucila Interiano Amador, an eight-year-old girl, on August 14, 2017, 10 days after its concluded the on-site visit. In April and May 2013, the Judge of the Children’s and Juvenile Offenders’ Court of the Department of Zacapa ordered the Guatemalan State to protect the lives of three girls and two boys, including Mabelita, who were suffering from chronic and acute malnutrition, as well as their immediate families. The Constitutional Court confirmed the judgments in 2017. The judge found that there had been violations of her rights to life, health, education, food, and housing, recognized in Article 104 of the Child and Adolescent Comprehensive Protection Law. In his judgment, the judge ordered the Human Rights Ombudsman (PDH) to assist in the coordination of interinstitutional efforts in that regard. The information received indicates that Mabelita weighed just 27 kilograms when she died. The Commission considers that, bearing in mind that Mabelita had been the beneficiary of a protection order since 2013, her death could have been avoided. The IACHR strongly urges the State to adopt immediate and effective concrete policies and mechanisms to safeguard the wellbeing of the other four children beneficiaries of the 2013 decisions, as well as to prevent the death from malnutrition of any more children in Guatemala.

As regards the right to education, according to the UNDP, the average length of schooling in the country is just 6.4 years, and a mere 4.8 years for indigenous children. Indigenous girls attend school for only three years
More than 1.8 million children and adolescents aged 10 to 19 are not in school.\footnote{UNICEF-Guatemala, Desnutrición.} According to available information, in 2015, 50 percent of boys and girls in Guatemala did not attend preprimary school;\footnote{Information provided by the State of Guatemala at the 154th regular session of the IACHR.} in 2017, roughly 400,000 primary school-age boys and girls are not in the education system. Furthermore, more than 678,000 secondary school-age adolescents do not have access to secondary education.\footnote{Human Rights Office of the Archdiocese of Guatemala (ODHAG), Informe sobre los derechos de la niñez y adolescencia en Guatemala, 2016. Child Fund, Annual Report 2016. Available online: http://childfundannualguatemala.org/.} According to the most recent data from Guatemala’s National Statistics Institute, 20.8 percent of Guatemalans over the age of 14 years old are illiterate, while in the indigenous population illiteracy in that age group is 32.8 percent.\footnote{Report on the overall situation of children, adolescents, and young people in Guatemala, in the framework of the on-site visit of the Inter-American Commission on Human Rights to Guatemala from July 31 to August 4, 2017, prepared by the national and international organizations El Refugio de la Niñez, Coordinadora Institucional de Promoción por los Derechos de la Niñez, CIPRODENI, Red Niña Niño, Asociación Civil Paz Joven Guatemala, World Vision, Save the Children, and Plan International Guatemala. In the IACHR archive.} According to the UNDP, recent years have seen some progress in education, although Guatemala still faces crucial challenges. Among the advances there have been progressive increases in primary education enrollment; almost complete gender parity in education and an increase in youth literacy (from 76% to 91.9% between 1994 and 2011).\footnote{UNDP-Guatemala, The Millennium Development Goals.} In its comments to the draft of this report, the State indicated that the National Committee of Literacy reported, as part of the process of achieving literacy in all persons over 15 years of age, a 4.31% decrease in the illiteracy rate between 2012 (16.62%) and 2016 (12.31%).\footnote{Communication from the State of Guatemala, “Submission of the State of Guatemala to Include in the Draft Report on the Human Rights Situation in Guatemala,” December 22, 2017.}

As regards land ownership, according to the Office of the United Nations High Commissioner for Human Rights (OHCHR), there are at present more than 1,440 disputes over land concerning overlaps, boundaries, regularizations, and land occupations, among other issues. Forcible evictions in this context continue to be a cause for concern. Farming accounts for 13.6 percent of GDP and 26.4 percent of total exports. According to the OHCHR and information received during the visit, a number of complaints have been made about the adverse impact of single-crop operations that continue to expand throughout the country. Such
complaints concern, *inter alia*, alleged irregular land purchases, the impact of fumigation on crops in neighboring properties, and diversion of rivers.\(^53\)

45. On the question of the right to water, according to information received, around three million Guatemalans lack access to safe drinking water, while some six million are without access to improved sanitation services.\(^54\) According to the PDH, 20 percent of the country does not have access to improved water sources, and there is a gap of 24.7 percent between urban and rural areas.\(^55\) Of people living in extreme poverty, 40 percent lack access to improved water sources.\(^56\) Guatemala is the only country in Central America without a water law.\(^57\) Information received also indicates that rural areas have serious problems of access to safe drinking water because of droughts, rivers being diverted, and water grabs by businesses, not to mention pollution and land grabs by corporations and megaprojects.\(^58\) According to UNICEF, the global economic situation and the effects of climate change, especially droughts, disproportionately impact the economies and, in particular, the subsistence of indigenous families and of the poorest, with children the worst affected.\(^59\)

46. With respect to the right to housing, civil society organizations say that 50% of the Guatemalan population lacks decent, adequate, and healthy housing.\(^60\) In that regard, the State reported that it replaced the National Housing Fund of Guatemala (*Fondo Nacional de la Vivienda de Guatemala*—FODIGUA) with the National Fund for Housing (*Fondo Nacional para la Vivienda*—FOPAVI), which started functioning in 2013. One of its chief reforms has been the rise in the direct subsidy received by beneficiary families, from 15,000 quetzales (about US$1,900) to 35,000 quetzales (about US$4,600). The State added that since its establishment FOPAVI has

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\(^{53}\) OHCHR, Meeting with civil society organizations in Alta Verapaz.


\(^{57}\) The PDH, for its parts, considers it "urgent to enact a law that prioritizes water for personal and domestic use, food production, and disease prevention, and that it should also recognize the principles of equality, equity, inclusion, access to information, social participation, accountability, and justice, as well as ensuring sustainability." Human Rights Ombudsman, press release, *Día Mundial del Agua*, March 22, 2017. See also, UNDP Guatemala, *Acceso al agua, indispensable para el bienestar*, March 22, 2017. Available online: [http://www.gt.undp.org/content/guatemala/es/home/ourperspective/ourperspectivearticles/2017/03/22/acceso-al-agua-indispensable-para-el-bienestar.html](http://www.gt.undp.org/content/guatemala/es/home/ourperspective/ourperspectivearticles/2017/03/22/acceso-al-agua-indispensable-para-el-bienestar.html).

\(^{58}\) Information received from civil society organizations, August 2017. In the IACHR archive.


\(^{60}\) Informe Alternativo al III Informe Periódico del Estado de Guatemala sobre la Aplicación del Pidesc, March 21, 2014, p. 75-76.
provided assistance to more than 26,000 families living in poverty or extreme poverty.\footnote{Report of the State of Guatemala regarding the “Draft General Report on Human Rights in Guatemala and the communication of August 14, 2015 of the IACHR,” October 6, 2015.}

47. Regarding the right to work, according to information provided to the IACHR, difficulties persist with respect to access to jobs, with a result that informal employment is widespread, especially in the farming sector. Almost 70 percent of the labor force is informally employed, according to information from the Ministry of Labor.\footnote{Ministry of Labor, Ferias del trabajo reducen tasa de desempleo e informalidad en Guatemala, April 2017. Available online: http://www.mintrabajo.gob.gt/index.php/nota-principal/6085-ferias-del-trabajo-reducen-tasa-de-desempleo-e-informalidad-en-guatemala.html. See also newspaper article in La Prensa, Empleo informal sube a 69.9 por ciento en 2016, November 15, 2016. Available online: http://www.prensalibre.com/guatemala/politica/empleo-informal-sube-a-699-en-el-2016.} According to the National Statistics Institute, in rural areas, 85 percent of the labor force is informally employed.\footnote{Newspaper article in La Prensa, Empleo informal sube a 69.9 por ciento en 2016, November 15, 2016.} The Ministry reported that the informal employment rate fell by two percentage points between 2016 and 2017, from 69.8 percent to 67.8 percent, and that unemployment came down by 0.7 percent, thanks to labor fairs and employment kiosks held in the first half 2017.\footnote{Ministry of Labor, Ferias del trabajo reducen tasa de desempleo e informalidad en Guatemala, April 2017.}

48. As regards child labor, Guatemala has the highest child labor rate in the region. According to official data in the country, there are 850,000 children engaged in productive activities, 43 percent of whom are not in school.\footnote{The organization Programa Educativo del Niño, Niña y Adolescente Trabajador (PENNAT) puts the number of children and adolescents in productive activities at 1 million and warns of underreporting in this area.} The 2016 National Employment and Income Survey carried out by the National Statistics Institute indicates that 6.3 percent of all children aged 7 to 14 years old perform some kind of economic activity.\footnote{By sectors, most child workers are employed in farming (58.8 percent), followed by commerce, hospitality and catering (24 percent), and manufacturing (9.3 percent). El País, La pobreza arrebata la niñez a un millón de menores trabajadores en Guatemala, June 19, 2017.}

49. As regards the right to health, there is no universal health coverage system that provides access without discrimination to quality care services. The Commission received troubling information about the situation of people with HIV in Guatemala, who have to contend with constant supply shortages of antiretroviral drugs, failure to hire personnel at comprehensive care units,\footnote{The HIV Law (Decree 27-2000) requires the Ministry of Public Health and Social Assistance to provide health care services to people living with HIV/AIDS.} and difficulties obtaining quality generic medicine.\footnote{Information received from civil society organizations during the on-site visit from July 31 to August 4, 2017.} In its comments to the draft of this report, the State indicated that in 2016 it established the Inclusive Health Model, which institutes
general guidelines for the geographic distribution in the territory, the organizational network, and development of healthcare services and strengthening of human resources. The State similarly pointed out that after the crisis in the availability of medication in national hospitals, by December 2016 it was able to increase the availability of medication and surgical equipment to above 80% in 25 hospitals, 70% in 15 hospitals, and between 50% and 60% in 4 hospitals.\textsuperscript{69}

50. It is in this context of persistent poverty, inequality and exclusion, chronic malnutrition in children, and low levels of education, against a backdrop of insufficient government revenue to meet the most pressing needs of the population through policies and programs, that the Inter-American Commission analyzes the situation of human rights in Guatemala in this report.

CHAPTER 2
ADMINISTRATION OF JUSTICE
ADMINISTRATION OF JUSTICE

51. Administration of justice is one of the main challenges facing the Guatemalan State, given its crosscutting effect on the enjoyment of all other human rights that the State is called on to protect. An efficient and effective justice administration is also critical for combating impunity.

52. Through its various mechanisms, the Commission has received extensive information about the challenges that Guatemala faces in the area of administration of justice. They range from reparations to victims of the internal armed conflict and their next of kin to the fight against corruption and impunity in the present, as well as the high levels of violence that afflict the country. The Commission has also received information about efforts made to ensure full access to justice and has heard from the State about significant strides in that regard and about challenges that persist. This chapter provides a summary of those challenges and that progress as well as outlining the differentiated effect of lack of access to justice on different sectors of the population that require attention.

A. Access to justice and impunity

53. Access to justice has long been a priority issue for the IACHR. The IACHR has seen the problems associated with impunity arising from the State’s inability to provide an adequate and efficient justice administration system or independent and impartial justice. According to the latest available information, the impunity rate for the crime of homicide in recent years has hovered between 99.1 percent and 98.4 percent.

54. In that regard, most of the incidents that occurred during the armed conflict (1960 to 1996) have gone unpunished. The Commission noted in

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71 Id., para. 96. CICIG defines impunity as the failure to report, investigation, arrest, try, find positive solutions for the victims and/or convict those responsible for crimes classified as such in Guatemalan law and focuses its report on the subject of judgments of conviction. CICIG, Press release 091, Sistema de Medición de Impunidad en Guatemala [System to Measure Impunity in Guatemala], November 27, 2015.
its 2015 country report that the failure of justice to effectively respond to crimes perpetrated in Guatemala both in the past and the present tend to establish a situation of structural impunity.\textsuperscript{72} According to the latest information from the Public Prosecution Service (Ministerio Público), as of April 2017 there was a government backlog (mora fiscal) in around 617,640 criminal cases.\textsuperscript{73}

55. Indeed, impunity is one of the crosscutting problems affecting administration of justice and an obstacle for strengthening the rule of law in several States in the region, including Guatemala.\textsuperscript{74} On many occasions, both the Inter-American Commission and Court have urged the State of Guatemala to adopt measures to remove the barriers that have created a situation of impunity.\textsuperscript{75}

56. In that regard, the Commission notes that in recent years the Guatemalan State has made progress in combating impunity, thanks to the efforts of the International Commission against Impunity in Guatemala (CICIG),\textsuperscript{76} which,

\textsuperscript{72} IACHR, Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 392.

\textsuperscript{73} Public Prosecution Service, Memoria de Labores 2016-2017 [Report on Activities 2016-2017], p. 43. Available online: https://www.mp.gob.gt/noticias/memoria-administracion-mayo-2016-2017/. According to the Public Prosecution Service the government backlog was reduced by 52 percent from 2014 to 2017. According to the same report, "government backlog is institutionally defined as the delay completing investigations and/or criminal prosecutions that should have been carried out in a specific case, within a reasonable time, which starts to be counted from the date on which the suspect is apprehended." \textit{Ibid}.

\textsuperscript{74} IACHR, Second Report on the Situation of Human Rights in Peru (2000), Chapter II. See also IACHR, Third Report on the Situation of Human Rights in Paraguay, OEA/Ser./L/VII.110. Doc. 52, March 9, 2001, Chapter III.


\textsuperscript{76} CICIG is an independent international organ that was set up in 2006 under an agreement between the United Nations and the Government of Guatemala to combat the impunity generated by illegal security groups and clandestine security organizations in the country that seriously undermine human rights. CICIG’s mandate comprises a number of key objectives set down in its establishing agreement: determine the existence of illegal security groups and clandestine security organizations, their structure and possible relation to State entities or agents and other sectors that threaten civil and political rights in Guatemala; collaborate with the State in the dismantling of illegal security groups and clandestine security organizations and promote the investigation, criminal prosecution and punishment of those crimes committed by their members; recommend to the State the adoption of public policies for eradicating clandestine security organizations and illegal security groups and preventing their reemergence, including the legal and institutional reforms necessary to achieve this goal. Agreement between the United Nations and the State of Guatemala on the Establishment of an International Commission against Impunity in Guatemala (CICIG), December 12, 2006. The term of the CICIG has been extended until September 4, 2019.
together with the Public Prosecution Service, has played a key role in the fight against corruption and impunity in the country. The contribution of CICIG has been significant, both in terms of its investigative work and its support in the areas of training and promotion of legal reforms aimed at making the justice system more effective. Notable investigations and proceedings that can be cited as examples include the *La Línea* and State Co-option cases, as well as the case of the Mazatenango journalists Danilo López and Federico Salazar.\(^77\) *La Línea*, one of the cases with the most far-reaching repercussions in the history of CICIG, involved a customs fraud and bribery network that operated at the very highest levels of the State and resulted in the resignation of the then-president, Otto Pérez Molina, and his vice president, Roxana Baldetti, both of whom are currently under criminal prosecution.\(^78\)

57. The cooperation between CICIG and the Public Prosecution Service has allowed the identification of justice operators suspected of belonging to corruption networks and organizations that generate impunity; identification and prosecution of members of criminal organizations responsible for the widespread murder of individuals who undermined or obstructed their criminal interests; dismantling to a large extent of criminal organizations that from within the State, such as the prison system and the police, engage in criminal conduct and terrorize defenseless populations, as well as helping to consolidate intricate networks of corruption in the State.\(^79\)

58. This progress in fight against corruption and impunity has come amid reports of pressure, even at the very highest levels of the State, against the head of CICIG, Iván Velásquez, and the Attorney General, Thelma Aldana. In that regard, both the IACHR and the Office of the High Commissioner for Human Rights have expressed their support for the work of CICIG and the

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\(^77\) A criminal organization was identified that was planning murders and other attacks against journalists in the Department of Mazatenango. In 2016, in a bid to identify the masterminds behind that criminal organization, the case was transferred to the Office of the Special Prosecutor against Impunity, which, together with CICIG, is continuing the investigation.

Public Prosecution Service. The Commission considers that, as has already been stated, the independence of an agency like CICIG should be insulated from undue interference in order to preserve the democratic rule of law in Guatemala.

59. The IACHR notes that following the visit, a number of events caused institutional instability in the country. On August 27, 2017, the President of the Republic, Jimmy Morales, declared Ivan Velasquez, the head of CICIG, persona non grata and ordered his immediate expulsion from the country. The announcement came days after CICIG revealed a case of alleged corruption and suspected electoral finance irregularities that involved senior government officials, including the president.

60. The Secretary-General of the United Nations issued a statement expressing shock at the decision of the president to expel Commissioner Velasquez from the country. On August 29, 2017, the Constitutional Court of Guatemala granted the application for permanent relief (amparo definitivo) filed by the Human Rights Ombudsman on the half of Commissioner Iván Velásquez, nullifying the president’s decision. Days later, the Supreme Court of Justice of Guatemala admitted a request to begin impeachment proceedings against the President of the Republic. On September 11, 2017, the Congress of the Republic voted against stripping the President of his immunity, thus forestalling the possibility of investigating the corruption allegations made by CICIG. On September 21, the Congress re-examined the question of the impeachment of President Morales, and again voted not to lift his immunity.

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83 Ibid. In a separate video published later on August 27, 2017, the president said that “no domestic tribunal has the constitutional authority to interfere in the decisions of the president.” The video was published on the Guatemalan Government’s official YouTube page and can be viewed at https://www.youtube.com/watch?v=RQwJroBiZw0&feature=youtu.be.
61. During this period of institutional and political instability the president dismissed the minister of foreign affairs. In addition, the ministers of the interior, health, public finance, and labor and social security, as well as several vice ministers and the Chair of the Presidential Commission for Human Rights (COPREDEH) resigned. According to widely available information, the president refused to accept the resignations of the ministers of the interior, public finance, and labor and social security. As for the citizenry, there were mass public protests demonstrations against corruption and impunity, including a national strike on September 20, 2017.

62. On August 29, the Commission decided to request the Guatemalan State to adopt precautionary measures on behalf of Judge Gloria Patricia Porras Escobar and her immediate family as it considered that she was in a situation of risk because of her work as a justice on the Constitutional Court in Guatemala. Internally, a number of organizations presented motions for impeachment against the president for official disobedience, while another organization presented a motion for impeachment against the justices that granted the application for amparo (constitutional relief) in favor of Commissioner Velasquez.

63. This serious situation prompted the IACHR to adopt a resolution on human rights and the fight against impunity and corruption in which it stated that “impunity fosters and perpetuates acts of corruption. Therefore, the establishment of effective mechanisms to eradicate corruption is an urgent obligation in order to achieve effective access to an independent and impartial justice and to guarantee human rights.” It also noted that “the consequences of corruption ... affect not only both the legitimacy of the governors and the rights of the persons governed, but also profoundly

87 In a joint press release, the ministers of labor and social security, the interior, and public finance said that their departure was due to the fact that the “opportunities for implementing [their] work programs have closed rapidly” as a result of the political crisis in the country. Newspaper article in Prensa Libre, Renuncian ministros Francisco Rivas, Julio Héctor Estrada y Leticia Teleguario, September 19, 2017. Available online: http://www.prensalibre.com/guatemala/politica/renuncian-ministros-de-finanzas-gobernacion-y-de-trabajo. The joint press release is available at https://twitter.com/julioHestrada/status/910293086781231105.


89 Prensa Libre, Jimmy Morales no acepta la renuncia de ministros de Gobernación, Trabajo y Finanzas, October 9, 2017.


91 On August 29, 2017, Fundación Myrna Mack filed a motion for impeachment against President Jimmy Morales for the crime of disobedience. That same day, Fundación contra el Terrorismo filed a motion for impeachment against three justices of the Constitutional Court who voted in favor of the amparo application for Velásquez.
[affect] the national treasury, which is insufficient to meet the needs of citizens with regard to food, health, work, education, a dignified life, and justice.” It also said that “corruption, impunity, organized crime, intolerance, political violence, and social exclusion of various sectors, present a serious danger of regression in the effectiveness of the rule of law and restrict the full enjoyment of the human rights that the American Convention recognizes for everyone. The consequences are particularly grave for the persons, groups and collectives historically excluded, in particular those who live in [poverty and] extreme poverty in the country.”

64. In its resolution, the IACHR reaffirmed the importance of the fight against corruption to combat impunity through a strengthened, independent and impartial judiciary; it also reaffirmed the fundamental importance of the full exercise of the rights to freedom of expression and access to public information, as well as the rights to association and peaceful assembly, for the investigation and denunciation of corruption. The IACHR called on the independent branches of government to act to guarantee the rule of law and urged the State of Guatemala to take the measures necessary to ensure compliance with the decision of the Constitutional Court and, consequently, to enable CICIG’s head Commissioner, Iván Velásquez, to continue to perform his work with the requisite guarantees.

65. As of the date of adoption of this report, new developments continued to emerge in Guatemala that call into doubt the fight against impunity and corruption that the State of Guatemala reaffirmed to the IACHR during the on-site visit. For example, on September 13, 2017, the Congress of Guatemala passed a series of reforms lessening the penalties for the crime of illicit finance, with the result that only the comptroller general of the party, not its general secretary, would be accountable, and allowing prison sentences of up to 10 years to be commuted. The president was also said to have received a "bonus" of 50,000 quetzales per month from the Army (approximately US$6,800), which he claimed to have returned on September 14, 2017. On September 14, the day after the Congress passed the reforms, the Constitutional court unanimously granted an application

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93 Ibid.
for provisional constitutional relief to prevent them coming into force.\footnote{Newspaper article in El Nuevo Herald, Guatemala, Corte detiene reforma que favorece a políticos, September 14, 2017. Available online: http://www.elnuevoherald.com/noticias/mundo/article173297241.html.}

Once again, Guatemalans took to the streets to demonstrate against the reforms and express their support for the fight against corruption and impunity.\footnote{Newspaper article in Prensa Libre, La otra perspectiva cívica del Paro Nacional que quizá no vio, September 20, 2017. Available online: http://www.prensalibre.com/guatemala/politica/paro-nacional-el-color-de-la-manifestacion-del-20-de-septiembre.}

\section{66.} In this context, the Public Prosecution Service and CICIG filed an application for the impeachment of Álvaro Arzú Irioyen, Mayor of Guatemala City and former president of the Republic for alleged embezzlement and illicit electoral financing. As of the date of adoption of this report, that proceeding was at the initial stage and the investigation was continuing. Days after these events, the Government revoked the visa of Iván Velásquez, supposedly because the application had not been submitted by the appropriate person, as on previous occasions. On its social media accounts, the IACHR said that "the revocation of Iván Velásquez’s visa is unwarranted and goes against Guatemala’s commitments to international human rights bodies.” For his part, the United Nations spokesman said that they hoped that the Government would renew the visa because the Secretary-General considered the work of CICIG to be "extremely important.”\footnote{Guatevisión, Video: ONU responde por visa revocada de Iván Velásquez, October 12, 2017.} According to CICIG, a new visa renewal application has been presented to the Guatemalan immigration authorities.

\section{67.} On October 27, 2017, the Commission requested the State of Guatemala to adopt precautionary measures in favor of August Jordán Rodas Andrade, Human Rights Ombudsman, and his immediate family. The request alleged, among other things, that Mr. Rodas Andrade has worked alongside and has initiated legal actions in high-impact cases related to the fight against corruption and has been subjected to threats and harassment aimed at limiting his work, and has been made aware that some individuals are planning actions against him and his family.\footnote{IACHR, IACHR Grants Precautionary Measure for Human Rights Ombudsman of Guatemala, November 3, 2017.} The Commission requested the State of Guatemala to adopt the necessary measures to protect the life and personal integrity of Mr. Rodas Andrade and his immediate family, and to ensure that he can carry out his work as Human Rights Ombudsman of Guatemala without being subjected to acts of intimidation, threats, and harassment.
68. In light of the recent events in Guatemala, the IACHR recalls first, that the fight against corruption and impunity, at all levels of government, is a fundamental component of that obligation, since preventing them is essential for proper administration of justice. Moreover, “[e]ssential elements of representative democracy include, *inter alia*, respect for human rights and [...] access to and the exercise of power in accordance with the rule of law [...] and [t]ransparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press are essential components of the exercise of democracy.” Accordingly, the IACHR calls on the state of Guatemala to respect the independence of the different branches of government, including the judiciary, in order to encourage the fight against impunity and corruption at all levels of government and ensure the democratic rule of law.

69. The IACHR recalls that, in accordance with inter-American standards, in the region’s democracies, including Guatemala’s, there are systems of checks and balances in place by which the judiciary may consider the compatibility with the Constitution and international conventions of decisions or policies adopted by other branches of government. Moreover, Guatemala ratified the International Covenant on Civil and Political Rights in 1992 and to the Optional Protocol thereto in 2000, both of which instruments enshrine this international obligation for the State.

70. In its comments to the draft of this report, the State indicated that the Public Prosecutor’s Unit Against Corruption includes 10 prosecutors’ offices. In the first semester of 2017, this Unit filed more than 35 investigations before the Courts of Justice, which has resulted in important results in the fight against corruption. According to the State, the total number of judicial sanctions imposed between 2012 and 2017 is 247 (without specifying the crimes for which they were imposed).

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101 Inter-American Democratic Charter, Articles 3 and 4.
71. The IACHR reiterates its recognition of the measures and efforts taken by the CICIG and the Public Prosecutor’s Office to combat corruption and impunity in the last three years, a process in which civil society and international cooperation have played a fundamental role.\(^{106}\) In particular, the IACHR recognizes the crucial role of CICIG in the fight against corruption in Guatemala through the disbanding of criminal networks and organized crime structures together with the Public Prosecutor’s Office, as well as the support it provides in the form of training and supporting legal reforms to improve the efficiency of the justice system, in keeping with its mandate. Over the years, the investigations it has conducted revealed the alleged involvement of officials from all three branches of government and of other actors in the country in illicit acts of corruption, some of which are now the subject of criminal processes.\(^ {107}\)

72. In light of the results achieved, the IACHR welcomes the increase in budget to the Public Prosecution Service of which it was informed during the on-site visit and it encourages the State to provide similar support to other key institutions in the justice system, such as the National Institute of Forensic Sciences (INACF), whose work is essential in criminal proceedings. The Commission also recognizes the work done by the Presidential Commission on Human Rights (COPREDEH) to protect and promote human rights and hopes that that work will continue under the new leadership.\(^ {108}\) The IACHR urges the State to ensure that these institutions are able to carry out their work without interference, to continue to adopt measures to enable the Public Prosecution Service to continue coordinating actions and collaborating with the CICIG under the leadership of Ivan Velasquez, and that it allocate the necessary resources to that end.

73. Regarding the cases relating to the internal armed conflict, the State informed the Commission that, according to the Judicial Center for Information, Development and Statistics, eight judgments were issued that covered 17 identified victims.\(^ {109}\) During its on-site visit, the IACHR noted some recent progress in cases connected with gross violations that

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\(^{106}\) The IACHR expressed that recognition in its country report, its follow-up on its recommendations, as well as its preliminary observations at the conclusion of the on-site visit. \(\text{Press Release 114/17, IACHR Wraps up On-Site Visit to Guatemala, August 4, 2017.}\)

\(^{107}\) IACHR, \(\text{Resolution 1/17, Human Rights and the Fight against Impunity and Corruption, September 12, 2017.}\)


\(^{109}\) Information provided by the State, Note Ref. P-952-2017/VHG/LWC/nj, July 10, 2017, p. 4. Those judgments were issued in the following cases: Dos Erres (201 victims), Plan de Sánchez (256 victims), Pedro Arredondo (1 victim), Student Edgar Leonel Paredes (3 victims), Efraín Ríos Montt, Student Fernando García (1 victim), Embassy of Spain (41 victims), and Sepur Zarco (14 victims identificadas).
occurred during the internal armed conflict, including those of Molina Theissen \(^\text{110}\) and the Regional Training Command for Peacekeeping Operations (CREOMPAZ), \(^\text{111}\) where “Military Zone 21” operated during the time of the internal armed conflict, among others. The IACHR visited the CREOMPAZ facilities as well as the site where the Forensic Anthropology Foundation of Guatemala (FAFG) has exhumed at least 558 skeletons, making it the largest mass grave discovered to date in Latin America. In spite of the progress made in a number of cases, it pales in comparison with the number of violations perpetrated during the conflict and the State of Guatemala’s obligations regarding the rights to truth, justice, and reparation for the victims, as is described later in this report.

74. During its visit, the IACHR verified the existence of multiple persisting factors that contribute to impunity. For example, the Commission was informed about the abusive use of writs of amparo as a strategy to delay a number of criminal proceedings; amnesty requests; and the use of statutes of limitation as blocking tactics to protect the accused. The IACHR recalls that the State has an obligation to ensure that its apparatus provides prompt and effective justice to victims of human rights violations, carries out impartial investigations without delay, and punishes those found responsible. \(^\text{112}\) Accordingly, the State should examine the factors that hinder access to prompt and effective justice and adopt appropriate corrective measures.

75. The fight against impunity and corruption has permeated institutions in Guatemala since the era of the internal armed conflict. The Commission urges the State of Guatemala to make a political commitment to the fight against impunity and corruption by dismantling the parallel organizations and powers that persist in the country in order to achieve full observance of human rights in Guatemala. To that end, the State should allow the CICIG’s head Commissioner, Iván Velasquez, to continue to work jointly with the Public Prosecution Service without interference and with the appropriate resources and the requisite guarantees.

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B. The requirements of independence and impartiality: The Public Prosecution Service and judicial reforms

76. The independence and impartiality of justice operators—prosecutors and judges—is a key element for combating impunity, as it allows them effectively to punish wrongdoers and, at the same time, ensure a fair trial for anyone subject to the State’s exercise of its punitive power. In that regard, the IACHR has been closely following selection processes for justice operators in Guatemala.

77. In its report Guarantees for the Independence of Justice Operators, the IACHR noted that in order to guarantee that independence and impartiality it is necessary to ensure an adequate and transparent process of election and appointment. The circumstances of their appointment should enable them to perform their work independently and impartially in the cases they adjudicate, bring, or defend, as well as establishing disciplinary procedures that offer the appropriate guarantees.

78. In Guatemala, nominating commissions are at the heart of the selection process for justice operators and other state officials. The purpose of nominating commissions is to propose and submit lists of persons to be chosen and appointed by the President of the Republic or the Congress to occupy high-level State positions. According to the Nominating Commission Law, the positions for which the Congress of the Republic or the President choose from a list of candidates proposed by a Nominations Committee include the justices of the Supreme Court of Justice, the Courts of Appeal, the Comptroller General, the Attorney General of the Republic...
and Head of the Public Prosecution Service; and the Human Rights Ombudsman.\textsuperscript{118}

79. According to the Nominating Commissions Law, commissions are required to abide by the principles of transparency, professional excellence, objectivity, and disclosure.\textsuperscript{119} The composition of commissions varies depending on the position in question. For example, the nominating commission lists of candidates for positions on the Supreme Court of Justice comprises 11 deans from the country’s law schools, 11 representatives of the College of Lawyers and Notaries, 11 representatives of the appellate courts, and one representative of university rectors. The Commission presents a list of candidates from which the Congress of the Republic picks the justice.\textsuperscript{120}

80. The IACHR considers that, on paper, the selection process for justice operators seems good, pluralistic, and objective. However, for several years the IACHR has received information—enlarged during its visit—that suggests that the process has been abused and flawed in practice, mainly through political influence peddling over the composition of nominating commissions, as well as insufficient scrutiny of members’ qualifications.\textsuperscript{121} For example, the Commission received information suggesting that in the selection process potential candidates often require the tacit approval of certain high-ranking public officials and other actors that wield \textit{de facto} power in the country. In what would be one of the most dramatic examples of the current system’s flaws, the IACHR was informed of the creation of law schools without students for the sole purpose of placing an additional dean on the nominating commission.\textsuperscript{122} The reiterated questions raised are a reflection of the shortcomings in selection and appointment processes, which should respect and safeguard the principles of independence and autonomy of judges.\textsuperscript{123}

\textsuperscript{118} Legislative Decree No. 19-2009, Nominating Commissions Law, Art. 1. Nominating commissions also put forward lists of candidates for the appointment of members of the Supreme Electoral Tribunal, the Director of the Public Criminal Defender Institute, the Superintendent of Tax Administration, the Superintendent of Banks, and others.

\textsuperscript{119} \textit{Id.}, Art. 2.

\textsuperscript{120} \textit{Ibid.}

\textsuperscript{121} IACHR, On-site visit to Guatemala, July 31 to August 4, 2017, meetings with civil society and other organizations.

\textsuperscript{122} \textit{Id.}

\textsuperscript{123} The IACHR first expressed concern about the selection and appointment procedures for judges and other justice operators in Guatemala early in 2014. The IACHR underscored that the goal of any process to select and appoint justice operators must be to select candidates based on personal merit and professional qualifications, as well as on the particular and specific nature of the functions that they would perform. IACHR, Press release 41/14, \textit{IACHR Urges Guatemala to Ensure Transparency and Meet Minimum Standards in the Appointment of Justice Operators}, Washington, D.C., April 21, 2014. To that end, it is essential to put
81. That is particularly important in light of information that in recent years six judges, including two Supreme Court (CSJ) justices have been convicted or prosecuted for such offenses as money laundering, illicit enrichment, acceptance of bribes, and breach of public duties.\textsuperscript{124}

82. On March 7, 2016, the IACHR called on states in the region to strengthen judicial independence in their respective countries through appointment procedures that are in line with international standards. The IACHR pointed to risks in selection processes in several countries, including Guatemala, that could affect the independence of those selected. Such risks include: direct appointments by the executive branch, without the participation of another public body or without receiving observations from civil society actors or other interested parties with respect to the candidacies; a failure by the agencies responsible for designating judges to publish vacancy announcements and procedures; and lack of public access to information about the candidates so as to enable the effective participation of society, in compliance with the principle of civil society participation.\textsuperscript{125}

83. Also in March 2016, the United Nations Special Rapporteur on the independence of judges and lawyers, Monica Pinto, warned that the selection process for the five members of the Constitutional Court and their alternates for the 2016-2021 term in Guatemala might not meet fundamental principles of transparency and objectivity. The Special Rapporteur rated as positive certain advances made in some stages of the selection process for justices of the Constitutional court. However, she expressed grave concern about the risk of politicization and undue interference that threaten them, especially as regards the process for the appointment of the justice and alternate that corresponds to the President of the Republic, given that no information had been shared about the selection procedures or the criteria used either before or during the process.\textsuperscript{126}


\textsuperscript{125} IACHR, Press Release No. 030/16, IACHR Calls on States in the Region to Strengthen Judicial Independence, March 7, 2016.

\textsuperscript{126} United Nations High Commissioner for Human Rights, Guatemala: \textit{“Me preocupa el proceso de elección de magistrados”, advierte experta de la ONU}, March 14, 2016.
84. The IACHR will continue to monitor coming selection and appointment processes closely, in particular looking at whether candidates satisfy the merits of suitability, capacity, and honesty established in Article 113 of the Constitution of Guatemala,\textsuperscript{127} as well as international standards in this regard.

85. In this context, the Commission has also monitored the constitutional reform process in the area of justice, particularly laws that propose amendments to the Nominating Commissions Law, the Judicial Career Law, and the Organic Law of the Public Prosecution Service, among others. Broadly speaking the justice reforms are designed to separate the administrative and adjudicatory functions of the Supreme Court of Justice, recognize the indigenous jurisdiction, and reform selection processes for civil servants and justice operators. Among other aspects, the reforms aim to establish an objective points system for aspirants; adopt a score voting system in which each applicant grades candidates; set deadlines and establish rules on such things as technical assessment and interviews of candidates; incorporate mechanisms for assessing aspirants; correct a legal loophole with respect to the election procedure for members of the judicial career council who are not from the judiciary; and shield the disciplinary evaluation and punishment process from undue political influence.\textsuperscript{128}

86. The Commission was told that the reform process aimed at strengthening governance and administrative management in the judiciary was set in motion with the participation of broad sectors of Guatemalan society, the Public Prosecution Service, the Human Rights Ombudsman, civil society organizations, and international agencies specializing in such matters. In addition, a technical secretariat of experts was set up with the participation of the Office of the United Nations Resident Coordinator in Guatemala, OHCHR, and CICIG in the dialogue, results systematization, and content proposal stages.\textsuperscript{129} Information received indicates that the President initially supported the reform.\textsuperscript{130} However, the reform process that got underway in 2015 has stalled in the Congress and, according to

\textsuperscript{127} Political Constitution of the Republic of Guatemala, Art. 113 (Right to Apply for Public Employment or Office. Guatemalans have the right to apply for public employment or office and, in being so granted, to have only their capacity, suitability, and honesty taken into account.).

\textsuperscript{128} IACHR, On-site visit to Guatemala, July 31 to August 4, 2017, meetings with civil society and other organizations.


Guatemalan civil society organizations, there is a lack of political will to move it forward.\textsuperscript{131}

87. The IACHR considers that this reform process presents an important opportunity for strengthening the independence of justice operators in Guatemala. The proposed reforms are especially important for ensuring noninterference in selection processes for justice operators who are critical for ensuring the continuity of efforts to combat corruption and impunity in the country, such as the Attorney General, the Comptroller General, and the members of the Supreme Court and Constitutional Court, who will be chosen in the first half of 2018.\textsuperscript{132}

88. The IACHR urges the State of Guatemala to push through the constitutional reform in the area of justice and enact it as soon as possible, while seeing to it that international standards in that regard are met. The Commission believes that the proposal to create a body in which the adjudicatory and administration functions of the Supreme Court of Justice are separate and which is independent from other branches of government could effectively better safeguard the independence of judges from pressures aimed at influencing or controlling their decisions. It also considers it important that the amendment of the Judicial Career Law be approved soon in order to completely and effectively integrate the operations of the Judicial Career Council. As to appointment and selection processes, as well as performance evaluation, the State should ensure that selection is based on merit and professional capacity and that the principle of non-discrimination and equal access to opportunities is observed.

89. The Commission notes that in response to public demands to fight corruption and enhance judicial independence, the Congress adopted a number of amendments to laws, including the Organic Law of the Public Prosecution Service and the Judicial Career Law. According to the human rights ombudsman, one of the most important advances of the new provisions is the incorporation of guiding principles and the creation of the Judicial Career Council, whose functions will include convocation, appointment, performance evaluation, and the disciplinary regime for justices of the peace and lower court judges; the appointment of disciplinary boards and of the Director of the School of Legal Studies; approval of the policies and programs of the School of Legal Studies; and notification of the Congress of the expiration of the constitutional term of

\textsuperscript{131} IACHR, On-site visit to Guatemala, July 31 to August 4, 2017, meetings with civil society and other organizations.

\textsuperscript{132} The terms of office of the Attorney General and Head of the Public Prosecution Service and the Comptroller General end in 2018.
office of members of the Supreme Court and the Court of Appeals. On June 29, 2016, the Public Prosecution Service, CICIG, and the Office of the High Commissioner for Human Rights welcomed the adoption by the Congress of Decree No. 32-2016 (Judicial Career Law), saying that it would help to strengthen and ensure judicial independence and impartiality consistent with international human rights standards. The Law is designed to ensure that the procedures for selection, promotion, transfer, and performance evaluation of judges is done based on objective and transparent criteria, merit and expertise, as well as establishing guarantees for due process in disciplinary proceedings.

90. CICIG and the office of the High Commissioner for Human Rights also welcomed the reform of the Organic Law of the Public Prosecution Service, saying that it would help strengthen the institutional framework of the Public Prosecution Service so that it could carry out its work independently and effectively, as the fight against impunity requires.

91. The importance of and need for these justice reforms is clear from the serious situation of risk that several justice operators face in Guatemala, which includes pressures, in particular on judges, from the highest levels of the State. (See section on the situation of human rights defenders and justice operators.)

92. Another factor that weakens the independence of justice operators is their reduced budgets and poor working conditions. While the both the Public Criminal Defender Institute (IDPP) and the Attorney General of Guatemala recently reported a modest increase in their budgets, they also warned of their reduced ability to cover the country and their limited capacity to respond effectively to the large number of cases assigned to them. In this regard, the Attorney General reported, for example, that her office only has a presence in 10 percent of the country, while the Public Defender Institute said that it has only about 300 lawyers to carry out its work nationwide. As

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135 The Office of the High Commissioner also welcomed the introduction in the Congress of Guatemala of the bill for the constitutional reform of the justice system. Office of the United Nations High Commissioner for Human Rights, Statement of the Spokesperson for the UN High Commissioner for Human Rights, Constitutional reform bill in Guatemala and threats to the Attorney General, October 7, 2016. The reform would be in line with what the High Commissioner has recommended to the State of Guatemala in different annual reports, since it would strengthen the institution and its investigations by developing a professional career system based on the principles of suitability, objectivity, transparency, and nondiscrimination, and by establishing objective criteria for the removal of the Attorney General, among other aspects. United Nations, *CICIG Y OACNUDH saludan aprobación de reforma a ley orgánica del MP*, February 23, 2016.

136 Meetings with the Public Criminal Defendant Institute during the on-site visit, July 31 to August 4, 2017.
regards the IDPP, the Commission was informed that it has 15 indigenous attorneys who cover 11 Mayan, Xinca and Garifuna languages.\footnote{IACHR, Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 409.}

93. In light of the situation, the IACHR reiterates that the State has an obligation to implement an efficient, impartial system for the administration of justice that functions with the appropriate swiftness to ensure full access to justice for everyone in Guatemala.\footnote{See, for example, I/A Court H.R., \textit{Case of Molina Theissen v. Guatemala}, Supervision of compliance with judgment. Order of the Inter-American Court of Human Rights, November 16, 2009. I/A Court H.R., \textit{Case of Bámaca Velásquez v. Guatemala}, Supervision of compliance with judgment. Order of the Inter-American Court of Human Rights, November 27, 2009.}

\section{Access to Justice for Different Groups}

94. During its visit, the IACHR noted that access to justice in Guatemala is differentiated. Historically sidelined sectors of the population face specific obstacles that hinder their effective access to justice. In the following section the Commission describes the main obstacles it has identified that prevent a number of groups from obtaining effective access to justice.

1. Women

Secretariat for Women (SEPREM), the National Coordinator for the Prevention of Intrafamilial Violence (CONAPREVI), and the Office of the Ombudsperson for Indigenous Women (DEMI). The creation of mechanisms such as the Prosecutor’s Office for Women, the 24-hour Criminal Court of First Instance for Crimes of Femicide, or the Comprehensive Model to Address Violence against Women are also steps in the right direction in the specialization of the justice system and the prosecution of acts of violence against women.

However, during its on-site visit the Commission was briefed about the shortage of resources and staff at most of these institutions, which weakens their capacity to act effectively. A case in point is the Office of the Ombudsperson for Indigenous Women (DEMI), which has the highly challenging mandate of covering all the country’s different geolinguistic areas.\textsuperscript{144} To carry out its mandate properly, the institution considers that it needs an annual budget of 43 million quetzales, whereas at present it is allocated only 16 million quetzales per year.\textsuperscript{145} In its comments to the draft of this report, the State informed that DEMI’s budget for 2017 was 19 million quetzals, and that this year it opened two additional regional offices, bringing the total number of offices in the country to 14.\textsuperscript{146} Geolinguistic coverage is of the utmost importance for ensuring access to justice for indigenous women since, as the Commission has stated, although translation at hearings is guaranteed, there is a constant shortage of personnel who speak local languages fluently, as well as a lack of interpreters and translators for other procedures. This situation creates a mismatch between the alleged facts and the way in which the complaint is registered.\textsuperscript{147}

DEMI was created in the wake of the peace accords with the aim of advancing indigenous women’s human rights. It represented an innovative

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\textsuperscript{144} Between 2013 and 2017, the Office of the Ombudsperson for Indigenous Women has handled around 58,000 cases nationwide. However, at present the institution’s only extends to 13 of the country’s regions (in addition to its headquarters in Guatemala City) and it apparently does not have the resources to encompass every linguistic community in the country owing to budgetary constraints. For example, there are nine linguistic communities in Huehuetenango but only the Mam community is covered. By the same token, in Alta Verapaz, where there are high rates of violence, malnutrition, and poverty specifically affecting indigenous women, it only covers the Q’chi area and lacks the capacity to attend to the P’plchi area. Information received during the on-site visit of the IACHR from July 31 to August 4, 2017, at a meeting with institutions on indigenous women’s rights held on August 3, 2017.

\textsuperscript{145} Communication from the Guatemalan State, Comments of the State of Guatemala on the Preliminary Observations of the IACHR on its on-site visit, August 29, 2017.


\textsuperscript{147} Movimiento de Mujeres Indígenas, Situación y Condición de las Mujeres y niñas indígenas en el acceso a la justicia en Guatemala. Information received during the on-site visit of the IACHR from July 31 to August 4, 2017.
effort on the part of the Guatemalan State to provide comprehensive and specialized assistance to indigenous women who were victims of violence. However, the Commission has expressed concern at reverses in its institutional independence, given the change in the mechanism for appointing the Ombudsperson by Executive Decree 38-2013. The information received suggests that this mechanism has suppressed the role of the Coordinating Board and the Advisory Council of proposing a shortlist of three candidates to the President of the Republic. During its on-site visit, the Commission was informed that this situation has not been rectified, undermining the right of women to have a say in the choice of the Ombudsperson for Indigenous Women. The Commission reminds the State of the importance of ensuring full participation for indigenous women in the process of selecting the head of DEMI. In its comments to the draft of this report, the State indicated that DEMI carried out 706 training modules related to women’s rights, in which it trained 52,372 people, including indigenous women and public servants and employees. In addition, between 2012 and 2016 it provided assistance in a total of 1,937 cases related to violence against indigenous women, out of which 760 included legal representation in different types of violence-related cases. It also indicated that it provided social assistance in 308 cases and psychological services in 869 cases.

98. During its on-site visit, the Commission received consistent information about the obstacles that women—particularly indigenous women—face in obtaining effective access to justice, in spite of the institutional mechanisms developed in the country. For instance, on its visit to women in indigenous

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149 Executive Decree 442-2007 granted DEMI an independent structure, including a coordination board in charge of choosing the Ombudsperson for Indigenous Women. For that purpose, there was a mechanism by which all indigenous women’s organizations at the local and national level were publicly invited to propose to the President of the Republic three suitable candidates whom they considered appropriate in keeping with their worldview, principles, and values. The process afforded broad participation to indigenous women. However, the mechanism was modified by Executive Decree 38-2013, which eliminated the Coordination Board’s function of selecting a shortlist of three candidates for the position of Ombudsperson for Indigenous Women, leaving the decision entirely up to the President of the Republic. Majawil Q’jí Nuevo Amanecer, “Violación al Derecho a la participación de las mujeres indígenas en la dirección de asuntos públicos por medio de representantes libremente elegidos y de tener acceso en condiciones de igualdad a las funciones públicas del Estado de Guatemala”. Information received during the on-site visit of the IACHR from July 31 to August 4, 2017.

150 Majawil Q’jí Nuevo Amanecer, “Violación al Derecho a la participación de las mujeres indígenas en la dirección de asuntos públicos por medio de representantes libremente elegidos y de tener acceso en condiciones de igualdad a las funciones públicas del Estado de Guatemala”. Information received during the on-site visit of the IACHR from July 31 to August 4, 2017.


152 Ibid.
communities in Alta Verapaz the Commission was informed of acts of discrimination, lack of adequate assistance, and lack of coordination on the part of local authorities.\textsuperscript{153} According to the information received, there is a practice of exclusion and centralization of justice services in the country that makes it difficult to lodge complaints, file lawsuits, and institute other judicial procedures. Indigenous women’s human rights organizations told the Commission that there were not enough judicial offices in the country and that, because they were centrally situated at municipal and departmental seats, access to them was restricted by the large distances they had to travel which, in turn, made the process more costly for victim.\textsuperscript{154}

99. By the same token, systems of investigation and assistance reportedly do not take indigenous women’s specific needs and traditions into consideration. Protection shelters, for example, lack the conditions to enable women and girls to wear traditional dress or to perform traditional community tasks, such as planting and fabric weaving.\textsuperscript{155} In response to the situation, the Commission underscores the importance of having in place special assistance protocols tailored to the needs of indigenous girls and women that take their cultural background and traditions into account.

100. The Commission was informed about the difficulties that Guatemalan women continue to encounter in accessing decision-making and representative positions in the country.\textsuperscript{156} The information received indicates that there is a persistent absence of indigenous women in the majority of decision-making bodies. Indigenous organizations said that the prevalence of certain racist and male chauvinist stereotypes that reduce indigenous women’s roles to domestic and rural settings hinders their participation and representation in policy and decision-making forums. In that regard, the Commission recalls that under the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), the State has an obligation to ensure for women the right to have equal access to public service and to take part in the conduct of public affairs, including decision-making. In its comments to the draft of this report, the State informed that the Supreme Electoral Tribunal is currently devising a second group of reforms fo the

\textsuperscript{153} Information received during the on-site visit of the IACHR from July 31 to August 4, 2017, at a meeting with women from indigenous communities in Alta Verapaz during the visit to Cobán on August 1, 2017.

\textsuperscript{154} Situation of Q’eqchi’, Poqomchi and Achi women in the north of the country. Information received during the on-site visit of the IACHR from July 31 to August 4, 2017.

\textsuperscript{155} Movimiento de Mujeres Indígenas, Situación y Condición de las Mujeres y niñas indígenas en el acceso a la justicia en Guatemala. Information received during the on-site visit of the IACHR from July 31 to August 4, 2017.

\textsuperscript{156} Information received during the on-site visit of the IACHR from July 31 to August 4, 2017, at a meeting with institutions on indigenous women’s rights held on August 3, 2017.
Law of Elections and Political Parties, which will include gender parity and the alternation of indigenous peoples in the nominations to elected positions. The State also indicated that out of the 158 representatives currently in Congress for the 2016-2020 legislative period, 25 are women, i.e., approximately 16\%. 

101. The IACHR also learned about the obstacles and difficulties indigenous women face in relation to the lack of judicial protection of their collective intellectual property in the law courts. Their traditional clothing and designs are a fundamental part of the identity and culture of indigenous peoples and communities. According to information provided to the Commission, in recent years indigenous communities have seen their ancestral creations appropriated by persons alien to their communities without respect for their authorship, meaning, and traditions, or contributing to the development of the communities that create them. Computerized designs inspired by ancestral creations, reproduction of traditional garb, and industrialization of Mayan fabrics could be infringing their copyright and associated rights enshrined in the laws governing industrial property in Guatemala. According to information furnished to the Commission, women's communities that took their cases to court encountered large numbers of obstacles preventing their complaints from being given meaningful consideration without discrimination.

102. The IACHR has also received copious information on the effect of the femicide phenomenon on women and Guatemalan society, which is examined in the section of this report that deals with citizen security. Following the adoption of the Law against Femicide and Other Forms of Violence against Women in 2008, violence against women became the crime most reported to the Public Prosecution Service. The situation has overwhelmed the courts' capacity to settle complaints because there are still too few prosecution units to deal with the volume of cases. The Commission recognizes the efforts of the State to develop specific bodies, such as the Prosecutor’s Office for Women (established in 2011) or the First Criminal Court of First Instance for Crimes of Femicide and Other Forms of Violence against Women and Sexual Violence, Exploitation, and Trafficking in Persons, which was created in 2012 and operates around-

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158 Ibid.

159 Asociación Femenina para el Desarrollo de Santiago Sacatepéquez (AFEDE), “Violación a los Derechos Culturales de Mujeres Indígenas y Violación al Principio e Igualdad y No Discriminación”. Information received during the on-site visit of the IACHR from July 31 to August 4, 2017.

160 Information received during the on-site visit of the IACHR from July 31 to August 4, 2017.
the-clock.\textsuperscript{161} The Office of the Special Prosecutor for Femicide,\textsuperscript{162} which has analysis, litigation, and evidence gathering units opened at the end of 2016. In spite of the efforts of the State in this regard, the number of convictions and acquittals in femicide cases are minimal relative to the number of complaints, and while the total number of judgments increased by 253 percent from 2012 to 2013, that rise still only accounts for judgments in 3 percent of complaints.\textsuperscript{163} These figures reflect a high level of impunity in these cases. The Commission calls on the State to continue its efforts and to follow up on the implementation of the Law against Femicide, as well as establishing specialized courts and tribunals all over the country and ensuring the necessary budget appropriations to enable them to function.

2. **Indigenous Peoples**

103. The Commission has repeatedly said that indigenous peoples in Guatemala face the highest levels of social exclusion.\textsuperscript{164} Their exclusion is visible in a variety of spheres, including access to justice. During the on-site visit, the Commission received information regarding the lack of access to justice for indigenous peoples in Guatemala and the persistence of linguistic, geographic, and cultural barriers in obtaining such access. For example, the IACHR was informed that some authorities make indigenous persons wait longer than non-indigenous persons. One indigenous person who met with the commission said: “When a Ladino person arrives and we were here before, they make us wait.” In Alta Verapaz, a woman explained to the IACHR that “they have translators in the Public Prosecutor’s Office, but they don’t know Q’eqchi and they do not translate everything we say.”\textsuperscript{165} The IACHR has been reporting on the general situation of indigenous peoples in Guatemala since the 1990s. The fact that some of these barriers have not been overcome in over three decades reflects a structural failing, since those obstacles persist in spite of reiterated observations and recommendations. Information presented to the the United Nations Special Rapporteur on the rights of indigenous peoples indicate that only around

\textsuperscript{161} USAID, Guatemala’s 24-Hour Courts: Changing the Way Women Access Justice, 2012.
\textsuperscript{162} Ministry of the Interior, Inauguran Fiscalia de delitos contra el Femicidio, November 23, 2016.
\textsuperscript{163} Impunity Watch, ¿Dónde está la justicia? El continuum de la violencia contra las mujeres, 2015.
\textsuperscript{165} IACHR, On-site visit to Guatemala, July 31 to August 4, 2017, meetings with civil society organizations in Alta Verapaz.
10 percent of indigenous people have adequate and effective access to justice.

104. The IACHR received information from the State about training provided to officials in the judiciary and Public Prosecution Service on discrimination, the use of cultural and language experts, and the work of the Indigenous Peoples Unit of the Supreme Court of Justice to compile good practices in relation to discrimination-related judgments. In its observations to the draft of this report, the State further informed the Commission that the Public Defenders’ Institute has provided representation in 6,602 cases in an indigenous language, as well as 547 cases “with cultural pertinence”, regarding indigenous peoples.\textsuperscript{166} The Commission values the efforts of the State in that regard and considers that they should continue in order to achieve their goal of eradicating discrimination.

105. The IACHR also learned that in the process of constitutional reform of justice, recognition of the indigenous jurisdiction prompted controversy and opposition from certain sectors of the population.\textsuperscript{167} In response to that situation, the Commission heard that indigenous organizations and leaders adopted the position that if the issue of recognition of indigenous jurisdiction was preventing the constitutional reform from going through, indigenous organizations would withdraw that recognition from consideration in order to allow the Congress to pass the rest of the constitutional amendments.\textsuperscript{168} This resulted in the continued exclusion of indigenous peoples in that regard, which affects their full access to justice in the country. In this regard, the IACHR reiterates that the rule of law in Guatemala can only be consolidated when these historically excluded sectors are granted an equal say in society and in decision-making, something that has yet to be accomplished.\textsuperscript{169}

106. In relation to prior consultation as part of the issue of access to justice, the IACHR learned of the judgment handed down by the Constitutional Court in May 2017 ordering the Ministry of Energy and Mines (MEM) to conduct consultations with indigenous communities affected by two hydroelectric companies operating on the River Cahabón, in Alta Verapaz, in accordance


\textsuperscript{167} IACHR, On-site visit to Guatemala, July 31 to August 4, 2017, meetings with civil society and other organizations.

\textsuperscript{168} Ibid.

with International Labour Organization (ILO) Convention No. 169.\textsuperscript{170} However, the Court allowed the companies to continue operating for the space of one year while the consultations are carried out and ordered the Congress to adopt legislation on issue of prior consultation.\textsuperscript{171} In that connection, the IACHR recalls that, under inter-American standards on such matters, "the obligation to consult is the responsibility of the State; therefore the planning and executing of the consultation process is not an obligation that can be avoided by delegating it to a private company or to third parties, much less delegating it to the very company that is interested in exploiting the resources in the territory of the community that must be consulted."\textsuperscript{172} Furthermore, as the Inter-American Court has stated, “the requirement of prior consultation means that this must take place before taking the measure or implementing the project that may affect the communities....”\textsuperscript{173}

107. In the course of its visit, the Commission was informed about the recent adoption of the "Operating Guidelines on Consultation of Indigenous Peoples."\textsuperscript{174} The adoption of the guidelines was a controversial issue, since a number of indigenous organizations and elders opposed it, owing to the fact that, according to them, the guidelines echo certain precepts of ILO Convention No. 169 but not inter-American standards on the right of indigenous peoples to prior consultation.\textsuperscript{175} A number of indigenous organizations and leaders told the Commission that the authorities that drafted the operating guidelines did not meet with other sectors of society and indigenous peoples in a bid to reach agreements or consensus; that those indigenous leaders did not endorse the regulation; that the operational guidelines on consultations prepared by the Ministry of Labor


\textsuperscript{171} Id.


\textsuperscript{173} I/A Court H.R., Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and reparations, Judgment of June 27, 2012, Series C No. 245, para. 181 (emphasis added).

\textsuperscript{174} IACHR, On-site visit to Guatemala, July 31 to August 4, 2017, meetings with civil society and other organizations. Meeting with the Minister of Labor and Social Security, Aura Leticia Teleguario, and the Permanent Representative of Guatemala to the OAS, Ambassador Gabriel Aguilera, Washington, D.C., August 11, 2017.

\textsuperscript{175} IACHR, On-site visit to Guatemala, July 31 to August 4, 2017, meetings with indigenous organizations and elders. See also, government of the Republic of Guatemala, Guía Operativa para la implementación de la consulta a pueblos indígenas [Operating Guidelines on Consultation of Indigenous Peoples], pp. 3-7, which mentions ILO Conv will ention No. 169, rulings of the Constitutional Court, and the International Convention on the Elimination of all Forms of Racial Discrimination; however, it does not mention the binding decisions of the Inter-American Court of Human Rights as the “constitutional framework of rights, or as standards.”
was "an imposition," since when ministry representatives visited some departments to consult on the guidelines, the guidelines were rejected, while some communities were not consulted.\textsuperscript{176}

108. In that regard, the Commission highlights, that the State’s obligation of free and informed prior consultation of indigenous and tribal peoples also relates to the adoption of legislative measures.\textsuperscript{177} The Inter-American Court has stated: “In the case of consultation prior to the adoption of a legislative measure, the indigenous peoples must be consulted in advance during all stages of the process of producing the legislation, and these consultations must not be restricted to proposals.”\textsuperscript{178} By the same token, the IACHR considers that identifying the measure that is to be the subject of consultation is fundamental in the process of consultation and consent. Thus it should be endowed with the greatest possible guarantees, reducing discretion in the decision and applying, in non-restrictive terms, the concept of impairment or negative impact. This is regardless of the type of megaproject, extraction project, investment project or any other that affects ancestral peoples.\textsuperscript{179}

109. During its visit, the Commission met with indigenous authorities of different peoples and regions of the country.\textsuperscript{180} Some authorities said they consider prior consultation to be a strictly indigenous institution and, therefore, the indigenous peoples themselves should decide how to carry them out. They noted that some State authorities conceive of the prior consultation as a process to prevent or resolve social conflicts, and not as a true process to secure the consent of the consulted peoples and communities.\textsuperscript{181} Also, they asserted that several different indigenous peoples of Guatemala have their own institutions, processes, mechanisms and timing in each individual group and community; and that a properly conducted process of prior consultation should take into account these characteristics and particularities.

\begin{itemize}
\item \textsuperscript{176} Meeting with indigenous organizations and elders. Information submitted to the IACHR by several indigenous organizations on August 4, 2017.
\item \textsuperscript{177} I/A Court H.R., \textit{Case of the Kichwa Indigenous People of Sarayaku v. Ecuador}, Merits and Reparations, Judgment of June 27, 2012, Series C No. 245, para. 181.
\item \textsuperscript{178} Ibid.
\item \textsuperscript{179} IACHR, \textit{Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion}, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 495.
\item \textsuperscript{180} In Guatemala City, the IACHR met with indigenous authorities. In Alta Verapaz, the Commission met with indigenous women’s organizations and with community-level indigenous peoples’ rights defense organizations. In San Marcos, the Commission met with indigenous peoples’ rights defenders.
\end{itemize}
110. On this topic, the Commission recalls that both the United Nations Declaration on the Rights of Indigenous Peoples and the Inter-American legal precedent conceive of the right to prior, free and informed consultation as a process emanating from the right to self-determination.\textsuperscript{182} Therefore, implementation of the right to prior consultation must, above all, respect that right and make sure that it does not become a mere procedural formality that does not take into account the particular characteristics of the indigenous people or community involved. The Inter-American Court has repeatedly held that the right to consultation includes, as a fundamental element, the right of indigenous peoples to be consulted about, and to participate in, development of the process of consultation to which they are entitled.\textsuperscript{183} The IACHR also recalls that prior consultation is not a tool to mitigate social conflict, but rather a procedure to provide for the right of self-determination, in relation to activities that are carried out on their ancestral lands and territories, or that have an impact on the natural resources that are found there.

111. In its observations to the draft of this report, the State of Guatemala noted that after being unable to reach consensus on and approve an instrument to regulate consultation with indigenous peoples according to the ILO Convention 169, in 2016 a specialized team was formed to collect necessary input from indigenous peoples to develop basic standards to carry out consultations.\textsuperscript{184} By December 2016, six different linguistic


communities had participated with this team, according to the State. Additionally, the State informed that the Ministry of Energy and Mines entered into an institutional agreement with the Executive Branch’s Planning and Programming Secretariat (SEGEPLAN) to strengthen territorial management and provide prior and timely information in the territories where energy and mining projects exist.\textsuperscript{185}

112. In summary, the IACHR stresses that it is the obligation of the State of Guatemala to adhere to the standards of the Inter-American Commission and the Court in the area of justice for indigenous peoples in general, and prior consultation in particular. Participation of indigenous peoples and communities in the processes, in accordance with their practices, customs and methods of participation, is fundamental in order to ensure that they achieve full access to justice in Guatemala. In a country where more than half of the population identifies itself as indigenous, compliance with said standards must be a priority.

3. Children and Adolescents

113. Regarding access to justice for children and adolescents, the Commission received information that this group is facing the challenges of a justice system with limitations of a structural nature, in addition to barriers associated with their condition. According to the information received during the visit, rates of impunity for cases of physical and sexual violence and exploitation of children and adolescents surpasses 95\%.\textsuperscript{186} Based on public information, in the first half of 2016 there were 76 deaths of children and adolescents per month reported in the country.\textsuperscript{187}

114. In order to address this situation and provide adequate assistance to this group, as of 2016, the State has been setting up Prosecutorial Branch Offices at hospitals to assist victims of sexual violence, mistreatment and crimes against the personal integrity of children and adolescents.\textsuperscript{188} This measure could be instrumental in confronting impunity for crimes against children and in contributing to reduce the incidence thereof. Likewise, the Office of the Counsel General of the Nation (PGN) is mandated by law to play a fundamental role in the defense and protection of children and

\textsuperscript{185} Ibid.
\textsuperscript{186} IACHR, on-site visit to Guatemala, July 31 to August 4, 2017, meetings with civil society organizations and international agencies.
\textsuperscript{188} Information provided by the State, Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017, pg. 11. IACHR, on-site visit to Guatemala, July 31 to August 4, 2017, meetings with civil society and other organizations.
adolescents, whose rights have been violated, a task that, based on the information received, it has a difficult time fulfilling because of inadequate resources and coverage.

115. The State reported to the IACHR that a Public Comprehensive Protection Policy and National Action Plan for Children and Adolescents in Guatemala has been pushed forward by the Secretariat of Social Welfare of the Office of the President of the Republic and the Social Movement for the Rights of Children and Youth, which was established in 2004.189 Despite said policy, institutional weakness in the areas of the State in charge of specialized justice for children is an impediment to the investigation and prosecution and, in cases that go to trial, to reaching a conviction for crimes committed against children and adolescents, as reflected in the rates of impunity.190 During its visit, the IACHR repeatedly heard that institutional weakness is also linked to the policy in force taking a protection-based approach as opposed to being a national public policy providing for full implementation of the rights of children and adolescents.

116. In the framework of specialized justice for children and adolescents, we note the creation of the Sectional Office of the Prosecutor for crimes against children and adolescents in an attempt to strengthen the specialized approach for the protection of this group.191 Previously, the Office of the Prosecutor for Crimes against Women handled these cases. This new office must implement a model of comprehensive assistance, which must include services such as medical and psychological care and social work assistance. In this regard, civil society organizations specialized in the subject matter expressed their concern to the Commission over the lack of adequate resources for this Prosecutor’s Office to function effectively.192 The IACHR deems it necessary for these institutions to have sufficient resources to be able to fulfill their mandate and improve the specialized system of justice for children.

117. Additionally, the State noted that the Judiciary created the Trial Court for Children and Adolescents of the Metropolitan Area, which is tasked with

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189 The State noted that this policy “unifies the priorities and approaches of the State in order to realize the rights of children and adolescents, promote greater coordination, organization, coherence and comprehensiveness in the actions undertaken by government institutions, non-governmental organizations and international cooperation, in order to promote in the context of execution and monitoring of the Public Policy and Plan of Action—at the national and municipal level—sustainability of actions to fulfill the human rights of children and adolescents.” Information provided by the State. Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017, pg. 11, and Annex 5.


191 IACHR, on-site visit to Guatemala, July 31 to August 4, 2017, meetings with civil society organizations and international agencies.

192 Id.
assisting the children and adolescents in the cases it hears, in which children and adolescents are being prosecuted. In the framework of specialized justice for children, in October 2016, the Oversight Court for Execution of Measures for Adolescents in Conflict with the Criminal Law of Guatemala City issued a ruling ordering several actions relating to the conditions of detention at four facilities for the deprivation of children and adolescents: Centro Juvenil de Privación de Libertad para Mujeres (CEJUPLIM-Gorriones), Centro Juvenil de Detención Provisional (CEJUDEP-Gaviotas), Centro Juvenil de Detención Provisional para Varones (CEJUDEP-Anexo), and Centro Juvenil de Privación de Libertad para Varones (CEJUPLIV-Etapa II). These actions fall under the purview of the Secretariat of Social Welfare, the Ministry of Education, the Secretariat for the Administration of Forfeited Assets, and the National Institute of Forensic Sciences. This ruling was upheld under an order of the Court of Appeals for Children and Adolescents.

118. On June 12, 2017, the IACHR asked the State to adopt precautionary measures on behalf of children and adolescents, who are housed at these four detention facilities, MC 161-17. The Commission requested the Guatemalan State to adopt the necessary measures to protect the lives and personal integrity of the adolescents of the four facilities, to take the necessary actions to improve their conditions of detention in keeping with international standards; to strengthen security at the four detention facilities; to adopt the necessary measures to have emergency plans in place to respond to potential risk factors identified in the ruling, should they materialize; to agree on the measures to be adopted with the beneficiaries and their representatives; and to report on the steps taken to investigate the alleged incidents and avoid the repetition thereof. The visits made to the children’s and adolescents’ detention facilities are explained in greater detail below.

119. During its visit, the IACHR learned of significant concrete steps forward as a result of said ruling, particularly the demolition of the “dungeon” dormitories at the facility known as “Etapa II” [‘Stage II’], as well as the installation of toilets in the adolescents’ dormitories at the “Gorriones” facility, visited by the Commission. In contrast, the IACHR

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194 Information received from the Oversight Court for Execution of Measures for Adolescents in Conflict with Criminal Law, August 2, 2017 (in the IACHR archive).
196 Id. The Resolution identified the following risk factors: deficient infrastructure, overcrowding and inadequate security measures.
197 Information received from the Oversight Court for Execution of Measures for Adolescents in Conflict with Criminal Law, August 2, 2017 (in the IACHR archive).
also learned about obstacles and delays in compliance with other items ordered in the ruling of the Oversight Court for Execution of Measures for Adolescents in Conflict with the Criminal Law, for which the partial justification was given that the team at the Secretariat of Social Welfare had recently been installed in their positions.\textsuperscript{198} The Commission notes that on August 9, 2017, the Secretary of Social Welfare was dismissed after only five months in office. In this sense, the IACHR expresses its concern that this recent turnover in the leadership and team might lead to additional delay in compliance with all the measures ordered by the Court back in October 2016.

\textbf{120. As is mentioned hereunder, many of the problems standing in the way of children and adolescents in Guatemala from having full access to justice, stem from the lack of a national public policy ensuring full implementation of the rights of this group, as well as inadequate coordination between the institutions of the State in charge of this area. The 2004 Public Comprehensive Protection Policy and National Plan of Action for Children and Adolescents, which is based on a protection-focused approach rather than on full implementation of rights, has proven inadequate and ineffective. The Commission encourages the State to adopt and implement a national public policy for full implementation of the rights of children and adolescents as soon as possible.}

\textbf{4. Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)}

\textbf{121. LGBTI} persons face major roadblocks to gain access to justice. The IACHR received information indicating that obstacles persist in Guatemala in terms of respect for and guarantee of due process rights in cases linked to acts of discrimination and violence based on the sexual orientation or gender identity of the victims.\textsuperscript{199} In fact, according to the information provided, 85\% of LGBTI victims of violence and discrimination filed a report for the assaults, and only 26\% received a response from the authorities.\textsuperscript{200} Likewise, the Office of the United Nations High

\footnotesize{\textsuperscript{198} This turnover on the team of the Secretariat stemmed from the dismissal and subsequent indictment of the former heads, after a fire broke out at the residential care facility the Hogar Virgen de la Asunción on March 8, 2017, in which 41 little girls and adolescents burned to death. See Section VII.B, infra.}

\footnotesize{\textsuperscript{199} Redlactrans, Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá, [\textquoteleft Violations of the Human Rights of Trans Women in Costa Rica, El Salvador, Guatemala, Honduras and Panama\textquoteright], January 2016, para. 141, p. 37; Human Rights Committee, Final observations of the Human Rights Committee: Guatemala, CCPR/C/GTM/CO/3, April 19, 2012, para. 11.}

\footnotesize{\textsuperscript{200} Redlactrans, Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá, [\textquoteleft Violations of the Human Rights of Trans Women in Costa Rica, El Salvador, Guatemala, Honduras and Panama\textquoteright], January 2016, para. 141, p. 37.}
Commissioner expressed his concern over the “persistent discrimination and violence against persons based on their sexual orientation and gender identity” in Guatemala.\(^{201}\) In its comments to the draft of this report, the State of Guatemala noted that the Public Prosecutors’ System for Information and Investigation Control (SICOMP) registered a total of 11 reports between 2011 and 2015, without specifying the crimes involved, and of those 4 were dismissed. Similarly, it indicated that between 2016 and 2017 the system registered 355 reports—again, without specifying the crimes—46 of which were dismissed or rejected. It also stated that the Human Rights Ombudsman has a Diversity Unit.\(^{202}\)

122. The State also informed that in November 2016, the Ministry of Public Health and Social Welfare launched an “Integral and Differentiated Healthcare Strategy for Trans Persons in Guatemala 2016-2030.” It also pointed out that COPREDEH currently has a final draft of the Public Policy on this subject, and that in November 2017 a team of experts was established to follow-up on LGBTI matters, which is comprised of government institutions and civil society organizations.\(^{203}\)

123. The Commission received worrisome information from civil society about introduction of legislative bill in the Congress of the Republic, Law No. 5272, the content of which is about the “protection of life and family.”\(^{204}\) This bill, if approved, would prohibit teaching about gender and sexual diversity in schools; would reaffirm the institution of marriage as the exclusive right of persons of opposite sexes; and would do away with the criminal offense of discrimination, when it is directed at LGBTI persons.\(^{205}\) On this issue, it came to the attention of the IACHR that evangelical movements were the main supporters of said legislative bill.\(^{206}\)


\(^{203}\) Ibid.

\(^{204}\) Congress of the Republic of Guatemala, Iniciativa que dispone aprobar Ley para la Protección de la Vida y la Familia, [‘Legislative bill to approve the Law for the Protection of Life and Family’], July 24, 2017.

\(^{205}\) Otrans Reinas de la Noche, Pronunciamiento público, [‘Public Statement’], April 28, 2017. Also see: Coalición de Organizaciones LGBTTTI de Incidencia en las Américas, Red Latinoamericana y del Caribe de personas trans (Redlactrans), Convención Interamericana de Derechos Sexuales y Derechos Reproductivos, [‘Coalition of LGBTTTI Advocacy Organizations of the Americas, Latin American and Caribbean Network of Trans Persons (Redlactrans), Inter-American Convention on Sexual and Reproductive Rights’].

\(^{206}\) Congress of the Republic of Guatemala, Diputados reciben proyecto de ley de coordinadora evangélica nacional, [‘Deputies receive legislative bill from the national evangelical coordinator’], February 17, 2017.
124. In view of these proposals, the Commission recalls that both the IACHR and the Inter-American Court have established that in accordance with Article 2 of the American Convention, the right to equal protection under the law and the principle of non-discrimination, mean that States are obligated to: (i) refrain from introducing into legal frameworks regulations that are discriminatory or that have discriminatory effects on certain groups of the population; (ii) eliminate discriminatory regulations; (iii) combat discriminatory practices; and (iv) establish norms and adopt the necessary measures to recognize and guarantee effective equality of all people under the law.\(^{207}\) The IACHR calls upon the State of Guatemala to comply with these principles in considering the legislative proposals under review.

5. **People of African Descent**

125. As for people of African descent, the Commission recognizes the efforts of the State in conducting activities in the context of the International Decade for People of African Descent. However, despite the State's commitment to promote international and policy instruments in support of the rights of Afro-Guatemalans, challenges persist, particularly with regard to information collection and structural racism.

126. While the Commission recognizes the adoption of an ethnic approach to the 2017 national census, civil society organizations reported to the IACHR that the census scheduled to be carried out in 2017 takes into account the categories “Maya” and “Garifuna,” but does not have a category encompassing Afro-Guatemalans that do not identify themselves as one of these two categories. Consequently, other Afro-Guatemalan groups, such as *criollos* or “*Afro-Mestizos*” would remain outside of the classification system.\(^{208}\)

127. Based on information available to the Commission, the lack of visibility of Afro-Guatemalans, as a result of the scarce or non-existent information gathered by the State on persons self-identifying as such,\(^{209}\) has led to Afro-Guatemalan people who are not Garifuna, not gaining full access to social programs and benefits targeted expressly to minority groups.\(^{210}\)


\(^{208}\) IACHR, on-site visit, July 31 to August 4, 2017. Meetings with civil society organizations.


\(^{210}\) IACHR, on-site visit, July 31 to August 4, 2017. Meetings with civil society organizations.
society organizations that were present at the meetings with the IACHR in the context of the on-site visit, stated that Afro-Guatemalan persons, who are not Garifunas, have not had access to special policies related to education. In this regard, the Commission reiterates the recommendation of the UN CERD that a lack of complete, reliable and up-to-date statistical data on the demographic make-up of the country poses an obstacle to the development of inclusive public policies on topics of gender and racial discrimination, as well as a differentiated focus of the population in a particular situation of vulnerability.211

128. Lastly, the Commission underscores that the social and economic determinism, which shapes the racial profile of certain groups, reflects the persisting wide gap in the enjoyment of economic, social and cultural rights between Afro-Guatemalans in particular and other population groups.212 This shows that the degree of structural and institutional discrimination creates de facto barriers for people of African descent to fully enjoy and exercise their human rights.

D. Transitional justice and reparations to victims of the internal armed conflict

129. The lack of access to justice in Guatemala is closely linked to the lack of reparation for human rights violations committed during the internal armed conflict. The Commission has previously noted the importance for Guatemala to deal with that historic debt to the victims of said violations and their next of kin, as enshrined in the Peace Accords.213

130. During the on-site visit, the Commission took note of recent progress it observed in cases linked to gross violations dating back to the internal armed conflict, such as the cases of CREOMPAZ, Molina Theissen, and Sepur Zarco,214 among other ones. During the visit to the facilities of the Regional

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211 CERD. Final observations on the 13th and 14th periodic reports of Guatemala. CERD/C/GTM/CO/14-15, June 12, 2015, p. 2.
Training Command for United Nations Peacekeeping Operations (CREOMPAZ), the IACHR was apprised that as of the present date, eight detained former military members were tried for acts committed from 1981 to 1984 at the former military base in the city of Coban, where bone remains have been located, from which 128 persons, who were victims of forced disappearance, have been successfully identified. Notwithstanding this progress, some organizations raised the alert that there have been no forward steps in 2017, and that some alleged victims—and therefore, violations—have been excluded from the process of instituting trial proceedings.

131. As for the case of the boy Marco Antonio Molina Theissen, allegedly disappeared by members of the Guatemalan Army in 1981, the IACHR was informed that at a hearing held on July 25, 2017, Judge Víctor Hugo Herrera Ríos, of High Risk Case Court C, admitted evidence introduced by both parties, including testimony of witnesses, official documents and experts’ reports, as well as the 2004 judgment of the Inter-American Court of Human Rights in the case of *Molina Theissen v. Guatemala*. Following this hearing, the judge decided to certify the case to the oral trial stage, the starting date of which was left to the chief judge of High Risk Case Court C.

132. Much to its satisfaction, the Commission acknowledges the ruling of the Chamber of Appeals for High Risk cases upholding the landmark judgment of the Sepur Zarco case, relating to domestic and sexual violence committed by members of the armed services against Maya q’eqchi’ women as an instrument of war and repression during the internal armed conflict.
1982, after the disappearance and destruction of homes and crops in the communities of the Valley of Polochic, a military outpost was installed in Sepur Zarco under the same name. As it appears in the case proceedings file, for at least six months, girls and women of the area were subjected to sexual violence and to sexual and domestic slavery.

133. As a result of these crimes and a landmark conviction, on February 26, 2016, High Risk Case Court A convicted Coronel Steelmer Francisco Reyes Girón and former military commissioner Heriberto Valdés Asij for crimes against the duties of humanity, sexual violence, humiliating and degrading treatment against the women, murder and forced disappearance and sentenced them to a prison term of 120 and 240 years respectively.220 The Commission recognizes that the judgment of the Sepur Zarco case is emblematic because it was a final conviction under a charge of a criminal offense against the duties of humanity for sexual violence, and the first time in Guatemala that sexual slavery has been established as a war crime, and that the magnitude of use and control over the bodies of women during the conflict has been recognized. The IACHR calls on the State of Guatemala to take the necessary measures to enforce the judgment, especially as to implementation of the measures of reparation aimed at the dignifying and transforming the lives of the women victims.221

134. The IACHR recognizes the efforts of the prosecutors and judges and other justice operators in achieving progress in this and other cases related to the internal armed conflict. Despite the positive side to this, most of the gross human rights violations committed during the internal armed conflict remain in impunity, and operators of justice who hear these matters are the targets of ongoing threats, intimidation and even criminal complaints brought against them.222 The IACHR stresses that the State has the obligation to ensure conditions of independence and security so that justice operators are able to fulfill their duties in the struggle against impunity with respect to the human rights violations committed during the internal

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220 UNAMG, Sepur Zarco, el camino de las mujeres hacia la justicia, ['Sepur Zarco, the women’s path to justice'], 2016.

221 Muneres Transformando el Mundo, Estudio de la Sentencia del Caso Sepur Zarco, ['Study of the Judgment of the Sepur Zarco case'] July 2017. Document submitted during the on-site visit of the IACHR, from July 31 to August 4, 2017, at a meeting with women from the indigenous communities of Alta Verapaz, visit to Cobán conducted on August 1, 2017.

armed conflict. Civil society organizations also reported on increased assaults and harassment against human rights defenders who follow these cases. Furthermore, the IACHR received information about the risk that some of the cases currently under investigation will not be brought to trial, because of the recurring procedural stalling tactics mentioned earlier in the previous section of the instant report.

135. The Commission has also been closely monitoring the genocide case against José Mauricio Rodríguez Sánchez, the former chief of military intelligence and Efraín Ríos Montt, former head of State. In 2015, a civilian court found Mr. Ríos Montt incompetent to stand trial, and by decision of the Constitutional Court, the case was sent back to the early stages. Additionally, it was reported to the IACHR that in May 2017, a complaint was brought for malfeasance in office against three justices of the Constitutional Court for unlawfully reinstating the case. The IACHR notes with concern the lack of progress in the Ixil genocide case, as well as in the case of the massacre of Las Dos Erres. The IACHR reminds the State of Guatemala of its obligation to investigate promptly, impartially and effectively all serious human rights violations committed in the past. It is the responsibility of the State to adopt the respective administrative or criminal measures in response to actions or omissions of State officials, who may contribute to the denial of justice and to impunity and hamper proceedings aimed at identifying and punishing those responsible.

136. Furthermore, as for matters involving members of the armed forces, information was received from civil society organizations about difficulties in gaining access to information in the possession of the Ministry of Defense. The Commission received information as well regarding the failure of the Police to effectively execute the arrest warrants ordered by judges for several years, which subjects the victims to a situation of permanent vulnerability fearing they will be the targets of further attacks.

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223 By way of example, civil society organizations made reference to the arrest in January 2016 of 18 former members of the military forces, who in 1978 and 1989 were allegedly involved in committing gross human rights violations, including forced disappearances, extrajudicial executions, torture, violence and sexual violence. The persons standing accused include Edgar Ovalle, retired colonel and deputy until May 2017, and one of the founders of the political party in power FCN-Nación. Ovalle is currently a fugitive from justice and Interpol issued a Red Alert for his arrest, charged with forced disappearance and crimes against humanity relating to the bone remains discovered at CREOMPAZ. Interpol, Red Alert for Edgar Justino Ovalle Maldonado, June 18, 2017. It can be viewed at: https://www.interpol.int/es/notice/search/wanted/2017-16771.


by the perpetrators. Since 2009, the IACHR documented around 30 arrest warrants against persons charged with committing serious crimes during the internal armed conflict, none of which have been executed. The IACHR was informed that in one particular case, a defendant who received a monthly pension from the State, could not be successfully located to execute an arrest warrant against him. In 2017, the Commission again received information that arrest warrants had still not been executed for the following individuals: Luis Enrique Mendoza García, charged in a case of genocide; 8 former commanders and intelligence officers of military zone 21; and 8 persons charged in the case of the massacre of Las Dos Erres, with arrest warrants issued back in 2000.

137. During the on-site visit, the IACHR conducted an in-person visit to the facilities of the Archives of the National Civilian Police. The IACHR recognizes how important the Archives is for the reactivation and elucidation of some of the criminal cases for gross human rights violations connected to the internal armed conflict and that this repository of records greatly aids in the recovery of the historical memory. According to information it received, the Archive is solely dependent on international cooperation. The IACHR urges the State to allocate resources to the Archive and support this measure for memory, truth and justice.

**National Reparation Program**

138. Regarding reparations for violations committed during the internal armed conflict, the IACHR was apprised once again about meager and delayed compliance with limited coverage by the Guatemalan State. The IACHR has held several public hearings on the National Reparation Program (PNR), created in 2003. As the State acknowledged in the past before the IACHR, the total budget allocation of the PNR as set forth in the agreement creating it, emanating from the Peace Accords, has never actually been fulfilled. According to the information received, civil society organizations find that the PNR continues to be culturally inadequate and does not pay enough attention to the special situation of indigenous women, children and

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226 IACHR, CIDH concluye visita de trabajo a Guatemala, 12 de junio de 2009. ["IACHR concludes working visit to Guatemala, June 12, 2009"].


adolescents. Consequently, this places the burden of trying to secure adequate reparation on the organizations supporting the victims.\textsuperscript{229} Moreover, frequent staff turnover hampers continuity and delays cases. It was also reported to the IACHR that the victims continue to endeavor to push forward legislative bill 3551, drafted in 2006, which would give solidity and legal certainty to the PNR, but it has not been approved.\textsuperscript{230}

139. The most recent figures provided by the State indicate that as of 2015, there were 75,674 victims registered in the PNR, of which 38,263 have been economically compensated and around 20,000, compensated in material reparation projects, such as housing.\textsuperscript{231} The State acknowledged that reparation of the victims of the conflict is a pending matter in Guatemala and noted that in addition to the measures that it has begun to adopt in order to revive the Reparations Program in Guatemala, it shares the concern of the victims over prompt approval of draft Law 3551 and over the National Victims Register.\textsuperscript{232} In view of this situation, the budget cuts for the PNR in 2016 is of particular concern, as this effectively reduced the capacity for reparation measure execution. According to information the Commission received from civil society, citing as its source the narrative section of the PNR management report, as of the month of June 2017, in the first quarter of 2017, zero money was executed for direct reparation to the victims; and as of June 30, 2017, the reparations delivered totaled 740,000 quetzals in financial reparation (38 cases covered); and 868,000 quetzals in material restitution for the construction of 14 houses.\textsuperscript{233} The IACHR urges the State to endow the PNR with sufficient resources to be able, for the first time since it was created, to have the budget allocation established in the accord creating it and, thus, provide the victims and their family members with the services for which the Register was created. In its comments to the draft of this report, the State indicated that in order to fully comply with the terms of the Peace Accords, it established the Political Agenda for Peace 2017-2026, which identifies institutional commitments. It also indicated that since 2017, the


\textsuperscript{230} IACHR, Public Hearing “Right to full reparation for victims of the armed conflict in Guatemala,” Panama, December 6, 2016; information submitted by civil society organizations to request a thematic hearing on “Reparation in Guatemala,” October 10, 2016.


\textsuperscript{232} IACHR, Public Hearing “Right to full reparation for the victims of the armed conflict in Guatemala,” Panama, December 6, 2016.

\textsuperscript{233} Status report on the situation of the Public Reparations Policy in Guatemala, submitted by 22 communities of Nebaj and Cotzal, Quiché, July 31, 2017. In the archives of the IACHR.
Commission on Sacred Sites has been incorporated into the Secretariat of Peace, in order to comply with the commitments related to the identity and rights of indigenous peoples.\textsuperscript{234} The State also pointed out that the budget approved for CODISRA went from 5,985,751 quetzales in 2012 to 10,500,000 quetzales in 2017. Also, the State referred that this budget was approved as part of the Strategic Institutional Plan of 2017-2021. The objective of this Plan is to articulate public policies and national legislation in order to consolidate and strengthen the institutional development aimed at effectively complying with said policies.\textsuperscript{235}

140. As for the particular challenges faced by indigenous women,\textsuperscript{236} even though Guatemalan courts have acknowledged that during said conflict, rape was a widespread, massive and systematic practice carried out by agents of the State as part of a counterinsurgent policy, the PNR lacks of a specific policy in place to provide adequate reparation to these victims.\textsuperscript{237} In fact, the information available indicates that despite the breadth of rape cases, the PNR has no specific policy in place to meet the demands and specific petitions for the cases endured by the women during the internal armed conflict.\textsuperscript{238} During the visit, the Commission received reports pertaining to the absence of clear procedures and requirements for women victims to have access to reparation. Moreover, the burden of proof rests on the victims, who encounter serious difficulties to document and prove their cases. Consequently, many of them remain outside the reparation mechanisms.\textsuperscript{239} Additionally, several organizations reported to the Commission that, in response to women’s demand for reparation in cases of rape, the PNR has stop taking cases because of the lack of budget.

\textsuperscript{235} Ibid.
\textsuperscript{236} National Widows Coordinator of Guatemala (CONAVIGUA), Asociación Campesina de Desarrollo Nebajense (ASOCDENEB), Coordinadora de Víctimas de Alta Verapaz (CODEVI), Centro de Análisis Forense de Ciencias Aplicadas (CAFCA), Thematic hearing “Situation of women victims of human rights violations during the internal armed conflict in Guatemala,” held during the 144\textsuperscript{th} Session of the iACHR in Washington D.C., on March 27, 2012. CEJIL, Observations to the Report on the Situation of Human Rights in Guatemala, October 14, 2016.
\textsuperscript{237} Rape was used as an instrument of war and as a tool to generate terror and subdue the population. CICIG, Tribunal de Conciencia contra la Violencia Sexual hacia las Mujeres, [‘Court of Conscience against sexual violence toward women’], Press release, March 5, 2010. The Commission for Historical Clarification (CEH) determined that sexual violence against women was a prevalent practice during the three decades of conflict and cautioned that sexual violence statistics have been underestimated: of the 42,275 human rights violations reported, only 2.38% are for sexual violence. Of the 1,465 cases reported, the CEH was only able to document 285 cases. UN WOMEN, Guatemala Country Background, 2017.
\textsuperscript{238} Network of Social and Victims’ Organizations, Informe Auditoría social a la política de reparación del Estado de Guatemala, [‘Social audit report on the reparation policy of the State of Guatemala’], January 2015, p. 35. Information received during the IACHR’s on-site visit, from July 31 to August 4, 2017. Information provided by the organization Estrella Polar of Guatemala at the public meeting held on July 31, 2017 in Guatemala City.
Countless testimonies of victims taken during the Commission’s visit attest to the importance of taking into consideration the differential impact of the armed conflict on women, of including specific measures to consider displaced women, widowed women and orphans, and of establishing clear mechanisms to do justice and provide reparation in cases of rape.240

141. The State provided information on the PNR’s 2015 Annual Report (Memoria de Labores), which describes five central components of reparation: (1) dignifying victims through actions of support for exhumations and measures of truth and memory; (2) cultural reparation; (3) psychosocial reparation and rehabilitation; and (4) material restitution of homes, lands, legal certainty of land in productive investment; and (5) economic reparation.241 Additionally, the State acknowledged that one of the major challenges facing the PNR is “to complete the work teams at all regional offices with capable and suitable staff, especially in sensitive areas, such as, legal advisors, psychologists, community outreach intermediaries and technical production advisors.”242 The information received also indicates that some of the PNR Regional Offices were closed in 2016 and stopped assisting victims.243

142. Lastly, during its visit, the Commission gathered testimony on the many difficulties faced by the victims of the armed conflict to conduct an effective search for the disappeared. The IACHR recalls that since 2007, civil society has been pushing in the Congress of the Republic for approval of Law 35-90 to create the National Commission to Search for Victims of Forced Disappearance and other Forms of Disappearance, to endeavor to locate the whereabouts of more than 45,000 victims of forced disappearance and other forms of disappearance during the internal armed conflict.244 The bill continues to languish ten years later. On this score, the State has the obligation to conduct serious, impartial, prompt and effective investigations of cases of alleged disappearances.245 The Commission cautions the Guatemalan State about the need and urgency to conduct serious investigations and proceed to the search for disappeared persons.

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240 Id.
243 Status report on the situation of the Public Reparations Policy in Guatemala, submitted by 22 communities of Nebaj and Cotzal, Quiché, July 31, 2017. In archive of the IACHR.
as a priority, in keeping with Inter-American standards on the subject matter.

143. The IACHR has issued reiterated appeals to the Guatemalan State to make the PNR fully operational, endowing it with sufficient material and human resources to fulfill its mandate. In this occasion, the Commission expresses its concern over the failure to respond to these appeals. The Commission will continue to monitor implementation of the PNR in every way and every form of reparation. The IACHR urges the State to meet its obligations in accordance with both the Peace Accords and domestic and international law, as well as to launch the National Commission to Search for Disappeared Persons.

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CHAPTER 3
SITUATION OF HUMAN RIGHTS DEFENDERS AND JUSTICE OPERATORS
SITUATION OF HUMAN RIGHTS DEFENDERS AND JUSTICE OPERATORS

A. Human Rights Defenders

144. The situation of human rights defenders in Guatemala has been a source of constant concern to the IACHR because of the acts of violence and attacks to which they are constantly exposed, which range from murders, to repeated threats, harassment, criminalization and bullying. In its 2015 Country Report, the IACHR voiced this concern, in particular, with respect to persons who defend the rights of indigenous peoples, to land ownership and a healthy environment, the rights of victims of the internal armed conflict and of workers. The IACHR also underscored the excessive and unjustified use of criminal law against human rights defenders, on allegedly unfounded charges, arbitrary arrests and the protracted use of pre-trial detention, in particular, with respect to indigenous leaders and authorities. Another important cause for concern in the country is the stigmatization and slander of human rights defenders, which undermines their reputation in society and takes legitimacy away from the social struggle.

145. During its on-site visit, the Commission ascertained the situation described above. Attacks and murders have been on the rise in the country since 2016. The Unit for the Protection of Human Rights Defenders in Guatemala (UDEFEGUA) reported from January to June 2017 a total of 236 attacks on human rights defenders, which include processes of criminalization, acts of slander and defamation of character, arbitrary detention and filing of complaints with the courts. This figure is 89.73% of all attacks reported over all of 2016, which totaled 253.

146. In the first half of 2017 alone, UDEFEGUA reported that the number of assaults on persons who defend human rights linked to the defense of the environment, nature, natural resources and water, rose to 72, as compared

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to the total of 37 assaults targeting this group in all of 2016.\footnote{Id., p. 8.} On June 30, 2017, a group of United Nations Rapporteurs, in conjunction with the IACHR, condemned the attacks and murders of environmental rights defenders in Guatemala and announced that they are the most at-risk defenders in the world, because of their efforts to defend territory and the environment from large scale projects, which threaten their right to a healthy environment.\footnote{IACHR, Press Release No. 088/17, \textit{Expertos condenan ataques y asesinatos de defensoras y defensores del medioambiente en Guatemala}, [‘Experts condemn attacks and murders of defenders of the environment in Guatemala’], June 30, 2017.}

147. The Department of Guatemala posts the highest number of acts of violence in general, with 111 attacks reported from January to June 2017. Elsewhere, in the western high plains region (\textit{Altiplano Occidental}), a total of 48 attacks on human rights defenders were reported. Likewise, in the northeast region (encompassing Alta and Baja Verapaz, Petén, Chiquimula, Jutiapa, Jalapa, Santa Rosa, Izabal, El Progreso and Zacapa), 74 attacks were reported. Within this region, Alta and Baja Verapaz, Izabal and Chiquimula would be the Departments with the highest levels of worsening violence against human rights defenders, particularly in terms of criminalization of human rights defense and murders.\footnote{UDEFEGUA, \textit{Informe sobre Situación de Defensoras y Defensores de Derechos Humanos en Guatemala. Un Reflejo del Deterioro de los Derechos Humanos en el País, Enero a Junio de 2017}, [‘Report on the Situation of Human Rights Defenders in Guatemala. A Reflection on the Deterioration of Human Rights in the Country January to June 2017’], August 2017, pp. 9-10.}

148. The IACHR received troubling reports about the northern extractive region, which encompasses the Departments of Alta Verapaz and Petén, the region with the heaviest concentration of extractive industry and projects, which include monoculture and bio-fuels, mining, a privatized model of protected areas, large scale hydroelectric dams, construction and extension of the Franja Transversal Norte highway, among other ones. Civil society organizations argued that these extractive industries and projects have entailed environmental destruction, unlawful dispossession of common property and of land owned by \textit{campesinos}, communities and families. There are around 30 hydroelectric projects underway in the region, which have not fulfilled the requirement of a prior, free and informed consultation with the communities, according to the information received by the Commission.\footnote{Meeting with criminalized defenders in the Municipality of San Pablo, San Marcos, in the context of the on-site visit, in the City of Guatemala, on August 1, 2017; Civil Society, \textit{Situation of Human Rights in the Northern Region of Guatemala, August 1, 2017}, p. 1.}
149. On another note, according to the PDH, from 2016 to 2017, it continued to witness the discourse and action of smearing and discrediting the work of defenders, as well as some justice operators, especially district attorneys, improperly using criminal law to persecute and take human rights defenders into custody. The IACHR notes with concern that the State has still not established a Public Policy for the Protection of Human Rights Defenders, in compliance with the judgment of the Inter-American Court of Human Rights in the case of Human Rights Defender et al v. Guatemala directing it to do so, as is explained hereunder.

150. Greater detail is provided below of the types of acts of aggression faced by human rights defenders in Guatemala.

1. **Intimidation, Threats, Attacks and Murders**

151. The IACHR is alarmed at the rise in murders of human rights defenders. According to information reported by UDEFEGUA, in 2016, a total of 14 murders were committed (4 women and 10 men), which represents an increase over the 12 murders recorded in 2015 and 7 in 2014. For the

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254 By way of example, on December 2, 2016, the IACHR condemned the murder of human rights defender Evelyn Zulma, trans leader and activist of the organization OTRANS Reinas de la Noche, who was the beneficiary of precautionary measures granted by the IACHR on February 3, 2006. According to reports, the body was found with all her teeth knocked out and her hair pulled out. The National Forensic Science Institute of Guatemala (INACIF) reported to the family that Evelyn Zulma Alegría Robles’s throat was cut and based on the toxicological tests, she presented residue of high toxicity that were consistent with the administration of poison. IACHR, Press Release No. 181/16, CIDH repudia asesinato de defensora de derechos humanos de personas trans en Guatemala, [‘IACHR repudiates murder of trans rights defender in Guatemala’], December 2, 2016; UDEFEGUA, Informe sobre situación de Defensoras y Defensores de Derechos Humanos, [‘Report on the situation of human rights defenders’], January 2017, pg. 9. Separately, the OUNHCHR condemned several cases of murder of human rights defenders perpetrated in 2016, citing that in the past two years, murders of human rights defenders have been on the rise. For example, on March 18, 2016, it condemned the murder of human rights defender Walter Manfredo Méndez, President of Cooperativa La Lucha del municipio Las Cruces, Petén, and member of Frente Petenero contra las Represas. United Nations, UNESCO and the OUNHCHR condemn murders of journalist and human rights defender, March 18, 2016. The High Commissioner also spoke out about the case of Daniel Choc, murdered in June 2016 in the context of the San Juan Tres Rios of Alta Verapaz indigenous community’s land claim, supported by the organization Comité de Campesinos del Altiplano (CCDA). United Nations, Informe del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre las actividades de su Oficina en Guatemala 2016, [‘Report of the United Nations High Commissioner for Human Rights on the activities of his Office in Guatemala 2016’], A/HRC/34/3/Add.1, January 11, 2017, para. 36. Likewise, it condemned the murder on June 19 of Brenda Marleni Estrada Tambito, legal counsel of the Unión Sindical de Trabajadores de Guatemala (UNSITRAGUA HISTÓRICA), who was dedicated to the strengthening of the exercise of the right to collective bargaining and to worker organization. United Nations High Commissioner for Human Rights.
first half of 2017 alone, UDEFEFUA reported 7 murders of human rights defenders, the same figure for all of 2014. 255

152. Additionally, intimidation and threats continue to make up a significant number of the acts of aggression against human rights defenders. In 2016, UDEFEFEGUA verified a total of 54 incidents of intimidation stemming from human rights defense, and when added to the 48 incidents of threats (written, in-person, over the phone) they would account for 38.73% of the total acts of aggression. In the first half of 2017, the organization recorded 51 incidents of defamation of character, 39 threats and 27 acts of intimidation. 257 By way of example, the IACHR received information that from July 1 to July 2, 2017, defender Rafael Maldonado received death threats over the social networks. These incidents were reported to the Crimes against Human Rights Activists Unit of the Office of the Human Rights Violation Prosecutor’s Office (FIDH) of the Public Prosecutor’s Office. 258 The IACHR expects said unit to take the necessary measures with regard to these threats on the life of Mr. Maldonado and on the exercise of human rights defense.

153. In addition to the smear and stigmatization campaigns that are explained in detail in the next paragraphs, the PDH has noted that another form of recurring intimidation is to take photographs and videos of persons and/or
defenders without their consent. The defenders have reported that in many instances, the persons doing the photographing or taking the videos are linked to the extractive companies or are retired members of the military forces.  

2. **Stigmatization and Smear Campaigns**

154. The IACHR noticed the constant use of the social networks and other information media to disseminate stigmatizing and delegitimizing messages against defenders. For example, civil society organizations asserted that human rights defenders are branded as “professional troublemakers,” “outlaws,” “professional thugs,” “failed fratricidal riffraff,” “former terrorist organization left-wing NGOs” or claims are made that “human rights defense has become the exclusive business in this Central American country of the former guerrilla member/terrorists.”

According to the organizations, this is pervasive language aimed at stigmatizing community leaders and human rights defenders.

155. The IACHR was also apprised of racist content, especially targeting representatives and leadership of indigenous communities and peoples, as well as homophobic content targeting organizations and individuals who defend the rights of sexual diversity, and sexist content targeting women human rights defenders. According to the PDH, this takes place when there is opposition to diversion of rivers, pollution or reports of a lack of water, failures in electric service or complaints are filed for lack of access to public information. The OUNHCHR has also voiced its concern over messages via social media resorting to aggressive and violent language, which could even be construed as incitement to hatred. It noted that some of these messages pose threats to the lives and safety of human rights defenders, and even columnists.

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262 IACHR, *Observaciones Preliminares de la Visita in loco de la CIDH a Guatemala*, ['Preliminary observations from the IACHR’s on-site visit to Guatemala'], August 4, 2017.


264 United Nations High Commissioner for Human Rights, *OACNUDH rechaza mensajes que incitan a la violencia*, ['OUNHCHR rejects messages that incite violence'], July 1, 2016.
Likewise, civil society organizations reported to the IACHR that over the past years, hate speech has been escalating, citing organizations such as Movimiento Reconciliación y Justicia, Libertad para los Veteranos de Guerra, o la Fundación contra el Terrorismo, which tend to denigrate individuals and organizations that seek justice for the victims. As a result of the intense campaign of stigmatization and criminalization unleashed in the different communications media and social networks, human rights defense organizations have filed several complaints with the PDH.265

By way of example, in the investigations into the CREOMPAZ military base, which gave rise to several arrests of members of the military for crimes of forced disappearance and crimes against humanity, the IACHR learned that in the context of the hearings conducted from January to June, 2016, complainants, prosecutors, expert witnesses and victims’ organizations linked to the cases were the targets of threats, intimidation and surveillance. The organizations contended that since January 2017, hate speech has been spewed through postings on the web pages of the Fundación contra el Terrorismo and of Familiares y Amigos de Militares e hijas de Militares, with photographs of human rights defenders intended to denigrate the individuals and organizations supporting the quest for justice for the victims.266 According to available information, these acts arose mainly in relation to the cases connected to CREOMPAZ, though not exclusively.

According to information received by the IACHR, on July 5, 2017, a protest rally took place in the central park of San Rafael Las Flores, in the Department of Santa Rosa, with the alleged participation of suppliers and workers of the San Rafael – El Escobal mining company, where they displayed stigmatizing messages against the organization Center for Environmental and Social Legal Action of Guatemala, known as CALAS for its Spanish language acronym (Centro de Acción Legal Ambiental y Social de Guatemala), accusing the organization of “creating conflict” and of “destroying development.” In that context, the demonstrators were carrying banners with a photo of Yuri Melini Salguero, the Director of CALAS, during a recent working trip to Brussels, Belgium, organized by the World Organisation against Torture (OMCT). At the demonstrations, he was accused of traveling at the expense of the conflict. According to civil

265 Most the complaints filed are related to print and digital postings disseminated by the Fundación contra el Terrorismo and its president, where charges are leveled against several human rights defenders as financiers of terrorism groups and fosterers of social conflict in the country, among other allegedly criminal or unlawful conduct. Information received in the context of the visit; UDEFEGUA, Report on transitional justice and human rights defenders, July 31, 2017, p. 2.

266 Information received in the context of the visit; Civil society, Situation of human rights in the northern region of Guatemala, August 1, 2017, p. 17.
society organizations, the smear and stigmatization campaign against CALAS reached a fever pitch and seemed to be even further escalating as a result of the decision of the Supreme Court of Justice of Guatemala, on July 6, 2017, to order the temporary suspension of the license for exploration and exploitation of the San Rafael mining projects. This decision settled a petition for constitutional relief via *amparo* filed by CALAS in May 2017 against the Ministry of Energy and Mines (MEM), on the grounds that the Xinca indigenous peoples, who inhabit the municipalities affected by the project, were not consulted, as required under ILO Convention 169 and Inter-American legal precedent, and that the MEM discriminated against them in repeatedly denying their existence in the area where the mining project operates.267

159. Stigmatization and smear campaigns are nothing new to Guatemala. The Commission has been consistently monitoring this phenomenon in the country. In 2013, the PDH issued a resolution to bring charges against the president of the Fundación contra el Terrorismo [Foundation against Terrorism] for content the organization disseminated in several materials attacking the dignity of human rights defenders.268 In this regard, the PDH concluded that that campaign was a coordinated strategy to spread a discourse of hatred, intended to degrade, intimidate, promote prejudice or incite violence against individuals on the basis of sex, age group, ethnic group, nationality, religion, sexual orientation, gender identity, opinion and political and ideological position, socioeconomic status, occupation, appearance or image.269

160. Furthermore, the IACHR notes with concern complaints regarding the involvement of private companies in processes and campaigns to stigmatize and delegitimize human rights defenders. On this score, civil

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268 In particular, they were denigrated with several epithets that “denote disrespect and contempt, delegitimize the work of human rights defense, equating it to illegal, unlawful and harmful actions that the respondent calls “terrorism,” and because its content urges and invokes hatred and intolerance, as opposed to a culture of respect for liberties and fundamental rights in order to achieve peace.” Human Rights Ombudsman of Guatemala, Resolución REF. EXP. ORD. GUA. 8184-2012/DCP Acumulados; REF. EXP. ORD. GUA. 8926-2012/A REF. EXP. ORD. GUA. 2061-2013/DCP REF. EXP. ORD. GUA. 2433-2013/DCP REF. EXP. ORD. GUA. 3554-2013/DCP REF. EXP. ORD. GUA. 3632-2013/DCP, Resolution, December 27, 2013, p. 8 et seq.

269 The PDH recommended to the Ministry of the Interior to promote a mass outreach campaign on the importance of the work of human rights defenders, legislation protecting said work and the international obligations that the State of Guatemala is required to fulfill with respect to defenders. This resolution was finalized on January 19, 2016 after several appeals filed against it were denied. Human Rights Ombudsman of Guatemala, Resolución REF. EXP. ORD. GUA. 8184-2012/DCP Acumulados; REF. EXP. ORD. GUA. 8926-2012/A REF. EXP. ORD. GUA. 2061-2013/DCP REF. EXP. ORD. GUA. 2433-2013/DCP REF. EXP. ORD. GUA. 3554-2013/DCP REF. EXP. ORD. GUA. 3632-2013/DCP, December 27, 2013, pgs. 8 et seq. *Prensa Libre*, *CC rechaza amparo de Méndez Ruiz contra la PDH*, January 27, 2016.
society organizations claimed that some companies use corporate communications media and social networks to publicize the image of defenders with messages that discredit their leadership, smear them and injure their dignity. According to the organizations, the most frequently used names are “guerrilla,” “terrorist,” “hoodlum,” “criminal,” “swindler,” among other ones.270

161. The IACHR notes that stigmatization and delegitimation have a differential impact on women human rights defenders, because of traditional gender relationships, which quite often intersect with the racial discrimination to which defenders of indigenous or African descent are subjected. Smears or defamation of character against women defenders has a differential status, because a significant number of these incidents hurt and undermine their gender condition.271 In addition to the discrimination to which they are subjected because of their traditional role and gender stereotype conceptions that have been attributed to them, their situation is further compounded by performing a job, which entails great risk by virtue of the specific causes they advocate. The IACHR has received many petitions on violence affecting women in communities marked by an historical patriarchal conception, where they are subjected to degrading social stereotypes of their sexual life or they would be accused of undermining moral values or social institutions such as the family.272

162. By way of example, based on testimony reflected in the Amnesty International report We are Defending the Land with Our Blood: Defenders of the Land, Territory and Environment in Honduras and Guatemala, defender Lolita Chávez, member of the Kiché Peoples’ Council (CPK) and beneficiary of precautionary measures granted by the IACHR,273 contended that she was called “conflictive” and “troublemaker,” names with roots in discriminatory views of women and indigenous people as being incapable of leading and who, instead of exercising their rights, act impulsively.274 The case of the La Puya Peaceful Resistance, one of the most respected

270 IACHR, Metting in Santa Eulalia with civil society orgnizations; Situation of Human Rights in the Northern Region of Guatemala, August 1, 2017, pg. 3. Amnesty International, Defendemos la tierra con nuestra sangre: personas defensoras de la tierra, el territorio y el medio ambiente en Honduras y Guatemala, [‘Let us defend the land with our blood: defenders of land, territory and the environment in Honduras and Guatemala’], September 2016, pp. 48-49.


273 IACHR, Medida Cautelar 231-05, [‘Precautionary Measure 231-05’], November 7, 2005.

274 Amnesty International, Defendemos la tierra con nuestra sangre: personas defensoras de la tierra, el territorio y el medio ambiente en Honduras y Guatemala, [‘We Are Defending the Land with our Blood: Defenders of the Land, Territory and Environment in Honduras and Guatemala’], September 2016, p. 47.
leaders was stigmatized though rumors that she had received money from a mining company. This first drove her into isolation within the movement and then to make the decision to quit. Even though she left the movement, she continued to be the target of attacks against her and threats against her minor children, still referencing her role as a defender. In early 2016, the defender received death threats against her and her children when the case filed by the community was being heard in the High Courts of Guatemala, challenging the mining license for lack of prior consultation with the community. The defender was compelled to implement emergency protection strategies for her children as well as for her own safety. As a woman defender, she argued that her situation is doubly difficult and that “because of the threats, my husband just left and that was it, but I am not going to leave my children.”275

163. The IACHR has learned of the use of this slanderous language by justice operators themselves. By way of example, in an interrogation conducted by an assistant prosecutor of the administrative crimes section, in the context of case proceeding MP001-2015-59084, the executive director of the Forensic Anthropology Foundation of Guatemala appeared to provide testimony about the proceedings brought against former President José Efraín Ríos Montt and José Mauricio Rodríguez. During his testimony, the director of said foundation was asked about the expert analysis conducted and whether he held any resentment, hatred or contempt toward the military profession and whether “you or your father have belonged to any terrorist, guerrilla group, rebel armed forces, revolutionary organization or left wing political party.”276

164. The IACHR finds that stigmatizing statements against defenders can eventually undermine the right to personal integrity, the right to honor and dignity and the principle of the presumption of innocence. In this regard, the Commission has held that when authorities give statements or issue communiqués publically berating a defender for acts that have not been proven in a court of law, it is an assault on his or her dignity and honor, inasmuch as his or her work is delegitimized in the eyes of society, thereby affecting his or her human rights defense endeavors. Moreover, the Commission has noted that the repetition of stigmatizing statements can contribute to stoking a climate of hostility and intolerance by different segments of the population, possibly leading to adverse effects on the lives and personal integrity of the defender, by making him or her more vulnerable, because public officials or certain segments of society could

275 Id., p. 48.
construe such statements as instructions, instigation, authorization or support, for the commission of acts against the defender’s life, personal security, or violations of other rights.\textsuperscript{277}

165. The IACHR finds that the State must provide defenders with an adequate remedy when they are the targets of stigmatizing statements that could affect their reputation, jeopardize their personal integrity, or give rise to or facilitate their criminalization.

3. Criminalization

166. During its country visit, the Commission noted that human rights defenders are constantly at risk of retaliation for their work and face obstacles to doing their work, through the use of the criminal justice system against them. Information received by the IACHR points to improper use of criminal charges such as incitement to commit a crime or abduction or kidnapping, filing of judicial proceedings and protracted alternative measures to incarceration, groundless arrest warrants, arbitrary arrests and pretrial detention for the purpose of criminalizing their activities as human rights defenders. Civil society organizations also reported to the IACHR about the misuse of the criminal justice system in Guatemala by instituting criminal proceedings without any grounds as a way of intimidating and wearing down human rights defenders.

167. In fact, during its visit to Cobán in the Department of Alta Verapaz and to Ixquisis and Santa Eulalia in the Department of Huehuetenango, the IACHR noted with great concern that as a result of the situation of serious conflict stemming from different hydroelectric projects, defenders are subjected to protracted criminal proceedings, custody without bail, arbitrary detention and arrest warrants.\textsuperscript{278} The Commission ascertained that leaders who defend indigenous peoples’ rights, territory and the environment are especially at risk of criminalization.

168. At the public hearing “Denunciation of criminalization of human rights defenders who oppose hydroelectric projects in Guatemala,” the participating organizations claimed, in addition to violent evictions, attacks, threats and constant harassment by the security agents of the hydroelectric companies, that there is a patterns of criminalization within

\textsuperscript{277} IACHR, Criminalización de la labor de las defensoras y los defensores de derechos humanos, [‘Criminalization of the work of human rights defenders’], OEA/Ser.L/V/II, Doc. 49/15, December 31, 2015, paras. 84-85.
\textsuperscript{278} IACHR, Observaciones Preliminares de la Visita in loco de la CIDH a Guatemala, [‘Preliminary observations to the IACHR’s on-site visit to Guatemala’], August 4, 2017. Meeting with the organizations in Coban, Alta Verapaz, August 1, 2017, and meeting with organizations in Huehuetenango, August 2, 2017.
the Guatemalan court system and malicious litigation by agents of the office of the public prosecutor and attorneys of transnational corporations.

169. Criminalization, as was mentioned above, is the most recurrent form of aggression against human rights defenders in Guatemala. According to the information cited, in the first half of 2017 alone, the total figure for 2016 has been surpassed, with a total of 106 cases reported. During this period, we can cite the arrests of the Guitz Pop brothers and Abelino Chub Caal, who has remained in prison since February 3, 2017, to stand as examples of the abuse of criminal law against human rights defenders.\textsuperscript{279}

170. In particular, the IACHR received a constant flow of information about inappropriate use of arrest or custody warrants, which remain in force and pending execution for several years and are reactivated at strategic times of mobilization and social protest.\textsuperscript{280} This is frequently used against communities that occupy lands targeted for the development of megaprojects and exploitation of natural resources. In the northern region alone, 500 custody warrants were in force and have not been executed.\textsuperscript{281} During its visit to Ixquisis and Santa Eulalia, Department of Huehuetenango, the IACHR witnessed this situation with great concern.\textsuperscript{282} Likewise, the Commission was apprised that 204 custody orders have been issued against indigenous and community leaders of the Campesino Committee of the Altiplano in retaliation for the defense of the rights of their communities.

171. During the on-site visit, the Commission received information about defenders living in constant fear as a consequence of criminal proceedings brought against them without any grounds. Particularly alarming is the information received by the Commission that most of the intimidation and threats are linked to economic groups with interests contrary to the causes


\textsuperscript{280} IACHR, Observaciones Preliminares de la Visita in loco de la CIDH a Guatemala, [‘Preliminary observations from the IACHR’s on-site visit to Guatemala’], August 4, 2017; Meeting with community leaders in Ixquisis, Department of Huehuetenango, in the context of the on-site visit, August 2, 2017.

\textsuperscript{281} Meeting with criminalized defenders in the Municipality of San Pablo, San Marcos, in the context of the on-site visit, Guatemala City, August 1, 2017; Civil Society, Situation of Human Rights in the Northern Region of Guatemala, August 1, 2017, pg. 2.

\textsuperscript{282} This custody orders are reportedly in force for several members of the communities without any basis or sufficient justification, without the affected individual even being properly informed of the crimes for which he or she is charged and without regard to what allegedly criminal acts he or she committed. Meeting with community leaders in Ixquisis, Department of Huehuetenango, in the context of the on-site visit, August 2, 2017.
they defend, or to structures linked to the security forces that operated during the armed conflict.283

172. Defenders describe that having a custody order in force against them is the equivalent to “psychological incarceration.” In many instances, these warrants remain in force for months and even for years while they do not know whether or not said order will be executed or whether or not they will continue in force. Attorneys consulted by the organizations claim that in Guatemala it is common to be unable to gain access to information to know how many custody orders have been issued for a defender and, therefore, be able to fully exercise the right of defense. The issuing of many custody orders for several members of the same movement, also has a deterrent effect on the right of association, inasmuch as it prevents other persons from joining or continuing to engage in pro-human rights activities for fear of being arrested. The IACHR has previously warned that when arrest warrants are used in this way, it creates a deterrent effect on the activity of defense of human rights defenders because the defenders could stop performing their activities for fear of exposure to arrests.284 Additionally, this practice tends to weaken and dismantle movements as they lose members, either because of their arrest, or because they must focus on their own defense, with resources which otherwise would have been used for the promotion of human rights.285

173. During the meeting with defenders of the environment and territory in Santa Eulalia on August 2, 2017, a delegation of the IACHR received information about criminalized defenders for whom custody orders were issued for the commission of the crimes of attacks, coercion, threats, incitement to commit a crime, obstruction of criminal proceedings, abduction or kidnapping, and have been in force since April 3, 2015. The defenders claimed that they are being criminalized because they are leaders within their communities and were not even present at the scene of the crimes for which the company workers accused them. On this issue, they testified to the IACHR that criminalization against women “is not the same as the criminalization experienced by men, because we have to

283  IACHR, Observaciones Preliminares de la Visita in loco de la CIDH a Guatemala, ['Preliminary observations from the IACHR’s on-site visit to Guatemala'], August 4, 2017.
285  Amnesty International, Defendemos la tierra con nuestra sangre: personas defensoras de la tierra, el territorio y el medio ambiente en Honduras y Guatemala, ['We Are Defending the Land with our Blood: Defenders of the Land, Territory and Environment in Honduras and Guatemala'], September 2016, p. 56.
concern ourselves as well with our children, with housework and the company’s intimidation affects our way of life.”

174. Furthermore, civil society organizations argued that the mere fact of belonging to a social movement or a human rights organization that works in favor of rights related to land or the right to territory or a healthy environment has been taken as an indicator of criminal liability. Far from proving any liability of the defenders for the acts, the authorities assume that being a member of a group or participation in a demonstration automatically makes defenders responsible for the acts for which they are accused. In addition to the fact that most conflicts over land are settled in criminal proceedings under charges of usurpation and aggravated usurpation, the civil society organizations claimed that the conflicts associated with indigenous territories and peasant’s lands in Guatemala are also tied to corruption in land registration and structures engaged in the unlawful dispossession of lands.

175. The Commission also received information about the use of unjustified criminal charges for offenses such as “kidnapping” or “unlawful association,” which do not allow for alternative measures to pretrial detention. Additionally, the Commission received information about several cases of criminal complaints that have been dismissed for lack of merits or acquittals, after holding the defenders in custody for long periods of time based on these bogus charges. By way of example, the IACHR received information about the criminal proceedings against seven indigenous authorities and community leaders of the Department of Huehuetenango, who unjustifiably remained in pretrial detention for 14 months charged with kidnapping, before the Guatemalan justice system acquitted five of them. According to the annual report of the OUNHCHR, the defendants had remained in pre-trial detention for more than one year after many delays in their criminal proceedings, which were characterized by irregularities. After finding that there was not sufficient evidence, the judgment of acquittal noted that the criminal proceedings had been used to

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286 Meeting with criminalized human rights defenders in Santa Eulalia in the context of the on-site visit, August 2, 2017.
287 Amnesty International, Defendemos la tierra con nuestra sangre: personas defensoras de la tierra, el territorio y el medio ambiente en Honduras y Guatemala, [‘We Are Defending the Land with our Blood: Defenders of the Land, Territory and Environment in Honduras and Guatemala’], September 2016, p. 53.
288 Id., p. 21.
289 Lawyers without Borders, Study on the situation of gender-based violence in Guatemala and of women’s access to justice, p.51.
“criminalize the actions carried out by the ancestral authorities [...] to defend their rights.”

176. During its country visit, the IACHR held a meeting with human rights defenders of the municipalities of San Pablo and Malacatán, both located in the Department of San Marcos, where it received reports on the criminalization of at least 14 human rights defenders who are opposed to a hydroelectric project, standing accused of the crimes of abduction, kidnapping and unlawful association, singling out the ancestral and community authorities for allegedly forming an organized crime structure.

177. During the visit, the IACHR received information on the criminalization of a human rights defender and community leader from San Pablo, Fausto Sánchez Roblero. On December 10, 2014, the defender was arrested along with another three opponents to a hydroelectric project, which was reportedly built in an area without having conducted a prior, free and informed consultation with the communities, and stood charged with the crimes of kidnapping and unlawful association. According to publically available information, on August 19, 2016, the trial court judges acquitted Mr. Sánchez for lack of evidence and contradictions in the testimony of the witnesses and, accordingly, ordered the release of the defender. However, the association Liga Pro Patria, which had been a private complainant in the proceedings, appealed the judgment of acquittal before the Chamber of Appeals for Criminal and Civil Matters. On February 9, 2017, the acquittal of the defender was upheld on the grounds that the decision was incoherent and, therefore, the judgment of acquittal issued by the trial court was upheld and the court was instructed to issue the respective release order. Defender Fausto Sánchez Roblero was deprived of liberty for approximately 2 years and 3 months prior to being acquitted of all charges. When he was released, the defender claimed that his case was about political persecution because he was against the building of a hydroelectric project.

Civil society organizations have contended that the case of human rights defender Fausto Sánchez stands as an example of the
criminalization of community leaders who oppose the exploitation of natural resources.295

178. In light of the situation of human rights defenders described in this section, the Commission recalls that under Inter-American legal precedent, when an arrest order is issued, it must provide a basis and reasons in order to avoid arbitrary detentions and ensure the right to a defense of the individual.296 Additionally, the arresting agent must inform the person in simple language, free of technical legal terms, about the acts and the particular legal basis for the arrest.297 The Commission recalls, as well, that every State of the region has the obligation to not use arrest warrants as a mechanism of punishment or retaliation against anyone, including in particular human rights defenders.

179. In response, the State noted, among other things, that the on-site visit has been a starting point to achieve consensus, engage in talks and negotiations and to take the communities into account. It indicated that the recommendations issued by the IACHR after the on-site visit were received by COPREDEH and by the Office of the Foreign Ministry of Guatemala and are being considered for this sustainable dialogue with the communities and the companies. The Guatemalan State placed itself at their disposal for this permanent, sustainable dialogue and to carry out this type of negotiation. Lastly, it contended that it strictly enforces the law and the Convention in the sphere of investigation, which is the purview of the Office of the Public Prosecutor. It claimed that of the total number of complaints filed with the Unit for crimes against activists of the Office of the Prosecutor for Human Rights, a small percentage of the those filed by

296 IA Court of HR, Caso Defensor de Derechos Humanos y otros Vs. Guatemala, [‘Case of Human Rights Defender et al v. Guatemala’]. Preliminary objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283, para. 263, which established that the State must implement, within a reasonable time, a public policy for the protection of human rights defenders, taking into account, at least the following requirements: a) the participation of human rights defenders, civil society organizations and experts in the formulation of standards for the regulation of a program for the protection of the group in question; b) the protection program should adopt a comprehensive and inter-institutional approach to this problem, based on the risk posed by each situation and adopt immediate measures to address complaints by defenders; c) the creation of a risk analysis model to adequately determine the risk and the protection needs of each defender or group; d) the creation of an information management system on the status of the prevention and protection of human rights defenders; e) the design of protection plans in response to specific risks faced by each defender and to the nature of his/her work; f) the promotion of a culture of legitimization and protection of the work of human rights defenders, and g) the provision of sufficient human and financial resources to respond to the real needs for protection of human rights defenders.

297 Ibid.
human rights defenders stem from acts of aggression by extractive companies.\(^{298}\)

180. The Commission reiterates, as emphasized in its Report on Criminalization of Human Rights Defenders, that no defender may be subjected to a criminal proceeding indefinitely, inasmuch as such a situation would infringe on the guarantee of a reasonable time period. This guarantee, in addition to being a basic element for the right to a fair trial in accordance with the rules of due process, is particularly instrumental in preventing unwarranted criminal proceedings from hampering the work of human rights defenders.\(^{299}\) Accordingly, States should take all necessary measures to prevent State investigations from leading to unjust or unfounded trial proceedings against people who legitimately demand respect for and protection of human rights.\(^{300}\)

\textbf{a) Measures Adopted by the State: Protection Mechanism}

181. The State of Guatemala does not have in place, as of the date of approval of this report, a Public Policy for the Protection of Human Rights Defenders. Consequently, the State must coordinate different government agencies, whose obligation it is to grant protection to human rights defenders, with the participation of different civil society organizations and experts.\(^{301}\) According to the information the IACHR received, despite the regulatory framework established to create the agencies in charge of human rights defender protection, no systematic or coordinated approach from these authorities is currently in place to address violence against these defenders.\(^{302}\)

182. The IACHR notes that the State does have a process in place for the intake, analysis and granting of protection measures for human rights defenders within the National Civilian Police (PNC) through the Division of Protection of Individuals and Security of the Office of the Assistant Director General for Operations. According to the information provided by the State of Guatemala, through this Division, the PNC provides personalized or

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\(^{300}\) Id., para. 182.


perimeter security to human rights defenders, whose risk has been ascertained through specific assessment to determine the security contingent required by the situation. Based on this information, beginning in 2016 at the Ministry of the Interior, the Protocol for the Implementation of Immediate and Preventive Security Measures has been in force to provide such measures for union workers, union leaders, officials, members, persons related to the defense of labor rights, as well as the physical spaces where they carry out their activities. Additionally, in its report to the IACHR, the State noted that in order to uphold the PNC’s commitment to the protection of human rights defenders, representatives of the institution have been appointed to formulate a Public Policy for the Protection for Human Rights Defenders.  

183. Notwithstanding, according to the claims of civil society organizations and the OUNHCHR, the Division for the Protection of Individuals and Security of the PNC is still not adequately documenting or monitoring the cases to assess ongoing risks and determine the effectiveness of the security measures. Additionally, the risk assessment processes do not always adequately take into account the culture and gender of the human rights defenders, or the social and general political context in which they perform their work.

184. As to protection measures, civil society organizations expressed concern about the risk assessments of human rights defenders conducted by the Division for Individual Protection and Security of the PNC. This unit reportedly lacks a manual or unified criteria to aid in establishing what requirements need to be met in order to provide perimeter or personalized security. They also claimed that this division does not provide a copy of the risk assessment report to defenders, who thus remain in the dark about the reasoning behind the proposed security arrangement or any changes to it or decision to remove it altogether. In order to obtain this information, they must physically go to the Public Information Unit of the Ministry of the Interior. Based on the risk assessment reports that these organizations were able to obtain, they express concern about weak analytical content and very little fact-based grounds for conclusions as well as the failure to take into account the context in which the defenders do their work.  

185. During its on-site visit, the IACHR held a meeting with the authorities of the Unit for Analysis of Patterns of Attacks on Human Rights Defenders of the

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Ministry of the Interior. At this meeting, the Commission was briefed about the mandate of said Unit, which entails analyzing, in context, patterns of attacks on human rights defenders, using a pre-established method, approved by the members of the Unit. According to the authority of the Ministry of the Interior representing the Unit, no pattern of attacks on human rights defenders has been verified.

186. In contrast, civil society organizations have contended that the Unit for the Analysis of Attacks on Human Rights Defenders in Guatemala has not been very effective and reiterated that the Unit has not taken adequate steps to protect defenders from the improper use of the justice system through unfounded criminal investigations that are used by the State itself, particularly against those who work to defend land, territory and the environment. In fact, the organizations representing civil society in this framework became so unhappy with the way the Unit functions and its ineffectiveness that it decided to withdraw from it. In 2016, several years later, the civil society organizations resumed participation at the Unit for the Analysis of Attacks on Human Rights Defenders in Guatemala, because they felt that the new authorities in charge of this body would be more willing to change their approach to the protection of defenders.

187. Furthermore, the OUNHCHR voiced its concern that the Ministerial Decision issuing the mandate of the Unit has not been renewed since it lapsed in January 2017. This concern was also echoed by civil society organizations, which noted in addition that the Unit for Analysis does not have its own financial resources or staff, but must use whatever financial resources are allocated to it by the Ministry of the Interior.

305 The ‘unit’ (Intancia) is a body made up of a representative of the Ministry of the Interior, who is the coordinator, one representative of the General Directorate of Civilian Intelligence (DIGICI), one representative of the Human Rights Unit of the Division of Criminal Investigation (DINC) of the National Civilian Police, one representative of the Public Prosecutor’s Office, specifically from the Office of the Prosecutor for Human Rights Section, two representatives of national human rights organizations, and one representative of international human rights organizations.

306 Meeting with authorities of the Unit for the Analysis of Patterns of Attacks on Human Rights Defenders of the Ministry of the Interior in the context of the IACHR’s country visit, August 3, 2017.


and human resources that are contributed by the public institutions making it up.\textsuperscript{310}

188. The Commission notes that even though the State has taken some initiatives, such as creating the Unit for Analysis of Attacks on Defenders and the Unit for Crimes against Human Rights Activists, these entities have not been properly strengthened or endowed with sufficient resources. The Unit for Analysis continues to operate on an unsure legal footing and the Unit for Crimes against Activists does not have the capacity to get to the bottom of crimes and effectively punish those responsible. The Commission further ascertained that the State still does not have adequate regulations and practices in place to ensure that defenders are not the targets of unwarranted criminal proceedings. The IACHR recalls the obligation of the State to investigate and punish violations of the rights of defenders in order to combat existing impunity and prevent the repetition thereof.\textsuperscript{311}

189. The IACHR notes the importance of creating a program or public policy for the comprehensive protection of human rights defenders, in keeping with the provisions of the judgment of the Inter-American Court in the case of \textit{Human Rights Defender et al v. Guatemala}.\textsuperscript{312} This concern has also been echoed by the European Parliament, which in a resolution expressed worry that the ongoing acts of violence and lack of security may have a negative effect on the full and free exercise of the activities of human rights defenders. Additionally, it recalled the need to develop a public policy for the protection of human rights defenders through a process of broad participation addressing the structural causes for the increased vulnerability of human rights defenders and asking the business community to support these efforts.\textsuperscript{313}

190. The Commission notes that in September 2016, COPREDEH began to develop a public policy on human rights defenders, which will be the subject to public consultation with civil society. If it is actually carried out, it would represent a step toward implementation of the judgment in the


\textsuperscript{311} CIDH, \textit{Observaciones Preliminares de la Visita in loco de la CIDH a Guatemala}, [‘Preliminary observations to the IACHR’s on-site visit to Guatemala’] August 4, 2017.


case of Human Rights Defender et al v. Guatemala. The IACHR also learned that the Public Prosecutor’s Office is developing an internal policy for the investigation of crimes against human rights defenders, which could help to ensure that these cases are examined with a differential approach.314

191. The Commission recognizes the efforts of the State to institute in early 2018 a process to create the “Public Policy for the Protection of Human Rights Defenders,” which has been supported by different State agencies and civil society organizations. As directed by the Inter-American Court of Human Rights, this policy must include implementation of a program of comprehensive protection for human rights defenders providing for special measures of adequate and effective protection, which are suitable to address the particular situation of risk faced by the individual and capable of producing the results for which they have been conceived.315 This program should incorporate a model of analysis to be able to assess risk and the protection needs of each individual defender or group of defenders, including a gender perspective or a perspective of groups in situations of special vulnerability. Additionally, the State should make sure that authorities or third parties do not manipulate the punitive power of the State and its bodies of justice in order to harass human rights defenders and justice operators.316

192. The IACHR welcomes that the Office of the Attorney General is setting into motion the process of drafting a General Instruction manual to guide prosecutors in the investigation of attacks on defenders. The initiative, pushed forward by civil society groups, is currently under discussion. The adoption of this General Instruction could be a significant step toward addressing impunity in cases of attacks on human rights defenders. Additionally, according to civil society organizations, the Office of the Attorney General is reportedly working on draft guidelines to prevent criminalization and ensure that the criminal justice system is not used to attack or harass defenders. Adoption of these guidelines could represent a significant improvement in addressing the improper use of the justice


system against them. In both instances, it is crucial for the authorities in charge of enforcing the General Instruction and the guidelines to be adequately trained to implement them effectively.\textsuperscript{317}

193. Civil society organizations have expressed, nonetheless, their concern over the fact that as of the present date, the proposed General Instruction has still not been delivered to the Attorney General of the Ministry of Public Prosecution, whose job it is to approve and promote the implementation thereof nationwide. In the absence of this instruction manual, the capacity to conduct immediate, independent and systematic investigations of violations committed against human rights defenders is curtailed.\textsuperscript{318}

194. The IACHR recalls that States should undertake, as a matter of public policy, the struggle against impunity for violations of the rights of human rights defenders, exhaustive and independent investigations into the attacks on this group, and punish their perpetrators, as a fundamental means of preventing such attacks from recurring.\textsuperscript{319} The IACHR has urged States to set up specialized units within the police force and public prosecutor’s office, armed with the necessary resources and training and protocols to enable them to act in coordination and with due diligence when investigating attacks on human rights defenders, while establishing hypothesis about the crimes and guidelines to steer the investigation, taking into account the interests that may have been harmed in retaliation for the activities conducted by the aggrieved human rights defender.\textsuperscript{320}

\textbf{B. Justice Operators}

195. The Commission has repeatedly made the point that judges are the lead actors in ensuring judicial protection of human rights in a democratic State and the due process that must be observed when the State is able to impose a punishment. In a democratic system, judges act as a check on the acts of other branches of government and public servants in general to make sure their acts are consistent with conventions, the constitution and laws.


\textsuperscript{320} Id., para. 541(22).
Judges also administer justice in disputes between private parties where a person’s rights might be at stake. For their part, prosecutors are essential to eliminating impunity in cases of human rights violations and providing an effective recourse to persons whose rights have been violated as a result of crimes committed against them. Additionally, public defenders play a critical role in ensuring that the State complies with its obligation to guarantee due process to any persons affected by the State’s exercise of its punitive authority.\footnote{IACHR, “Garantías para la independencia de las y los operadores de justicia: Hacia el fortalecimiento del acceso a la justicia y el estado de derecho en las Américas,” [Guarantees for the Independence of Justice Operators: Toward strengthening access to justice and the rule of law in the Americas’], OEA/Ser.L/V/II. Doc. 44 December 5, 2013, paras. 16-18.}

1. Acts Limiting or Hampering Performance of their Work

\textbf{196.} At a meeting with operators of justice in the context of the country visit, the IACHR received information about the situation of accusations, defamation of character and attacks against judges and magistrates. At said meeting, the justice operators claimed they were targets of smear campaigns branding them as “communists,” “lefties” or “guerrillas.” They claimed they are the target of harassment through groundless motions to strip them of their immunity to stand regular trial (\textit{prejuicios}), as well as of attacks and threats. Accordingly, they raised the need for retaliation to halt, as well as for improvement of administrative management procedures to ensure protection for justice operators, inasmuch as said attacks and threats are not addressed from a perspective that takes into account the pattern and nature thereof, but instead are treated as common crimes. They also emphasized the need to strengthen the agency protecting judges and magistrates and to conduct a thorough review or vetting process of the personnel assigned to the personal security system and produce action protocols for rapid-response protection of judges who come under threat.\footnote{Meeting with justice operators in the context of the country visit, August 2, 2017, Guatemala City.}

\textbf{197.} Following its country visit in 2017, the International Commission of Jurists (ICJ) concluded that if high level officials who have sufficient protection are vulnerable to attacks and intimidation, then the situation is truly worrisome for justice operators who work on behalf of the affected communities in departments or municipalities removed from Guatemala City, where they are much more vulnerable to attacks. Recently, the judicial officer presiding over the Justice of the Peace Court for Civil and Criminal Matters in San Cristóbal Department of Alta Verapaz and an assistant
prosecutor of the Public Prosecutor’s Office were each attacked separately. Additionally, according to public information from the College of Attorneys, the President of the Bar Association of Jutiapa endured an armed assault and an attorney of the Department of Peten, and Saul Paaú Maaz was the target of threats, possibly linked to defense on behalf of communities affected by pollution of the La Pasión River. In this last case, Judge Karla Hernández was also reportedly threatened.\footnote{323}

198. Furthermore, following its country visit, the ICJ noted that the case assignment system is very fragile and can be readily manipulated so that cases are assigned to a particular judge, who could act without independence or impartiality and foster through his or her rulings the impunity sought by the respective attorneys. By way of example, according to information that was provided to the ICJ, most of the cases that are brought by the Fundación contra el Terrorismo are assigned to Judge of the Seventh Criminal Court Adrián Rodríguez. In particular, the case assignment system of the high-risk courts has led to High Risk Tribunal A receiving few or no cases. This is at odds with the notion of creating a High Risk Tribunal D. In its observations, the ICJ regretted that this practice is going on, as it can be construed as a mechanism to undermine the two women and one male judges sitting on said Tribunal.\footnote{324} 

199. The attempts to make progress in combatting impunity and corruption by justice operators, described in the chapter on access to justice\footnote{325} have brought in their wake attacks and threats against them. At meetings with both judges and prosecuting and defense attorneys, the Commission received reports of harassment, assaults and threats as instruments of control and intimidation in the performance of their duties, especially from those who are involved in high impact cases of corruption, serious human rights violations or case in which significant economic interests are at stake.

200. Over the past years, the Commission has requested the Guatemalan State to adopt precautionary measures on behalf of Attorney General Thelma Aldana (MC 351-16);\footnote{326} magistrates Claudia Escobar (MC 433-14); Patricia

\footnote{323}{International Commission of Jurists (ICJ), Pronunciamiento de la Comisión Internacional de Juristas en ocasión de finalizar su visita a Guatemala, ['Statement of the International Commission of Jurists on the occasion of concluding its visit to Guatemala'], February 24, 2017, p. 5.} 

\footnote{324}{International Commission of Jurists (ICJ), Pronunciamiento de la Comisión Internacional de Juristas en ocasión de finalizar su visita a Guatemala, ['Statement of the International Commission of Jurists on the occasion of concluding its visit to Guatemala'], February 24, 2017, p. 6.} 

\footnote{325}{See Section III.B, on Requirements for independence and impartiality: Public Prosecutor’s Office and reforms to the Judiciary.} 

\footnote{326}{IACHR, MC 497/16, Thelma Esperanza Aldana Hernández y familia, respecto de Guatemala, ['Thelma Esperanza Aldana Hernandez and family, with respect to Guatemala'], July 22, 2016.}
Isabel Bustamante García, Pablo Xitumul de Paz, and Yassmín Barrios Aguilar (MC 125-13);\textsuperscript{327} as well as judge Miguel Ángel Gálvez (MC 351-16);\textsuperscript{328} and magistrate Gloria Patricia Porras Escobar (MC 431-17).\textsuperscript{329} Following the visit, requests for precautionary measures were also received on behalf of members of the Office of the Human Rights Ombudsman, who completed their term in August 2017. The IACHR has followed up on these requests through the process of evaluation of Precautionary Measures, in accordance with its own Rules of Procedure, and urges the State to comply with all of the recommendations set forth within that framework.\textsuperscript{330}

201. As was referenced above, on August 29, 2017, the IACHR requested the State of Guatemala to adopt the necessary measures to preserve the life and personal integrity of Magistrate Gloria Patricia Porras Escobar and next-of-kin, inasmuch as it finds that she faces a situation of risk stemming from her work as a Justice of the Constitutional Court in Guatemala.\textsuperscript{331} The IACHR requested the State to adopt the necessary measures to ensure that Magistrate Porras Escobar is able to perform her duties as a justice of the Constitutional without being the target of acts of intimidation, threats and harassment; agree on the measures to be adopted together with the beneficiaries and their representatives; and report on the steps taken to investigate the alleged incidents that gave rise to the adoption of said precautionary measure and thus prevent them from happening again.\textsuperscript{332}

202. The Commission also learned of hard-hitting stigmatization campaigns in the media and on social networks branding justice operators as “guerrilla members” or “detractors of development,” together with other strategies of intimidation, including repeatedly subjecting operators to groundless disciplinary and/or criminal proceedings and threats through written messages and telephone calls.\textsuperscript{333} During the hearing on “Denunciations of

\textsuperscript{327} IACHR, MC 125/13, Iris Yassmin Barrios Aguilar y otros, respecto de Guatemala, [Iris Yassmin Barrios Aguilar et al, with respect to Guatemala], June 28, 2013.

\textsuperscript{328} IACHR, MC 351/16 and 366/16, Miguel Ángel Gálvez y familia, respecto de Guatemala, [‘Miguel Angel Galvez and family, with respect to Guatemala’], August 21, 2016.

\textsuperscript{329} IACHR, Resolution 34/17, Precautionary Measure No. 431-17, Gloria Patricia Porras Escobar y familia respecto de Guatemala, [‘Gloria Patricia Porras Escobar and family with respect to Guatemala’], August 29, 2017.

\textsuperscript{330} Rules of Procedure of the Inter-American Commission on Human Rights, Article 25.

\textsuperscript{331} The request alleged that several hearings were held on the removal of immunity to stand trial against Justice Porras based on the performance of her duties, as well as that she had been the target of intimidation and harassment and surveillance on her and her husband. IACHR, MC 431/17, Gloria Patricia Porras Escobar and family, with respect to Guatemala, August 29, 2017. Resolution 34/17 it can be viewed at: \url{http://www.oas.org/es/cidh/decisiones/pdf/2017/34-17MC431-17-GU.pdf}

\textsuperscript{332} IACHR, MC 431/17, Gloria Patricia Porras Escobar and family, with respect to Guatemala, August 29, 2017.

\textsuperscript{333} IACHR, Observaciones Preliminares de la Visita in loco de la CIDH a Guatemala [‘Preliminary observations from the IACHR’s on-site visit to Guatemala’], August 4, 2017.
threats to judicial independence in Guatemala,” held on September 7, 2017, during the 164th Special Session in Mexico City, Mexico, the IACHR heard directly from operator of justice Carmen Leonor Maldonado Cambra about an attempt on her life on February 9, 2017, where she was seriously wounded by gun shots. According to the account of prosecutor Maldonado Cambra, the PDH had requested perimeter security on her behalf, but the National Civilian Police failed to provide it. The prosecutor decried that “power groups” with interests opposing human rights protection were behind the attempt.

203. According to information received by the IACHR in early 2017, during the criminal proceedings against her son and other defendants, former magistrate Blanca Stalling attempted to wield her influence over one of the judges of the sentencing court that was presiding over the case, Judge Carlos Ruano, member of the Guatemalan Association of Judges for Integrity (AGJI). Said judge reported the act to the Office of the Special Prosecutor against Impunity of the Attorney General’s Office (FECI), the CICIG and the media, which prompted a hearing to remove her immunity before the commission of inquiry of the Congress of the Republic. Because of the imminent risk to the life of judge Ruano, in January 2017, he was compelled to leave the country temporarily. However, in its investigation, the Inquiry Commission itself requested information from the General Directorate of Migration about Judge Ruano, whereby the location where he was living as a security measure was made public, placing him at even greater risk, according to the organizations.

204. The Inter-American Court of Human Rights has held in its legal precedents that States must ensure that judicial officers, prosecutors, investigators and other justice officials have an adequate security and protection system that takes into account the circumstances of the cases under their jurisdiction and their places of work so that they may perform their duties with due diligence. The IACHR reiterates that it is the duty of the State of Guatemala to protect its justice operators from attacks, acts of intimidation, threats and harassment, and to investigate those who violate their rights and effectively punish them. If States fail to guarantee the safety of their justice operators from every type of external and internal pressure, including reprisals directly aimed at attacking their person and family, the

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334 IACHR, 164th Special Session, Denuncias sobre amenazas a la independencia judicial en Guatemala, [‘Denunciations of threats to judicial independence in Guatemala’], September 7, 2017, Mexico City.
335 Id.
exercise of judicial function may be gravely affected, access to justice impeded, and the rule of law weakened.\textsuperscript{338}

205. In 2011, the Guatemalan State established the Unit for Crimes against Justice Operators within the Office of the Prosecutor for Human Rights under the Public Prosecutor’s Office. The IACHR received information indicating that this unit is underfunded and thus is unable to fulfill its mandate, and the staff is not properly trained.\textsuperscript{339} Information was also received that justice operators have been subjected to pressure and attempts at improper interference in cases. In view of the context of pressure and intimidation to which justice operators are subjected in Guatemala, as reflected in the number of precautionary measures requested on their behalf, the Commission urges the State to strengthen the work of said Unit and recognize the importance of its functions to guarantee the right of access to justice as well as to due process of law.

206. The Commission finds that to strengthen the institutional independence of the judicial branch and of the prosecution service and public defender service, they must be statutorily provided with stable and sufficient resources to enable them to perform their functions of protecting and ensuring the right of access to justice. Moreover, their budgets must be periodically reviewed with a view toward progressive increase. There must be a procedure in place to enable the entity concerned to participate in any change or modification of its budget and it must have assurances that it can execute and manage its own budget or that such authority will be vested in the respective organ of government.\textsuperscript{340}

\textsuperscript{338} IACHR, Garantías para la independencia de las y los operadores de justicia. Hacia el fortalecimiento del acceso a la justicia y el estado de derecho en las Américas, [‘Guarantees for the Independence of Justice Operators: Toward strengthening access to justice and the rule of law in the Americas’], OEA/Ser.L/V/II. Doc. 44 December 5, 2013, para. 147.


\textsuperscript{340} IACHR, Garantías para la independencia de las y los operadores de justicia. Hacia el fortalecimiento del acceso a la justicia y el estado de derecho en las Américas, [‘Guarantees for the Independence of Justice Operators: Toward strengthening access to justice and the rule of law in the Americas’], OEA/Ser.L/V/II. Doc. 44 December 5, 2013, para. 55.
CHAPTER 4
INTERNALLY DISPLACED PERSONS, MIGRANTS, ASYLUM-SEEKERS, REFUGEES, AND VICTIMS OF HUMAN TRAFFICKING IN GUATEMALA
INTERNALLY DISPLACED PERSONS, MIGRANTS, ASYLUM-SEEKERS, REFUGEES, AND VICTIMS OF HUMAN TRAFFICKING IN GUATEMALA

207. Guatemala is a country of origin, transit, destination and return of migrants. The prevailing trend in the country is migration to other countries. Throughout the visit, the IACHR received extensive information about how a variety of factors have compelled tens of thousands of people over the past years to flee their homes both internally within Guatemala, and to other countries of the region, contributing in this way to the crisis of displaced persons and refugees from the countries of the Northern Triangle of Central America.

208. As was noted earlier in the report, the common thread running through the different forms of violence and displacement in Guatemala for decades has been concentrated ownership and use of land and natural resources by a limited segment of society. This has gone hand and hand with different forms of discrimination and racism, the main victims of which have been members of indigenous peoples, peasants farmers (campesinos), communities, persons in situation of poverty and other populations in situations of vulnerability. Regarding this issue, the Commission notes that the Agreement on the Identity and Rights of Indigenous Peoples and the Agreement on Socioeconomic Aspects of the Agrarian Situation gave rise to the Law of Registration of Cadastral Information, Article 91 of which sets forth the obligation of the Supreme Court of Justice to create Agrarian Tribunals and for a draft law to be introduced within the shortest length of time possible, regulating the substance and procedure for the application thereof and for which the appropriate budget would be allocated. Notwithstanding, the IACHR was apprised of the lack of political will to comply with these commitments and, on the contrary, the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) brought a suit challenging the constitutionality of this article. Consequently, the Supreme Court of Justice ordered the temporary

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Ley del Registro de Información Catastral, ['Law of Registration of Cadastral Information'] Decree Number 41-2005, Article 91.
stay of the effect of the law, but left in force the obligation of the agrarian tribunals and the budget allocation to them.\textsuperscript{343}

\section*{A. Internal Displacement}

209. In the context of the visit, the IACHR received ample information about the different forms of forced internal displacement in Guatemala. According to estimates of the Internal Displacement Monitoring Centre (IDMC), as of 2016, there were 257,000 internally displaced persons.\textsuperscript{344} Based on the information received, there are multiple causes for the phenomenon of internal displacement in Guatemala. The main factors leading to forced displacement in the country include extortion and threats, the presence of organized crime and drug trafficking activity, expansion of megaprojects and large scale business activities (such as monoculture of sugarcane and oil palm, extensive cattle ranching and expansion of grazing pastures, logging of fine wood, metal and non-metal mining, hydroelectric plants, archeological extraction, tourism), extreme poverty, social exclusion, different forms of violence such as intrafamily and gender violence,\textsuperscript{345} as well as factors linked to climate change and natural disasters.\textsuperscript{346} According to a diagnostic analysis on internal displacement written by Rafael Landívar University in 2016, this issue has been fueled by structural violence and the failure to fully implement the Peace Accords; the promotion of neoliberal policies; and the fragility of the State, which is under the influence of a military, political and economic elite, some of which is linked to illicit activities.\textsuperscript{347}

210. During the visit, the IACHR received information about cases of displacement stemming from the acts of illegal actors, such as maras and gangs, criminal organizations and criminals acting on their own.\textsuperscript{348} According to a study conducted by the Universidad Rafael Landívar, displaced persons fleeing these groups live mostly in the periphery of the metropolitan area of the capital city and move to nearby areas, which are

\begin{thebibliography}{99}
\item Constitutional Court, Expediente 2265-2006, [‘Case File 2265-2006’], September 4, 2006.
\item UNHCR International Centre for the Rights of Migrants, Diagnóstico “Desplazamiento Forzado y Necesidades de Protección, generados por nuevas formas de Violencia y Criminalidad en Centroamérica” [Study ‘Forced Displacement and Protection Needs produced by new forms of Violence and Criminality in Central America’] May 2012, p. 11.
\item Ibid.
\item Ibid.
\end{thebibliography}
slightly less dangerous. Those displaced by violence lack any mechanism of protection or security for their own and their family’s safety and live in constant fear and mistrust of authorities. In many instances, these people would rather not file complaints or reports with authorities and this situation leads to impunity.\textsuperscript{349} Children and adolescents are at a higher risk of being victims of internal displacement, as well as of human trafficking for sexual or labor purposes or to be recruited by gangs and criminal organizations. The Commission also received information about cases of displacement caused by gender violence, as well as cases of displacement of the LGBTI population as a consequence of prevailing homophobic and lesbophobic attitudes.\textsuperscript{350}

211. By way of example, the delegation heard testimony from a displaced person who stated: “I left my community because I was extorted. I do not know perhaps some of my siblings went to the United States. I think that that is why they started to threaten my family for money. I had to leave my community and I have not been able to return and so unfortunately it is very sad to be far away from the family while being in our own country.”\textsuperscript{351}

212. Another type of displacement is linked to the expansion of business activities, such as the cultivation of oil palm trees, sugarcane and the expansion of cattle grazing pastures, which has reduced food crop-growing areas. As a result, many families and communities, mostly indigenous ones, have been displaced, and damage is also done to nature in the process.\textsuperscript{352} This situation places these displaced persons at risk of malnutrition and disease.\textsuperscript{353} Additionally, companies often resort to violence, material and physical harm in order to force the sale of plots of land. Similarly, mining companies and hydroelectric dam projects claim to carry out development projects, but this does not translate into formal jobs nor do they protect natural resources. These projects have divided communities and caused internal forced displacement in different parts of Guatemala, mostly in rural areas.\textsuperscript{354}

213. The last form of displacement observed by the Commission in the State of Guatemala is natural disaster-caused, such as heavy storms or hurricanes,

\textsuperscript{349} Ibid.
\textsuperscript{350} I\textit{d.}, p. 2.
\textsuperscript{351} Testimony of displaced person to IACHR Rapporteur on the Rights of Migrants, August 1, 2017.
\textsuperscript{352} Instituto de Investigación y Proyección sobre Dinámicas Globales y Territoriales de la Universidad Rafael Landívar, Documento síntesis del Diagnóstico de desplazamiento interno en Guatemala (2010-2016) [‘Summary of Study on Internal Displacement in Guatemala 2010-2016’] (awaiting publication), p. 3.
\textsuperscript{353} Ibid.
\textsuperscript{354} Ibid.
volcanic eruptions and earthquakes. This situation has been further exacerbated by climate change, as well as by deforestation, lack of control over real estate development and home building companies, a housing shortage and few prevention measures. Based on IDMC figures, in 2016 approximately 1,700 displacement events took place as a result of natural disasters.\textsuperscript{355} The people most affected in these displacements are those living in a situation of poverty and in marginalized areas. According to a study of the Universidad de Landívar, persons affected by this type of displacement only receive emergency assistance, even though they lose their property and endure emotional damages, are left homeless in precarious conditions and without any psychological support.\textsuperscript{356}

214. It can be surmised from the information in this section that the many forms of violence have forced a high number of Guatemalans to move to other parts of Guatemalan territory. The Commission notes that, as of the present date, the State has not produced any study or statistics regarding the profile and scope of internal displacement in Guatemala. Currently, most available statistics on this issue come mainly from qualitative and partial or indirect information produced by academic and research institutions and civil society organizations. Consequently, the IACHR urges the Guatemalan State to recognize the issue, perform a diagnostic assessment on it and collect data on the different types of internal displacement, as well as to develop and implement public policies aimed at preventing and dealing with the problem, including legislation based on the Guiding Principles on Internal Displacement, which must ensure the participation of displaced persons, the Office of the Human Rights Ombudsman and civil society organizations. The Commission also calls on the State to appoint a lead institution to address this issue and implement the public policy that is developed on this subject matter, providing adequate budget resources for the effective implementation thereof.

**B. Forced Evictions**

215. On its visit, the IACHR received a plethora of information on forced evictions and the risk faced by a high number of peasant farmer and indigenous communities of being evicted by the Guatemalan State as a result of the execution of court orders.\textsuperscript{357} According to the information


\textsuperscript{356} Instituto de Investigación y Proyección sobre Dinámicas Globales y Territoriales de la Universidad Rafael Landívar, *Documento síntesis del Diagnóstico de desplazamiento interno en Guatemala (2010-2016)* ['Summary of Study on Internal Displacement in Guatemala 2010-2016'] (awaiting publishing), p. 3.

\textsuperscript{357} See: International Commission of Jurists, *Acceso a la Justicia: El Caso de las Comunidades de los municipios de San Andrés y La Libertad, departamento del Petén, Guatemala*, ['Access to Justice: The Case of the
collected during the visit, the vested interests of private corporations or companies are often behind the execution of the eviction orders and involve a variety of investment projects in monoculture farming, mining, hydroelectric dams, petroleum or tourism, *inter alia*. Over the past years, we have observed how legal and illegal interests have forced the population to move or resist and defend their territory. During the visit, the Commission learned that in the Department of El Petén alone at least 125 motions for eviction have been filed, in addition to evictions of the communities of Centro Uno, Nueva Esperanza and Laguna Larga. The IACHR notes that the evictions affect persons living in situations of greatest vulnerability and further compound inequality, social conflicts, segregation and the creation of ghettos.\(^{358}\) Forced evictions are often linked to a lack of legal certainty about their land, which constitutes an essential ingredient of the right to adequate housing.\(^{359}\)

216. The IACHR received information about 37 multicultural communities, which have been in existence for 20 to 40 years and inhabit the “Laguna del Tigre National Park” and “La Sierra Lacandón National Park,” both of which are part of the Maya Biosphere Reserve, a protected area of the Department of El Petén, consisting of several parks or natural reserves and holding the status of protected areas as of the time of entry into force of Decree 4-89, the Law of Projected Areas. Additionally, in 1990 the State approved the Law, which declared the Maya Biosphere Reserve as a Protected Area, and in 2004, Decree No. 16-2004 on the Emergency Law for the Defense, Restoration and Conservation of the Laguna del Tigre National Park.

217. The individuals and communities inhabiting the Department of Petén arrived there at different points in time for different reasons. Based on the information received during the visit, groups of people and communities began to arrive in and created the Department of Petén, as a result of resettlements promoted by the Guatemalan State around the 1980s. Other people live in the Department on their original territory because they belong to the Q’eqchi community; while others were displaced during the internal armed conflict and returned to their areas of origin with the signing of the Agreement on a Firm and Lasting Peace; and other people

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\(^{358}\) Report of the Special Rapporteur on adequate housing, as component of the right to an adequate standard of living, *Principios Básicos y Directrices sobre los Desalojos y el Desplazamiento generados por el Desarrollo* ([‘Basic Principles and Guidelines for Development-Based Evictions and Displacement’]), para. 8.

\(^{359}\) Id., para. 5
arrived in the Department after the State declared it a protected area.\(^{360}\) One factor common to many of these people and communities is the lack of legal certainty regarding their land, even though they may be living in Petén for decades and 20 years have elapsed since the signing of the Peace Accords.\(^{361}\) Once the area was declared a natural protected area, many of these persons were regarded as “trespassers.”\(^{362}\) Notwithstanding, in cases such as the community of Laguna Larga, the State took several steps, which entailed recognition of the existence of that community through a 2006 endorsement enabling the community to receive elementary school teachers from the Ministry of Education and another endorsement enabling it to appoint an assistant mayor recognized by the Municipality of San Andrés. The IACHR was apprised of the processes of eviction, which were sealed and stemmed from 12 year old court cases, and were reportedly reopened in a short period of time as a result of alleged pressure from economic interests.

In this context, the IACHR received information about a systematic and standing practice of Guatemalan authorities to bring community leaders before the Guatemalan justice system for allegedly committing the crime of “usurpation” or “aggravated usurpation” of protected areas, as well as “terrorism,” “illegal assembly or demonstrations,” as was noted in the section on the situation of human rights defenders.\(^{363}\) On this note, the IACHR was provided information about the arrest of Don Jovel Tobar, a human rights defender from the community of La Mestiza, at the hands of members of the National Civilian Police, on March 28, 2017, for the alleged crime of usurpation of a protected area. According to reports from the members of his community and human rights defenders to the IACHR, the arrest of Mr. Tobar took place in response to his work as a representative of his community and, therefore, the criminal proceedings instituted against him allegedly amounts to a form of criminalization of social protest and of his human rights defense.\(^{364}\) The IACHR learned that Mr. Jovel Tobar
was released from detention after the Commission’s press release was issued reporting on the granting of precautionary measure 412-17 to the Community of Petén.

Likewise, it has also come to the attention of the IACHR that the Guatemalan State has charged communities inhabiting protected areas of being “drug trafficking collaborators.” This situation is of special concern to the IACHR because generalizations of this kind were also used during the time of the internal armed conflict, when claims were made that all peasant farmers (campesinos) and indigenous people were guerrilla members or collaborated with the guerrilla forces, in an effort to stigmatize and criminalize these population groups.365

The IACHR learned of a pattern of human rights violations in the execution of evictions, including the violation of the right to consultation and the failure to provide advance notice, which is usually carried out in summary fashion and with violence by members of the National Civilian Police, the Army and the National Council of Protected Areas (CONAP), and involve burning and destruction of homes, food, animals, without any arrangement for return or relocation or any real chance for due process or access to justice. In light of this situation, 37 communities of Petén took actions aimed at engaging the State in direct talks through the Alternative Proposal for the Comprehensive and Sustainable Development of the Communities Affected by the Declaration of the Protected Areas of Laguna del Tigre and Sierra Lacandon.366 Despite appearing open to dialogue at first, Guatemalan authorities closed the door on this possibility in 2017. On June 2, 2017, nearly 700 members of the community of San Andrés in Laguna Larga, Municipality of La Libertad in Petén, Guatemala, were forcibly displaced from their lands. The community decided to flee from location of their homes, yard animals and staple crops before the Guatemalan authorities executed the eviction order.

The eviction order operation was executed by 1500 members of the National Police, 300 members of the Army and officials of CONAP and the PDH. The IACHR delegation witnessed the presence in the area of heavily armed members of the Army and CONAP officials. The IACHR also

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366 Report: 37 Communities of Laguna del Tigre and Sierra de Lacandon National Park of Peten Guatemala, 2017, para. 3
confirmed that most of the houses had been destroyed or burned and that only the school, the church and a few houses remained intact. The community school was occupied by the military men who were guarding the area and one of the walls was marked as “Kaibil Battalion Military Outpost Laguna Larga.” One house that was not destroyed was being used by CONAP officials. Crops were still seen around the houses, as well as backyard animals wandering freely between the houses and the ruins that remained of the community.

222. The affected individuals were displaced to the vicinity of ejido El Desengaño in the Municipality of Candelaria, State of Campeche, Mexico, which was also visited by the Commission on August 1, 2017. The IACHR delegation was received by a group of nearly 450 people, made up of slightly more than 100 children, 100 women, 200 men and 50 older adults. In the interviews, the community members identified themselves as a campesina community of indigenous extract. They reported that they had not been notified formally of the eviction, no reasonable alternatives to the eviction had been provided to them, no measures had been taken to minimize the adverse effects thereof and they were not allowed to take inventory of their properties either.\textsuperscript{367}

223. They claimed that there were never notified that a public hearing or consultation was held in the context of the proceedings leading to the eviction order. They also reported that they had been negotiating for several years with different state offices to find a way to avoid the eviction. They contended as well that there were economic interests, such as Guatecarbon company, which was interested in cap and trade carbon emission credits. Many of the people interviewed stated that as a consequence of displacement, they had to incur expenses, which in many instances were as high as 1,000 quetzals. Regarding the stretch of border, they reported that they had no chance for any future economically sustainable livelihood there because they had no place to grow crops. They reported that the Presidential Commission for Dialogue of Guatemala had mentioned a possibility of alternative resettlement, but they believed it was not certain and they feared that the measure would take a long time and that the land to which they were resettled was not suitable for farming. The delegation took the testimony of a women originally from Laguna Larga, Petén, who testified as follows:

“We are persons who have been living for 17 years in Laguna Larga and we are going through such a difficult time. What we

\textsuperscript{367} IACHR, Observaciones Preliminares de la Visita in loco de la CIDH a Guatemala, ["Preliminary observations from the in situ visit of the IACHR to Guatemala"], August 4, 2017; IACHR, Precautionary measure No. 412-17, Settlers evicted and displaced from the Community of Laguna Larga, Guatemala, September 8, 2017.
are going through is very difficult. We have been abandoned now for almost two months in this place by our government and economic resources is the most impossible thing for us [to get] in order to continue to raise our children because this eviction was illegal, we believe it is because we were not called, we were not summoned to a meeting prior to the eviction (…). It is a blow, they hit us from behind and they knocked us down. (…) We ask to return to our place [of residence], this location is not suitable to be with our children, we are lacking everything, we are lacking economic resources, we are lacking everything we need to raise our children.”

224. The Commission was able to ascertain the inhuman and degrading conditions in which the community was living with the lack of potable water, electricity, and basic sanitation services. Families were living in shacks (champas) with straw roofs and tents, fully exposed to the climate, animals and the elements. According to members of the community, most of the humanitarian assistance they have received has been provided by the Mexican State, as well as by Mexican civil society and organizations such as UNICEF and the Mexican Red Cross. The attending doctor at the medical center, which was set up for the community, reported to the Commission that the situation of the community is quite critical and that different illnesses are starting to appear. In particular, the doctor treating the community stressed that there was a considerable number of children with varying degrees of malnutrition and that 9 of them were suffering from severe cases.

225. The doctor also reported that there were 14 pregnant women, including 7 to 8 cases of highly risky pregnancy. The main diseases that are faced by the community pertain to skin, respiratory and diarrhea problems and one very serious case of a 2-year-old girl with a facial staphylococcus infection. Many of these diseases were the consequences of having to live exposed to the elements, in unsanitary conditions, without access to potable water, practices of poor hygiene, encountering difficulties to gain access to clean water and the use of communal latrines. With respect to older adults, the doctor reported that three patients have been diagnosed with enlarged prostate, which requires medical treatment. Because resources are scarce and the location is so inaccessible, priority has had to be given to those

368 Testimony of a lady belonging to Laguna Larga, Petén to the IACHR Rapporteur on the Rights of Migrants, August 1, 2017.
369 IACHR, Observaciones Preliminares de la Visita in loco de la CIDH a Guatemala, [‘Preliminary observations from the in situ visit of the IACHR to Guatemala’], August 4, 2017; IACHR, Precautionary measure No. 412-17, Settlers evicted and displaced from the Community of Laguna Larga, Guatemala, September 8, 2017.
people who most need treatment and care. Community members reported that the closest points of medical and health services were the Health Center of El Desengaño and Candelaria Hospital in Mexico. They also stated that they do not have sufficient clothing and that women do not have supplies for their hygiene. They claimed that the food assistance was inadequate, and that it consisted of rations per family of mostly rice and corn.  

226. The IACHR confirmed that the community’s main source of water was a lake that was located at the end of the camp of tents and shacks, but that the water it held was cloudy and polluted and, therefore, the community needed to dig a water well on the Guatemalan side of the border area. Because it is difficult and expensive to obtain clean water, the community members must go to the lake to wash their clothes and dishes. In the interviews, community members reported that the closest location to get potable water was the ejido El Desengaño in Mexico, which could be around 10 kilometers away and would take them nearly one hour to get there by motorcycle. Many of these people stated that they used the nearby lake as well to bathe.

227. Community members reported being threatened and intimidated by members of the Army who were guarding the former community and have not allowed them to pick up the belongings they left behind or their crops, which are starting to spoil. The community members asked the Commission to intercede on their behalf before the Guatemalan State in order to allow them to return to the community where they had been living since the early 2000s and filed a request for a precautionary measure.

228. In response, the IACHR granted precautionary measure 412-17, on the grounds that the persons evicted and displaced from Laguna Larga community are in a situation of gravity and urgency, because their rights to life and personal integrity are at risk of irreparable harm. Based on the information provided by the petitioner, as well as on its own observations during the country visit, the IACHR asked the Guatemalan State to: 

a) Adopt the necessary measures to protect the right to life and personal integrity of the beneficiaries, through measures aimed at improving, among

370 Cédula, Observaciones Preliminares de la Visita in loco de la CIDH a Guatemala, [‘Preliminary observations from the in situ visit of the IACHR to Guatemala’], August 4, 2017; IACHR, Precautionary measure No. 412-17, Settlers evicted and displaced from the Community of Laguna Larga, Guatemala, September 8, 2017.

371 IACHR, Precautionary Measure No. 412-17, Settlers evicted and displaced from the Laguna Larga Community, Guatemala, September 8, 2017.

372 Id.

373 Id.

374 Id.
other aspects, sanitary and health conditions, especially of children, women and older adults. In particular, through measures to ensure, among other aspects: i. Access to adequate food in terms of nutrition and culturally appropriateness, as well as potable water for the displaced population, in keeping with a standard regarded as acceptable by international organizations such as the World Health Organization (WHO). Especially, adopt immediate measures to protect the lives and integrity of children suffering from malnutrition, and with the aim of preventing future cases; ii. Shelter in adequate conditions of habitability and sanitation as well as clothing that provides protection from heat, rain, wind and other threats to health, as well as conditions of safety; iii. Safe access to the area where they previously lived in order to collect the property, possessions and crops required for subsistence of the population; iv. Continuation of education and assistance services and basic care for children; v. Adequate medical treatment for pathologies, ailments and diseases of the beneficiary population in keeping with applicable international standards, including specialized medical treatment for those who are afflicted with chronic illness, as well as specialized women's health care, maternal health care, as well as for children and older adults in affordable and accessible conditions; b) Adopt the necessary measures to protect the right to life and personal integrity of the displaced population from potential acts of violence by third parties or agents of the State. At the same time, ensure protection of household items, property and crops left behind when members of the community were displaced; c) Adopt the measures necessary to continue in the appropriate dialogue and consultation with the evicted persons, in order to reach a lasting solution for the situation of the evicted and displaced persons; d) Arrange for the measures to be adopted together with the beneficiaries and their representatives; and e) Report on the steps taken in order to investigate the events that gave rise to the adoption of the instant precautionary measure and thus prevent them from happening again.²²⁹

²²⁹ The Guatemalan State reported to the IACHR on the actions that it is implementing in order to comply with the precautionary measure. These actions include authorization from Chamber B of the Multi-Judge Trial Court for Criminal Matters, Drug Activity and Crimes against the Environment of San Benito, department of Petén so that, in coordination with the other pertinent authorities, COPREDEH take the necessary steps to gather the harvest of the community as soon as possible; the decision to carry out a process of profiling families in order to be able to provide the necessary care, including the urgency of a temporary shelter; delivery of
food assistance for two months; setting up a medical care day and the delivery of 234 mosquito nets to 91 families in order to prevent insect-born diseases such as malaria; proposing to the community to grant them title to land located in the Municipality of Morales, department of Izabal, consisting of six caballerías (669 acres) of land with fertile soil and each family can be provided three manzanas of land for farming (3 hectares).\textsuperscript{376}

230. Subsequently to the granting of the precautionary measure to the community of Laguna Larga, the IACHR received information on evictions of Maya Quiché communities, which had been demanding legal recognition of their lands for several years.\textsuperscript{377} In this regard, on October 30, 2017 approximately 80 families, made up of 429 individuals, including women, men, children belonging to the Chaab’ilch’o’ch of the municipality of Livingston,\textsuperscript{378} department of Izabal, were evicted, and had previously been subjected to force displacement during the internal conflict.\textsuperscript{379} The eviction was carried out by 1,141 members of the National Civilian Police.\textsuperscript{380} Separately, on November 1, 2017, the community of La Cumbre Sacuxah, Tactic, department of Alta Verapaz, which was made up of approximately 25 families\textsuperscript{381} (120 persons), including 60 children, 6 infant children and 15 older adults, were evicted. The eviction was conducted with the participation of 182 National Civilian Police agents.\textsuperscript{382} In the context of these events, an arrest warrant was reportedly issued for 6 individuals for the crime of aggravated usurpation. Lastly, on November 3, 15 families of

\textsuperscript{376} COPREDEH, Report of the State of Guatemala to the Illustrious Inter-American Commission on Human Rights. Precautionary Measures 412-17 benefiting Settlers evicted and displaced from the Community of Laguna Larga, Peten, Guatemala, October 18, 2017.

\textsuperscript{377} Open letter to the International Commission against Impunity in Guatemala (CICIG) and the Intern-American Commission on Human Rights (IACHR) in response to the humanitarian crisis and forced displacements caused by the Guatemalan State and Government in Chaab’ilch’o’ch, Livingston, Izabal; La Cumbre Sacuxha, Tactic, Alta Verapaz and Chaqchila Trece Aguas Community, Senahu, Alta Verapaz, Guatemala, November 6, 2017.

\textsuperscript{378} Report requested by Chamber of Deputies member Locadio Juracan Salome of Bancada Convergencia, Memorandum October 31, 2017, COPREDEH, Izabal.

\textsuperscript{379} Open letter to the International Commission against Impunity in Guatemala (CICIG) and the Intern-American Commission on Human Rights (IACHR) in response to the humanitarian crisis and forced displacements caused by the Guatemalan State and Government in Chaab’ilch’o’ch, Livingston, Izabal; La Cumbre Sacuxha, Tactic, Alta Verapaz and Chaqchila Trece Aguas Community, Senahu, Alta Verapaz, Guatemala, November 6, 2017.

\textsuperscript{380} Report requested by Chamber of Deputies member Locadio Juracan Salome of Bancada Convergencia, Memorandum October 31, 2017, COPREDEH, Izabal.

\textsuperscript{381} Report requested by Chamber of Deputies member Locadio Juracan Salome of Bancada Convergencia, Memorandum November 7, 2017, COPREDEH, Case of Finca Trece Aguas, Senahu, Alta Verapaz.

\textsuperscript{382} Id.
the Community of Chaqchila Trece Aguas, Senahu, Department of Alta Verapaz were evicted by 217 National Civilian Police agents.\footnote{231}{Report requested by Chamber of Deputies member Locadio Juracan Salome of Bancada Convergencia, Memorandum November 7, 2017, COPREDEH, Aldea la Cumbre Chamche.}

Based on available information, the IACHR notes with extreme concern that the evictions were carried out without conducting any prior consultation with the communities, with very little time in advance to remove their belongings, and using a disproportionate number of police agents to act by use of intimidation, humiliation, threats and aggression, particularly against some women.\footnote{232}{Open letter to the International Commission against Impunity in Guatemala (CICIG) and the Intern-American Commission on Human Rights (IACHR) in response to the humanitarian crisis and forced displacements caused by the Guatemalan State and Government in Chaab’ilch’o’ch, Livingston, Izabal; La Cumbre Sacuxha, Tactic, Alta Verapaz and Chaqchila Trece Aguas Community, Senahu, Alta Verapaz, Guatemala, November 6, 2017.}

Additionally, in the view of the Commission, it is of deep concern that houses were burnt down by non State actors, though in the presence of the authorities, with them doing anything about it; as well as the lack of alternatives for relocation or lasting solutions for the displaced communities.\footnote{233}{Id.}

It is also worrying that during and after the eviction, the communities have not received support from the authorities, but have had to resort to neighbors or members of neighboring communities, specifically the Cotoxhá community in Finca Manzanitas, where there is dire need for food, healthcare, access to water and medical services, especially for children under 13 years of age and infant babies, who mostly present health and diarrhea problems.\footnote{234}{In this regard, see, Open letter to the International Commission against Impunity in Guatemala (CICIG) and the Intern-American Commission on Human Rights (IACHR) in response to the humanitarian crisis and forced displacements caused by the Guatemalan State and Government in Chaab’ilch’o’ch, Livingston, Izabal; La Cumbre Sacuxha, Tactic, Alta Verapaz and Chaqchila Trece Aguas Community, Senahu, Alta Verapaz, Guatemala, November 6, 2017.}

The IACHR notices that the practice of forced evictions has been implemented by the Guatemalan State over the past years and has been causing internal displacement. In accordance with human rights norms and standards, the IACHR deems it pertinent to explicitly note that evictions must only be carried out under strict observance of international human rights norms and standards and the principles of exceptionality, legality, proportionality and suitability, with the legitimate aim of promoting social wellbeing and ensuring solutions for the evicted population, which may involve restitution and return, resettlement to different land of better or equal quality and rehabilitation or fair compensation.\footnote{235}{See: United Nations, Principios Básicos y Directrices sobre los Desalojos y el Desplazamiento generado por el Desarrollo, Anexo I del Informe del Relator Especial sobre una vivienda adecuada, como parte del derecho a un nivel de vida adecuado. [‘Basic Principles and Guidelines for Development-Based Evictions and
be necessary to conduct an eviction, States must protect the dignity, lives and security of the evicted persons, ensuring at a minimum access to adequate food in terms of nutrition and culture, potable water and sanitation, lodging in adequately inhabitable conditions, as well as clothing that provides protection from inclement weather and other threats to health, access to medical services, means of subsistence, education and access to justice, as well as ensure access to humanitarian aid and independent monitoring. Additionally, safe access to commonly owned resources upon which they depended previously must be ensured, which includes the ability to collect their property, household items, crops and harvests.388

C. International Migration: Migrants, Asylum-Seekers and Refugees

233. The Commission notes that according to the information it received, internal displacement tends to be the previous stage to international migration. It is estimated that one out of every ten Guatemalans live outside their country and that the majority of the people who migrate (97.4%), do so to the United States of America.389 The trip is often made by paying around $5,000 USD to coyotes and generally covers three attempts. In many instances, people opt to go into debt and ask for loans to make the journey.390 Very often, the migrants become the victims of different human rights violations over the course of their trip, including kidnapping, sexual violence, extortions, robbery, disappearances and human trafficking.

234. The IACHR observes that the number of individuals that have felt compelled to leave Guatemala and seek asylum in neighboring countries as a consequence of different forms of violence, has grown dramatically over the past years. Based on the figures of the United Nations High Commissioner for Refugees (UNHCR), from 2010 to 2016, asylum requests

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388 Ibid.
389 Bornschein, Dirk, Antecedentes: el caso de las migraciones en Guatemala, causas y cifras, ['Background: the case of migration in Guatemala, causes and figures'], March 24, 2017.
390 Ibid.
rose by 4,427.62% (See Graph 1). For the same period, the number of persons who were recognized as refugees increase by 121.06%.


235. In transit through Guatemala, migrants are victims of many abuses, such as extortion, robbery and even disappearances, inasmuch as the Guatemalan State has seriously failed in its response to ensure these people and their family members access to justice and searches for missing and unidentified migrants. According to information provided by civil society organizations, migrants claim that it is harder to cross Central American borders and heavy emphasis on security serves to weaken the use of Regional Agreement on Procedure CA-4 for the Extension of the Single Central American Visa (CA-4).

236. In this regard, the delegation heard the testimony of a family member of one of the 72 persons massacred in Tamaulipas, Mexico, who claimed that: “We want to know what happened, we need for the Guatemalan government to ensure our rights as victims. As next of kin, we suffer many consequences and we need for the government to address our complaints, to not act deaf and turn a blind eye.” “It is still frequent for authorities to refuse to take our complaints about disappearances occurring outside of

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392 Ibid.
393 Information provided by Scalabrini International Migration Network (SIMN) Missionaries of Saint Charles Scalabrinians.
Guatemalan territory, while the Mexican authorities do not facilitate the right to justice either because many times they refuse to bring a complaint and only make a simple record of appearance of the families.\textsuperscript{394}"

237. Even though there have been policies aimed at providing access to transnational justice such as the Mexican Mechanism for Foreign Support for Search and Investigation, the IACHR deems it necessary for the State of Guatemala to accept joint responsibility so that this mechanism can adequately function. For this purpose, authorities must become involved in the coordination and collaboration with the Mechanism and make adequate, trained and permanent translators, interpreters and staffing available to advise the families and enable them to file and follow up on reports. Additionally, direct lines of communication with authorities of other countries must be ensured and plans for the protection of victims, complainants and witnesses must be drawn up.\textsuperscript{395}

238. In this regard, the IACHR highlights the progress achieved with the entry into force of the new Migration Code, to which approximately 70 organizations and institutions from all spheres contributed.\textsuperscript{396} The Code established the creation of the Guatemalan Migration Institute as an autonomous authority, which has incorporated a procedure for the care and assistance of the families of persons reported as disappeared as a result of migration, and includes the obligation to establish a search procedure, facilitation of conveyances, repatriation of bodies, prohibition of cremation and the facilitation of search mechanisms between States of transit, destination and origin of migrants, as well as special provisions for the search of unaccompanied migrant children and adolescents reported as disappeared or missing.\textsuperscript{397}

239. Additionally, the Migration Code sets forth some important developments, such as recognition of the right to migrate,\textsuperscript{398} the right to request recognition of refugee status\textsuperscript{399} and the concept of diplomatic asylum.\textsuperscript{400} The Code allows for the entry of foreigners for humanitarian reasons,
including persons affected by natural disasters, medical emergencies, armed conflicts, cooperation with other States for medical purposes, aid and relief and for the repatriation of the remains of family members, who die in Guatemala.401

240. With respect to the right to not be returned (non-refoulement),402 the Code only defines as the prohibition of returning a person who has been denied status of refugee or asylum, when there is a compelling reason to believe that his her life, physical integrity and liberty will be jeopardized, ensuring that the Office of the UNHCR has been apprised of the person’s situation. This arrangement is of concern to the IACHR because it does not provide for the right of non-refoulement over the course of the entire proceeding for recognition of refugee status, nor for the prohibition of refusal of entry at the border, or for indirect return to home country (indirect non-refoulement). Additionally, Article 50 of the Code establishes the obligation to pay administrative costs incurred for persons who do not carry identification and travel documents or who have not fulfilled the administrative requirements for entry, in addition to providing that “they will returned to their country of provenance.” The IACHR reminds the Guatemalan State that the obligation of non-refoulement is a peremptory norm of general international law, which means that no person may be expelled or returned to another country, whether or it is of origin, when his or her right to life or personal liberty is at risk of being violated for reasons of race, religion, nationality, membership in a particular social group or of political opinion. Likewise, returning a refugee because of entry into Guatemalan territory without identification documents or for not fulfilling administrative entry requirements would be a clear infringement of Article 22.8 of the American Convention on Human Rights on non-refoulement.

241. The IACHR regards the enactment of the Migration Code in Guatemala, on May 8, 2017, as a first step to address migration from a human rights perspective. The State also informed, in its comments to the draft of this report, that between January and December 2017 it housed 2,648 people in the Shelter of the General Directorate of Migration in Guatemala City. In addition, in December 2017 the State renewed 26 permits to remain in the country for applicants under the Refugee Statute.403 In this regard, the IACHR urges the Guatemalan State to overhaul the way in which the right of non-refoulement in Article 50 is established, in order to bring it in line with international and Inter-American human rights norms and standards.

401 Id., Article 68.
402 Id., Article 46.
It is also essential to regulate the Migration Code and other statutes regarding persons in the context of human mobility, under the framework of a participatory process with civil society organizations and other relevant actors. Lastly, the IACHR urges the Guatemalan State to address and prevent the causes giving rise to forced migration of Guatemalans to other countries.

D. Returned or Deported Migrants

242. The Inter-American Commission notes that Guatemala is also an important country for forced return of migrants, especially since the crack down in migration policies of Mexico and United States over the past years. The number of persons detained and deported by Mexican authorities has grown exponentially, especially after the Southern Border Plan came into effect in 2014. According to official statistics from Mexico’s National Migration Institute (INM), from 2014 to 2015 detentions of Guatemalans increased by 75.22%, while deportations grew by 92.95% (See Graph 2). The IACHR finds that this situation raises significant challenges with regard to the reintegration of these people into society and the effective enjoyment of their rights in Guatemala. Even though the Guatemalan State has begun to adopt some measures to receive and reintegrate deported or returned persons, such as the recent opening of a lounge in the international airport of Guatemala City for migrant children, and incorporating into the Migration Code the ability to request shelter and temporary care to stay overnight for 48 hours, these efforts are still inadequate to address the current situation what’s more the sharp increase in deportations and impacts this type of measures can have in the long term within Guatemalan society.

243. In its comments to the draft of this report, the State submitted statistics of Guatemalan individuals deported from Mexico by land as of October 23, 2017. These figures show 25,167 people have been so deported, of whom 15,659 are adult males, 428 adult females, 215 accompanied boys, 175 accompanied girls, 156 unaccompanied boys, and 39 unaccompanied girls. The total figures reported reflect a decrease compared to previous years, where the number of people deported reached 45,459 in 2016 and 61,635

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406 Code of Migration, Article 16.
in 2015, as of October 31 of each year. Regarding Guatemalan people deported from the United States of America by air, figures for 2017 (as of October 4) show 22,477 people, compared to 28,464 in 2016 and 26,097 in 2015, as of October 31 of each year.\footnote{Communication from the State of Guatemala, “Submission of the State of Guatemala to Include in the Draft Report on the Human Rights Situation in Guatemala,” December 22, 2017.}

The IACHR urges the State of Guatemala to continue to implement measures aimed at taking in and reintegrating returnees, especially to protect persons who first fled a situation of violence and run the risk of being persecuted or revictimized.

### E. Human Trafficking

245. Guatemala is also a country of origin, transit and destination of male and female adult and child and adolescent victims of trafficking for sexual or labor purposes.\footnote{Guatemala, Report of the State on Trafficking in Persons, 2016, 2017, p. 66.} Indigenous persons and children and adolescents tend to be the main victims of these crimes; children are usually exploited to beg on the streets and as roving vendors; moreover, criminal organizations tend to sexually exploit little girls and force young men in urban areas to sell or transport drugs or commit extortion.\footnote{Office to Monitor and Combat Trafficking in Persons, US Department of State, 2016 \textit{Trafficking in Persons Report, Guatemala}, 2016. Available at: https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258775.htm} According to the United Nations Office on Drugs and Crime (UNODC), crossborder trafficking in persons originating in Central America and the Caribbean accounts for

![Guatemalan persons detained and deported from Mexico 2012 - 2017](chart)

Source: Secretariat of the Interior, National Migration Institute 2010 -2017

* Statistics available until July 2017

\footnote{Guatemala, Report of the State on Trafficking in Persons, 2016, 2017, p. 66.}

\footnote{Office to Monitor and Combat Trafficking in Persons, US Department of State, 2016 \textit{Trafficking in Persons Report, Guatemala}, 2016. Available at: https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258775.htm}
12% of the all human trafficking victims detected in North America, especially Mexico and the United States.\textsuperscript{410}

246. In this regard, the Commission notes that through the Inter-Institutional Commission against Trafficking in persons, the Guatemalan State implemented training of 246 public officials in the first quarter of 2017.\textsuperscript{411} In its comments to the draft of this report, the State indicated that the Secretariat against Sexual Violence, Exploitation and Human Trafficking (SVET) has trained 146,221 people on the prevention of crimes related to sexual violence, exploitation, human trafficking and LGBTI persons.\textsuperscript{412} Additionally, 147 victims of human trafficking have been assisted, 113 of which are children and 13, adult males and females, while 138 of the victims were women or girls and 9 were boys and men.\textsuperscript{413} Most of the victims were Guatemalan nationals, while there were 3 Hondurans, 3 Mexicans, 3 Salvadoreans and 1 Venezuelan national.\textsuperscript{414}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{chart.png}
\caption{Identified victims of human trafficking in Guatemala according to type of trafficking}
\end{figure}


247. In its comments to the draft of this report, the State stated that SVET has served 415 children and adolescents in its specialized temporary shelters. Additionally, in October 2015 the Public Prosecutor’s Office approved the “Protocol regarding Assistance to Victims of Human Trafficking,” the

\textsuperscript{410} UNODC, \textit{Global Report on Trafficking in Persons 2016}, p. 93.
\textsuperscript{413} Guatemala, Report of the State on Trafficking in Persons 2016, 2017, pp. 70, 71.
\textsuperscript{414} \textit{Id.}, p. 69.
“General Instruction regulating the Mechanisms of Serving, Coordinating and Intervention by the Public Prosecutor related to the Assistance to Victims and Strategic Criminal Prosecution of Human Trafficking Crimes.” Also, the System for the Protection of Children and the Unit Against Child Pornography were created in May 2016, as part of the Prosecutor’s Office United on Human Trafficking.\(^\text{415}\) As for the prosecution and punishment of the crime of trafficking in persons, the Guatemalan State received 168 complaints for the period of January to June 2017, obtaining over the same period 21 judgments, 17 of which were convictions and 4, acquittals.\(^\text{416}\) Figures provided by the State in its comments to the draft of this report reflect that between 2012 and June 2017, there were a total of 1,771 reports, which included 3,338 people affected and resulted in a total of 82 convictions.\(^\text{417}\) In this regard, the IACHR urges the Guatemalan State to continue its efforts to prevent and address the crime of human trafficking, especially, prosecuting the crime and providing assistance and care and full reparation to the victims thereof.

248. The facts described in the instant chapter suggest that the situation of internal displacement, forced evictions, migration and return has grown worse over the past years in Guatemala, while the State has not taken adequate measures to properly address it over the migration continuum, either within the country or on route to other countries. Both internal and external displacement in Guatemala are caused by, \textit{inter alia}, poverty, inequality, violence, forced evictions, domestic violence, megaprojects and natural disasters, which lead to Guatemalans having to leave their homes and places of origin as a mechanism of survival and protection. Thus, it is essential for the approach to human mobility in the State of Guatemala to include addressing the root causes of the internal and external displacement, recognizing internal forced displacement in order to properly deal and eradicate it, addressing the return of displaced persons in order to ensure their protection and reintegration, as well as ensure human rights, including access to justice, the right to asylum and non-refoulement, for migrants on Guatemalan soil.


CHAPTER 5

SITUATION OF FREEDOM OF EXPRESSION
SITUATION OF FREEDOM OF EXPRESSION

A. Situation of journalists and attacks to freedom of expression

249. During the on-site visit conducted in 2017, the IACHR verified significant levels of violence against journalists in Guatemala, characterized by murders, threats, and speech that aims to stigmatize media outlets and journalists engaged in the fight against corruption and the abuse of power. According to reports, journalists and media workers are “highly vulnerable” to violence in the practice of their profession, especially in areas outside the nation’s capital. These journalists, in addition to confronting the scourge of drug trafficking and organized crime, are also subject to attacks from some public servants allegedly linked to corrupt acts. 418 According to the information received, Quetzaltenango is one of the areas where the greatest number of attacks on journalists has been reported in recent years. 419

250. Article 35 of the 1985 Constitution of the Republic of Guatemala, amended in 1993, establishes that “The expression of thought through any means of dissemination, without censorship or prior permission, is free […].” Notwithstanding this broad constitutional protection of the right to freedom of expression, the Commission has “constantly received information to the effect that the full exercise of that right has been obstructed by acts of intimidation against independent media and journalists.” 420 Additionally, in recent years the IACHR has noted “with particular concern the attacks against [journalists] covering investigations into public administration, acts of corruption, and human rights.” 421 During its on-site visit, the Commission verified that, in addition to attacks and stigmatization, there are persistent structural problems in Guatemala that
prevent citizens from receiving information from a variety of sources, such as the high degree of concentration in the ownership and control of both free-to-air and subscription-based radio and television channels. There are also serious obstacles that keep the community media outlets of indigenous peoples from accessing the radio spectrum and the public resources needed to achieve sustainability.

251. The IACHR notes in particular the announcement made by President Jimmy Morales during the on-site visit, regarding the imminent approval of a Program for the Protection of Journalists and Media Workers, on which he is reportedly working in consultation with journalists’ organizations. Nevertheless, the IACHR also notes with concern that there has been no tangible progress since that time toward the establishment of that program.

252. The IACHR and its Office of the Special Rapporteur for Freedom of Expression would like to underscore that journalism in Guatemala is currently playing a fundamental role in denouncing abuses of power and following up on investigations into cases of corruption. The IACHR observed that journalists and media workers continue to be, throughout Guatemala, the main source of information and debate concerning the serious human rights problems, institutional crisis, and corruption affecting the country. Nevertheless, a smear campaign against journalists and news media was evident on social media in 2017. According to Human Rights Ombudsman [Procurador de los Derechos Humanos] (PDH) Augusto Jordán Rodas Andrade, there is “an intent to disparage journalists in these times of so much uncertainty in Guatemala, which may jeopardize [its] fragile democracy.”

253. Principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR establishes that: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

254. Based on the Inter-American case law and doctrine, the IACHR and its Office of the Special Rapporteur remind the Guatemalan State, in relation to violence and attacks on journalists and media outlets, of the importance of meeting the three positive obligations that emanate from the rights to life,
Chapter 5: Situation of Freedom of Expression

human treatment, and freedom of expression, to wit: the obligation to prevent, the obligation to protect, and the obligation to criminally investigate, prosecute, and punish the perpetrators of these crimes. Violence against journalists must be combated through a comprehensive policy of prevention, protection, and the pursuit of justice. These obligations are mutually complementary in order for free, democratic, and robust speech to exist without restrictions. 423

1. Murders of Journalists and Reporters, and Impunity for these Crimes

255. In 2016, and thus far in 2017, the Office of the Special Rapporteur for Freedom of Expression received information about the murder of 10 journalists in Guatemala. Eight journalists were reported to have been murdered in 2016; nevertheless, it has not been determined whether their murders were connected to the exercise of the right to freedom of expression. 424 According to the information available, the authorities opened investigations in those cases, but no answers have yet been provided with respect to the logical line of investigation into whether these crimes were connected to the work the victims were performing as journalists and media workers. 425 The Office of the Special Rapporteur has received information about two other cases in 2017, which it is monitoring in order to establish whether they are related to the victims’ journalistic work. 426 In its comments to the draft of this report, the State indicated that between 2012 and June 2017, the Public Prosecutor’s Office received 372 reports related to threats, violent attacks and murders of journalists, which lead to 17 judicial sentences: two acquittals and six convictions for

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425 Idem, para. 645.

crimes against life, as well as one acquittal and eight convictions for other crimes.\textsuperscript{427}

256. Journalist Manuel Salvador Villagrán, who worked with different local media outlets in the municipality of San Jorge, Department of Zacapa, was murdered on January 19, 2017. He was also reportedly the head of the Department of Public Relations of the Municipality of San Jorge. Sources revealed that the journalist was shot several times while riding his motorcycle. \textsuperscript{428} According to publicly available information, significant progress has been made in the investigation of this crime.\textsuperscript{429}

257. Also, on July 8, 2017, journalist and presenter Johnny Javier Guardado’s body was found in the municipality of El Chal, Department of Petén. According to the information available, he had been stabbed.\textsuperscript{430}

258. Additionally, according to the information gathered by the Office of the Special Rapporteur and received during the on-site visit, Guatemala continues to have high levels of impunity for crimes involving the murder of journalists. Given the slow pace of the investigations, in most cases the authorities reportedly have not been able to determine whether these crimes are related to the journalistic work of the victims. \textsuperscript{431} According to Guatemalan freedom of expression organizations, that situation gives rise to self-censorship among journalists who do not know why they might be attacked.\textsuperscript{432}

259. Despite this situation, the IACHR acknowledges the progress of the investigation into the murder of two journalists which shook the country in 2015. In January 2017, the International Commission against Impunity in Guatemala \textsuperscript{[Comisión Internacional contra la Impunidad en Guatemala]} (CICIG) and the Public Ministry (MP) filed a request for a preliminary impeachment hearing against Representative Julio Antonio Juárez Ramírez for the March 10, 2015 death of journalists Danilo Efraín Zapón López and Federico Benjamín Salazar Gerónimo in Mazatenango, Suchitepéquez.
Ramírez is alleged to have been the mastermind of the murders, and reportedly viewed Zapón López as “a threat to the consolidation of his candidacy as district representative and a challenge to his power in the area.” In January 2017, two individuals were reportedly arrested for their participation in the journalists’ deaths. 433 Another four individuals were reportedly apprehended at an initial phase. 434 In February, the Guatemalan Supreme Court (CSJ) heard the request for a preliminary impeachment hearing against Representative Juárez Ramírez. 435 In November, the Investigative Judge [Jueza Pesquisidora] appointed by the Supreme Court of Justice [Corte Suprema de Justicia] (CJS) in the case against Representative Juárez Ramírez, would have recommended to the plenary of judges of the CSJ to withdraw the immunity of the parliamentarian to be investigated for the murder of the journalists.436

260. In June 2017, it was learned that through its Office of the Special Prosecutor against Impunity [Fiscalía Especial contra la Impunidad], the Public Ministry was able to get High-Risk Court “B” [Juzgado de Mayor Riesgo “B”] to admit 81 items of evidence against the alleged murderers of Danilo López and Federico Salazar. It was also determined that the trial will be held in High-Risk Court “A” [Tribunal “A” de Mayor Riesgo].437

261. Additionally, during the first half of 2017, through the actions of the Public Ministry’s Unit for Crimes against Journalists [Unidad de Delitos contra Periodistas], two individuals were convicted of crimes committed against journalists during 2016. On May 30, Byron Eduardo Felipe Morales was sentenced to 40 years for the June 2016 murder of journalist Víctor Hugo Valdez Cardona. Similarly, on June 2, Rolando Antonio Jiménez Cruz was sentenced to 23 years for the September 4, 2016 death of journalist Felipe David Munguía Jiménez. The investigation is reportedly ongoing in an effort

262. The IACHR received information about the May 2017 inauguration of a Prosecution Unit for Crimes against Journalists [\textit{Unidad de Delitos contra Periodistas del Ministerio Público}] in Quetzaltenango. According to reports, the Prosecutor’s Office in Quetzaltenango is composed of one prosecutor, three assistant prosecutors, one prosecution officer, and an administrative assistant.\footnote{El Periódico. May 9, 2017. \textit{Inauguran fiscales en Quetzaltenango}; Centro de Reportes Informativos sobre Guatemala (Cerigua). May 9, 2017. \textit{Thelma Aldana inauguró Agencia Fiscal de Delitos contra Periodistas en Quetzaltenango}.} This agency has territorial jurisdiction over the departments of Suchitepéquez, Retalhuleu, San Marcos, Huehuetenango, Totonicapán, Sololá, and Quetzaltenango.\footnote{República de Guatemala. Communication from the State of Guatemala regarding the request for information from the Office of the Special Rapporteur for Freedom of Expression of the IACHR. Ref. P-1021-2017/VHG/LWC/nj. July 24, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.} In addition, according to information provided by the State, a division of the Unit for Crimes against Journalists that operates in Guatemala City was established in 2017, which includes: an agency that handles common crimes, made up of one prosecutor, 5 assistant prosecutors, and one prosecution officer; and another agency that investigates crimes against the person committed against journalists, comprised by one prosecutor, 4 assistant prosecutors, and one prosecution officer. A driver has also reportedly been assigned to provide assistance in investigative proceedings.\footnote{Ibid.} This staffing increase represents a strengthening of the Unit’s human resources, which in 2015 had only five prosecutors to handle over 100 cases.\footnote{IACHR. \textit{Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion}. OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015, para. 295.} The State additionally reports that a general instruction from the Attorney General and Head of the Public Ministry that contains general guidelines for investigating cases in which the victims are human rights defenders (including journalists) is currently at the approval stage.\footnote{República de Guatemala. Communication from the State of Guatemala regarding the request for information from the Office of the Special Rapporteur for Freedom of Expression of the IACHR. Ref. P-1021-2017/VHG/LWC/nj. July 24, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.}
263. The IACHR notes in particular the efforts made by the Public Ministry to address the obligation to pursue full justice for murdered journalists, bearing in mind the specificities of these types of investigations. However, it also takes note of the delay in prosecuting the masterminds in some of these cases, due to the lack of coordination among the different state agencies with jurisdiction over the matter.

264. The IACHR has reiterated that the murder of journalists constitutes the most extreme form of censorship and States have a positive obligation to identify and punish the perpetrators of these crimes. For the Inter-American Commission, it is essential that the Guatemalan State investigate in a complete, effective, and impartial manner the murders of journalists and clarify their motives and judicially determine the relationship they may have with journalism and freedom of expression. The authorities should not rule out the exercise of journalism as a motive for murder and/or aggression before the investigation is completed. The omission of logical lines of investigation or the lack of diligence in collecting evidence in this regard can have serious repercussions on the development of the processes in stages of prosecution or trial.\textsuperscript{444} Not having exhausted completely the logical lines of investigation affects, above all, that the intellectual authors cannot be identified.\textsuperscript{445}

265. As established by the Special Rapporteur of the United Nations (UN) for the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights of the Organization of the American States (OAS), the State “has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of the practicing their profession. Their work material and tools must not be destroyed or confiscated by the authorities.” Moreover, “the authorities must not stigmatize or stereotype demonstrators and their demands. They must refrain from making generalizations based on isolated events or the conduct of particular groups.”\textsuperscript{446}


\textsuperscript{446} United Nations (UN) Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on
2. Threats, Arrests, Harassment, and Attacks on Journalists and Media Outlets

266. In its report entitled *Situation of Human Rights in Guatemala: Diversity, Inequality, and Exclusion*, the IACHR observed that, given their difficult working conditions, some journalists are said to have opted for self-censorship to protect themselves from attacks and threats. Between January and August of 2015, the Office of the Prosecutor for Crimes against Journalists [Fiscalía de Delitos contra Periodistas] received 81 complaints—a figure that surpassed the numbers recorded in each of the three previous years.\(^447\)

267. More recently, during the on-site visit, journalists and organizations that defend freedom of expression reported to the IACHR a spike in threats and stigmatization on social media, assaults by law enforcement officers, and a climate of sharp social and political polarization that also permeates the practice of journalism, especially opinion journalism. According to press organizations, local politicians, members of the National Police, and organized crime are sources of intimidation in areas of the country outside the capital. Under the difficult working conditions, some journalists have reportedly continued to engage in self-censorship to protect themselves from attacks and threats. In 2017, between January and August, the Office of the Prosecutor for Crimes against Journalists reportedly received 53 complaints, 24 of which alleged threats.\(^448\) Additionally, 170 complaints are reportedly at the initial criminal investigation phase in the common crimes unit, including the Department of Quetzaltenango, and 24 complaints are pending in the unit for crimes against the person. Some of the most notable cases of 2017 are detailed below.\(^449\)

268. On March 1, photojournalist Alex Cruz and driver Ernesto Hidalgo, of the newspaper *elPeriódico*, were reportedly intercepted by two unknown men...
who threatened them with firearms and confiscated their cell phones and photography equipment.\textsuperscript{450}

269. In June, it was learned that journalist Marielos Monzón, a columnist for \textit{Prensa Libre}, filed a complaint with the Public Ministry’s Prosecution Unit for Crimes against Journalists alleging that she had been subject to threats and intimidation. According to the information available, a list had reportedly been distributed in recent weeks to members of organized crime blaming her and other journalists for being responsible for the legal proceedings brought against individuals involved in drug trafficking crimes. This was reportedly not the first time the journalist had been accused of criminal activity—in 2011 she and 50 other individuals were accused of participating in various crimes during the internal armed conflict, although in fact she was just a child at the time. That complaint was dismissed by the Prosecutor’s Office.\textsuperscript{451}

270. The same month, it was reported that Edgar Rubio Castañeda, an Infantry Colonel in the Guatemalan Army, had been interrogated by military authorities because of his book \textit{Desde el cuartel, otra visión de Guatemala} [“From the Barracks: Another View of Guatemala”]. A Military Honor Board [\textit{Junta de Honor Militar}], which was reportedly established specifically to question him about the publication of the aforementioned book, reportedly demanded that Rubio Castañeda present defense evidence. Additionally, the Board reportedly accused him of insubordination to the Army and of failing to conform to the institution, both of which are punishable under the Military Code.\textsuperscript{452}

271. In July, Centro Pen [PEN Center] Guatemala condemned the assaults committed against various reporters from \textit{Prensa Libre} in the capital and Quetzaltenango, and from \textit{Nuestro Diario}. According to the organization, reporters Rigoberto Escobar, Carlos Paredes, Edwin Pitán, Carlos Ventura, and Byron Bravo were assaulted by members of the security details of politicians and private electric power generation companies in outlying


areas of the country.\textsuperscript{453} Similarly, on September 7, Rony Rolando Castillo, the \textit{Nuestro Diario} correspondent for central-north Santa Rosa, was reportedly assaulted and had his photography equipment stolen by a group of tuk-tuk drivers while photographing a demonstration outside the Cuilapana National Hospital in Santa Rosa.\textsuperscript{454}

272. As previously indicated, the sharp social and political polarization permeating the practice of journalism in Guatemala, threats, harassment, and the stigmatization of journalists, media workers and media outlets, among other things, were also reported. Some of the most notable cases from 2017 are detailed below.

273. On February 28, during a press conference, President Jimmy Morales reportedly blamed the media for spreading rumors of a coup d'état in Guatemala.\textsuperscript{455} According to reports, the president himself was the one who raised the issue on February 16, when he alleged that he had heard “well-founded rumors” of a possible coup in Guatemala.\textsuperscript{456}

274. According to the information available, on August 28, \textit{Guatevisión} denounced the publication of a fake Facebook page, which accused the media outlet of being a “traitor to the nation,” allegedly manipulating information, and placing the country in foreign hands. According to reports, that message was apparently replicated by accounts with few posts in their history, with few contacts, or contacts that were hidden or created within the past two or three years—which in turn attacked the channel on its own Facebook page, as well as in the comment sections of articles that had been shared. These events reportedly occurred in reaction to the channel’s uninterrupted coverage the previous day of President Jimmy Morales’s decision to declare Iván Velázquez \textit{persona non grata}.\textsuperscript{457}

275. Following the smear campaign that had been waged on social media against journalists and the news media, the Office of the Human Rights Ombudsman [\textit{Procuraduría de Derechos Humanos}] (PDH) opened a file on September 2, as Ombudsman Augusto Jordán Rodas Andrade had indicated

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that, “there is an intent to disparage journalists in these times of so much uncertainty in Guatemala, which may jeopardize our fragile democracy.” 458

276. On August 29, various media outlets complained of the restrictions placed on their coverage of the Regional Intelligence Conference in which President Jimmy Morales took part. According to the information available, a group of journalists was reportedly assaulted by members of the Secretariat of Administrative and Security Affairs [Secretaría de Asuntos Administrativos y de Seguridad] (SAAS). At the same event, SAAS staff reportedly tried to grab a camera that the reporters were using to film the incident. The President reportedly left without making any statements to the press.459

277. All types of threats, attacks, or harassment directed against journalists, media personnel, or media outlets themselves must be investigated by the justice system and the authorities should not proceed to discard the practice of journalism as the motive for criminal acts before an investigation is over. States have an obligation to take effective steps to prevent attacks against journalists and others exercising their right to freedom of expression and to combat impunity, specifically by vehemently condemning such attacks when they occur, through prompt and effective investigation, in order to duly punish perpetrators and make reparation to victims, as appropriate. States also have an obligation to provide protection to journalists and others exercising their right to freedom of expression, who run a grave risk of being attacked.460

278. Likewise, principle 9 of the Declaration of Principles on Freedom of Expression provides that “[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

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3. Censorship

279. During 2017, the IACHR and the Office of the Special Rapporteur for Freedom of Expression also received information about alleged cases of censorship in Guatemala. In February, a group of journalists working for the newspaper Contrapoder complained that an article about Iván Velásquez, head of the International Commission against Impunity in Guatemala (CICIG), was censored. The article, entitled “Emboscada contra Iván Velásquez” [“Ambush of Iván Velásquez”] was supposedly withdrawn moments before the magazine went to press. According to the information available, the reason given by the vice president of the publishing group for its withdrawal was a lack of “journalistic rigor.”

280. According to reports, Guatevisión’s signal was reportedly blocked in several departments of the country between 10:00 a.m. and 5:00 p.m., and 6:00 p.m. and 9:00 p.m. on August 27, while it was airing uninterrupted coverage of President Jimmy Morales’s decision to declare Iván Velázquez, head of the International Commission against Corruption in Guatemala (CICIG), persona non grata. The blocking of Guatevisión’s signal, which was allegedly done by cable companies tied to certain political groups, and had occurred during the broadcast of “news that affected [certain] interests. It happened to us in Petén, Retalhuleu, Quetzaltenango, and Sololá.”

281. Article 13.2 of the American Convention explicitly states that the exercise of freedom of expression cannot be subject to prior censorship. Additionally, Principle 5 of the Declaration of Principles on Freedom of Expression establishes that, “Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of...
information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

4. **Program for the Protection of Journalists and Media Workers**

282. In October 2012, during the Universal Periodic Review (UPR), Guatemala agreed to create a Program for the Protection of Journalists. That commitment was reiterated on November 28, 2013 by then-President of Guatemala, Otto Pérez Molina. Nevertheless—nearly five years later—the implementation of such a program continues to be under discussion, despite the repeated recommendations of the IACHR, its Office of the Special Rapporteur, UNESCO, and OHCHR to move forward with its creation. In 2014, a High-Level Committee and a Technical Committee were established, consisting of the Presidential Commission coordinating the Executive's Policy on Human Rights [Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos] (COPREDEH), the Ministry of the Interior [Ministerio de Gobernación], the Public Ministry, and the Social Communication Secretariat of the Presidency [Secretaría de Comunicación Social de la Presidencia de la República] (SCSPR). Their objective was to design and implement a program for the protection of journalists.

283. The following year, the government made progress on the design of the mechanism, in consultation with civil society and human rights organizations. Together, the High-Level Committee and the Technical Committee worked to design and implement the protection mechanism for journalists. This work was also supported by UNESCO and the Office of the High Commissioner for Human Rights (OHCHR). An initial document entitled “Preliminary Proposal - Program for the Protection of Journalists” was drafted, and the institutions that should make up the Program, their powers with respect to protection, and the mechanisms for coordination were identified. In this context, after being debated by journalists and defenders of the right to freedom of expression, a set of observations, recommendations, and comments was submitted to the Technical

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464 The commitment was co-signed by the Vice President, the Minister of the Interior, the Chairman of the Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos (COPREDEH), with representatives of the Human Rights Ombudsman Institution, the Office of the Attorney General; and as witnesses of honor, the Resident Coordinator of the United Nations and the Representative of the United Nations Educational, Scientific and Cultural Organization – UNESCO.

Committee, which were considered by the latter and focused on the conceptual design of the System to Protect the Practice of Journalism [Sistema de Protección al Ejercicio Periodístico] (SPEP). Nevertheless, various journalists’ associations claimed that they had little to no participation in preparing the proposal. Finally, in 2016, after the new government came to power, President Jimmy Morales’s administration decided to suspend the process and begin a new process for establishing the mechanism.

284. More recently, on different occasions in 2017, then-Human Rights Ombudsman Jorge de León Duque urged the government to implement the Program for the Protection of Journalists without delay. On February 7, the then-Human Rights Ombudsman expressed his concern over the vulnerable situation of the country’s journalists, especially those who carry out their activities in areas outside Guatemala City, and urged the government to implement the program soon. De León Duque reiterated that need on May 3, in a statement released for World Press Freedom Day.

285. In February, the Press Alliance [Alianza de Entidades de Prensa] reportedly denounced the Guatemalan State for failing to keep its promise to adopt a Program for the Protection of Journalists. In the joint statement signed by the Association of Journalists of Guatemala (APG), the Guatemalan Chamber of Journalism [Cámara Guatemalteca de Periodismo] (CGP), the Guatemalan Chamber of Professional Broadcast Announcers [Cámara de Locutores Profesionales de Guatemala] (CLPG), and Guatemalan Sports Reporters [Cronistas Deportivos Guatemaltecos] (CDG), the Alliance condemned the Guatemalan government’s apparent lack of will to fulfill its promises with respect to the Program. On June 1, after Representative Sandra Morán announced her willingness to work on a legislative bill for

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466 Idem, paras. 683-694.
the protection of journalists, the Press Alliance reportedly dismissed the intent of some congressional representatives who support such a law, alleging that they did not enjoy public confidence and credibility, and that the intent of the initiative was not just to protect journalists but also to create opportunities and processes for regulation that would include a general media law.\(^{471}\)

286. On May 2, Guatemalan Vice President Jafeth Cabrera and his communications team met with the Press Alliance to address the establishment of the Program for the Protection of Journalists, which reportedly has made no progress since July 2016. Jafeth Cabrera was said to have offered to look into the reasons for the alleged delay, and indicated that if the President would delegate the proposal to him, he would make the effort to move it forward.\(^{472}\)

287. On this point, the IACHR took note of President Jimmy Morales’s announcement during the on-site visit to the effect that the government was working on a Program for the Protection of Journalists and Media Workers in consultation with journalists’ organizations, and that he would approve it as soon as possible.

288. During the on-site visit, the IACHR again heard complaints from various civil society organizations, including Cerigua and other collectives of the Press Alliance,\(^{473}\) regarding the government’s lack of political will to move forward with the creation, funding, and implementation of a protection mechanism, despite the long-standing assurances offered by the Executive Branch. The IACHR also received a letter signed by a number of active journalists demanding a public and participatory consultation in the process for the creation of the protection mechanism.\(^{474}\)


\(^{472}\) Centro de Reportes Informativos sobre Guatemala (Cerigua). May 2, 2017. Vicepresidente escucha propuesta de Programa de Protección a Periodistas.

\(^{473}\) Asociación de Periodistas de Guatemala (APG), Cámara Guatemalteca de Periodismo (CGP), Centro de Reportes Informáticos de Guatemala (Cerigua), Cámaras de Locutores Profesionales de Guatemala, Cronistas Deportivos Guatemaltecos, Asociación de Periodistas Marquenses, Asociación de Prensa de Huehuetenango, Asociación de Periodistas Comunitarios de Verapaz (APCV), Asociación de Periodistas y Comunicadores Sociales de Alta Verapaz (APC-AV), Asociación de Periodistas de Jutiapa (APJ), Red de Comunicadores Sociales de Chiquimula (RCS), Asociación de Comunicadores de Santa Rosa, Asociación de Prensa Jalapaneca (Aprej), Asociación de Comunicadores “Omar Aguirre” Huehuetenango, Asociación de Periodistas y Comunicadores Sociales de Sololá, Asociación de Prensa Quetzalteca (APQ).

\(^{474}\) Communication delivered to the Special Rapporteur for Freedom of Expression, Edison Lanza, by a group of journalists during the on-site visit to Guatemala. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.
The IACHR observes, according to information provided by the State, that the Ministry of the Interior, through the National Civil Police and its Personal Protection and Security Division [División de Protección a Personas y Seguridad], is responsible for providing security to human rights defenders, journalists, trade unionists, and others pursuant to Government Order 97-2009, which has been in force since April 3, 2009. According to the Guatemalan State, supplemental protection measures are provided through personal security, permanent security posts, and perimeter security. Additionally, the Presidential Commission coordinating the Executive’s Policy on Human Rights [Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos] (COPREDEH) published the “Protocol for the Protection of Journalists” [Protocolo para Protección a Periodistas], detailing a number of situations and rules that provide individuals who practice journalism with an overview of situations of risk. It also published the “Protection Manual for Journalists and Media Workers” [Manual de protección para periodistas y comunicadores], addressing national and international laws, permissible restrictions, and other material.475

More recently, the Guatemalan news agency Centro de Reportes Informativos sobre Guatemala [Center for News Reports on Guatemala] (Cerigua), launched a campaign in Geneva with members of the diplomatic missions of different States in order to express their concern over the lack of progress on the establishment of the Program for the Protection of Journalists. The organization underscored that advances were made in the protection of the press, such as the establishment of the Body for the Analysis of Attacks on Human Rights Defenders [Instancia de Análisis de Ataques contra Defensores de Derechos Humanos], an entity coordinated by the Ministry of the Interior whose participants include the Public Ministry (MP), the Presidential Commission coordinating the Executive’s Policy on Human Rights (COPREDEH), and the Office of the High Commissioner for Human Rights (OHCHR), as well as a variety of social actors, including the organization itself. Nevertheless, Cerigua indicated that the Ministry of the Interior had refused to approve the order that would enable the entity to continue operating. It further alleged that an advisor had needlessly blocked the approval of the government order to proceed with the creation
of the Program for the Protection of Journalists, despite the existence of an order from the Office of the President. 476

291. In its comments to the draft of this report, the State of Guatemala stated that in November 2016 the President pushed for the creation of a Governmental Agreement that would create the Program for the Protection of Journalists and Social Communicators. According to the State, this program:

“[W]ill be implemented in the office of Human Rights of the Minister of the Interior, who will define the legal procedures of the program, will establish its process within its jurisdiction, and will encompass any harm to the physical or psychological integrity, threat, harassment or intimidation against journalists and social communicators due to their profession. The Ministry of the Interior will issue the regulations for the specific activities of the program and will provide the necessary resources for its functioning. Currently, the Governmental Agreement that creates the program for the protection of journalists has been submitted to the consideration of various unionized sectors and journalists’ organizations.” 477

292. Based on the foregoing, the IACHR and its Office of the Special Rapporteur for Freedom of Expression remind the Guatemalan State some of the guidelines it has developed, and that should be taken into account in the design and operation of protection programs for journalists, among them:

i) political commitment from the State, that must include an adequate legal framework, sufficient human resources, trained and prepared, capable of establishing trust with the persons who seek protection; with corresponding resources with a view to covering the costs of the personnel who work in the program and the specific expenses related to the protective measures provided; adopt rules clearly spelling out the authorities and responsibilities of the officials who will play a role in either implementing or monitoring the protection measures; ii) that it include the adequate identification of potential beneficiaries and an adequate recognition of the grounds on which a potential beneficiary can seek protection; iii) a proper risk assessment, considering the gender perspective, that enables the State to determine the best way to fulfill its obligation to protect, taking into account contextual and specific


circumstances and providing for the active participation of the beneficiary; iv) the provision of suitable and effective protection measures that are tailored to both protect beneficiaries’ life and integrity corresponding to journalists’ needs and allow them to continue their professional activities; v) clear criteria and procedures for monitoring the effectiveness of the selected measures, and if the measures of protection are ineffective they will have to be adjusted to comport with the situation that the beneficiary is experiencing; vi) assess the risk in order to decide whether the measures of protection should be lifted with the beneficiaries’ participation in order to get their view on the question of whether the measures should be lifted; and vii) material protective measures shall be linked to exhaustive and independent investigations by the pertinent authorities to prevent and reduce the sources of the risk.\(^{478}\)

**B. Situation of broadcasting**

1. **Community Broadcasting**

293. During its on-site visit, the Inter-American Commission verified the lack of progress with regard to the obligation that the State assumed on multiple occasions to legally recognize the community broadcasting sector and effectively allocate permission for this sector to use frequencies. It additionally verified that, although Guatemala has no regulatory framework of policies for the incorporation of indigenous peoples into the broadcasting sector, it continued to persecute so-called “illegal” radio stations, which in some cases provide a service to the communities. While in some cases this persecution has been aimed at unauthorized commercial radio stations, in others it has also included the small radio stations of indigenous communities that broadcast in spite of the obstacles to accessing frequencies.

294. In February 2016, the IACHR and its Office of the Special Rapporteur learned that the Guatemalan Congress was in the third phase of studying draft law 4087, the “Community Media Act” [“Ley de Medios de Comunicación Comunitaria”]. The bill, backed by civil society and the country's indigenous peoples, sought to guarantee “access to media for

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indigenous communities and socially excluded minority sectors,” promoting international standards. At the time, the Office of the Special Rapporteur stated that the legislative debate on the bill represented an extraordinary opportunity for the State to effectively comply with its international obligations in this area. Nevertheless, the bill was defeated in an expedited procedure by the majority of a congressional Technical Committee, on the grounds that it lacked technical support and was an “untimely” and “unconstitutional” initiative.

295. More recently, during the on-site visit, the IACHR received with concern information about the application by analogy of the criminal offense of “frequency theft” [“hurto de fluidos”] and “theft” to community radio stations in order to bring criminal charges against them. The Guatemalan Association of Mayan Lawyers and Notaries reported that 46 community journalists have been convicted of this offense at this point. In addition, César Gómez, a representative of the Community Radio Movement, reported that the State continues to harass these media outlets, and that at least 12 of them have been shut down in the past two years. He also reportedly stated that the Office of the Prosecutor for Crimes against Journalists and Trade Unionists stopped going after the community broadcasters once the situation was denounced before the IACHR; however, since then, the Office of the Prosecutor for Environmental Crimes [Fiscalía de Delitos contra el Ambiente] has reportedly been responsible for harassing these radios, despite the fact that the matter is not within its purview. Gómez further denounced that criminal proceedings were brought against community broadcasters without the administrative proceedings before the Superintendency of Telecommunications (SIT) first being exhausted, as required under the General Telecommunications Act [Ley General de Telecomunicaciones].

296. According to the information available, various operations were carried out in the first half of the year to dismantle alleged “pirate radio stations”—the term used to refer to broadcasters that are not authorized to operate by the Superintendency of Telecommunications [Superintendencia de Telecomunicaciones] (SIT). According to information provided by the State, “Requests have been filed with the competent courts of Guatemala to

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conducted 165 evidentiary searches and inspections of premises where investigations have yielded evidence of the unlawful use of radio frequencies. [...] The seizure of the broadcasting equipment used as an instrument of the crime being prosecuted has also been requested.” The State additionally indicated that, “Sixty-five convictions have been handed down to date, ordering the seizure of the broadcasting devices used in those unlawful activities.”

Some of the most notable cases from 2017 are detailed below.

297. According to the information available, on February 15, authorities raided the radio station *La Jocosa* 104.7 FM[^483] and on February 22, in the municipality of Palencia, Guatemala, raids were carried out against 87.9 FM, *Promesa Stereo, Señal de Salvación*[^484] and radio 104.7 MHz, resulting in the arrest of Eduardo Ortega Santos, who was subsequently charged with the offense of “theft.”[^485] Similarly, on March 8, in the municipality of Táctic, Department of Alta Verapaz, raids were conducted against stations using the frequencies 104.7 and 92.7, respectively.[^486] The following day, a search was conducted at a property located in the municipality of Santa Lucía Cotzumalguapa associated with the frequency 95.9 FM.[^487] Subsequently, on March 15, the Public Ministry (MP) announced the seizure of equipment used on three “illegal frequencies”: radio station *Adoración Estéreo* in the municipality of Táctic, which operated on frequency 95.5 FM; radio station *Éxitos* in the municipality of Chamelco, which operated on frequency 104.3 FM, where Franklin Caz Caal was reportedly arrested and charged with “theft”; and finally, radio station *La Voz de Pocola* 105.5 FM, in the municipality of Pocola de Carchá.[^488] On June 15, two raids were reportedly carried out in the municipalities of Patzicia and Patzún, Department of Chimaltenango, in connection with frequencies 91.9 and 107.9. José


Lorenzo Choc Pérez was reportedly arrested and charged with theft in one of those raids.\textsuperscript{489}

On July 25, in the municipality of San Miguel Chicaj, Department of Baja Verapaz, staff from the Metropolitan District Prosecutor’s Office and National Civil Police (PNC) officers carried out a raid on a radio station that was using frequency 107.5, which is reportedly assigned to Radio TGW, owned by the Guatemalan State. The operation reportedly resulted in the seizure of the equipment used to conduct the radio activity.\textsuperscript{490} Additionally, on August 31, in the municipality of Fray Bartolomé de las Casas, Department of Alta Verapaz, the Agency for Crimes Committed through the Unlawful Use of Radio Frequencies [Agencia de Delitos Cometidos por el Uso Ilegal de Frecuencia Radioeléctricas] reportedly seized the equipment used by frequency 92.5, including an amplifier, a CPU, an exciter, and various consoles. In the same incident, National Civil Police (PNC) officers reportedly arrested Santos Yaxcat Yat on suspicion of theft.\textsuperscript{491}

In spite of the situation described above, the IACHR took note of the fact that the community radio station Snuq’ Jolom Konob’ in Santa Eulalia—which it visited—reopened on December 2, 2016.\textsuperscript{492} Previously, the Office of the Special Rapporteur had noted the harassment of the station, which was shut down by local authorities on January 20, 2015. There was an attempt to reopen it on March 19, 2016, but the attempt was blocked by the mayor and marred by violent incidents.\textsuperscript{493} The IACHR takes particular note of the decision of the local authorities of Santa Eulalia in favor of the resumption of activities by Snuq’ Jolom Konob’, and of its journalists and media workers for their efforts to ensure that the population of Santa Eulalia has the means to access the right to freely seek, receive, and disseminate information and opinions.

\textsuperscript{489} Ministerio Público (MP). June 15, 2017. \textit{Agencia que investiga delitos relacionados a frecuencias ilegales coordina diligencia en Chimaltenango.}


\textsuperscript{491} Ministerio Público (MP). September 1, 2017. \textit{MP incauta equipo utilizado en frecuencia ilegal en Alta Verapaz.}

\textsuperscript{492} Km 169 Prensa Comunitaria. November 30, 2016. \textit{Después De Más De Un Año Censurada Por Fin La Radio Comunitaria Snuq’ Jolom Konob’Logra Reabrirse; Radio Comunitaria Snuq’ Jolom Konob’/Facebook. December 2, 2016. Celebración Reapertura de la comunitaria de Santa Eulalia.}

Since 2000, the IACHR and its Office of the Special Rapporteur for Freedom of Expression have issued recommendations to the State of Guatemala in two aspects, namely: the need for a fairer and more inclusive legal framework for broadcasting and the decriminalization of broadcasting without a license. The use of criminal law to punish violations to the broadcasting regime can be problematic in the light of the American Convention on Human Rights, and the establishment of criminal penalties for commercial or community broadcasting, which they may face due to the absence or misuse of the license, could constitute a disproportionate reaction. Also, Article 13.2 of the American Convention on Human Rights holds that the exercise of the right to freedom of thought and expression “shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order,
or public health or morals.” Additionally, the Inter-American case law has emphasized that the States have the obligation to “adopt affirmative measures (legislative, administrative, or of any other nature), under conditions of equality and non-discrimination, to reverse or change existing discriminatory situations that may compromise certain groups’ effective enjoyment and exercise of the right to freedom of expression.”

2. Improper concentration of media ownership

301. During its on-site visit to Guatemala, the IACHR confirmed that the State has made no progress with respect to the excessive degree of concentration in the ownership and control of audiovisual media, especially free-to-air television. In December 2012, Decree 34-2012 entered into force, amending the General Telecommunications Act to extend by 20 years the titles to the usufructuary rights to the radio spectrum. One of the main beneficiaries of the reform was Mexican businessman Ángel González, who holds rights to the frequencies and is the owner of four private VHF channels that broadcast in Guatemala. In addition, according to the report on Campaign Finance in Guatemala published by the International Commission against Impunity in Guatemala (CICIG) in July 2015, “There is probably no other case in the world where a single individual owns the four existing private VHF channels. But this has been possible in Guatemala, and Mr. Ángel González has no VHF competition.”

According to various actors from both civil society and the State, the businessman is responsible for promoting an agenda tied to sectors that oppose institutional anti-corruption reforms and the investigation and punishment of serious human rights violations.

302. According to the State, as far as the market and ownership in the country’s communications sector are concerned, the Superintendency of Telecommunications [Superintendencia de Telecomunicaciones] (SIT) does not apply a specific allocation process to audiovisual media outlets, “the most usual process being the one established in Article 61 of the General Telecommunications Act, which provides for a public competition, under equal conditions, for all who wish to acquire [frequencies] in accordance with the law.” It stated with respect to the announcement of public competitions and/or processes for the allocation of frequencies to the

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community sector, “We must clarify that there are no community radio stations, and thus prevent any discretionary power with respect to the matter; all that exists is what is established in Article 61 of the General Telecommunications Act, which provides for a public competition, without limitation on the participation of any person or entity.”\(^{499}\) Even though the law prescribes public competitions for the adjudication of titles to the usufructuary rights to frequencies, competition by auction would do little to encourage the plurality and diversity of voices in Guatemala. That method is provided in Article 62 of the General Telecommunications Act, which establishes that “the Superintendency will determine the manner in which the public auction will be conducted. All offers must be submitted as a sealed bid, including a performance bond equivalent to the sum offered or any other form of guarantee that the Superintendency determines.”\(^{500}\) As the IACHR has stated, “auctions based solely on economic criteria or that grant concessions without equal opportunity to all sectors are not compatible with democracy and with the right to freedom of expression and information guaranteed in the American Convention on Human Rights and the Declaration of Principles on Freedom of Expression.”\(^{501}\)

303. Additionally, during the on-site visit, the IACHR was informed that the Government had begun a process for the implementation of free-to-air digital terrestrial television, reportedly involving important regulatory decisions. The State reported that the discussion of a Draft Government Order on the Implementation of Digital Television was currently underway, and was under analysis at the Ministry of Communications, Infrastructure, and Housing [Ministerio de Comunicaciones, Infraestructura y Vivienda]. It emphasized that the Superintendency of Telecommunications [Superintendencia de Telecomunicaciones] of Guatemala (SIT) was attempting to “create major opportunities for the application of Information and Communications Technology (ICT) and multimedia services, with the transition from analog to digital television broadcasting. It is also working to ensure that the digital dividend (freed-up spectrum)


will allow for the introduction of mobile wireless broadband communications."

304. In view of the above, the IACHR expresses its concern over the absence of a plan for organizing the spectrum and the allocation of frequencies to allow for the entrance of new operators. Guatemala should not pass up this historic opportunity to democratize its media system and promote greater media pluralism and diversity, bearing in mind the existence of a group that dominates television in the country—a group that, according to the recent criminal investigation conducted by CICIG and the MP, allegedly used its dominant position to illegally finance the campaign of former President Pérez Molina, having privileged access to funds earmarked for government advertising and influencing the State’s decisions on broadcasting.

305. As indicated on previous occasions, the IACHR recalls that the concentration of the media in a few hands has a negative impact on democracy and freedom of expression, as expressly stated in principle 12 of the Declaration of Principles on Freedom of Expression of the IACHR “[m]onopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people’s right to information.” Since its first statement on the issue, the Inter-American Court has ruled that the existence of any monopoly on the ownership or administration of the media, whatever the form it intends to adopt, is prohibited, and acknowledged that States must actively intervene to avoid concentration of ownership in the media sector.

306. In this regard, the IACHR had indicated that, “If the media is controlled by a reduced number of individuals, or by only one individual, this situation would create a society in which a reduced number of individuals, or just one, would exert control over the information and, directly or indirectly, on the opinion received by the rest of the people. This lack of plurality in sources of information is a serious obstacle for the functioning of democracy. Democracy requires the confrontation of ideas, debate and discussion. When this debate does not exist, or is weakened by the lack of

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sources of information, the main pillar for the functioning of democracy is harmed.\textsuperscript{504}

307. The Office of the Special Rapporteur has also said that the States should take measures to ensure that all groups in society have access to opportunities to make their voices heard, both within their communities and in wider social debates, including through measures to promote media diversity, public service broadcasting and community media. The promotion of media and digital literacy and citizen journalism, including the capacity to make effective use of online communication tools, are also important. \textsuperscript{505}

308. The future regulation on digital television “should aim to ensure that the new digital dividend makes optimal use of the spectrum to ensure the greatest plurality and diversity possible”\textsuperscript{506} and become an opportunity to limit and reduce, or at least not increase, the undue concentration of existing media in the analogue environment by people, companies, or linked economic groups, either through ownership or control of the operation and programming of new television services.

3. Government Advertising

309. The investigation conducted by Guatemala’s Public Ministry and the International Commission against Impunity in Guatemala (CICIG), called “Co-optation of the State,” revealed a corruption scheme set up to finance the election campaign of Partido Patriota that carried its leader Otto Pérez Molina to the Presidency and Roxana Baldetti to the Vice Presidency. The unlawful activities to obtain funds for Partido Patriota were reportedly conducted between 2008 and 2011, and remained in place during the party’s administration (2012-2015). In a press release, the CICIG detailed that the “unlawful election campaign financing” was obtained through a network of corporations controlled by Baldetti that had no real business activity, since they were “instruments to channel the money secretly handed over by the representatives” of Radiotelevisión Guatemala S.A.


(Canal 3) and Televisiête S.A. (Canal 7), owned by Mexican businessman Ángel González.\textsuperscript{507}

310. González’s two companies, according to the documents seized during the investigation, contributed a total of 17,679,200 quetzales (approximately US$ 2,300,000 million) to Partido Patriota between 2008 and 2011. The CICIG concluded that, “this money was not reported to the Supreme Electoral Tribunal” as campaign contributions, and “was used to purchase the latest-model vehicles.” The aforementioned television companies reportedly benefitted from million-dollar contracts for government advertising, beginning when Pérez Molina and Baldetti came to power. The investigation revealed that the value of the contracts entered into between 2012 and 2015 was in excess of 200,000,000 quetzales (approximately US$ 26,000,000 million), which means that the two companies received 69 per cent of all government television advertising purchased during that period.\textsuperscript{508} González’s wife, Alba Elvira Lorenzana, is the subject of an international arrest warrant for her alleged involvement in the unlawful financing of Partido Patriota in exchange for the million-dollar contracts for state advertising.\textsuperscript{509} Former President Pérez Molina and former Vice President Baldetti resigned in 2015 amid various accusations of corruption, and both are being held in pretrial detention awaiting trial.

311. In connection with this group, in March 2017, the head of the Office of the Solicitor General [Procuraduría General de la Nación] (PGN), Anabella Morfín, filed a criminal complaint with the Public Ministry (MP) against the Superintendency of Telecommunications of Guatemala (SIT) for its alleged failure to turn over documents concerning the titles to the usufructuary


rights to television frequencies granted to the company Albavisión, owned by Mexican businessman Ángel González, requested of the SIT in 2016. The complaint was reportedly filed together with a report on the 85 frequencies said to be held by Ángel González’s channels. According to the information available, the Solicitor General has indicated on a number of occasions that she was not given the complete documentation on those titles to usufructuary rights for purposes of verifying whether they were granted lawfully or unlawfully. For its part, the SIT reportedly replied that it had turned over all of the documents on record in the Telecommunications archives.\textsuperscript{510}

312. In May, the Guatemalan Prosecutor’s Office filed an indictment in the “Cooptation of the State” case, naming 46 individual defendants, including former President Pérez Molina.\textsuperscript{511} The same month, based on testimony offered by Salvador González Álvarez, it was learned that, during the period she served as Vice President (2012-2015), Roxana Baldetti allegedly controlled 70 per cent of the Corporación de Noticias media group, which owned the newspapers Siglo21 and Al Día, and used it to present information favorable to her and to the Government.\textsuperscript{512}

313. During the on-site visit, the Communications Secretariat of the Presidency [Secretaría de Comunicación de la Presidencia] reported that it had ended the practice of using government advertising to reward media outlets for favorable coverage and punish critical media.

314. The Office of the Special Rapporteur recalls that Article 13.3 of the American Convention establishes that “[t]he right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.” In this sense, also the Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights, in principle 13 indicates that “the exercise of power and the use of public funds by the State, the granting of customs duty privileges, the

\textsuperscript{510} elPeriódico. February 8, 2017. Denunciarán a la SIT por falta de información sobre usufructos; La Hora. March 30, 2017. PGN denunció a la SIT por contratos de la TV abierta; elPeriódico. March 30, 2017. PGN denuncia en MP a Superintendencia de Telecomunicaciones por negarle información de usufructos para TV abierta; Guatevisión. March 30, 2017. PGN denuncia a la SIT por proteger a monopolio de la TV.


arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.”

C. Excessive Use of Force at Social Protests

315. According to the information gathered by the Office of the Special Rapporteur and received during the on-site visit, the interests and presence of corporations on traditional indigenous lands and territories has led to serious tensions and disputes in different regions of Guatemala, giving rise to social protest and—on occasion—triggering episodes of violence. There have been protests in some communities in view of the implementation of extractive projects, which have reportedly been repressed by the National Civil Police (PCN) and the army, as well as by private security personnel.

316. In its visits to the cities of Ixquisis and Santa Eulalia, the IACHR received with concern information about the situation of violence and criminalization to which human rights defenders are reportedly exposed. Reports included allegations of the excessive use of force during social protests against hydroelectric projects in the region. In Ixquisis, in particular, the IACHR heard the testimony of relatives of Sebastián Alonso Juán, who was shot to death on January 17 during a peaceful protest outside the company Proyectos de Desarrollo Hidrico S.A., in San Mateo Ixtatán. According to the information available, citizens from different communities of the Chuj and Q’anjob’al peoples were protesting against a hydroelectric project in Ixquisis, when armed individuals reportedly fired shots at them.513

317. At the March 20 hearing it held on the criminalization of rights defenders who are opposed to hydroelectric projects in Guatemala, the Commission

received information about violent evictions of the communities that opposed the operation of corporations in their territories, as well as attacks, threats, and constant harassment, particularly against female rights defenders. They alleged patterns of criminalization in the Guatemalan system through the statutory creation of criminal offenses to be used against them, as well as through malicious prosecution by prosecutors from the Public Ministry and lawyers from the transnational corporations. They condemned, among other things, the beforementioned murder of rights defender Sebastián Alonso Juán. At that same hearing, the Guatemalan State explained that it was seeking to gradually replace its current energy sources with renewable energy like hydroelectric power. It also stated that it was developing a National Plan on Business and Human Rights, which will include the monitoring and oversight of business activities, the protection of human rights, and measures of reparation.\footnote{IACHR. March 22, 2017. \textit{Press Release 035A/17 Report on the 161st Session of the IACHR}; IACHR. 161st Period of Sessions, Public Hearing - Criminalization of human rights defenders who oppose hydroelectric projects in Guatemala. March 20, 2017. Available at: \url{https://www.youtube.com/watch?v=3TW9U6qi-fA}}

318. At the September 7, 2017 hearing about reports of attacks on human rights defenders by extractive corporations in Guatemala, the Commission received information about an alleged State policy of persecuting individuals who defend the environment, natural resources, water, and land and territory in general. The requesting organizations stated, among other things, that this was an “unwritten” policy, implemented through defamation cases, stigmatization, and criminalization, carried out principally by the National Civil Police (PCN), and by the Public Ministry in some cases. They also reported attacks by extractive industries against them and against communities. For its part, the State indicated, among other things, that the on-site visit was the starting point for reaching consensuses, dialogues, negotiations, and taking account of the communities. It indicated that the recommendations made by the IACHR after the on-site visit had been received by COPREDEH and the Guatemalan Foreign Ministry, and that they are being considered for this sustainable dialogue with the communities and the corporations. The Guatemalan State expressed its willingness to engage in ongoing, sustainable dialogue, and to conduct these types of negotiations. Finally, it stated that it strives to ensure strict compliance with the law, and the application of “conventionality control” with respect to the investigation that is incumbent upon the Public Ministry. It asserted that a very low percentage of the complaints lodged with the Human Rights Prosecutor’s Unit for Crimes against Activists [\textit{Unidad de delitos contra activistas de la Fiscalía de}}
According to publicly available information, on May 27, members of the Artisanal Fishermen’s Guild [Gremial de Pescadores Artesanales] (GPA) of El Estor, Department of Izabal, reportedly blocked the route to Panzós, Alta Verapaz, in response to the authorities’ refusal to establish a dialogue roundtable to address the alleged pollution of the El Estor Lake by the Compañía Guatemalteca de Níquel [Guatemalan Nickel Company] (GNC). In order to clear the way, National Civil Police (PNC) anti-riot forces reportedly fired ammunition, rubber bullets, and tear gas canisters at the demonstrators. Carlos Maaz Coc, a member of the Maya-Q’eqchi indigenous community, reportedly died in the incident after being shot, and at least four police officers were wounded. 516 The same day, the Ministry of the Interior reported the death of one individual, although that statement was subsequently denied.517

On June 22, a group of residents of the municipality of Casillas, Department of Santa Rosa, reportedly blocked traffic heading toward the San Rafael Las Flores Mine. This was done to protest the mining company, which they held responsible for a number of tremors in the area that had caused cracks to form in residents’ houses. According to the information available, riot control officers from the National Civil Police (PNC) arrived on the scene and launched tear gas to break up the protest. Eleven people were reportedly injured, including a four-month-old baby and a two-year-old who were sickened by a tear gas canister that was thrown at their house. Four individuals who allegedly used rocks to assault members of the PNC were also arrested.518

On July 21, a group of residents protested by obstructing the highway leading to the municipality of Casillas, Department of Santa Rosa, reportedly blocking the passage of vehicles headed toward the El Escobal Mine in San Rafael Las Flores, which was guarded by the National Civil Police (PNC). According to the information available, the mine was not authorized to operate in light of a judgment by the Guatemalan Supreme

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Court [Corte Suprema de Justicia] (CSJ) admitting a petition for a constitutional remedy [amparo] filed by the Center for Environmental, Social and Legal Action [Centro de Acción Legal Ambiental y Social] (Calas) and suspending the mine’s license for extraction. PNC Officers reportedly fired tear gas canisters to break up the protest, and at least four people were sickened as a result.

On August 24, the Guatemalan Education Workers Union [Sindicato de Trabajadores y Trabajadoras por la Educación] (STEG) held a number of protests around the country to demand better working conditions and salary increases. In the town of Atescatempa, Department of Jutiapa, at least two teachers were reportedly arrested. The same day, in Ciudad Pedro de Alvarado, Department of Jutiapa, four other teachers were reportedly arrested for blocking the highway. Likewise, in Puerto Quetzal, Department of Escuintla, seven teachers were said to have been apprehended by the PNC while taking part in the demonstrations, although they were released after speaking with the authorities. According to the information available, la PNC used tear gas to disperse the crowd and no injuries were reported.

Guatemala also saw numerous social protests and demonstrations this year stemming from the country’s political turmoil. This resulted, among other things, in President Jimmy Morales decision to declare Iván Velásquez, head of the International Commission against Impunity in Guatemala (CICIG) persona non grata, after he and the Office of the Attorney General accused President Morales of irregularities during the campaign that carried him to power in 2016. In view of this situation, on September 12 the IACHR issued a resolution on human rights, impunity, and corruption in Guatemala, urging the State to “fulfill [its] obligation to protect human rights defenders, whistleblowers, journalists, and media outlets, which face particular risk when they investigate and disseminate information on corruption,” among other things.

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324. On September 14, a group of individuals demonstrated in the Plaza de la Constitución in Guatemala City, across from the Congress of the Republic, to reject the amendments made to the Criminal Code by decrees 14-2017 and 15-2017 which, upon entering into force, would benefit politicians investigated for electoral crimes. They also demanded the resignation of the 107 members of congress who had voted for the amendments. There was a certain degree of tension between the demonstrators and the Military Police (PM) and officers from the Secretariat of Administrative and Security Affairs of the Presidency (SAAS) guarding the Plaza de la Constitución. Consequently, President Jimmy Morales issued a statement rejecting “all acts and displays of violence,” and indicated that he had instructed the country’s security authorities to investigate who had been responsible for those acts.

325. The following day, the protests outside the Legislative Palace continued, while members of the House of Representatives held an extraordinary session to review the amendments to the Criminal Code. The session resulted in the shelving of both decrees. The Military Police (PM) reportedly dispersed the protest with pepper spray. One representative from the FCN-Nación party reportedly called the demonstrators “terrorists.” A video also shows that when the representatives exited a bus at the Legislative Palace, some of them hurled insults and made vulgar gestures at the demonstrators.

326. On September 16, referring to the previous day’s events, Human Rights Ombudsman Jordán Rodas allegedly stated that among the demonstrators it was known that there were infiltrators, not part of the social movement, who intended to leave a negative impression of the civic action. According

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525 AGN. September 14, 2107. Presidente Morales condena actos de violencia y atropello a celebración a la patria; Guatevisión. September 14, 2017. #URGENTE Jimmy Morales arremete contra manifestantes.


to him, among people trying to destabilize the demonstrations there were
security staff of some congressmen.\textsuperscript{529}

327. The same day, the Constitutional Court \textit{[Corte de Constitucionalidad]}(CC)
admitted two petitions for constitutional remedies \textit{[amparos]} filed by the
Office of the Human Rights Ombudsman \textit{[Procuraduría de los Derechos
Humanos]} (PDH). In its decision, the CC held that the authorities “must
allow the exercise of the rights to free movement, free expression of
thought, assembly, and protest,” and that the President must adhere to the
decision, instructing the Ministry of the Interior and the National Civil
Police (PNC) to comply with the decision and allow demonstrators to
exercise their rights peacefully.\textsuperscript{530} The same day, the Guatemalan
government released a statement on Twitter indicating that it would
comply with the decision.\textsuperscript{531}

328. On September 24, at a public meeting attended by ranchers and
agribusiness leaders, as well as President Jimmy Morales, the governor of
the Department of Izabal reportedly stated in reference to the social
protests that had taken place in the past month, that “We are not going to
allow small minority groups that have no representation to demand [the
President’s] resignation,” later adding that, “out of respect and loyalty to
the Guatemalan people, we have to say no to those people that were
demonstrating—they are not a big deal.” Finally, he stated that “For five or
ten thousand people to gather in the square, those people have [been paid],
and that is why they can’t claim to be speaking on behalf of honest and
hardworking Guatemalans.”\textsuperscript{532}

329. The IACHR has reiterated that social protest is a fundamental tool for
defending human rights and it is essential for expressing social and
political criticism on the activities of the authorities. The Commission has
stated that “in principle, criminalization per se of demonstrations in public
thoroughfares is inadmissible when they are carried out in exercise of the
rights to freedom of expression and to freedom of assembly” \textsuperscript{533} and that

\textsuperscript{529} Prensa Libre. September 16, 2017. \textit{Jordán Rodas dice que la PNC hizo uso excesivo de la fuerza contra
manifestantes; Soy 502. September 16, 2017. \textit{Guardias armados de algunos diputados estaban infiltrados
en protestas.}\textsuperscript{530} Agencia EFE. September 16, 2017. \textit{Constitucional ordena respetar los derechos de los manifestantes en
Guatemala.} Prensa Libre. September 16, 2017. \textit{CC ordena garantizar los derechos de los manifestantes.}\textsuperscript{531} “El presidente \texttt{@jimmymoralesgt} en atención a la resolución emitida hoy por la honorable Corte de
Constitucionalidad (CC)”. Official Twitter account of the Government of Guatemala \texttt{@GuatemalaGob.}
September 16, 2017\textsuperscript{532} Gobierno de Guatemala. September 24, 2017. \textit{Presidente Jimmy Morales se reúne con representantes del sector
ganadero del país;} Prensa Libre TV/ You tube. September 24, 2017. \textit{Duras críticas contra protestas
“the exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”

330. Also, the Joint Declaration on violence against journalists and media workers in the context of protests, adopted in 2013, establishes that the rights of assembly and freedom of expression “are fundamental, and guaranteeing them is a vital condition to the existence and proper functioning of a democratic society. A State may impose reasonable limitations on demonstrations for purposes of ensuring that they are conducted peacefully, or to disperse those that turn violent, provided that such limits are governed by the principles of legality, necessity, and proportionality. In addition, the breaking-up of a demonstration must be warranted by the duty to protect individuals, and authorities must use the measures that are safest and least harmful to the demonstrators. The use of force at public demonstrations must be an exception, used under strictly necessary circumstances consistent with internationally recognized principles.” Finally, the Inter-American Commission has found that any kind of arbitrary or abusive interference that affects the privacy of human rights defenders and their organizations is prohibited by the American Declaration and Convention.

331. With respect to the use of force in contexts of social protest, the IACHR presented standards on the subject in its 2015 report on the Use of Force. The IACHR indicated that “the imperative social interest of the right to participate in public demonstrations means that there is a general presumption in favor of its exercise.” The IACHR affirmed that “the presumption in favor of the exercise of social protest implies that the States must act on the basis of the legality of the protests or public demonstrations and on the assumption that they do not constitute a threat to public order, even in the cases that are made without prior notice.” Police action should have as its main objective the facilitation and not containment or confrontation with the demonstrators. Hence, police operations organized in the context of protests should be guided, as a general rule, to guarantee the exercise of this right and the protection of
protesters and third parties present. In this sense, the Commission has considered that the mere deconcentration of a demonstration does not constitute, in itself, a legitimate end that justifies the use of force by the security forces. “When a demonstration or protest leads to situations of violence, it must be understood that the State was not able to guarantee the exercise of this right.”

**D. Access to Public Information**

332. The right to access to public information in Guatemala is provided in the Constitution of Guatemala, as well as in the ordinary law, through the Access to Public Information Act [Ley de Acceso a la Información Pública] (LAIP), Decree 57-2008, passed in 2008 by the Congress of the Republic, which further designates the Human Rights Ombudsman (PDH) as its regulating entity.538

333. According to the PDH, progress was made in the implementation of the Access to Information Act in 2016, “to the extent that the number of Access to Information Units, Electronic Portals, Reports of Entities Subject to the Law, and public requests have all risen.” Nevertheless, he indicated that certain challenges remain in view of the low levels of compliance, especially in areas outside the capital, in the municipal governments and development councils. At the central level, noncompliance is said to be notable among trusts, non-governmental entities that handle funds, and entities in the sports sector. He further asserted that there are structural challenges such as “the politicization, corruption, and social inequality of the country, which has hindered the exercise of the right in outlying areas, specifically in municipalities where citizens have considerable interest in how resources are managed, but procedures at times are not carried out correctly due to unfamiliarity with the law”, affirmed the Human Rights Ombudsman.539

334. According to the information available, between 2012 and 2016 the PDH documented an exponential increase in the number of requests for access to public information submitted to the mechanisms established by the LAIP. This is reflected in the 21,944 requests received in 2012, compared to 63,830 in 2016. Nevertheless, in this context, the PDH identified two

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related challenges: first, to compare figures on the gender of the persons requesting information, and second, to promote the use of the legally created mechanisms throughout the country to prevent the geographic concentration of requests in the Department of Guatemala. In July 2017, the Public Ministry (MP) and the PDH reportedly signed an inter-institutional cooperation agreement. Its objective is to strengthen the LAIP through the creation of one agency under the responsibility of the MP that will hear and decide complaints alleging noncompliance with the law, and another that will provide guidance to complainants in those proceedings, under the direction of the PDH. The new Human Rights Ombudsman, Jordán Rodas Andrade, reportedly confirmed that the agreement remains in effect.

335. Principle 4 of the Declaration of Principles on Freedom of Expression states that “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.” Considering the principle of maximum disclosure, the law must guarantee the effective and broadest possible access to public information, and any exceptions must not become the general rule in practice. Also, the exceptions regime should be interpreted restrictively and all doubts should be resolved in favor of transparency and access.

540 Procurador de los Derechos Humanos (PDH). Informe Anual de la situación del derecho a la información pública 2016. No date. Available at: http://www.pdh.org.gt/biblioteca/category/90-informes-anales.html. Regarding gender, between 2014 and 2016, 39% of requests were made by women while 61% were made by men. In terms of geographical concentration, 85% of the requests made between 2016 and January 31, 2017 came from the department of Guatemala. On this matter, the PDH included among its challenges the need to empower the population of the rest of the country in order for them to know and demand their right to access public information. This is precisely because the PDH identified that in 2016, apart from the department of Guatemala, no other department reached 2% of requests for public information. In 2016, 45% of obligated individuals had not made any request.

541 elPeriódico. July 21, 2017. PDH y MP fortalecerán Ley de Acceso a la Información; Emisoras Unidas. No date. MP y PDH ratifican cooperación en el cumplimiento a la Ley de Acceso a la Información; Ministerio Público (MP). July 20, 2017. MP y PDH firman Convenio de Cooperación Interinstitucional para fortalecimiento de la Ley de Acceso a la Información Pública.

542 Ministerio Público (MP). August 21, 2017. Fiscal General recibe visita del Procurador de los Derechos Humanos; elPeriódico. August 21, 2017. Presidente Morales y fiscal Aldana, los primeros contactados por el nuevo procurador Jordán Rodas Andrade. In this regard, the Human Rights Ombudsman (Procurador de los Derechos Humanos) stated that the agreement should continue “because with more transparency in compliance with the Law of Access to Public Information, logically we are going to decrease corruption that is a scourge that hurts our society.”
CHAPTER 6
CITIZEN SECURITY
CITIZEN SECURITY

A. General Situation of Violence: Types, Areas of Highest Concentration, Actors Involved

336. The concept of citizen security is a situation in which persons are able to live free of the threats caused by violence and crime, and the State has the necessary means to guarantee and protect the human rights directly threatened by violence and crime. In Guatemala, the high rates of violence and insecurity pose an obstacle to the full enjoyment of human rights.

337. In the context of its monitoring duties, the Commission has been closely tracking levels of insecurity and violence in Guatemala. Even though there has been a slight decrease in the past ten years, the general homicide rate in the country continues to be one of the highest in Latin American and the Caribbean, one of the world’s most violent regions. Most crimes are attributed to the gangs (maras), the drug trafficking cartels and organized crime, which pose one of the most important security problems in the country, as is described in this section of the report.

1. Homicides and other violent deaths

338. As part of the drafting process of the instant report, the IACHR asked the State to provide official statistics on homicides occurring in Guatemala in 2016 and 2017, in order to set up a baseline for analysis of the situation of violence in the country. The State provided statistical data from the National Civilian Police (PNC), the Office of the Public Prosecutor, and the National Institute of Forensic Sciences of Guatemala (INACIF), and figures from each entity were not entirely consistent with each other. The figures of the PNC show that in 2016 there were 4,520 homicides in the country, 258 fewer than in 2015. Based on these figures, the homicide rate dropped from 29.5 to 27.3 for every 100,000 inhabitants. It must be noted that the...
World Health Organization considers a rate above 100 homicides per 100,000 inhabitants to be an outbreak of violence. For 2017, the State reported that from January to May there were 1,498 homicides, as compared to 1,584 for the same period in 2016.\footnote{Information provided by the State, Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017, pg. 23, Annex 14.} For its part, INACIF statistics reveal that in the first quarter of 2017, 2,641 autopsies for violent deaths were performed, averaging 4.1% less than for the same period in 2016.\footnote{Ministry of the Interior, “Bajan homicidios en primer semestre de 2017” ['Homicides are down in the first half of 2017'], August 2, 2017. Can be viewed at: \url{http://mingob.gob.gt/bajan-homicidios-en-primer-semestre-de-2017/}. According to the INACIF itself, in the first half of 2016, 2,754 autopsies for violent deaths were recorded.} Despite these figures continuing to be high and worrying—even reaching levels of an epidemic—the IACHR is pleased about the general downward trend in the indicators. At the same time, it notices with concern that in Guatemala City and other urban centers, homicides and violent deaths have risen in 2017.\footnote{Information provided by the State, Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017, pg. 23, Annexes 14, 15.}

As for the figures provided by the State, the IACHR notes that the PNC, the Office of the Public Prosecutor (MP), and the INACIF record homicides, “violent deaths,” and “deaths from causes associated with criminal acts” based on apparently different criteria, thus making it difficult to compare available statistics. The PNC statistics refer to “homicides,” but do not specify what definition is used. The MP’s figures of “violent deaths” include any ones that take place in the context of the following criminal offense: homicide, murder, femicide, extrajudicial execution, parricide, aggravated homicide, homicide in tumultuous feud, homicide committed in a state of violent emotion.\footnote{Id., Annex 13.} The INACIF, however, counts as deaths from “causes associated with criminal acts” those that are caused by firearm projectile wound, wounds caused by blade weapons, asphyxia by suspension, asphyxia by strangulation, asphyxia by suffocation, asphyxia from submersion, asphyxia by abdominal thoracic compression, corporal resection (decapitation and/or dismemberment).\footnote{Id., Annex 15(a) and 15(b).} The varying criteria lead to apparently disparate homicide figures.

By way of example, the figures of the Office of the Public Prosecutor (MP) post 4,831 “violent deaths” in 2016,\footnote{Id., Annex 15(a) and 15(b).} while INACIF registered 5,459 autopsies performed in deaths from “causes associated with criminal acts” in the same period.\footnote{Id., Annex 15(a) and 15(b).} Likewise, the PNC recorded 1,498 homicides from January 1 to May 4, 2017, while the MP reflected 1,053 homicides in the
same period of time. For its part, INACIF posted 1,726 autopsies performed in deaths associated with criminal acts from January to the last day of April, 2017 (in addition to the 41 little girls at the Hogar Virgen de la Asunción on March 8, while the Public Prosecutor recorded 1,382 violent deaths in the same period. Based on the figures provided, it is not clear to the IACHR why the Public Prosecutor’s Office would only record 1,382 “violent deaths” in this period when INACIF performed 1,726 autopsies in deaths associated with criminal acts (a discrepancy of 344 over a period of 4 months). Similarly, it is not clear how to account for the fact that in 2016, the MP has posted 4,831 violent deaths, while during that year INACIF performed 5,459 autopsies in deaths associated with alleged criminal acts (a discrepancy of 628 over one period of a year).

341. In response to the inconsistency in figures on homicides and violent deaths in Guatemala, the State explained that the PNC “collects information on deaths that take place in a context of a victim-criminal relationship, deaths from other causes are reflected in other statistics, and although the latter deaths may be violent deaths, they cannot be included in the homicide figure. By that account, the INACIF records statistics on the number of autopsies performed and the Public Prosecutor’s Office includes in its statistics the overall count of different deaths.” Based on this explanation, the IACHR clarifies that the figures of the INACIF described in the previous paragraph account for autopsies performed in deaths from “causes associated with criminal acts,” as opposed to autopsies performed in deaths from “causes associated with traffic accidents, common diseases and complications from them, intoxication and causes under review,” which the INACIF breaks down in its statistics. The lack of clarity and certainty in the statistics of the State’s own institutions makes it difficult to analyze the phenomenon of violence and insecurity in the country.

342. The State reported that the Ministry of the Interior has set up an Inter-Institutional Technical Group, made up of the Office of the Public Prosecutor, INACIF, PNC and other institutions that manage statistical information in the security and justice system. “The objective is to standardize the indicators of violence in the country in order to create a single statistic” in the country. The IACHR hopes that with the creation of

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552 Id., Annexes 13 and 14.
557 INACIF website can be found at: http://www.inacif.gob.gt/index.php?option=com_content&view=article&id=96&Itemid=2.
this group, standardized figures are generated regarding violent deaths and other crimes in the country to facilitate time-bound, region-based and disaggregated analysis of crime trends in Guatemala.

343. Approximately 80% of violent deaths in Guatemala are perpetrated with firearms and this figure has also decreased slightly. According to available data, 1,941 deaths by firearm were counted in the first half of 2017, which amounts to a 3% decrease as compared to the first half of 2016, when 2,000 deaths by firearms were recorded.\(^{559}\) In earlier reports, the IACHR has attributed the high number of deaths by firearms to the loose control over firearm possession and carry, the lack of a policy to reduce the number of firearms and a national disarmament plan, and effective implementation thereof.

2. Other Types of Violence and Insecurity

344. In addition to homicides, other types of violence, crime and insecurity have a bearing on the enjoyment of human rights in Guatemala. The IACHR has closely monitored the way private security forces function, a particularly critical issue in the area of security in the country.\(^{560}\) On September 20, 2016, the General Directorate of Private Security Services (DIGESSP) approved Resolution No. 370-2016 on misapplication of the Law Regulating Private Security Services (Decree Number 52-2010), which grants operating licenses to provide private security services through private security agents, such as private escorts.\(^{561}\) According to the General Directorate of Private Security Services, there are 181 private security firms currently in compliance or in the process of bringing themselves into compliance with the Law Regulating Private Security Services.\(^{562}\) Nonetheless, 37% of the firms continue to be out of compliance with the law. During its country visit, the IACHR received information suggesting that, despite some measures adopted by the DIGESSP, challenges to State control over private security companies persist, in particular with regard to gun control, illegal arms trafficking and control over working conditions.


\(^{562}\) According to the Dirección General de Servicios de Seguridad Privada, [‘General Directorate of Private Security Services’], as of January 5, 2017 there are 119 licensed companies, 49 companies licensed under ministerial [prosecutor’s office] authorization and 13 companies under government authorization.
The case of activist and human rights defender Patricia Samayoa, who was allegedly killed by a private security guard, for example, was brought to the attention of the Commission.\footnote{IACHR, Country visit to Guatemala, July 31 to August 4, 2017, meetings with civil society organizations, international agencies and others.}

In Guatemala, it has been common for “states of emergency (exception)” to be declared in response to public demonstrations, which for most part are organized by indigenous peoples and communities in defense of their territories and in opposition to projects carried out there.\footnote{International Peace Brigades, Monthly Guatemala Information Packet, No. 164, May 2017, p. 2.} In May 2017, the Legislative Branch of government upheld the declaration of a state of siege for the municipalities of Ixchiguán and Tajamulco, in the Department of San Marcos, under decree issued by the Executive Branch. Based on widely known public information, there has been a boundary dispute between these municipalities for more than 80 years, which escalated this year into armed confrontations. According to press accounts, the reported presence of organized crime in the area has compounded the situation. The IACHR learned that the Office of the Human Rights Ombudsman has been monitoring the process.

Additionally, lynching is another phenomenon fueling citizen insecurity in Guatemala, which has been closely watched by the IACHR for several years. Lynching is an act of crowd violence against one or more persons in order to dispense justice for themselves, regardless of whether or not the victim or victims die as a result. This social phenomenon has the particularity that the perpetrators are not habitual criminals nor do they act individually, but instead are ordinary citizens who join crowds of people and even entire communities to participate in lynching.\footnote{IACHR, Report on the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 132.} The victims are usually suspected of committing a crime. The victims are usually men, and are frequently tortured and beaten, mutilated, stoned to death or burned alive.\footnote{Id., para. 132-133.}

According to information provided by the PDH in 2017, the number of lynching in the past years has held relatively steady, ranging from around 30 deaths per year and one hundred injured, although a 2013 witnessed a sharp rise in deaths from this cause, with 53 lynchings reported in that year alone (that works out to an average of more than one person lynched per week).\footnote{Information provided by the Office of the Human Rights Ombudsman in the context of the country visit, July 31 to August 4, 2017.} The IACHR has noted above that lynching not only constitute...
a serious crime against the victim of the lynching, but are often also the
cause and effect of impunity, because they are closely tied to a lack of
public confidence in the State justice system, both in its duty to prevent
crime and its duty to investigate, prosecute and punish those responsible
for crimes. Lynchings are also emblematic of social conflict in some regions
of the country, particularly regions with a heavy indigenous population
where extraction projects are carried out on ancestral lands and territories.
Some specialists also link the persistence of the phenomenon of lynching in
Guatemala to the legacy of the internal armed conflict experienced by
broad swaths of the population during that period, particularly in rural,
mostly indigenous areas.

348. The IACHR regrets that tangible progress has not been made to mitigate
this issue, even though an appeal was issued by it to do so in its 2016
report. The Commission reiterates its appeal and reminds the State that
it is its duty to prevent crime and resolve conflicts or disputes, which
tigger violence. Additionally, the State has the obligation to conduct an
invesitigation from a culturally appropriate perspective, prosecute and,
when applicable, punish those responsible for criminal acts and, thereby,
address the phenomenon of lynching with a comprehensive approach and
from a multicultural and prevention perspective.

3. State’s Response

349. In response, the State reported to the IACHR on important initiatives in the
area of citizen security. The State’s concrete proposals to prevent crime
include: (i) implementing the 2014-2034 National Violence and Crime
Prevention, Citizen Security and Peaceful Coexistence Policy; (ii)
developing early warning and monitoring mechanisms for social conflict;
(iii) amending laws, regulations and rules in order to strengthen public
ethics and judicial independence; (iv) establishing comprehensive and

569 IACHR, Report on the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion,
on Extrajudicial Executions and the United Nations Mission in Guatemala, MINUGUA. In the archive of the
Commission.
571 IACHR, Report on the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion,
572 Id., para. 135.
573 As it noted in its report, in order to achieve it, “there must be a rapprochement between the State and the
communities, and the Government must have a prevention policy, and the political will to enforce it. There
must also be collaboration with municipal authorities, traditional indigenous authorities, and the Human
Rights Ombudsman’s Office.” IACHR, Report on the Situation of Human Rights in Guatemala: Diversity,
coordinated mechanisms for victim assistance, paying special attention to victims belonging to particularly vulnerable groups; (v) conducting public information campaigns to promote a culture of peaceful social interaction and reducing sexism, racism and discrimination; (vi) promoting a culture of reporting acts of corruption; and (vii) designing urgent assistance mechanisms to prevent lynching. The State also noted that it has 58 public policies in force, 10 of which include among their objectives violence and insecurity prevention and reduction.

350. The Commission also received information on the creation, in October 2016, of a Prosecutor’s Office Specialized in Children and Adolescents under the Office of the Public Prosecutor. Implementation of said Prosecutor’s Office took place in four stages, according to available information, it was first launched in Guatemala City and the metropolitan area, and was expanded to include the municipalities of Mixco, Villa Nueva, Quetzaltenango, Escuintla and Alta Verapaz.

351. As for measures to ensure that the PNC is in charge of internal security (domestic law enforcement), and has the capacity to do so in compliance with human rights, the State reported on some measures it adopted to strengthen the Police. These measures include increased budget for the PNC, adoption of the 2014-2034 National Violence and Crime Prevention, Citizen Security and Peaceful Coexistence Policy, as well as the National Action Plan cited above. The State also reported that as of 2012, the PNC has taken steps to put the necessary human and material resources in place for it to operate properly, such as: prioritizing expenditures, streamlining resources; closing the gap between the allocated and executed budget; efforts to increase budget allocation; arrange for financial assistance for projects aimed at helping the PNC properly function with international

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574  Information provided by the State, Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 18.


cooperation agencies; among other steps. The State reported as well on the appointment of an Office of the Inspector General, as the body in charge of internal oversight of the PNC. Its powers include prevention, investigation and sanction actions.\textsuperscript{578}

352. As was reported in the 2016 IACHR Report, one of the Guatemalan State’s responses to violence and insecurity has been the participation of the armed forces in internal security tasks. In said report, the IACHR underscored the importance for the armed forces to be removed from internal security duties, because the Army and the police are substantively different institutions insofar as the purposes for which they were created and their training and preparation are concerned. Additionally, each entity is legally empowered to fulfill two entirely different duties under their respective jurisdictions.\textsuperscript{579} The permanent presence of the Army in citizen security issues, besides, could be inconsistent with the Peace Accords, inasmuch as the accords set forth that citizen security is the sole province of the civilian police forces.\textsuperscript{580} Subsequent to publication of the 2016 report, the State reported that in order to consolidate the Central American Democratic Security Model, it is currently executing the Plan to Strengthen the National Civilian Police and gradually remove the Guatemalan Army from Citizen Security tasks.\textsuperscript{581} The IACHR welcomes this information.

353. The State proposed the withdrawal of the armed forces from internal security tasks in three phases. The first phase is redistribution and entails redirecting manpower to new priority locations as of January 1, 2017. This phase provides for the reassignment and relocation of the Army in thirty high violence high priority municipalities.\textsuperscript{582} The second phase, reduction, currently underway as of the date of approval of this report, involves quantitative reduction of Army assets by 50% starting April 1, 2017. Lastly, the third phase establishes the total withdrawal of Army assets from citizen security activities beginning on January 1, 2018, “leaving it open to the possibility of requesting support when necessary, pursuant to established protocols.”\textsuperscript{583} The State explained that it would continue to provide

\textsuperscript{578} Information provided by the State, Nota Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017.
\textsuperscript{580} \textit{Id.}, para. 153. Submission of the PDH to the IACHR report on the Situation of Human Rights in Guatemala, September 2015.
security outside prison facilities and along the borders of the country.\textsuperscript{584} The IACHR welcomes and encourages the efforts made and the commitments undertaken by the State in this regard, and it will closely monitor the process of withdrawal of the armed forces from these internal security tasks until it is completed, as scheduled for 2018.

354. In the same vein, the State has also noted that it is strengthening the PNC in order to meet international standards and turn it into a highly professionalized police force, of a multicultural, multiethnic and multilingual nature, which is in tune with the country’s true make-up, through the consequent vetting process with a view toward completely dispense with the presence of the armed forces in citizen security tasks.\textsuperscript{585} The State reiterated that for the past 5 years, the Ministry of the Interior has been growing the ranks of the National Civilian Police force, and it expects the number to surpass 37,000 police members in 2017.\textsuperscript{586}

355. The IACHR welcomes the efforts made by the State in the area of citizen security, in particular, in dismantling criminal gangs. In May 2016, the Office of the Public Prosecutor and the National Civilian Police conducted a landmark operation against organized crime, which led to the apprehension of 72 alleged members of a ring of extortionists operating in the urban and extra urban transportation sectors, as well as to the seizure of scores of weapons, drugs and cash.\textsuperscript{587} It was the largest operation ever reported by the MP and the PNC as of that time.\textsuperscript{588} In similar operations against organized crime, authorities reported arresting more than 50 alleged criminals.\textsuperscript{589} Likewise, in September 2017, the MP and the PNC reported another “mega operation” of enforcement against gangs and

\begin{footnotesize}
\begin{enumerate}
\item[587] Press article, Siglo 21, Histórico operativo en contra de extorsionistas [‘Historic operation against extortionists’], May 3, 2016. It can be found at: http://s21.gt/2016/05/03/historico-operativo-en-contra-extorsionistas/. Also see Ministry of the Interior, Presuntos extorsionistas de la clica Solo para locos de la mara 18 capturados [‘ Alleged extortionists of the Solo para locos clique of mara 18 captured’], April 26, 2017. It can be viewed at: http://mingob.gob.gt/presuntos-extorsionistas-de-la-clica-solo-para-locos-de-la-mara-18-capturados/.
\item[588] Press article, Siglo 21, Histórico operativo en contra de extorsionistas [‘Historic operation against extortionists’], May 3, 2016. It can be found at: http://s21.gt/2016/05/03/historico-operativo-en-contra-extorsionistas/.
\item[589] Id.
\end{enumerate}
\end{footnotesize}
criminal groups in the business of extortion. Mounted with officers of the abovementioned institutions, in addition to the Ministry of the Interior, the Judiciary and the Public Criminal Defense Institute, the operation netted 114 arrests of individuals charged in a case of the alleged crimes of murder, extortion, extortive obstruction of traffic and illicit association.

Because of the high levels of violence Guatemala is experiencing, the Commission calls on the State to step up the efforts it announced, and to allocate sufficient resources to prevent, investigate and punish the acts of violence, in particular when the targets are specific segments of the population who are affected by violence in a differential manner, as is explained hereunder.

B. Effects on Particular Groups and Effectiveness of State Policies

1. Women

The IACHR has repeatedly voiced its concern over the prevalence of violence against women in Guatemala and the general context of impunity for it. During its visit, the Commission received reports about a disconnect between the efforts of the State institutions to protect women and the increase in violence against women in the country. As was noted by the Office of the UNHCHR, despite a slight decrease in the total number of violent deaths over the past two years, Guatemala continues to face serious problems of violence and organized crime, especially in the departments of Guatemala, Escuintla and Izabal, which have a differential effect on women. In 2016, 4,327 cases of the crimes of femicide and other forms of violence against women were brought before the courts (an increase of 38% over 2015) and the courts specialized in crimes of femicide and other

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593 Information received during IACHR country visit, from July 31 to August 4, 2017. Information submitted by the Office of the United Nations High Commissioner for Human Rights (UNHCHR) in Guatemala during the meeting held on July 29, 2017 in Guatemala City.
forms of violence against women issued 1,908 judgments in 2016, which represents a 29% increase over 2015.594

358. In its comment to the draft of this report, the State indicated that currently it has 35 Gender Units in the Executive Branch, and 340 Municipal Directorates for Women, in addition to the 60 municipal policies of security with equity that have been signed. Similarly, the Department of Protection of Womens’ Rights within the Attorney General’s Office receives and processes reports of intra-family violence since 2015. Regarding the Centers of Integral Support for Women Survivors of Violence (CAIMUS), the State informed that in October 2016 a formal meeting took place between the Ministry of the Interior, the Ministry of Public Finance and members of Congress, for the purpose of including a specific appropriation in the annual national budget to ensure the functioning of these centers, which the State considers would be beneficial for the Commission to visit at some point.595

359. The UN WOMEN country study asserts that impunity, stereotypes, discrimination, the prevalence of a machista culture and acceptance of violence lead to particular brutality against women in Guatemala.596 According to the autopsies performed by the INACIF, from January to June 2016, 374 autopsies for violent deaths of women were counted, while in the same period of 2017, 431 have been conducted.597 These figures confirm the rising trend of violent deaths of women, despite the decrease in violent deaths of men in the same period. Additionally, the Commission has obtained information about the prevalence of acts of asphyxiation and dismemberment, including decapitations, thus exhibiting particular viciousness against women’s bodies.598

360. According to information obtained by the Commission, violence against women is the most reported crime in the country,599 especially sexual violence, for which the troubling statistics are flat. Based on the data of the Secretariat against Sexual Violence, Exploitation and Trafficking in Persons (SVET), in 2015, the Office of the Public Prosecutor registered 7,845

596 UN Women, Guatemala Country Background, 2017.
599 Guatemalan Women’s Group (GGM), No Violence against Women Network (REDNOVI), Women’s right to a violence free life in Guatemala as follow up to the hearing held at the 157th Regular Session of the IACHR, July 31, 2017. Information received during the IACHR country visit, from July 31 to August 4, 2017
complaints for crimes of sexual violence, while in 2016 7,949 complaints were recorded. For this past year, less than 1% of the cases have been disposed of with judgment. According to information provided by the Human Rights Ombudsman, from 2008 to 2016, 90% of the victims of sexual violence were women, especially young girls, adolescents and young women. In its comments to the draft of this report, the State indicated that figures of the Public Prosecutor’s Office registered, between 2012 and June 2017, 71,504 women who were victims of sexual violence. In that same period, the State indicated that it conducted 263 trainings on issues related to violence against women, benefiting 4,532 people (2,589 women and 1,942 men). The Commission reiterates its concern over the prevalence of sexual violence against women and calls on the State to step up its efforts to prevent, investigate and punish cases of sexual violence.

361. The Commission learned of the draft bill of law 5178 introduced in the Congress of the Republic in 2016 in order to approve the Law of the National Registry of Sexual Offenders and the Genetic Database. The bill seeks to enhance the efficiency of security and justice agencies in identifying victimizers of these types of crimes, and effectively enforce the law. In its comments to the draft of this report, the State highlighted that this Law was approved on November 29, 2017, which the IACHR salutes.

362. The Commission has asserted that the end to the armed conflict has not meant the end to violence, especially for women, who do not realize their right to lead a violence-free life. The Commission has been noticing a scenario of violence in Guatemala, where most crime is attributed to violence perpetrated by criminal organizations, such as drug trafficking cartels and gangs or maras. In this context, women face a heightened situation of risk: the maras tend to be criminal structures dominated by

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600 Secretariat against Sexual Violence, Exploitation and Trafficking in Persons (SVET), Datos estadísticos [statistical data]– viewed on August 4, 2017.
603 Congress of the Republic, Iniciativa Que Dispone Aprobar Ley Del Registro Nacional De Agresores Sexuales Y Banco De Datos Genético, [‘Legislative bill to approve the National Registry of Sexual Offenders and Genetic Database’] Iniciativa 5178-23, 2016.
males with a machista hierarchy, who engage in practices of extreme violence. It is difficult for women to rise above men to hold high positions in the hierarchy and, true to the stereotype, many women (mothers, sisters, female partners) are regarded as “property” of men and their gang. Overpowering and harassing women is part of the control and confrontation strategy among gangs, which leaves women particularly vulnerable to acts of extortion, threats, sexual violence, torture and murder.

In response to the Preliminary Observations of the IACHR, following its country visit, the State reported to the Commission that in examining PNC-created registries of this crime phenomenon, an increase was noticed in the number of women victimizers (arrested or jailed) for different criminal acts, which could suggest that violence against women mostly stems from their involvement in criminal organizations. In light of this situation, the Commission takes note of the intent of the State to promote and further actions to protect women in order to prevent them from being forced to join criminal groups or joining out of the sense of being the possession of the groups, and to adopt policies to prevent violence against women in general, regardless of who the perpetrators are.

2. Children and Adolescents

The insecurity and violence currently dogging Guatemala, which is associated with the actions of organized crime and is aggravated by high levels of corruption and impunity, has negative repercussions on child protection. In addition to the alarming homicide numbers among children and adolescents, the IACHR has received information about the levels of crime affecting this population group and the link of this phenomenon to the situation of poverty, marginalization and lack of access to education in which many Guatemalan, particularly indigenous, children and adolescents are living.

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Homicides are the main cause of death among adolescents and young people from 15 to 24 years of age in Guatemala, for whom the homicide rate surpassed 55 for every 100,000 inhabitants in 2015 (the most recent year for which figures are available for this age group). This has meant that much of the progress achieved in the area of survival during early childhood through public child protection policies falls by the wayside during adolescence. Available information to the IACHR suggests that most homicides can be attributed to activities of the maras.

Accordingly, the Commission notes that maras not only pose the most important security, but also human rights problem. The IACHR has noted that marginalization, social exclusion, poor quality education, violence in the home and poverty have led to the emergence and the expansion of criminal groups; children and adolescents join these groups because of a lack of education or job opportunities, or else in search of a feeling of belonging, recognition or protection. Additionally, many children and teenagers are recruited under deceit, pressure, threats, extortion and violence perpetrated by the maras themselves. Even though there have been some isolated programs and initiatives to deal with this issue, available information shows that the lack of a comprehensive national public policy renders these programs ineffective, or they are discarded shortly after they get off the ground.

The weaknesses cited earlier in information gathering and statistical data collection on violence and homicides in Guatemala also applies to the type of violence endured by children and adolescents. These weaknesses make it difficult to accurately identify victims and categorize homicides, in turn, making it hard to create effective public policies to address these issues.

Contrary to the trend in homicides and violent deaths, sexual crimes have been on the rise over the past eight years, according to medical examinations conducted by INACIF. Based on the figures of the Office of the Public Prosecutor, in 2015, there were 15,401 sexual offenses reported and...
from January to October 2016 there were already 12,115 cases. Among the cases reported during the first third of 2017, 37.8% was sexual assault, amounting to 990 rapes, against adolescents from 13 to 17 years of age; followed by 7 to 12 year old little boys and girls, with a total of 409 cases. There were also 230 cases of sexual violence reported against children from 0 to 6 years of age, 169 of which documented that little girls as the victims. Additionally, it was report that in 2016, 8% of the victims of sexual violence were from 0 to 6 years of age, 15% from 7 to 12 years of age, 36% from 13 to 17 years old, and 13% from 18 to 29 years of age. These figures are for reported cases only and it is also estimated that there is a significant underreporting of cases, as victims often fail to report abuse.

On another note, from January 1 to May 31, 2017, the Office of the Public Prosecutor reported receiving 2,637 complaints for sexual violence against children and adolescents: 1,733 for rape, 661 for sexual assault, 193 for aggravated rape, 26 for sexual assault with special aggravating circumstances, and 24 for rape with special aggravating circumstances. According to the INACIF, around 85% of the forensic examinations performed for reasons of sexual assault are present in cases where the alleged perpetrator is a family member or a person close to the family. The Commission notes that there is also a discrepancy under this category between the figures of the Office of the Public Prosecutor and the INACIF.

In its comments to the draft of this report, the State informed that in 2016 an agreement was entered into by the Ministry of Public Health and Social Welfare, the Public Prosecutors’ Office, and the Secretariat against Sexual Violence, Exploitation and Human Trafficking (SVET) for the support in the provision of medication necessary in the assistance to victims of sexual violence. Between 2014 and 2017, SVET reported having provided medical assistance, psychological and social assistance, recreation, education or...
legal assistance to a total of 852 victims of sexual violence or sexual trafficking.621

371. As for child and teenage pregnancy, the Observatory on Sexual and Reproductive Health reported 18,279 pregnancies of girls aged 10 to 19 years old from January 1 to March 31, 2017.622 The available information to the IACHR indicates that girls and adolescents are twice as likely to die during pregnancy or while giving birth, and the babies born to an adolescent mother have a higher likelihood of dying in the first month of their lives as compared to babies born to adult mothers.623 On August 17, 2017, the Congress of the Republic approved Decree 13-2017, amending the Civil Code to eliminate the exceptions allowing marriage of persons below 18 years of age, partly in response to the high rates of teenage pregnancy.624 The Commission voices its concern over the high number of child and teenage pregnancies in Guatemala and, in addition to the amendment to the law urges the State to implement public policies on education and comprehensive care for children and adolescents, including age group appropriate sexual and reproductive education.

372. The Commission has also received reports to the effect that as part of the citizen security strategy, in Guatemala, armed members of the military at times teach classes in schools, including family planning.625 This is reportedly a strategy used by the State to build ties of trust between the armed forces of the State and children and adolescents. During its visit to the department of Petén, the IACHR saw firsthand how members of the Army had occupied a school in the community of Laguna Larga, which they were apparently using to sleep overnight.626 On this score, the State noted that “it is not the duty of the Guatemalan Army to occupy communities or schools.”627

622 Ibid.
623 Ibid.
373. The IACHR has expressed that the trust of the civilian population in the Armed Forces must be build through other means and mechanisms, without infringing the right to education. The teaching of academic subject matter by personnel of the armed forces of the State is not consistent with the duty of the State to provide a quality education through specialized professionals in the education of children and adolescents.\textsuperscript{628}

### 3. Indigenous Peoples

374. As for the situation of violence and citizen security in Guatemala and how it particularly affects indigenous peoples, the IACHR has been repeatedly contended that attacks in Guatemala are often targeted at traditional authorities, indigenous leaders, particularly those that are against projects on their ancestral lands and territories.\textsuperscript{629} Over the past years, the IACHR has been receiving reports of increased violence, intimidation, murders, crackdowns on peaceful demonstrations, as well as criminal prosecution against indigenous leaders and authorities for their opposition to development and investment projects.

375. The reports stresses that indigenous communities opposing megaprojects on their territories have confronted, among other aspects to: property destruction, robbery and theft and the burning of homes and crops; blocked roads or destroyed bridges; verbal threats and threats with blade weapons and firearms; gun shots in the air or on communities; complaints with local courts to obtain warrants for their arrest; direct physical assaults on communities, including on children; smear and stigmatization campaigns in the news media; and processes of criminalization of defenders of the human rights of indigenous peoples, among other things.\textsuperscript{630}

376. The violence faced by indigenous communities and peoples is also often linked to the agrarian conflict persisting in many areas of the country. The IACHR learned of the situation of the communities of Nueva Seamay and Nueva Sebax, in Senahú, Alta Verapaz. According to the information it received, the members of the communities of the Verapaz Union of Peasant Organizations (OVOC) have been the targets of assaults, death threats, and have even been attacked with firearms, with community member Dominga


\textsuperscript{629} IACHR, 2016 Annual Report, \textit{Capítulo V: Seguimiento de recomendaciones formuladas por la CIDH en sus informes de país o temáticas} [‘Chapter V: Follow-Up of Recommendations Issued by the IACHR in its Country or Thematic Reports’] para. 121.

\textsuperscript{630} Information received from civil society organizations and indigenous authorities during the country visit, July 31 to August 4, 2017.
Caal Col sustaining a bullet wound.\textsuperscript{631} Their houses and farm plantings have reportedly been destroyed, and as of the present date those responsible for the destruction or the attack on Mrs. Caal Col have not be apprehended, based on available information. These attacks and violence have come about despite the Secretariat of Agrarian Affairs (SAA) having set up a discussion forum, where the Ministry of the Interior, the municipal governments, the Land Fund (FONTIERRAS), the National Land Registry (National Cadastre), human rights organizations and the affected communities all have a seat as well. This forum, however, has not been effective at preventing these attacks, evictions and conflicts.\textsuperscript{632}

377. The violence faced by indigenous peoples is closely connected to the situation of discrimination and exclusion they experience. This exclusion can be seen in spheres such as land ownership, access to basic services, working conditions, access to the formal economy, participation in decision-making and in the institutions of the State, representation in the media and public debate, and the lack of access to justice.\textsuperscript{633} Despite specific provisions of the 1996 Peace Accords on the elimination of discrimination against indigenous peoples, more than 20 years after the signing, the IACHR continues to receive reports of the need for full compliance with the commitments, especially the Agreement on Identity and the Rights of Indigenous Peoples. Despite claims to the contrary, the Commission notes that, according to the Secretariat of Peace (SEPAZ), both that Agreement as well as the Agreement on Socio-economic Aspects and the Agrarian Situation are ones that present the “highest number of commitments pending compliance, which affects the socio-economic and culture issues of the country.”\textsuperscript{634}

378. The IACHR also received reports of threats, harassment, intimidation and attempted cooptation against the members of the Central Campesina Ch’ortí’ Nuevo Día union, who are opposed to the operation of a hydroelectric company and an antimony mine in the municipality of Olopa, in the Department of Chiquimula.\textsuperscript{635} Reports were also received about assaults with machetes and threats against the lives of indigenous members of the Matasano community, as well as conflicts in the community

\textsuperscript{631} International Peace Brigades, Monthly Information Packet of Guatemala, No. 164, May 2017, p. 3.
\textsuperscript{632} International Peace Brigades, Monthly Information Packet of Guatemala, No. 164, May 2017, p. 3.
of El Rodeo, also stemming from the presence of companies in the area and community opposition to it.

379. The IACHR notes that the common thread to the violence and insecurity afflicting the indigenous peoples and communities in rural areas of Guatemala is the presence of actors foreign to these communities, and the lack of a process of consultation in keeping with Inter-American standards. The IACHR stresses again the process of prior consultation must not be thought of merely as a tool to mitigate social conflict. Notwithstanding, when it is properly conducted, it can have a collateral effect of lessening such conflicts.  

4. LGBTI Persons

380. During its visit, the IACHR received information indicating that violence against LGBTI persons is a structural issue, as illustrated by persistent forms of discrimination and prejudice. In this regard, the Commission has become aware of the high incidence of violence against trans women, and of the high risk faced by human rights defenders of LGBTI rights. Additionally, the IACHR has received information regarding human rights matters linked to the right to health of trans persons, which warrant being addressed by the State, such as lack of medicine in hospitals for the treatment of HIV for who require it, and the absence of a public health care policy from a gender perspective.

381. On this topic, civil society has reported to the Commission that 85% of trans women, who are victims of violence and discrimination, are below 35 years of age, with 33% of the total number of victims from 18 to 24 years of age. Additionally, based on accounts received by the Commission, trans women sex workers have been murdered by individuals, who use their services or at the hands of gangs and criminal groups.

382. On related note, the IACHR has received worrying reports that indicate that defenders of the rights of LGBTI persons are subject to violence, threats and harassment because of the work they do. In this sense, the offices of

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636 See Section III.C, para. 109, supra.
certain organizations have allegedly been attacked by unknown individuals.\textsuperscript{640} On this score, the Commission cites the murder of the trans leader and activist Evelyn Zulm, who was a beneficiary of precautionary measures requested by the IACHR,\textsuperscript{641} in November 2016. In this same period, the IACHR received reports of three other murders of trans women in Guatemala, which were characterized by alarming degrees of cruelty;\textsuperscript{642} a view shared by the Human Rights Ombudsman of Guatemala and the Office of the United Nations High Commissioner for Human Rights. The two entities have voiced their concern over the evident “troubling trend of attacks on trans women.”\textsuperscript{643}

383. The Commission also learned about the serious situation that trans women confront in their access to health services because of the lack of HIV medications for hospitals in the public health network.\textsuperscript{644} According to the information it received, this situation reportedly came about because of new directives from the Ministry of Health for the procurement of these drugs, which do not take into consideration the need to provide HIV treatment on a continual basis.\textsuperscript{645} The IACHR was apprised as well during its on-site visit by civil society organizations on August 1, 2017 that the Ministry of Health was only purchasing medications once inventories are completely exhausted. This situation reportedly causes breaks in treatment for persons with HIV, particularly affecting trans women, who make up nearly 22% of the HIV positive population of the country.\textsuperscript{646} Additionally with regard to the situation of trans persons, the IACHR heard accounts that in Guatemala there is no specific prison policy for the deprivation of liberty of trans persons.

384. Notwithstanding, the Commission recognizes the forward steps cited by the Office of the Human Rights Ombudsman of Guatemala, in his “2016 Annual Status Report” which, following the recommendations of the IACHR, conducted training sessions of National Civilian Police agents who “take

\textsuperscript{641} IACHR, MC 3-06 - Kevin Josué Alegría Robles y miembros de OASIS, Guatemala, February 3, 2006.
\textsuperscript{643} PDH and OUNHCHR Preocupan graves hechos de violencia contra mujeres trans ['Concern over serious acts of violence against trans women'], December 8, 2016.
\textsuperscript{644} El Periódico, Complicadas normas administrativas afectan a pacientes con VIH/sida ['Complicated administrative rules affect HIV/AIDS patients'], November 7, 2017.
\textsuperscript{645} El Periódico, Más de 16 mil pacientes en riesgo por falta de medicamentos ['More than 16 thousand patients at risk because of lack of medications'], November 7, 2017.
\textsuperscript{646} UNAIDS, Guatemala, in 2016.
complaints in order to shed light on and document the violence suffered by LGBTI persons.” The Office of the Ombudsman wrote that as a result of the oversight of the Office of Victim Care (OAV) of the National Civilian Police, it could be confirmed: “there are several deficiencies in recording violence suffered by LGBTI persons.” The Office of the Ombudsman noted in his report that a field was added for the identification of the complainant persons, “in addition to the name of the personal identification document (DPI), for the gender identification” and that “the OAV agents must respect self-identification” of the person bringing the complaint. Additionally, the Office of the Ombudsman reported to the IACHR that the Offices of Permanent Care of the Office of the Public Prosecutor and of Victim Care of the Office of the Ombudsman, carried out a supervisory check in order to make sure “to include the LGBTI field in complaint intake, so that violence against this population group is made visible.”

385. The IACHR expresses its concern over the situation of violence and discrimination endured by LGBTI persons in Guatemala, as well as the lack of specific public policies to fully ensure the rights of these people. Nonetheless, the Commission does take note of the efforts of the bodies of justice in advancing the rights of LGBTI persons. The IACHR takes this opportunity to recall that the State of Guatemala is obligated to act with due diligence to prevent, investigate, punish and provide reparation for all types of violence committed against LGBTI persons. The Commission, accordingly, recommends the State of Guatemala to adopt the legislative and policy measures necessary to prevent violence, discrimination and prejudice against persons based on sexual orientation, identity and diverse gender expression, or whose bodies deviate from the male and female standard.

C. Death Penalty

386. During its country visit, the IACHR noticed that a public debate was taking place about the high levels of insecurity in the country, particularly as a consequence of activities of the so-called maras or gangs. The debate has included, among other aspects, calls to resume application of the death
penalty for crimes committed by members of the maras. In light of the situation, the IACHR underscores the importance for the State of Guatemala to consider adopting as soon as possible Legislative Bill 5100 to abolish the death penalty, which is pending in Congress.

387. Guatemala is one of the few countries of the hemisphere where the death penalty is still provided for within the domestic legal framework. The Guatemalan State ratified in 1978 the American Convention on Human Rights, Article 4 of which enshrines the right to life and Article 2 of which enshrines the obligation to adopt provisions of domestic law to give effect to that right. Guatemala has still not ratified the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

388. Capital punishment is provided for in the Guatemalan Criminal Code, the Law against Narcoactivity (Decree 48-92), and in Decree 100-96 that establishes the procedure for execution of the death penalty. The death penalty is in force in the country for the crimes of parricide, extrajudicial execution, abduction or kidnapping, forced disappearance, killing the President or Vice President. No legal mechanism is in place to regulate pardons. Article 18 of the Political Constitution of the Republic of Guatemala lists the instances in which said punishment may not be imposed, and also provides that the “Congress of the Republic may abolish the death penalty.” That is to say, in order to abolish the death penalty from the Guatemalan legal system, a simple amendment to the law is sufficient without the need for a constitutional amendment.

389. The Commission was informed of the legislative bill No. 5100, Law Abolishing the Death Penalty, which is currently pending in Congress. It also received information about the promotion of initiatives aimed at resuming implementation of the death penalty, in particular, in response to the high levels of insecurity afflicting the country.

652 IACHR, On-Site Visit to Guatemala, July 31 to August 4, 2017, meetings with civil society organizations and others.

653 In addition to Guatemala, the death penalty is still in force in Antigua and Barbuda, Bahamas, Barbados, Belize, Cuba, Dominican, United States, Grandada, Guyana, Jamaica, Saint Kits and Neves, Santa Lucia, Saint Vicent and the Grenadines, and Trinidad and Tobago.

654 The instances in which the death penalty may not be imposed are: “a. On the grounds of presumptions; b. On women; c. On persons older than 60 years of age; d. On convicts of political crimes and common crimes connected to political crimes; and e. On convicts whose extradition has been granted under that status.”

655 See, for example, Press article, “Guatemala analiza volver a aplicar la pena de muerte para combatir a las maras” [‘Guatemala examines bringing back application of the death penalty to combat maras’], August 26, 2017. Can be viewed at: https://actualidad.rt.com/actualidad/248128-guatemala-analiza-volver-aplicar-pena-muerte.
390. During its on-site visit, State officials reiterated to the Commission that the death penalty has not been applied in the country since 2000, and that there are no inmates on “death row,” meaning sentenced to the death penalty and awaiting execution.\footnote{IACHR, On-site visit to Guatemala, July 31 to August 4, 2017, meetings with State officials.} The IACHR welcomed this information, and noted that since the repeal of Decree 159, a void has opened up in the Guatemalan legal system on the subject of the death penalty, inasmuch as there is no State entity with the legal authority to hear and rule on pardons, petitions for clemency and commutation of sentences. In practice, this has functioned as a de facto moratorium. In February 2016, the Court of Constitutionality found the application of the death penalty for the crime of murder to be unconstitutional as established in Article 132 of the Guatemalan Criminal Code. The ruling did away with the element of dangerousness as grounds for a death sentence.

391. The Commission views as positive that for 17 years the death penalty has not been imposed by judicial authorities and that for more than a decade commutation of death penalty sentence has been ordered for persons previously sentenced. In response to recent calls to resume the application of the death penalty, the IACHR recalls that even though it is not used in practice, as long as the domestic law provides for its use, potential implementation of the death penalty lies dormant. As the Inter-American Court has held, even when the accused has not been executed, “the mere existence of [a rule that provides for the death penalty] is, \textit{per se}, a violation” of the provision of the Convention to adopt laws in the domestic legal system to give effect to the right to life.\footnote{IA Court of HR, \textit{Case of Raxcacó Reyes v. Guatemala}, Judgment of September 15, 2005. Merits, Reparations and Costs. Series C, No. 133, para. 88.} In May 2016, in relation to compliance with judgment in the case of \textit{Raxcacó v. Guatemala}, the Inter-American Court oversaw potential amendment to Article 132 of the Criminal Code on the crime of murder and the ability to impose the death penalty on the grounds of “dangerousness of the agent,” as well as amendment to Article 201 of the Criminal Code which sets forth the elements and punishment of the crime of abduction or kidnapping, in such a way that different definitions and punishments are set forth for different forms of that criminal offense, and during the implementation of these amendments, to not apply the death penalty for that crime.\footnote{IA Court of HR, 2016 Annual Report of the Inter-American Court of Human Rights, pg. 83.} The Commission takes note and views positively that as a consequence of actions of both the Executive Branch and of the Judicial Branch, in keeping with the judgments of the Inter-American Court, more than 17 years have elapsed without the death penalty being imposed or executed in Guatemala. The Commission finds that, in practice, the State of Guatemala has taken steps forward toward abolishing the death penalty, which is
consistent with the spirit of the American Convention on the subject matter.

392. Additionally, the IACHR acknowledges the ruling of the Constitutionality Court of October 24, 2017, declaring unconstitutional the application of the death penalty to the crimes of parricide, extrajudicial execution, abduction or kidnapping, forced disappearance, and killing the president or vice president. The grounds for the Court’s decision included the inconsistency between the application of the death penalty and international human rights treaties ratified by the Guatemalan State. In this regard, the Commission notes that while Article 18 of Guatemala's Constitution still provides for the death penalty, it may no longer be imposed in the country in light of Article 4.2 of the American Convention. The IACHR welcomes this advancement toward abolition of the death penalty.

393. Based on the foregoing, and taking into account the practice of almost two decades, and the findings of the IACHR in its Report “The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition” with regard to the obligation of OAS member States to gradually eliminate the death penalty, the Commission recommends the State of Guatemala to adopt the necessary measures so that domestic law is brought into line with said practice and thus continue to move toward abolition of the death penalty. The IACHR reiterates the need to move forward in amending laws in the countries of the region, which still allow the death penalty, in order to totally abolish it from their legal systems or, otherwise, impose a moratorium on imposing it. In this vein, the Commission calls Guatemala to ratify the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.
CHAPTER 7
SITUATION OF PERSONS UNDER STATE CUSTODY
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A. Persons Deprived of Liberty

394. With regard to the situation of persons deprived of liberty in Guatemala, the Inter-American Commission notes that the Guatemalan prison system is characterized for the most part by overcrowding (22,464 persons held in facilities with a maximum capacity of 6,320), excessive use of pre-trial detention (50% of the total of the prison population), and a slow justice system. It is also characterized by deplorable conditions of detention, high levels of violence, a lack of effective social reintegration programs, corruption, authorities’ failure to effectively control the inside of prison facilities.

395. According to official figures, as of May 2017, a total of 22,464 persons were being held in detention at 21 prison/detention facilities currently in operation in the country.* Additionally, approximately 1,600 persons are regularly held in custody at police stations.** In particular, the IACHR learned that the total number of women deprived of liberty is 2,248, the equivalent of 10% of the total prison population.*** This figure is of particular concern to the Commission, considering that the percentage of incarcerated women more than doubles the average of women deprived of liberty in the region.****

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* In particular, Guatemala has 22 prison facilities, but currently only 21 are in operation, because the Centro Penal del Progreso, Guastatoya, is not holding any people deprived of liberty. PDH-Guatemala. Information submitted to the IACHR on July 27, 2017, in the context of the on-site visit.

** PDH, Guatemala, Information provided to the IACHR on July 25, 2017.

*** PDH-Guatemala. Information provided to the IACHR on July 25, 2017, in the context of country visit.

**** The specific percentage is 4.95%. This statistic is based on the latest available figures from the States of the Americas—which encompass from 2012 to 2017—except for Cuba, which does not have the respective statistics. Institute for Criminal Policy Research and Birkbeck University, World Prison Brief data. IACHR, Informe sobre medidas dirigidas a reducir el uso de la prisión preventiva en las Américas, ["Report on Measures Aimed at Reducing the Use of Pre-trial Detention in the Americas"], OEA/Ser.L/V/II.163. Doc. 105, July 3, 2017, para. 200.
1. Overcrowding and excessive use of pre-trial detention

b) General considerations

High rates of overcrowding pose one of the main concerns in connection with the prison system in Guatemala. Available information shows that from 2010 to the present, the prison population in the country has nearly doubled. In this regard, in order to address the situation of overcrowding, the IACHR notes that the Guatemalan State has made several efforts to reduce the number of persons deprived of liberty. These efforts include measures aimed at reducing pretrial detention in cases that warrant doing so, such as the use of alternative measures to incarceration, and the creation of the Democratic Crime Policy (Política Criminal Democrática) of the State of Guatemala by the Office of the Public Prosecutor (Ministerio Público or MP for its Spanish initials), an initiative to use pretrial detention in keeping with its exceptional nature, and only in cases where risk of flight or potential hampering of the investigation is “provable.” The State has also established programs such as the ‘progressive regime’ (gradual easing of confinement) and sentence reduction, which seek to facilitate social reintegration and enable persons deprived of liberty—through work, education and good conduct—to be conditionally released or to benefit from early release prior to completing their prison sentence. In its comments to the draft of this report, the

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667 On this score, the OUNHCHR has spoken out about the “urgent need” to address structural problems of the Prison System, such as “chronic overcrowding.” Annual Report of the OUNHCHR on the activities of its office in Guatemala, A/HRC/34/3/Add.1, January 11, 2017, para. 31.

668 In particular, in 2010, it was reported that 10,512 persons were deprived of liberty. PDH-Guatemala, Contribuciones del Procurador de los Derechos Humanos para la adopción, en el 54° período de sesiones del Comité contra la Tortura, de la lista de cuestiones previas a la presentación del séptimo informe periódico por parte del Estado de Guatemala, [‘Contributions of the Human Rights Ombudsman for approval, at the 54th session of the Committee against Torture, of the list of questions prior to the submission of the 7th periodic report by the State of Guatemala’], February 5, 2015, para. 91. Also see, IACHR, Situción de derechos humanos en Guatemala, [‘Situation of Human Rights in Guatemala’], OEA/Ser.L/V/II, Doc. 43/15, December 31, 2015, para. 354.

It must also be noted that the rate of deprivation of liberty per 100,000 inhabitants has notably increased year after year. For example, while in 2010 this rate was 84 persons deprived of liberty, in 2016, the rate increased to 127. PDH, Guatemala, Informe Anual Circunstanciado 2016, [‘Annual Status Report’], p. 176.

669 This initiative, completed in 2016, designed in the context of the Democratic Crime Policy of Guatemala, involved the efforts of the three branches of government, and adopts “a comprehensive strategy to deal with violence and crime, through 4 strategic action prongs, which are: prevention, investigation, punishment and reintegration.” State of Guatemala, Submission of the State of Guatemala in response to request for information prior to the on-site visit of the IACHR, Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017, pars. 87-89, 92,93, and 95-97.

670 The progressive regime consists of several activities aimed at the social readaptation of convicted persons and is divided into four phases. The last phase is conditional release. For further information on how it works, see Ley del Régimen Penitenciario, [‘Law of Prison Regime’], Decree No. 33-2006, Guatemala, in force as of September 2012, Articles 56 to 69.
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State informed that it is currently working on the regulations to implement this Law. Notwithstanding, the information provided indicates that the aforementioned measures have not been effective, and that the occupancy rate of prison facilities is at more than three times their maximum capacity.

397. In view of the fact that overcrowding constitutes *per se* a violation of personal integrity, and that this situation seriously undermines the enjoyment of human rights by persons deprived of liberty, the IACHR urges the State to adopt measures aimed at a more rational use of incarceration, such as the use of pretrial detention in keeping with standards on the subject matter; and the promotion, regulation and use of alternatives measures to the deprivation of liberty. The Guatemalan State must also take steps to efficiently implement existing initiatives which provide for the use of conditional release, which in addition to reduce the prison population, helps support persons deprived of liberty to become reintegrated into society. In particular, in order for programs such as sentence redemption and progressive release regime to efficiently work, the State must, among other things: a) implement comprehensive measures to prevent bureaucratization of processes and help to speed up and providing certainty to the processing of the progressive release regime and of motions for redemption of sentence; b) implement an automatized and unified system of registry and assessment of cases under these regimes, or cases that could be eligible for these benefits; c) ensure continuity of these programs, regardless of turnover of prison or government officials, and d) ensure that persons deprived of liberty have the legal assistance they require to gain access to the programs.

398. As for the situation of pretrial detention, which poses one of the most serious problems faced by persons deprived of liberty in Guatemala, the IACHR notes that as of May 2017, 50.07% of the total prison population—that is, a total of 11,210 individuals—were being held in pretrial detention. The fact that 50% of said population is under this regime

Redemption of the sentence is a measure based on “education and useful and/or productive work,” which allows for redeeming punishments of deprivation of liberty. For further information on how it works, see *Ley del Régimen Penitenciario* [*Law of Prison Regime*], Decree No. 33-2006, Guatemala, in force as of September 2012, 70 to 74.


On this subject, the IACHR has held that overcrowding increases levels of violence between inmates; hampers access to basic services; contributes to the spread of diseases; creates deplorable conditions of sanitation and hygiene; in and of itself poses a risk factor for an emergency situation; restricts inmates access to productive activities and fosters corruption. IACHR, *Informe sobre el uso de la prisión preventiva en las Américas*, [*Report on the Use of Pretrial Detention in the Americas*], OEA/Ser.L/V/II., Doc. 46/13, December 30, 2013, para. 288.

Of the total number of persons in pretrial detention, 10,038 are males and 1,210, mujeres. PDH-Guatemala. Information submitted to the IACHR on July 27, 2017, in the context of the on-site visit. The PDH and the
clearly shows that it is not being used in keeping with the requirement for it to be exceptional in nature, and that it disproportionately affects persons who cannot afford to pay the monetary punishment of a fine. Excessive use of this measure is one of the most obvious signs of the failure of the justice administration system, and represents an unacceptable situation in a democratic society, which respects the right of every person to the presumption of innocence.674 Accordingly, the Commission calls on the State to adopt the judicial, legislative, administrative and other types of measures required to correct the excessive use of pretrial detention, ensuring that this measure is of an exceptional nature and hews to the principles of legality, presumption of innocence, necessity and proportionality,675 and making sure that the regulation thereof does not run counter to efforts to combat impunity in Guatemala.

c) Major challenges to reducing pretrial detention

399. The IACHR had access to information suggesting that the major challenges faced by the Guatemalan State to reduce excessive use of pretrial detention, and consequently, high levels of prison overcrowding, include the following: a) crime policies proposing higher incarceration rates as a solution to citizen security; b) pressure from the media and public opinion to address citizen insecurity through deprivation of liberty; c) use of the mechanism of disciplinary control as a measure of pressure or punishment against judicial authorities who decide to use alternative measures to incarceration; d) inadequate public defense; e) lack of registries to monitor the length of judicial proceedings, and f) high incidence of hearing postponement.

400. Firstly, crime policies proposing higher rates of incarceration as a solution to citizen insecurity translate into legislation that seeks to: a) favor the use of pretrial detention; b) limit the ability to use alternative measures to

OUNHCHR-Guatemala further report that the use of pretrial detention significantly varies from one department to another, with highest rates recorded in 2016: Santa Rosa (33%); Guatemala (37%); Jalapa (40%); Zacapa (42%), and Retalhuleu (50%). Said regime was used less frequently in these departments: San Marcos (9%), Alta Verapaz (15%) y Sololá (15%). OUNHCHR and PDH, “The use of pretrial detention in Guatemala: a human rights problem,” 2016, para. 18.


deprivation of liberty, and c) impose more requirements for release. In this regard, amended Article 264 of the Code of Criminal Procedure makes it mandatory to impose pretrial detention with no ability to use alternative measures for certain crimes; in addition to allowing for repeat offense as a criterion per se to automatically impose this regime. In another statute, the Law against Femicide and other Forms of Violence against Women prohibits the use of alternatives to pretrial detention for any charge of femicide; and the Law to Strengthen Criminal Prosecution, in addition to making pretrial detention automatic for certain crimes, prohibits the use of any prison benefits such as alternative measures for these same crimes.

401. The IACHR notes that these legal provisions establish grounds for admissibility of pretrial detention that differ from the traditional or precautionary grounds and reflect a punitive or a perpetrator-focused approach to criminal law. In this regard, the IACHR reiterates that pretrial detention should be justified in each specific case and that legislation that provides for the use of non-custodial measures based on the type of offense, stands at odds with the governing principles of the use of pretrial detention. Based on the foregoing, in no circumstance may the law provide that any type of offense is excluded from the regime established for ending pretrial detention, or provide for certain types of offense to receive a different treatment from others in relation to being free during the trial, without any basis in objective and legitimate criteria, other than meeting standards such as “social alarm,” “social repercussion,” “dangerousness.”


677 In particular, Article 264 of the Code of Criminal Procedure establishes that no alternative measure [to incarceration] shall be granted for the following crimes: “homicide with malice of forethought, murder, parricide, aggravated rape, rape resulting in death, statutory rape [rape of a minor under 12 years of age], abduction or kidnapping in all of its forms, sabotage, aggravated robbery, possession or carrying of a firearm. Code of Criminal Procedure, Decreto No. 6-2013 por el que se reforma el artículo 264, ['Decree No. 6-2013 amending Article 264'], Guatemala, in force as of September 13, 2013, Article 264.

678 Code of Criminal Procedure, Decreto No. 6-2014 por el que se reforma el artículo 264, ['Decree No. 6-2013 amending Article 264'], Guatemala, in force as of September 13, 2013, Article 264.

679 Ley contra el Feminicidio y otras Formas de Violencia contra la Mujer, ['Law against Femicide and other Forms of Violence against Women'], Decreto No. 22-2008, Guatemala, in force as of April 2008, Article 6.

680 In particular, the Law to Strengthen Criminal Prosecution (Ley de Fortalecimiento de la Persecución Penal) (which amends the Law against Organized Crime) establishes that the “conditional suspension of criminal prosecution” shall not be granted for the crimes set forth in Article 25 of this last law, consisting of crimes against life; abduction and kidnapping; torture; serious or very serious specific bodily harm; crimes of rape and sexual abuse. Ley de Fortalecimiento de la Persecución Penal, ['Law to Strengthen Criminal Prosecution'], Decreto No. 17-2009, Guatemala, in force as of May 2009, Article 3.


682 Id., para. 231. Recommendation B “Eradicating Pretrial Detention as Anticipated Punishment.”
On this issue, the IACHR determined in its recent jurisprudence that when a legal provision is in force allowing as sole grounds for pretrial detention preclusion from release during the case proceedings—and it is not determined based on an assessment of the evidence of risk of flight or hampering the case— the differential treatment leading to restriction of personal liberty is arbitrary and, therefore, a violation of the principle of equality and non-discrimination and of the right to personal liberty.\footnote{IACHR, Report No. 53/16, Case 12.056. Merits. Gabriel Oscar Jenkins. Argentina. December 6, 2016, paras. 147-149.}

Additionally, the IACHR views with concern that Guatemala has a ‘tough-on-crime’ or ‘iron fist’ crime policy in place when it comes to drugs,\footnote{IACHR, Informe sobre medidas dirigidas a reducir el uso de la prisión preventiva en las Américas, [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas], OEA/Ser.L/V/II.163. Doc. 105, July 3, 2017, para. 85.} in categorizing as “serious offenses” (felonies) all conduct relating to the use of drugs, which triggers automatic imposition of pretrial detention, and precludes defendants from benefitting from alternatives to incarceration.\footnote{For a more detailed analysis about this type of policies region wide, see: IACHR, Informe sobre medidas dirigidas a reducir el uso de la prisión preventiva en las Américas, [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas], OEA/Ser.L/V/II.163. Doc. 105, July 3, 2017, paras. 85 and 90. Also see: WOLA, IDPC, Dejusticia, CIM and OAS, Mujeres, políticas de drogas, Una guía para la reforma de políticas en América Latina, [‘Women, Drug Policies and Incarceration: A Guide to Policy Reform in Latin America’] 2016, pgs. 20 and 22; IACHR, Audiencia pública “Medidas para reducir la prisión preventiva en América” [‘Public Hearing “Measures to reduce pretrial detention in the Americas’], 157th regular session, April 5, 2016; Giacomello, Corina, Documento Informativo “Propuestas de alternativas a la persecución penal y al encarcelamiento por delitos de drogas en América Latina”, [‘Informational document: Proposals for alternatives to criminal prosecution and incarceration for drug crimes in Latin America’], International Drug Policy Consortium June 2014. Also see Consorcio Internacional sobre Políticas de Drogas, Las Cortes de Drogas. Los alcances y retos de una alternativa a la prisión preventiva”, [‘Drug Courts. Suggestions and Challenges of alternatives to pretrial detention’], May 2012, pg. 2. For example, in the area of legislation, the National Code of Criminal Procedures of Mexico allows for the automatic use of pretrial detention for the crimes against health listed under Articles 194 and 195 of the Federal Criminal Code [section titled] ‘About the production, possession, trafficking, proselytism and other acts in the area of drugs. Código Nacional de Procedimientos Penales, [‘National Code of Criminal Procedures’], Mexico, published on March 5, 2014, in force as of June 18, 2016, Article 167.} On this score, the Commission notes that the Law against Narcoactivity, in regarding as “serious” all offenses related to drugs, makes pretrial detention mandatory for the crimes of “drug trafficking” or only “possession for use.”\footnote{Ley contra la Narcoactividad, [‘Law against Narcoactivity’], Guatemala, in effect as of October 1992, Article 61.} By drawing no distinction between the treatments of crimes linked to drugs, Guatemalan law ignores the principles upon which the use pretrial detention is based, especially, the principle of proportionality.\footnote{IACHR, Informe sobre medidas dirigidas a reducir el uso de la prisión preventiva en las Américas, [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas], OEA/Ser.L/V/II.163. Doc. 105, July 3, 2017, para. 90.} Accordingly, and taking into account the incompatibility of this legislation with international standards, the IACHR welcomes the
recent commitment made by the State with respect to the adoption of international criteria providing for “alternative measures to incarceration such as a strategy that allows for addressing the issue of drugs.”

403. As for the lack of independence of justice operators, described in Chapter IV, Section B, this situation continues to be one of the major challenges to the use of alternatives to deprivation of liberty and, consequently, to a reduction in the incidence of prison overcrowding. This is because State policies, which propose more incarceration as a solution to the problems of citizen insecurity, often go hand in hand with a sharp media and political institutional message backed by public opinion, and even by the institutions of justice themselves. In this regard, the OUNHCHR and the PDH have noted that judicial officials receive very little encouragement or support from the institutions of justice to grant alternative measures, and that these decisions are more likely to be overturned than decisions imposing a custodial measure. Furthermore, the National Mechanism Office for the Prevention of Torture reported to the IACHR that the major challenge for the use of non-custodial measures is precisely that, the fear of their decisions being attacked in this way, by both civil society and the media, as well as by the Supreme Court of Justice itself. In response to this situation, the IACHR recommends the State to adopt the legislative, administrative and institutional measures necessary to ensure the highest degree possible of independence, autonomy and impartiality of judicial authorities, so that they are able to perform their duties free of any type of interference.

404. With respect to public defense in Guatemala, inadequate services continue to be one of the major causes of protracted pretrial detention. In particular, poor performance of public defenders is mostly rooted in the scant amount of resources allocated to pay them to fulfill their mandate and to remedy the problem of understaffing and cope with the heavy workload, which consequently befalls them. This keeps them from being able to effectively focus and properly follow up on the cases they take. Regarding this

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692 In this regard, IACHR, Audiencia pública “Medidas para reducir la prisión preventiva en América” [‘Public Hearing “Measure to reduce pretrial detention in the Americas’], 157th regular session, April 5, 2016. Information provided by the Institute of Comparative Studies in Penal Sciences of Guatemala (ICCPG). Also
institution, the IACHR recalls the recent legal precedents of the Inter-American Court to the effect that “the provision of free and public legal assistance helps [...] to adequately make up for the procedural inequality in which persons who face the punitive power of the State find themselves in, as well as the situation of vulnerability of persons deprived of liberty.”

Therefore, the Commission calls on the State of Guatemala to strengthen its public defender system, paying priority attention to the coverage and the quality of the service in order to provide from the time of apprehension by the police, a service aimed at timely and effective protection of the fundamental rights of the person charged with the crime.

On another note, the lack of an automated and unified registration/record-keeping system of cases of persons deprived of liberty makes it virtually impossible to know when the deadline for holding someone in pretrial detention has lapsed leading to detainees awaiting judgment remaining in jail for inordinate lengths of time.

In view of the foregoing, the State should implement a judicial and prison information management system at every detention facility in the country, in order to provide updated information and easy access to case information and the legal status of persons deprived of liberty in the country. These information management systems should make it possible to process information in an organized and efficient way at every prison facility, and make all information available in centralized information management systems, to which prison administration officials can resort in order to obtain up-to-date data and reliable statistics.


In this regard, IACHR, Informe sobre los derechos humanos de las personas privadas de libertad en las Américas [‘Report on the human rights of persons deprived of liberty in the Americas’], OEA/Ser.L/V/II. Doc. 64, December 31, 2011, para. 158.
406. Another cause of the extended length of pretrial detention is the high number of hearings that are suspended, as a consequence of a variety of factors such as parties’ failure to appear; lack of means of transportation, not enough gasoline, insufficient prison guards and failures in the coordination between institutions in planning for hearings. This issue is one of the main complaints made to the Commission through numerous testimonies of persons deprived of liberty and from information provided by civil society. The OUNHCHR and the PDH have also spoken out about this situation. On this score, the State of Guatemala reported that in order to streamline case proceedings and avoid hearing postponement, in 2017 the Judiciary entered into two interinstitutional cooperation agreements to implement the criminal matter notification system. One of the agreements is with the Office of the Public Prosecutor and the other one is with the Criminal Public Defense Institute. For its part, the IACHR believes that one of the most effective measures that the State can adopt in order to overcome the difficulties that arise in transferring defendants to court hearings is to implement so-called “in-prison hearings,” which are held on the prison premises and with the judicial officers going to the premises and conducting the particular proceeding. In addition to making sure a higher number of cases are heard this way, by holding this type of hearing justice operators are also brought into direct contact with the actual prison conditions. This could help to make the judiciary more sensitive to how important it is to use alternative measures to the deprivation of liberty, particularly, to deal with the high incidence of overcrowding plaguing Guatemala's prisons.

d) Alternative measures to pretrial detention

407. Alternative measures are regulated under Article 264 of the Code of Criminal Procedure. This Code establishes that as long as the risk of flight or of obstruction of the proceeding to “ascertain the truth” can be reasonably avoided, the judicial authority may choose to any of the

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697 In this regard, OUNHCHR and PDH, ['The use of pretrial prevention in Guatemala: a human rights problem'], 2016, para. 39.
following measures: a) bail bond; b) house arrest; c) ban from departing a particular territory, or from going to certain gatherings or locations; d) placement in the custody or under the surveillance of a particular person or institution; e) periodic appearance before a court or designated authority; and f) prohibition of contact with certain individuals.\footnote{701}

408. The IACHR notes that over the past years, the Guatemalan State has made several efforts mainly to apply two types of alternative measures: electronic monitoring devices; and restorative justice programs in criminal matters, focused on treatment of persons who commit minor drug-related offenses. As for electronic monitoring, the Law of Implementation of Control by Telematics (Telecommunications and Informatics) in Criminal Proceedings, in force as of December 2016, regulates the use of “telem and computer (telematics) control over criminal cases [...] under the modality of permanent location of persons, through the use of electronic bracelets, anklets, armbands or of any electronic device with a global positioning system (GPS).”\footnote{702} In response to the enactment of this law, and in order to develop the implementation of said devices, the Supreme Court of Justice issued Resolution 14-2017.\footnote{703}

409. The IACHR was informed that the use of electronic monitoring devices poses serious challenges to persons who cannot afford to pay for them. In this regard, the Law of Implementation of Electronic Control establishes that the cost of the respective devices must be defrayed by the beneficiaries themselves, except at the discretion of the competent judge, after a socio-economic study has been conducted.\footnote{704} On this score, the PDH has said that said provision amounts to a “limitation to persons deprived of liberty who, eligible for a non-custodial measure [...] are unable to secure it because they are unable to cover its cost.”\footnote{705} In light of the foregoing, the IACHR recalls the obligation of States to take the necessary measures to make sure that the use of electronic monitoring devices conforms to the criteria of material equality, and does not pose a discriminatory measure to

\footnotesize\begin{itemize}
\item \footnote{701} Código Procesal Penal, [Code of Criminal Procedure], Decree No. 51-92, Guatemala, in force as of December 1993, Article 264.
\item \footnote{702} Ley de Implementación del Control Telemático en el Proceso Penal (Decreto 49-2016) ['Law of Implementation of Telecommunication and Information Technology in Criminal Proceedings'], Guatemala, in force as of December 22, 2016, Article 7
\item \footnote{704} Ley de Implementación del Control Telemático en el Proceso Penal (Decreto 49-2016), ['Law of Implementation of Telecommunication and Information Technology in Criminal Proceedings'], Guatemala, in force as of December 22, 2016, Article 7.
\item \footnote{705} PDH, Guatemala, Informe Anual Circunstanciado 2016, ['2016 Annual Status Report'], p. 179.
\end{itemize}
the detriment of persons unable to afford said amounts of money.\footnote{IACHR, \textit{Informe sobre el uso de la prisión preventiva en las Américas}, [‘Report on the use of pretrial detention in the Americas’], para. 326. Recommendation B “Use of precautionary measures other than pretrial detention.”} Therefore, in the event the potential beneficiary’s inability to afford the payment, another non-custodial measure must be used, or not charge for the use of the electronic device.\footnote{IACHR, \textit{Informe sobre medidas dirigidas a reducir el uso de la prisión preventiva en las Américas}, [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas], OEA/Ser.L/V/II.163. Doc. 105, July 3, 2017, para. 134.}

410. In respect to programs of restorative justice in criminal matters, the Regulation for the Control of Sentences issued within the Probationary Regime of Conditional Suspension of Sentence –approved by the Supreme Court of Justice in 2013\footnote{Regulation for the Control of Impositions and Instructions Issued within the Probationary Regime of Conditional Suspension of Criminal Prosecution, approved under Resolution 4-2013 of the Supreme Court of Justice of Guatemala, published on August 6, 2013.}– provides for the ability of the defendant and the persons affected by the illicit conduct to participate in dispute resolution, through non-punitive measures which serve to redress the damage and mainstream the defendant back into society.\footnote{Id., Article 4, section d).}

411. In the context of these cases, heavy drug users who commit crimes related to drug use can be placed in treatment programs and, in such cases, the judicial authority has the power to remand the person to institutions, such as: a) specialized rehab facilities for addiction treatment; b) specialized institutions in psychological and psychiatric programs; c) job training providing institutions; and d) academic institutions.\footnote{Id., Article 12; IACHR, Hearing “Measures to reduce pretrial detention in the Americas,” 157\textsuperscript{th} regular session, April 5, 2016. Information provided by the IECCPG (Institute for Comparative Studies in Penal Sciences of Guatemala).} On this score, the State reported that judicial officers of the Narcoactivity Courts have opted to remand persons who “are facing criminal proceedings for minor drug-related offenses” to the Treatment Center of the Executive Secretariat of the Commission against Addictions and Illicit Drug Trafficking (SECCATID), so that users can receive medical treatment and rehabilitation, and avoid being incarcerated.\footnote{State of Guatemala, Submission on preliminary observations to the on-site visit of the IACHR, Ref. P-1261-2017/VHGM/LWC/nj, August 29, 2017. Annex 3, Response of the Commission on Addiction and Illicit Drug Trafficking. August 17, 2017.}

412. In light of the main concerns voiced by the IACHR in the \textit{Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas} with respect to drug treatment programs operating under judicial supervision in the region, the IACHR urges the Guatemalan State to take the necessary
measures to ensure implementation of a drug policy that pursues a public health rather than an enforcement and criminalizing approach.\textsuperscript{712} In this regard, as to the treatment of persons who have committed a minor crime as a consequence of drug use—as has been explained, are sent to the Treatment Center of SECCATID—the Guatemalan State should take the necessary measures to make sure that the persons, who will be placed in these programs are dependent or heavy drug users. In this instance, the State must promote other alternatives to the deprivation of liberty, such as outpatient type treatment in order to avoid institutionalizing them and to be able to address this issue with a health and human rights approach.\textsuperscript{713}

\section{Conditions of Detention}

\textbf{413.} The Commission is particularly concerned about the deplorable conditions of detention observed at Guatemalan prisons, which pose a risk to the lives and integrity of the persons deprived of liberty. These conditions of detention are characterized by alarming levels of overcrowding; deficient infrastructure; failure to segregate inmates awaiting judgment and those serving sentences; lack of hygiene, and of toilets and designated locations to spend the night; and deficient medical care. Furthermore, throughout prison facilities, there is a prevalence of inadequate food service, both in terms of quantity and nutritional value, a lack of social reintegration programs and of a differential approach to treatment for persons belonging to groups in special at-risk situations.

\textbf{414.} Firstly, the IACHR witnessed for itself with great concern the high degree of overcrowding at all detention facilities it visited, including three mini jailhouses or carceletas — commonly known as the ‘chicken coups’ or gallineros”— of the tower of the Courts of the judiciary (Torre de Tribunales del Organismo Judicial). The prison Unit Granja Penal de Pavón, built for a maximum capacity of 960 persons, houses triple that population (3,363 people). Moreover, the women’s facility Centro de Orientación Femenina and the Santa Teresa prison hold prison populations five times larger than their maximum housing capacity: the Centro de Orientación Femenina, with a capacity of 125 women, houses 700; and Santa Teresa jailhouse, with a maximum capacity of 250, has a population of 1,257 women.\textsuperscript{714} In its comments to the draft of this report, the State notified that


\textsuperscript{713} \textit{Id.}, para. 153.

\textsuperscript{714} The data relating to where said facilities are currently housed was obtained during the IACHR’s visit to the institution in the context of the country visit, August 1 and 2, 2017.
it is currently developing a list of people deprived of liberty to determine who may be eligible for a reduction of the sanction.\footnote{Communication from the State of Guatemala, “Submission of the State of Guatemala to Include in the Draft Report on the Human Rights Situation in Guatemala,” December 22, 2017.}

415. Likewise, the IACHR expresses its concern over the deficient medical care characterizing prison facilities in Guatemala. This deficiency is evident in the lack of medical staff, medicine and equipment, the difficult access to general hospitals, and the lack of a comprehensive health program.\footnote{For more information about medical care at prison facilities, see PDH, Guatemala, \textit{Informe Anual Circunstanciado 2016}, ['2016 Annual Status Report'], p. 210.} In particular, at the prison facilities it visited, the IACHR observed an almost total lack of medical staff for the prison population. For example, the prison Unit Granja Pavón, Santa Teresa jail and the women’s prison Centro de Orientación Femenino only have one doctor on the premises from Monday to Friday, treating a total population at these facilities of approximately 5,320 people. For its part, the OHUNHCHR has noted with concern that there are only 8 doctors to treat the entire prison population of the country.\footnote{Annual Report of the OUNHCHR on the activities of its office in Guatemala, A/HRC/34/3/Add.1, January 11, 2017, para. 31.} Furthermore, in many instances, the health facilities on the premises are not used for providing health care, but rather are used to house prisoners because of the high degree of overcrowding.\footnote{PDH, Guatemala, \textit{Informe Anual Circunstanciado 2016}, ['2016 Annual Status Report'], p. 210.}

416. In this same vein, the IACHR notes that the extreme overcrowding, the lack of hygiene and adequate ventilation pose a serious threat to the health of the inmates, because of increased risk of the spread of infectious disease caused by such conditions. This situation was observed by the IACHR particularly at the mini-jails of the Towers of the Courts, which were also extremely dirty, full of garbage, with a foul odor pervading the facilities and detainees in direct contact with the deplorable latrines. The detainees also ate their food in these same spaces and could remain there several days awaiting transfer to the respective prison facilities they were assigned to. In its comments to the draft of this report, the State indicated that regarding infrastructure, access to healthcare and hygiene, it is working on building two new units, with resources from the General Directorate of the Penitentiary System and with assistance from the Program to Support Security and Justice in Guatemala.\footnote{Communication from the State of Guatemala, “Submission of the State of Guatemala to Include in the Draft Report on the Human Rights Situtation in Guatemala,” December 22, 2017.}

417. The use of solitary confinement witnessed by the Commission at the three prison facilities it visited runs counter to international standards, inasmuch
as this should only be used as a “security measure” to protect the integrity of detainees or as punishment for misconduct. The IACHR documented the situation of 45 individuals who were being held in 8 solitary confinement cells; 28 of them were men, and 17 were women. In general, the group and individual cells are characterized by extremely cramped space, unhygienic conditions, no natural light and very little artificial light, inadequate ventilation, and high temperatures. Persons held in solitary confinement had the right to one hour of exposure to the sun per week—and, in the best of circumstances, per day—and they were not permitted visits or any contact with family members.

418. The protracted length of time that these exceptional regimes last is alarmingly worrisome to the IACHR. Further fueling this concern is the fact that 31 of the 45 persons in solitary confinement, who were interviewed, claimed they have been held under this regime for more than one year. The IACHR saw solitary confinement cells on its visit and notes the deplorable conditions of one particular cell dubbed “Reflexión” ['Reflection'] at the women’s prison Centro de Orientación Femenino. In said space, measuring a mere 1 meter by 2 meters, 5 women are housed, who in addition to the violations characterizing this type of regime, have no access to sunshine and are forced to sleep in a seated position. Two of these women have reportedly been held in these conditions for more than one year. Considering the frequency and extended periods of time for which this type of regime is used, the IACHR recalls that indefinite, unnecessary or prolonged application of the regime of solitary confinement constitutes torture or cruel, inhuman or degrading treatment. Consequently, the IACHR urges the State to use the regime of solitary confinement as an exception, for as short a time as possible, and only as a last resort. Additionally, it reiterates that solitary confinement orders should be

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authorized by a competent authority\textsuperscript{722} and subjected to independent review.\textsuperscript{723}

3. Acts of Violence Occurring at Prison Facilities

Over the past years, the IACHR has received information on the persistent high incidence of violence at prison facilities stemming from conflicts between rival groups of inmates and from a lack of effective control by authorities over what goes on inside these incarceration facilities. In particular, the IACHR notes that since 2015, there has been a notable increase in deaths from violent causes at prison facilities. On this score, the General Directorate of the Penitentiary System reports that in 2015 and 2016, respectively, the number of violent deaths totaled 59\textsuperscript{724} and 57;\textsuperscript{725} while during the period of 2010 to 2014, a total of 23 violent deaths were reported.

The IACHR expressed its concern over the acts of violence, which occurred on July 18, 2016, at the Pavón Prison Farm, which is located 17 kilometers outside of Guatemala City. In this regard, it noted that a riot broke out, as a consequence of a confrontation between rival groups, leaving 14 individuals dead and 10 people injured.\textsuperscript{726} The IACHR has also spoken out about the acts of violence which took place from late 2015 to early 2016 at the Canada Prison Unit and Puerto Barrios prison, located in the province of Escuintla and in the Department of Izabal, respectively, where a total of 24 people lost their lives.\textsuperscript{727}

\textsuperscript{722} IACHR, Principios y Buenas Prácticas sobre la Protección de las Personas Privadas de Libertad en las Américas, ['Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas'], OEA/Ser/L/V/II.131, Document approved by the Commission at its 131\textsuperscript{st} Regular Session held from March 3 to 14, 2008, Principle XXII.3.

\textsuperscript{723} United Nations, Reglas Mínimas de las Naciones Unidas para el Tratamiento de los Reclusos (Reglas Nelson Mandela), ['United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules')], A/RES/70/175, Resolution approved by the General Assembly, December 17, 2015, Rule 45.


\textsuperscript{725} This number is for data from January to November 2016. PDH, Guatemala, Informe Anual Circunstanciado 2016, ['2016 Annual Status Report'], p. 182.

\textsuperscript{726} Among those who lost their lives in the incidents was Byron Lima, serving prison time for the murder of Bishop Juan Gerardi in 1998, and Johanna Birriel, a 24-year-old Argentine woman, who was visiting the prison facility. IACHR, Press Release 109/16-‘CIDH condena violencia en cárcel de Guatemala’, ['IACHR condemns violence in Guatemalan prison'], Washington DC, August 3, 2016.

\textsuperscript{727} IACHR, Press Release 1/16 - CIDH lamenta violencia en cárcel de Guatemala, ['IACHR regrets violence in Guatemalan Prison'], Washington, D.C., January 19, 2016, and IACHR, Press Release 144/15 - CIDH expresa preocupación por muertes violentas en cárcel de Guatemala ['IACHR expresses concern regarding violent deaths in Guatemalan Prison'], Washington DC, December 7, 2015. Additionally, the IACHR spoke out in its 2016 Annual Report about the Granja Penal Canadá prison riot. IACHR, Situación de derechos humanos en...
421. In this context, the Commission has voiced condemnation of this type of incident, and has urged the Guatemalan State to investigate and get to bottom of the circumstances in which it took place and, when possible, identify and punish those responsible.\footnote{IACHR, \textit{Situación de derechos humanos en Guatemala}, [‘Situation of Human Rights in Guatemala’], OEA/Ser.L/V/II, Doc. 43/15, December 31, 2015, para. 362. Also see: IACHR, Press Release 106/16 - “CIDH condena violencia en cárcel de Guatemala”, [‘IACHR Condemns Violence in Guatemalan Prison’], August 3, 2016.} The IACHR has also called on the State to take concrete measures, such as disarming inmates and gaining effective control inside prisons to prevent the entry of firearms and other illegal items; improve security inside prisons; and prevent the operation of criminal organizations that have a presence inside jails.\footnote{PDH, Guatemala, \textit{Informe Anual Circunstanciado 2016}, [‘2016 Annual Status Report’] p. 53.}

4. Depravation of Liberty at Police Stations and on Military Bases

422. The use of police stations as permanent detention facilities and of military bases to house persons deprived of liberty indefinitely constitutes a special situation of concern to the IACHR. As to the National Civilian Police, it was brought to the attention of the Commission that police stations are used as permanent detention centers because of the current lack of space at prison facilities and the respective abuse of pretrial detention prevailing throughout the State. The PDH has been warning about this situation since 2014, and has recommended the prison system to implement the necessary measures to undertake the “protection of persons deprived of liberty at said stations.”\footnote{IACHR, Press Release 106/16 - “CIDH condena violencia en cárcel de Guatemala”, [‘IACHR Condemns Violence in Guatemalan Prison’], August 3, 2016.} In this regard, the IACHR reiterates that police stations facilities are not originally designed for the purpose of lodging persons deprived of liberty indefinitely, nor do they fulfill requirements for the long term housing of such persons.\footnote{IACHR, Press Release 151/16 - Relatoría sobre los Derechos de Personas Privadas de Libertad realiza visita a Argentina, [‘Rapporteurship on the Rights of Persons Deprived of Liberty Visits Argentina’], Washington, D.C., October 19, 2016.}

423. With respect to the use of military bases, the “use of a space on the facilities of a military base or military unit” was first authorized under Ministry of the Interior Decision No. 126-2010, on June 18, 2010, “in order to transfer for their confinement those persons deprived of liberty whose lives or safety, for reasons of a situation of vulnerability and security, may be at risk.” Under subsequent decisions of the Ministry of Interior, the following...
military premises have been used to house civilians deprived of their liberty: a) military headquarters “Matamoros,” under Ministry Decision No. 129-2010, of June 24, 2010; b) space for women at the military headquarters “Matamoros”, under Ministry Decision No. 484-2015, of August 24, 2015; c) expansion of the military headquarters “Matamoros” to 32 persons, under Ministerial Decision No. 263-2016, of June 13, 2016, and d) expansion of First Infantry Brigade Headquarters “Mariscal Zavala,” to 135 persons in pre-trial detention, under Decision No. 557-2015, November 12, 2015.\(^{732}\)

424. Regarding this situation, the CICIG has warned about the risks of operating jails on military bases, and has called on the State to close down these spaces.\(^{733}\) On another front, the PDH has noted that detention at military facilities is worrisome, because “detainees should be located at detention facilities of a civilian nature;” an aspect that also runs counter to the provisions of the Guatemalan Constitution, which establishes that prison sentences must be served at “locations intended for such a purpose,” which are characterized by being “of a civilian nature and with specialized personnel.”\(^{734}\) Moreover, the IACHR finds that prison administration should not be in the hands of the army or any other military institutions, except when they are under the control of civilian authority. Civilian public officials are suitable to perform duties of direct custody with respect to persons deprived of liberty, as well as to meet psychological, educational, labor and social reintegration needs.”\(^{735}\)

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\(^{732}\) Previously, this military facility’s maximum housing capacity was 16 persons.

\(^{733}\) Press article, Prensa Libre, “CICIG advierte sobre riesgo al funcionar cárceles en las instalaciones militares”, ['International Commission against Impunity in Guatemala warns about the risk of operating jails at military facilities'], July 21, 2017.

\(^{734}\) Constitución Política de la República de Guatemala, ['Political Constitution of the Republic of Guatemala'], amended under Legislative Decision No. 18-93, November 17, 1993, article 19 b).

\(^{735}\) In this same vein, the European Prison Rules provide that prisons shall be under the responsibility of public authorities and will be segregated from military, police or judicial services; they also stipulate that one of the objectives of the duties of prison personnel is to facilitate the social reintegration of the persons deprived of liberty. Committee of Ministers of Europe, Recomendación Rec(2006)2 a los Estados miembros sobre las Reglas Penitenciarias Europeas, ['Recommendation Rec(2006)2 to the member State on the European Prison Rules'], adopted by the Committee of Ministers on January 11, 2006, Rules 71 and 72.3. Furthermore, according to the OUNHCHR, the administration of the prison system must be in “civilian hands” and not be part of the military structure. OUNHCHR, "Los Derechos Humanos y las Prisiones: Manual de capacitación en derechos humanos para funcionarios de prisiones", ['Human Rights and Prisons: Training manual on human rights for prison officials'], Professional training series Nº 11, New York and Geneva, 2004, p. 230.

The Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas establish that prison officials must be civilians, and ensure that the employees making up the staff are preferably civilians. IACHR, Principios y Buenas Prácticas sobre la Protección de las Personas Privadas de Libertad en las Américas, ['Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas'], approved by the IACHR under Resolution 1/08 at its 131st regular session, held from March 3 to 14, 2008, Principle XX "Personnel of places of deprivation of liberty.”
5. **Imposition of Fines for Money Laundering Convictions**

425. **Article 4 of the Law against the Laundering of Money and other Assets** provides that the commission of the crime of laundering money or any other asset will be punished with an uncommutable prison term of 6 to 20 years, “plus a fine equal to the amount of the assets, instruments or proceeds of the subject crime.”\(^{736}\) Additionally, the Guatemalan Criminal Code provides that anyone who cannot afford to pay the fines imposed on them must pay off their fine by serving a sentence of deprivation of liberty equal to one day in prison for every 5 to 100 quetzals of fine.\(^{737}\) During its country visit, the IACHR received repeated testimony from persons deprived of liberty, as well as information from prison authorities, indicating that hundreds of persons, who have served their prison sentence for the commission of this crime, are held in Guatemalan jails because they do not have the economic resources to pay the fines that were imposed on them.

426. On this score, the IACHR was informed that the above-cited provision of law leads to low income persons sentenced to deprivation of liberty remaining in jail for life, or spending periods of time there that surpass three or even four times the length of time to which they had been sentenced to serve for their conviction.\(^{738}\) In response to this situation, in January 2017, the Public Criminal Defense Institute brought an unconstitutionality action before the Court of Constitutionality against Article 4 of the Law against Money Laundering. This action is based on the argument that the provision of the law in question provides for a double prison sentence for the same crime, because if a person is unable to pay the fine, he would continue to be deprived of liberty.\(^{739}\) This line of argument has been supported by the PDH in his legal opinion of September 6, 2016.\(^{740}\) The Commission will follow up on the outcome of this challenge to the constitutionality of the provision of the law.

427. The IACHR notes that pursuant to the legal precedents of the Inter-American Court, the prohibition against torture and other cruel, inhuman

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\(^{737}\) Criminal Code, Decreto No. 17-73, ['Decree No. 17-73'], Guatemala, in force as of September 15, 1973, Article 55.

\(^{738}\) PDH, Information provided to the IACHR at the meeting of August 2, 2017.

\(^{739}\) First Deputy Minister of the Interior, Information provided to the IACHR at the meeting of August 2, 2017; Letter of a person deprived of liberty, Pretrial Detention Center for Men of Zone 18, submitted through the National Mechanism Office on Prevention of Torture to the IACHR, July 28, 2017; Letter from persons deprived of liberty, Fraijanes, submitted through their legal representative to the IACHR, August 2, 2017.

and degrading punishments or treatment,\textsuperscript{741} also entails the requirement of proportionality in “state punishments for the perpetration of offenses.”\textsuperscript{742} In not providing for other means to address the monetary obligation, the Law against Money Laundering and the Criminal Code, in conjunction, allow for a person convicted of money laundering to be deprived of his liberty indefinitely because he cannot afford to pay the fines based on the value of the assets, instruments or proceeds of the crime. Moreover, the miniscule amount of money subtracted from the debt of the fine in exchange for each day served in prison (ranging from .70¢ to $14 USD/day) further keeps persons deprived of liberty from successfully paying off their debt. The absence of explicit regulations of the time periods in these circumstances and the unpredictability render the deprivation of liberty arbitrary and amount to life imprisonment. Furthermore, said practice constitutes deprivation of liberty for debts, which is prohibited under Article 7.7 of the American Convention.

428. Additionally, the IACHR notes that this legal provision is glaringly discriminatory because it has a differential effect on persons living in poverty or who do not have the economic wherewithal to pay the fine imposed. In view of the foregoing, the IACHR calls on the State to amend the Guatemalan law so that it can meet the following requirements: a) that the punishment for money laundering does not amount to \textit{de facto} imposition of a double punishment of deprivation of liberty, even possibly leading to life imprisonment, and b) that it not continue to perpetuate the deprivation of liberty based on the mere material impediment that the persons have to address the fine imposed.

\textbf{B. Adolescent Care and Detention Facilities}

429. Guatemala is an eminently young country. It has a population of more than 16 million inhabitants, around one half or 8,169,715 of which are children and adolescents from 0 to 19 years of age.\textsuperscript{743} According to the National Adoption Council, it is estimated that more than 5,000 children are currently institutionalized in the country for different reasons ranging from abandonment, abuse (physical, sexual or other types), poverty, pregnancy, a disability, addiction, conflict or contact with criminal law, \textit{inter alia}.\textsuperscript{744}


\textsuperscript{742} Ibid.

\textsuperscript{743} National Institute of Statistics, INE. Rough figures for 2015, the most recent year for which these figures are available.

\textsuperscript{744} IACHR, \textit{Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion}, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 271. Also see press article, \textit{La hora}, 4.215 niños están institucionalizados,
According to available statistics, almost 40 children, on average, are orphaned in Guatemala each day.\(^{745}\) In this context, this section of the instant report examines the situation of children under the custody of the State at shelters, orphanages and other residential care or detention facilities.

430. The State of Guatemala does not have a National System for the Full Implementation of the Rights of Children and Adolescents (NSFIRCA), because the Comprehensive Child and Adolescent Protection Law (PINA Law, from the Spanish acronym) currently in force does not clearly establish any comprehensive protection system with a high-level interinstitutional coordinating body. Such a system for full implementation requires that comprehensive protection policies defining a set of actions be prescribed by the National Children’s and Adolescents’ Commission and the Municipal Children’s and Adolescents’ Commissions for children and adolescents to be able to ensure the full enjoyment of their rights and freedoms. In an attempt to create a National System for the Full Implementation of the Rights of Children and Adolescents, the National Children’s and Adolescents’ Commission was created to be the lead children’s policy-making body. In practice, this National Commission fulfills its duty only to a limited extent, inasmuch as instead of coordinating a comprehensive public policy between the institutions involved, it only focuses on selected programs.

431. In the absence of such a system, the Secretariat of Social Welfare (SBS) has taken on the role of the lead, as well as the implementing, agency for services at residential institutions and facilities housing adolescents in conflict or contact with the criminal justice system. Consequently, a public assistance-focused approach based on a paradigm of an irregular or aberrant situation is used, as opposed to an approach of full protection and implementation of rights. The Commission received information indicating that coordination between the SBS (which is directly under the Office of the President), the Ministry of Social Development, and other relevant government agencies involved in the full implementation of rights and protection of children is wholly inadequate.\(^{746}\) The Ministry of Social Development is the lead agency for social services and national policy for the support of the most vulnerable segments of society and families living

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\(^{746}\) Information received during the country visit at meetings with civil society organizations specialized in the rights of children and adolescents, July 31 to August 4, 2017.
in a situation of poverty. However, these policies are not always coordinated with child protection and rights implementation policies, precisely because of the absence of an effective National System for the Full Implementation of Rights of Children and Adolescents.

432. The information received shows that the lack of a comprehensive national policy for the full implementation of the rights of the child has given rise to a high rate of institutionalization of children and adolescents living in a situation of vulnerability, because no comprehensive family protection and rights violation prevention policies are in place. In Guatemala, children and adolescents living in conditions of vulnerability—whether it is because of poverty, teen pregnancy, being victims of physical or sexual violence, disability, addictions or due to other causes—are generally placed in residential care institutions, usually large facilities, which have the capacity to house hundreds of boys and girls and operate under a closed-door regime with security mechanisms and details similar to those of prison facilities. This is inconsistent with international and Inter-American human rights standards on the best interests of the child.

433. The information received by the IACHR on this score indicates that the model of large residential institutions is a structural problem in Guatemala. The Commission has written that “the objective of special measures of protection cannot be other than the protection of the child and the preservation and restoration of his/her rights,” and that institutionalization and other protection measures “cannot be considered in their design or implementation, as a sanction on the parents in the exercise of their parental responsibilities; nor can they be considered as a corrective measure for those children who are deemed to have behavioral difficulties, or are labeled “rebels” or considered to have behavioral or social adaptation problems.” Therefore, the IACHR, the United Nations Committee on the Rights of the Child, UNICEF and the Office of the Human Rights Ombudsman of Guatemala have repeatedly requested the State to do away with this model of institutionalization, which stands in violation of the Convention on the Rights of the Child and international protection and alternative care standards. In August 2016, the UN Committee on the Rights of Persons with Disabilities asked Guatemala to abolish “all placements at institutions for all children of all ages, with or without

747 Meeting with national and international children’s rights protection organizations, August 2, 2017.
disability,” because of the abuses that are committed in them. The Committee recommended the State to support the families and services adapted for these children and adolescents in the community sphere and linked to social, medical and other types of services as appropriate.\textsuperscript{751} The Commission agrees with and endorses said request.

434. The environment described above raises a variety of concerns because of the precarious conditions at this type of facility, in terms of sanitation, hygiene, security and overcrowding. These conditions are incompatible with the objective of child protection and care because at such facilities children and adolescents are isolated from society and because it deprives them of their right to live with their families and in their communities.\textsuperscript{752} Available information shows that the number of care providers or other staff at these mega-institutions is often inadequate to cope with the high number of children and adolescents housed in them, or they lack qualified and trained staff to provide the support and assistance required by the children. In these settings, it is also commonplace to find that boys, girls and adolescents of differing profiles are not grouped together based on their ages and protection needs, thus fostering situations of abuse and violence.\textsuperscript{753} Also, the IACHR received information about gross human rights violations of children in some facilities, such as: charges against facility staff or other inmates perpetrating physical, psychological and sexual violence, and of negligent treatment, deficient food service, lack of access to age-appropriate education and medical services, and baseless restrictions on contact with family members.\textsuperscript{754} These conditions are typical of the problems found at the institutions where many children in Guatemala live and, therefore, the IACHR calls on the State again to take measures aimed at putting an end to the institutionalization of children and adolescents in the country.

435. Furthermore, the State has not instituted comprehensive and effective socio-educational and rehabilitation programs for adolescents in conflict and contact with the criminal justice system. In Guatemala, there are around 1,087 adolescents deprived of liberty, based on SBS statistics.\textsuperscript{755}

\textsuperscript{751} Also see, United Nations Committee on the Rights of Persons with Disabilities, General Comment #5, August 27, 2017, para. 37. It can be viewed at: http://www.ohchr.org/EN/HRBodies/Pages/GC.aspx.

\textsuperscript{752} See, for example, IACHR, Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas. OEA/Ser.L/V/II., Doc. 54/ October 13, 2013, para. 32. IA Court of HR, Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, Series A No. 17, August 28, 2002.

\textsuperscript{753} IACHR, Information received during country visit, July 31 to August 4, 2017. Meetings with inmates and prison facility staff.

\textsuperscript{754} Id.

\textsuperscript{755} The SBS’s figure is from 2016. Press story, \textit{El 73 por ciento de los jóvenes privados de libertad proviene del área metropolitan} [‘73% of young people deprived of liberty come from the metropolitan area’], August 18, 2016. It can be viewed at: http://lahora.gt/73-ciento-los-jovenes-privados-libertad-provienen-del-area-
Facilities where adolescents are deprived of liberty operate under extremely precarious conditions of confinement, in terms of overcrowding, unhealthiness, insecurity and violence. This exposes the adolescents to further abuses and violations of their rights and does not help to prevent recidivism, further exacerbating the problem instead of providing opportunities for social integration. On June 12, 2017, as was mentioned earlier, the IACHR granted Precautionary Measure 161-17 (Resolution 17/2017) on “Juvenile Deprivation of Liberty Facilities with respect to Guatemala.”

The Office of the Human Rights Ombudsman, who filed the request for PM 161-17, alleged a situation of risk to life and personal integrity of the adolescents deprived of liberty at four facilities as a consequence of several risk factors affecting them disproportionately. These sources of risk include precarious sanitation and infrastructure, and negligent health care. Also, high levels of violence are present, internal riots, abusive treatment and attacks on the facilities by individuals from outside the premises, and the fact that pregnant adolescents and adolescent mothers with their babies are housed at these facilities.

The acts of violence, riots and fires are periodic and endemic to how the system operates. During the country visit, the IACHR visited the two facilities Centro “Gaviotas” and Centro “Gorriones,” where it was able to examine the conditions of imprisonment and ascertain for itself some of its concerns. Of particular concern to the IACHR was that at these facilities young people are held in the same spaces as people of other age groups, and consequently, there are currently 13 year-old boys held in the same spaces as 26 year-old men.

The Commission also visited the juvenile women’s facility called the Centro Juvenil de Privación de Libertad para Mujeres (CEJUPLIM) “Gorriones,” where girls, female adolescents and women in conflict and contact with the criminal justice system ranging from 13 to 22 years of age were being held.

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756. These facilities are: (i) Centro Juvenil de Privación de Libertad para Varones II San José Pinula (CEJUPVII-“ETAPA II”); (ii) Centro Juvenil de Privación Provisional para Varones (CEJUDP-“Gaviotas”); (iii) Centro Juvenil de Privación de Libertad para Varones Anexo II (CEJUPVII-“Anexo”); and (iv) Centro Juvenil de Privación de Libertad para Mujeres (CEJUPLIM-“Gorriones”).

757. IACHR, PM No. 161-17 (Resolution n° 17/2017), “Centros Juveniles de Privación de Libertad respecto de Guatemala” [“Juvenile deprivation of liberty facilities with respect to Guatemala”], June 12, 2017. Also see, InsightCrime, Miembros barrio 18 son arrestados tras varios ataques a la policía de Guatemala, [“Members of barrio 18 arrested after several attacks on Guatemalan police.”], March 22, 2017.

758. The facility houses young men that have reached adult age, because there are no “intermediate” facilities in Guatemala, adolescents convicted as juveniles serve their sentence at the same facility, even after reaching adult age.
some pregnant and some with children. The Commission takes note of the efforts mentioned by the management of the facility to improve conditions of confinement. However, during the visit to the facility, the Commission ascertained several different problems relating to the human rights of the imprisoned girls and adolescents.\footnote{Information received during the IACHR’s on-site visit, from July 31 to August 4, 2017.}

439. As for conditions of incarceration, the Commission noticed the absence of windows in the dormitories, the lack of ventilation in the common spaces, as well as some structures on the verge of collapse. The inadequate and precarious infrastructure has negative repercussions on the physical and mental health of the girls and adolescents, even placing their physical integrity at risk. The Commission also witnessed the widespread lack of hygiene such as plumbing problems in pipes, heavy humidity in the dormitories and inadequate washing and drying of clothing, which can have negative consequences on the physical health of the female inmates. Additionally, the Commission viewed with concern the presence of several men working at the female detention facility, including the Director’s security guard, inasmuch as this is a setting where, only the presence of women is allowed. In general, the Commission noted that the infrastructure of the facility is more typical of a penitentiary than a juvenile detention facility.\footnote{\textit{Id.}}

440. With regard to the situation of women and adolescents with children who were pregnant or had children, the Commission visited the section that is designated for this population and noted the health status of the female inmates and their children. The testimonies received indicate the absence of proper food service, vitamin supplements and the lack of specialized medical care for the pregnant women, as well as the limited access to potable water.\footnote{\textit{Id.}}

441. The IACHR also heard adolescent girls provide accounts of enduring mistreatment, as well as cruel, inhuman and degrading treatment, which could constitute torture. Several adolescents reported to the Commission the practice of humiliating shouting and insults, as well as the use of dousing their bodies and face with gas, having sustained beatings and have been forced to do squats (known as “sapitos” or “rollitos”) as a form of punishment. Likewise, information was received about abusive and disproportionate searches of female inmates, who are forced to strip off their clothing several times a day, and of their family members.\footnote{\textit{Id.}}

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Commission reminds the State of the importance to ensure that persons, who met with the IACHR and provided information, including the little girls and female adolescent inmates and persons who work at the facility, are not subjected to retaliation by agents of the State.

442. The situation of the juvenile prison facilities are also adversely affected by the absence of a System for the Full Implementation of Rights of children and adolescents in Guatemala, as mentioned earlier in this report. At the time of approval of the instant report, the Commission had not received any information to indicate that there was a comprehensive child protection vision, strategies to promote respect of all rights of every child and adolescent, or effective coordination of policies, programs and services, and sufficient resources for them to function properly.

The tragedy of the “Hogar Virgen de la Asunción”

443. The facility formerly known as “Hogar Seguro Virgen de la Asunción” was a state-run residential facility for children and adolescent victims of violence, abandonment and child abuse located in San José Pinula, Department of Guatemala. In operation since 2010, the facility had a maximum capacity of 500 children and adolescents, but complaints had been filed for surpassing its capacity and overcrowding since it first opened.

444. To provide an idea of these complaints, according to the Human Rights Ombudsman’s Office, since 2012, it received 37 reports of different types of violations of the right to personal integrity of children at that institution; and from May to October 2016, 43 adolescents ran away from the Hogar Virgen de la Asunción. On November 16, 2016, the media reported that 18 of the adolescents were located, while the whereabouts of the rest were still unknown. Additionally, on repeated occasions (2012, 2013 and 2014), the Office of the Human Rights Ombudsman issued recommendations to reduce the rate of overcrowding and ensure the personal integrity of the children at the care facility; though based on available information, the respective authority did not properly implement the recommendations.763

763 With regard to the 55 girls who allegedly disappeared in September, October and November 2016 from facilities where they were living under State custody, the PDH has brought criminal complaints with the Office of the Public Prosecutor to investigate whether the disappearances may be related to human trafficking. The Secretariat of Social Welfare is coordinating a technical committee to address this issue. Informe anual del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre las actividades de su oficina en Guatemala, ["Annual report of the United Nations High Commissioner for Human Rights on the activities of its office in Guatemala"], January 11, 2017, A/HRC/34/3/Add.1, para. 52.
On March 8, 2017, there were 600 children and adolescents housed at the Hogar Virgen de la Asunción. The information available indicates that, as a disciplinary measure, 55 girls were locked into a classroom smaller than 44 square meters. That night a fire broke out in the classroom where the girls were locked in, burning and suffocating 41 girls and adolescents to death, and leaving another 15 girls hospitalized because of burns and other injuries they sustained as a result of the fire. According to the information received, police officials and security guards of the facility had the key to open the door where the girls were locked in, but it took nearly nine minutes before they opened it.

The Office of the Public Prosecutor opened a criminal investigation into the incidents against the public officials. Available information shows that Secretary of Social Welfare Carlos Antonio Rodas Mejía, Assistant Secretary of Social Welfare and Child Care Anahí Keller Zabala, and the Director of the Hogar Seguro, Santos Torres Ramírez, were initially arrested. They were formally charged and proceedings were instituted for the crime of involuntary homicide (for the death of 41 girls), negligent bodily harm (to the detriment of the girls and adolescents who were seriously injured), abuse of authority, breach of duties and mistreatment of minors. Subsequently, arrests were carried out on the Ombudsman for Children and Adolescents of the Office of the Council General of the Nation (PGN), Harold Flores; the head of the Office of the Defender of Children and Adolescents of the PDH, Gloria Castro; the Assistant Police Chief of the National Civilian Police (PNC), Luis Pérez Borja; the Assistant Inspector of the PNC, Eva Marina Marroquín, and the Chief of Special Protection against mistreatment in all of its forms of the Hogar Virgen de la Asunción, Brenda Chaman. Some civil society organizations voiced their disagreement with

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764 According to information from the Office of the Counsel General of the Nation (Procuraduría General de la Nación), the five major causes for the institutionalization of these 600 children and adolescents was: violated right, 104 children and adolescents institutionalized (17.3%); abandonment, 101 (16.8%); mistreatment, 82 (13.7%); neglect, 59 (9.8%); and rebelliousness, 41 (6.8%). Some of the children confined there have been institutionalized simply because they have no family to belong to.

765 The information indicates that 55 girls were originally locked in, and one more went in later after she fell from the roof once the crisis broke out, and was put into the classroom, for a total of 56 girls.


768 Ministry of the Public Prosecutor, Caso Hogar Seguro: MP solicita enviar a juicio a exfuncionarios por cinco delitos ['Case of Hogar Seguro: Prosecutor’s Office request bringing former public officials to trial for five crimes'], August 11, 2017. It can be viewed at: https://www.mp.gob.gt/noticias/2017/08/11/caso-hogar-seguro-mp-solicita-enviar-a-juicio-a-exfuncionarios-por-cinco-delitos/.
the fact that the defendants were charged with minor crimes, that intent was not included in the counts of the indictment, and that the case would not be approached from a human rights perspective in order to be able to charge the defendants with serious crimes, if applicable, such as torture.\footnote{Information received during the on-site country visit, July 31 to August 4, 2017.}

The IACHR reiterates the importance that the investigation is carried out with due diligence and that the criminal offenses charged are commensurate with the seriousness of the crimes.\footnote{IACHR, Press Release No. 114A/17, Observaciones Preliminares de la Visita in loco de la CIDH a Guatemala, [Preliminary Observations to the IACHR’s On-Site Visit to Guatemala], August 4, 2017.}

\textbf{447.} During the visit, the IACHR met with the representatives of some of the surviving girls, their families and the families of the girls who lost their lives in the fire. Some of the girls are being represented by different organizations in the country, and others, who do not have families to reunite with, are being represented by the Office of the Counsel General of the Nation (PGN), in keeping with its duty to represent minors who lack representation, pursuant to the Civil Code of Guatemala and Article 108 of the Law of Comprehensive Protection of Children and Adolescents (PINA Law).\footnote{Information provided by the Office of the Counsel General of the Nation in the context of the on-site visit, August 2, 2017. In the IACHR archives.}

Notwithstanding, the PGN is also tasked with the duty of representing and defending the interests of the State of Guatemala in every suit to which it is a party, in accordance with Article 252 of the Political Constitution of the Republic of Guatemala. Because the PGN is representing the girls who survived the fire in the case, wherein officials of the Executive branch, among others, are being prosecuted, such as the Assistant Inspector of the PNC and the former Secretary of Social Welfare, the representation of the girls by the PGN would amount to a conflict of interest. In view of this situation, the IACHR urges the Guatemalan State to take measures to resolve or avoid said conflict of interest and the effects thereof, and to especially take into consideration the best interests of the girls involved in the proceedings.

\textbf{448.} The IACHR also learned of the motion for recusal filed by the Office of the Public Prosecutor and other civil complainants against Judge Carlos Guerra Jordán, chief judge of the Fourth Trial Court for Criminal Matters and presiding judge in the case, casting doubt on his ability to be impartial because he had allegedly issued an opinion on the case proceedings and the investigation, as well as citing other grounds. On August 25, 2017, Judge Guerra Jordán decided to recuse himself from the case because his ability
to be impartial was called into question. All case proceedings were suspended until the Court of Appeals appointed a new judge to preside over the case. As of the date of approval of this report, the proceedings have not resumed. The IACHR stresses the importance for the State to fulfill its obligation to provide swift and effective justice, without delay for the victims and to be attentive to the resumption of the case with the alacrity that the seriousness of the case warrants, respecting at all times the right of due process of the accused, in keeping with the American Convention and Inter-American standards on the subject matter.

The Commission was also informed that after the fire, 244 girls and adolescents were reintegrated with their core families; 272 were transferred to public or private residential care facilities; 5 were repatriated to Honduras or El Salvador; 10 left the system, apparently, because they had reached adult age; and as of May 31, 2017, 24 had not been located and alerts were issued for them under the “Alba-Keneth” system, and two remained hospitalized in the United States. The Commission understands that the situation of these children and adolescents has been in constant flux, because some of them have been moved from one facility to another; the whereabouts of some are unknown, one remains hospitalized for a disability. Some organizations also reported to the IACHR about the institutionalization of children with disabilities, who were previously housed in the residential care facility of the Hogar Virgen de la Asunción and at other public and private residential care facilities of different capacities, but all of which still follow the model of

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773 American Convention on Human Rights, Pact of San Jose, Article 8. The Inter-American Court has written that three points must be taken into account in determining a reasonable time within which a trial must be conducted: (i) the complexity of the matter; (ii) the judicial activity of the interested party; and (iii) the behavior of the judicial authorities. IA Court of HR, Case of Genie Lacayo v. Nicaragua, Merits, Reparations and Costs, Series C, No. 30. Judgment of January 29, 1997.

774 “The Alba-Keneth Alert System involves a series of coordinated actions between public institutions to help expedite and locate and protect children or adolescents, who have been taken or have gone missing and to assist in the recovery and provide shelter for them.” Article 4, “Alba Keneth Alert System Law, Decree No. 28-2010, September 8, 2010. The Alba Keneth alert system is a rapid response system to disappearances or kidnappings of children. It was created after the disappearance of 8-year-old Alba Michelle España Días and of 4-year-old Keneth Alexis López Agustín, who were kidnapped and the search for them did not get under way immediately because of the lack of an adequate procedure. The system is designed to coordinate immediate actions by the National Civilian Police, the Office of the Public Prosecutor, the General Directorate of Migration, the Secretariat of Social Communication of the Office of the President, the Secretariat against Sexual Violence, Exploitation and Trafficking in Persons, the Ministry of Foreign Relations, and the Office of the General Counsel of the Nation (PGN); from 2012 to August 2017, the Operations Unit of the PGN has issued around 30,867 Alba-Keneth alerts, of which 23,521 were taken down because the child was successfully located, which works out to a 75% location rate.

775 Information provided by the Office of the Counsel General of the Nation in the context of the on-site visit, August 2, 2017. In the IACHR archives.
institutionalization characterizing child and adolescent residential care facilities in Guatemala.\textsuperscript{776} According to the PGN, its family reunification team has been closely following up on family reunification carried out through administrative proceedings and through hearings, with respect to 41% of the children and adolescents of the Hogar Virgen de la Asunción.\textsuperscript{777} As for the children who were transferred to public residential care and private facilities, the PGN reported that it is working with said institutions to begin the process of family reintegration, and that the process will begin with the facilities that are not registered with National Adoption Council.\textsuperscript{778}

In its comments to the draft of this report, the State detailed the activities of support by State entities related to this incident, in coordination with the Ministry of Social Welfare (SBS). In particular, the State informed that the Ministry of the Environment and Natural Resources provided training to adolescents who are in SBS homes, through a certification on environmental studies with an emphasis on climate change and ecological guardians; the Ministry of the Interior provided subsidies so that families who apply for the Program for Substitute or Temporary Families within the SBS may obtain the required background checks at no cost to them; the State is coordinating the training of personnel from the SBS and the National Council of Adoptions regarding legislation on protection for children with disabilities; and it is considering the creation of a registry of children and adolescents with thin protection system.\textsuperscript{779}

450. The Commission reiterates its call for the Guatemalan State to prioritize reunification with family, in accordance with Inter-American and international standards on the rights of children and adolescents to live in a family and community setting, including the American Convention on Human Rights and the Convention on the Rights of the Child\textsuperscript{780} and the Convention on the Rights of Persons with Disabilities.\textsuperscript{781}

451. A common denominator that the IACHR has noticed is the failure of the institutions of the State to follow up and to provide comprehensive support to the families of the victims, in terms of psychological support, counseling, and care to those afflicted by post traumatic stress disorder and/or physical ailments. The Commission finds that this is mostly due to Guatemala’s weak institutional framework with regard to the care of

\textsuperscript{776} Information provided by \textit{Disability Rights International}, October 8, 2017. In the IACHR archives.
\textsuperscript{777} Information provided by the Office of the Counsel General of the Nation in the context of the on-site visit, August 2, 2017. In the IACHR archives.
\textsuperscript{778} \textit{Id.}
\textsuperscript{780} Guatemala acceded to the Convention on the Rights of the Child on June 6, 1990.
\textsuperscript{781} Guatemala acceded to the Convention on the Rights of Persons with Disabilities on April 7, 2009.
children, inasmuch as State agencies do not have to capacity to ensure the full enjoyment of the human rights of children and adolescents, and that in this crisis, its lack of capacity has gotten worse. In the wake of the tragedy of Hogar Virgen de la Asunción, the institutional framework, which was already weak and uncoordinated, has shined a light on a veritable crisis and incapacity of the State to respond to the magnitude of the problems that the Guatemalan State is facing when it comes to ensuring the rights of children and adolescents.

452. The IACHR notes that one aspect that has hampered interinstitutional coordination with respect to the crisis of the Hogar Virgen de la Asunción, and protection of children in Guatemala in general, has been the constant turnover in the leadership at the relevant agencies. During the on-site visit, the IACHR met with then head of the Secretariat of Social Welfare Cándida Rabanales, who at the time mentioned her short tenure thus far in the position as one of the reasons why coordination between institutions had taken more time than anticipated. The organizations making up the child protection “cluster”—both state entities and civil society organizations—echoed this situation. As such, the IACHR regrets that frequent turnover continues in directorships of these agencies, which stands in the way of them achieving the stability they need. The Commission learned of the recent appointment of Ana Patricia Contreras Mejía as Secretary of the SBS, on September 4, 2017, and calls on the State to pursue stability in the key institutions for the care of children, especially at a time of crisis, such as the one the country is going through.

453. As a result of the incidents of March 8, the draft legislation to create the National System for the Full Implementation of the Rights of Children and Adolescents was pushed forward more expeditiously and is before Congress at this time, but as of the date of approval of this report, it has not been enacted. Through the Commission’s precautionary measures system, on March 12, 2017, the IACHR granted Precautionary Measure 985-16 seeking to protect the lives and integrity of the children and adolescents previously housed at the Hogar Virgen de la Asunción. In this regard, the
IACHR reiterates its concern over the information it received regarding the lack of support and assistance to the families of the victims and survivors of the fire, as well as the search for the children and adolescents, who after being under the custody of the State, have still not been located. The State must take immediate steps to find the whereabouts of those children and adolescents and provide said services to the families.

454. In the Recommendations section, the IACHR makes concrete recommendations to the State of Guatemala with regard to child and adolescent detention facilities in general, as well as on follow-up to the case of the Hogar Virgen de la Asunción in particular. The Commission will closely monitor compliance with these recommendations by the State.

C. Persons with Disabilities at Mental Health Institutions

1. General considerations

455. In August 2017, in the context of its on-site visit, the Commission visited the Federico Mora Hospital. On this score, the Commission reiterates that the prevailing situation at this hospital “reflects the lack of protection of persons with disabilities in Guatemala.”

456. The Federico Mora Hospital is the only long-term public institution in Guatemala providing psychiatric care to the country’s entire population of more than 15 million inhabitants, who are spread out among 22 different departments. As of August 2017, the patient population at said institution was 334. The Federico Mora hospital offers acute and chronic treatment, in addition to functioning as a psychiatric hospital, it also operates as a detention facility for so-called “forensic patients,” who are persons in pretrial detention or are serving sentences and are ordered by the court to be admitted because they are deemed to have some mental illness. Persons who are sent to the hospital as “protection measures”...
imposed by the judicial authority, who are in situations such as living on the streets, are also considered “forensic patients.” These patients are currently guarded by penitentiary agents. Because of the different type in the hospital population, it is particularly complex to provide medical treatment and care to the patients.

2. Conditions of Detention

Through a request for precautionary measures, filed in October 2012, the IACHR learned of several different violations, which jeopardize the lives and safety of the patients at Federico Mora Hospital. One of the major allegations was that the regular hospital patients and those charged with criminal offenses shared the same space and, consequently, the former would endure abuse from the criminally charged patients and their guards. For its part, the IACHR notes that at least 10 years prior to the filing of the request for precautionary measures, the PDH had already expressed its concern over the serious conditions prevailing at the aforementioned institution. In light of this situation, on November 20, 2012, the IACHR granted precautionary measure MC-370-12 on behalf of 334 patients of the Federico Mora Hospital and asked the State of...
Guatemala to adopt several measures to ensure the lives and personal integrity of the patients at the aforementioned hospital.\textsuperscript{792}

458. The granting of this measure and subsequent public awareness about the situation in which these patients were living led to different international and national agencies expressing their own concern over the “alarming conditions” prevailing at the Institution. Thus, the UN Committee on the Rights of Persons with Disabilities (CRPD Committee), the OUNHCHR and the Committee against Torture (CAT), have all called upon the State of Guatemala to take the necessary measures to ensure and speed up the pace of implementation of the aforementioned precautionary measure.\textsuperscript{793} This case has also attracted the attention of the national and international press and was heavily covered in 2014 by the BBC, which deemed the institution the “most dangerous hospital in the world.”\textsuperscript{794}

459. Five years after precautionary measure MC-370-12 was granted, the main changes noted by the Commission on its visit to the institution are: an improvement in infrastructure conditions as compared to the conditions reported at the time the precautionary measures were granted; and separation of hospital patients from those charged with criminal offenses. As to this last issue, the State has reported to the IACHR that said separation had made it possible to do without the presence of so many agents of the National Civilian Police—previously 140 agents—\textsuperscript{795} and that

\begin{itemize}
  \item In particular, the ICDH requested Guatemala to take the following actions: a) provide adequate medical treatment to the patients, based on the particular pathologies of each individual; b) ensure segregation of children from adults, taking special measures in keeping with the principle of the best interests of the child; c) segregate patients in pretrial detention and serving sentence, who are under judicial order of deprivation of liberty, from the rest of the hospital patients, and that the custody of the latter group be provided by unarmed hospital staff; d) restrict the use of solitary confinement to the situations and under the conditions established in international standards on persons with mental disability, and e) adopt immediate measures of prevention so that all patients, particularly women and children, are not the targets of acts of physical, psychological and sexual violence by other patients, security agents or hospital employees. Additionally, the IACHR requested that agreement be reached with the beneficiaries and their representatives on the measures to be adopted, IACHR Precautionary Measures MC 370/12, Asunto de los 334 Pacientes del Hospital Federico Mora respecto a Guatemala, [‘MC 370/12, Matter of the 334 Patients of the Federico Mora Hospital with respect to Guatemala’], November 2012.
  \item UN Committee on the Rights of Persons with Disabilities, Final observations on the initial report of Guatemala, CRPD/C/GTM/CO/1, September 30, 2016, para. 44; OUNHCHR -Guatemala, Press release, OACNUDH llama a garantizar los derechos humanos de pacientes del Hospital Federico Mora, [‘OUNHCHR calls for ensuring the human rights of patients of the Federico Mora Hospital’], December 7, 2014; Committee against Torture (CAT), Observaciones Finales sobre los Informes Periódicos Quinto y Sexto de Guatemala, [‘Final observations on the Fifth and Sixth periodical reports of Guatemala’], CAT/C/GTM/CO/5-6, June 24, 2013, para. 21.
  \item BBC, “Inside the 'world’s most dangerous' hospital”, December 4, 2014.
  \item State of Guatemala, Written submission of the State of Guatemala regarding the request for information prior to the on-site visit of the IACHR, Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017, para. 102.
\end{itemize}
currently there are only 15 prison guards on-site.\textsuperscript{796} Also, because the prison guards can only be posted in ward 4—the only location where criminally charged patients would be held—the State claimed that separation of the different categories of patients had also led to a “considerable” decrease in state agents abusing patients.

460. The IACHR notes that over the past years, there has been a notable increase in the budget allocated to the Federico Mora Hospital. In this vein, the State of Guatemala has reported that said budget has increased to 54 million quetzals (the equivalent of more than USD $7 million).\textsuperscript{797} On this score, the IACHR has information reflecting that this increase has mainly been used for infrastructure changes in the hospital and has not been invested in creating community services to facilitate persons with mental disabilities to return to the community.

461. On another note, the requesting parties of precautionary measure MC 370-12 contend that despite the amount of resources invested, because the patients at Federico Mora are still facing similar rights violations to those reported in 2012,\textsuperscript{798} their lives and integrity continue to be at risk. On this score, the IACHR notes the concern expressed by the CRPD Committee in its recent assessment of the Guatemalan State, in considering that the measures adopted by the State to ensure the rights of the patients, including the separation of patients under medical orders or those charged with criminal offenses, “have not been sufficient to protect the persons with disabilities.”\textsuperscript{799}

462. In particular, information has been made available to the IACHR indicating that the conditions of the hospital continue to be unsanitary and unhealthy, thus fostering infectious diseases and posing an immediate threat to the health and lives of the patients. With respect to the use of solitary confinement, the petitioners note that just as has been documented since 2012, the solitary confinement rooms continue to be used on a regular basis as punishment, when patients are aggressive, or when they are newly admitted and are in a “state of shock or resist their hospitalization.”\textsuperscript{800} In contrast, the State argues that the use of solitary confinement has been

\textsuperscript{796} Authorities of the Federico Mora Hospital. Information provided to the IACHR, during the visit to the institution on August 2, 2017.

\textsuperscript{797} State of Guatemala, Written submission of the State of Guatemala regarding the request for information prior to the on-site visit of the IACHR, Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017, para. 100.

\textsuperscript{798} Information provided in the context of the precautionary measure, submitted to the IACHR by the petitioners, on May 5, 2017.

\textsuperscript{799} UN Committee on the Rights of Persons with Disabilities, Final observations to the initial report of Guatemala, CRPD/C/GTM/CO/1, September 30, 2016, para. 43.

\textsuperscript{800} Information provided in the context of the precautionary measure, submitted to the IACHR by the petitioners, on May 5, 2017.
reduced, and that it is only used on an exceptional basis, under doctor’s order and based on the respective protocol.\footnote{Information provided in the context of the precautionary measure, submitted to the IACHR by the State of Guatemala, on February 27, 2017.}

463. Additionally, with regard to the alleged abuses committed against the patients, the petitioners claim that patients continue to be subjected to torture and mistreatment. In particular, they contend that violence and abuse are used by medical staff as a “tool of control,” and it has an aggravated effect on overmedicated patients, who are unable to protect themselves.\footnote{Information provided in the context of the precautionary measure, submitted to the IACHR by the petitioners, on May 5, 2017.} Moreover, 5 years after the aforementioned precautionary measure was granted, and despite the different abuses committed against the patients, which were brought to the attention of the Commission, the State has only reported about the drafting of internal rules for the application of administrative and economic punishments to staff that departs from the care protocols.\footnote{State of Guatemala, Written submission of the State of Guatemala regarding the request for information prior to the IACHR’s on-site visit, Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017, para. 98.} Furthermore, the IACHR has been informed that criminal charges were brought on September 22, 2016, against a male nurse who physically assaulted a patient. On this score, the IACHR notes that of the 12 cases of mistreatment of patients by hospital staff reported by the State in early 2017, which include physical abuse and negligent medical care, criminal proceedings were instituted in only one of them. The remaining cases were “brought to the attention of the disciplinary control agencies,” and in one of them, a doctor who did not properly follow up on the traumatism stemming from the fall of a patient, was relieved of his duty.\footnote{Information provided in the context of the precautionary measure, submitted to the IACHR by the State of Guatemala, on February 27, 2017.}

464. Inasmuch as States play the role of guarantor of persons under their custody\footnote{IACHR, Informe sobre los derechos humanos de las personas privadas de libertad en las Américas, [‘Report on the Human Rights of Persons Deprived of Liberty in the Americas], December 31, 2011, para. 328.} and that persons with disabilities at psychiatric institutions are in a special at-risk situation of being subjected to torture and mistreatment,\footnote{IA Court of HR, Case of Ximenes Lopes against Brazil. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, para. 106.} it is the special duty of the Guatemalan State to investigate ex officio, and when appropriate, punish those responsible for any violation of the personal integrity of any institutionalized persons.\footnote{In this regard, see Informe del Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes, [‘Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Juan E. Méndez, A/HRC/22/53, February 1, 2016. para. 85 c).} Moreover, under the assumption of the existence of an intrinsic imbalance of power...
between these persons and the respective hospital authorities, the State is required to oversee and make sure that persons with disabilities at mental health facilities receive “a worthy, human and professional treatment,” and they be protected against exploitation and abuse.\textsuperscript{808} In particular, reflecting the promptings of the CRPD Committee in September 2016, the IACHR reiterates the obligation of the State of Guatemala to establish an independent mechanism to oversee the confinement of patients at Federico Mora in order to prevent and protect against acts of torture and mistreatment.\textsuperscript{809}

3. **Indefinite Institutionalization because of a Lack of Community Services**

The right of persons with disabilities to independent living and to be included in the community, according to the CRPD Committee, means on the one hand that said persons are provided all the necessary means enabling them to exercise choice and control over their lives and make all decision concerning their lives.\textsuperscript{810} On the other hand, this right is related to full and effective participation and inclusion of persons with disabilities in society, through the development of inclusive environments.\textsuperscript{811} In and of itself, the protection of this right means that the lives of persons with disabilities take place outside residential institutions of all kinds. It is not “just” about living in a particular building or setting, it is, first and foremost, about losing personal choice and autonomy as a result of the imposition of certain life and living arrangements.\textsuperscript{812} When there is a lack of alternatives in the community, institutions segregate persons with disabilities from the community, because this becomes the only option for them to be able to receive the care and services they need. In this regard, the CRPD Committee has established that involuntary institutionalization on the basis of impairment, is often caused or increased by a lack of disability-specific support services, and leads to arbitrary deprivation of liberty.\textsuperscript{813}


\textsuperscript{809} UN Committee on the Rights of Persons with Disabilities, Final observations on the initial report of Guatemala, CRPD/C/GTM/CO/1, September 30, 2016, para. 43. In this regard, in its 2016 Annual Report, the PDH reiterated the concerns noted by the aforementioned Committee. PDH, Guatemala, *Informe Anual Circunstanciado 2016*, p. 251. [*Annual Status Report*]

\textsuperscript{810} UN Committee on the Rights of Persons with Disabilities, *General comment on article 19: Living independently and being included in the community*, CRPD/C/18/1, August 29, 2017, para. 16 a).

\textsuperscript{811} *Id.*, para. 16 b) and 19.

\textsuperscript{812} *Id.*, para. 16 c).

\textsuperscript{813} *Id.*, para. 83; and Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities: The right to liberty and security of persons with disabilities, adopted at the 4\textsuperscript{th} Session, September 2015, para. 8.
Based on the foregoing, the IACHR finds that a lack of support and community services for persons with disabilities and their families creates incentive to institutionalize these persons and, consequently, violates their right to live in the community.

466. With respect to the establishment of community services, even though the State reports on implementation of a pilot project to establish a “halfway house” model,\textsuperscript{814} it also recognizes patients are subjected to prolonged institutionalization because of an absence of support in the community.\textsuperscript{815} Separately, the IACHR was advised by the Ministry of Public Health and Social Assistance that as of early 2017, it has been implementing an inclusive model of health care, from a human rights and social integration perspective,\textsuperscript{816} which is based on the decentralization of medical treatment through health care promotion, at the primary care level.\textsuperscript{817} In this context, said Ministry reported to the Commission about the revision of the protocols to allow and ensure that the patients of Federico Mora Hospital have contact with their family members and with the community, and about holding health care days for patients focused on eye care, dental care and nutrition.\textsuperscript{818}

467. The IACHR welcomes actions aimed at improving the living conditions of the patients of the Federico Mora Hospital; however, it does not find that these conditions are adequate to protect their lives and integrity. In particular, the IACHR regrets that the measures adopted have not been focused on the creation of community-based services and that despite the notable increased hospital budget, these resources have not been used to create alternatives in the community. In this regard, the Commission notes the words of the CRPD Committee that investment of resources in institutions, instead of in developing possibilities for persons with disabilities to live independently in the community, leads to abandonment, dependence on family, institutionalization, isolation and segregation.\textsuperscript{819}

\textsuperscript{814} State of Guatemala, Written submission of the State of Guatemala regarding the request for information prior to the IACHR’s on-site visit, Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017, para. 103.

\textsuperscript{815} Information provided in the context of the precautionary measure, submitted to the IACHR by the State of Guatemala, on February 27, 2017.


\textsuperscript{817} Ministry of Public Health and Social Assistance. Information provided to the IACHR on August 2, 2017, at the meeting with health officials and during the visit to the institution.

\textsuperscript{818} Id.

\textsuperscript{819} UN Committee on the Rights of Persons with Disabilities, \textit{General comment on article 19: Living independently and being included in the community}, CRPD/C/18/1, August 29, 2017, para. 1.
468. In light of the foregoing, the main concern of the IACHR with respect to the situation of the patients of Federico Mora Hospital is the lack of community-based care programs to ensure living in the community. In this regard, as noted by the CRPD Committee, the lack of services designed to meet the needs of the patients of this institution in the community leads to their indefinite segregation. This situation is particularly worrisome considering that most of them continue living at the institution because no support is available to them in the community. On this score, the IACHR notes that according to the evaluation conducted in 2013 by independent psychiatric and medical staff of the hospital itself, approximately 75% of the patients (without including those in conflict with the law), did not need to remain at the institutions “for psychiatric reasons,” and could “easily” become integrated into the community, if there were outpatient services available to them.

469. Because of the lack of community-based options for the patients of the Federico Mora Hospital to receive the necessary services and treatment outside the institution, the IACHR recommends that the State guarantee community living for these persons, by creating and establishing community-based services. For this purpose, the Commission urges the State to adopt, among other ones, the following measures: a) expeditiously define a strategy for the de-institutionalization of persons with disabilities, with a timeline, sufficient resources and specific evaluation measures; b) ensure the participation of persons with disabilities, directly and through the organizations representing them, in the design and implementation of said strategy, and c) allocate sufficient resources for the development of support services. In this regard, in accordance with the CRPD Committee, the Commission stresses that community-based support must be designed to help persons with disabilities to be included in the community and to avoid their isolation and segregation.

820 UN Committee on the Rights of Persons with Disabilities, Final observations on the initial report of Guatemala, CRPD/C/GTM/CO/1, September 30, 2016, para. 54.
822 UN Committee on the Rights of Persons with Disabilities, Final observations on the initial report of Guatemala, CRPD/C/GTM/CO/1, September 30, 2016, para. 54. General comment on article 19: Living independently and being included in the community, CRPD/C/18/1, August 29, 2017, para. 98 g).
823 UN Committee on the Rights of Persons with Disabilities, General comment on article 19: Living independently and being included in the community, CRPD/C/18/1, August 29, 2017, para. 98 i).
824 UN Committee on the Rights of Persons with Disabilities, Final observations on the initial report of Guatemala, CRPD/C/GTM/CO/1, September 30, 2016, para. 54.
825 UN Committee on the Rights of Persons with Disabilities, General comment on article 19: Living independently and being included in the community, CRPD/C/18/1, August 29, 2017, para. 30.
Lastly, as for the patients in conflict with the law, who as of August 2, 2017 numbered 46 individuals, the IACHR was informed that 90% of them should not even remain at the institution and, therefore, they too are subjected to arbitrary deprivation of liberty. According to the psychiatric staff in charge of the treatment of this population of patients, this situation stems from the lack of review of judicial decisions to institutionalize, even though very often the medical expert opinions recommend outpatient treatment. The State has also reported to the Commission that an “Interinstitutional Agreement” was signed for the Public Criminal Defense Institute to be able to request the release of a significant number of patients. Furthermore, the IACHR learned of a State initiative to create a justice center with an expanded purview within the hospital itself, in order to review on an ongoing basis the security measures imposed on the patients in conflict with the law.

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826 Ministry of Public Health and Social Assistance. Information provided to the IACHR on August 2, 2017, at the meeting with health officials and during the visit to the institution. Additionally, this information was conveyed to the IACHR by the psychiatric staff itself in charge of treating the patients in conflict with the law, during its visit to the institution on August 2, 2017.

827 Psychiatric staff of the Federico Mora Hospital. Information provided to the IACHR during its visit to the institution on August 2, 2017.


829 COPREDEH. Information provided to the IACHR, during its visit to the institution on August 2, 2017.
CHAPTER 8

CONCLUSIONS AND RECOMMENDATIONS
CONCLUSIONS AND RECOMMENDATIONS

471. The human rights situation described in this report is rooted in the causes of the armed conflict, which persist to the present day. This causes include economic and social inequality, high levels of corruption, and a weak State response, partly as a consequence of the scarce tax revenue raised by the State to meet the most pressing needs through policies and programs. There continues to be structural problems, such as racial discrimination, social inequality, a widespread situation of poverty and exclusion, impunity and lack of access to justice, which stand as roadblocks to full respect for human rights in Guatemala. The IACHR has consistently received information about persisting parallel structures of power that hamper efforts to combat impunity, corruption and strengthen the rule of law.

472. In this context, as immediate measures, it is essential for the State to redouble its commitment to continue with efforts undertaken to combat impunity, violence, intolerance and corruption, through prevention and pro-human rights policies and programs, as well as a strengthened, independent and impartial justice system. For this purpose, it is the obligation of the State to ensure the conditions for the CICIG and the Office of the Public Prosecutor to be able to efficiently perform their jobs, as well as approve a reform to the Constitution in the field of justice in keeping with the highest human rights standards.

473. Additionally, the State must make further efforts to adopt laws, policies and programs to close the persistent inequality and exclusion gap, so that all persons, in particular, those historically excluded, are able to exercise their human rights. It includes ensuring sufficient budget to fund the areas of greatest concern described in the instant report.

474. The Commission expresses its will and willingness to contribute and collaborate with the State of Guatemala in the implementation of a human rights agenda aimed at ensuring and protecting the rights of its inhabitants. In this context, the IACHR makes the following recommendations to the State of Guatemala:
A. General Recommendations

1. Create, together with the IACHR, a Follow-Up Mechanism to the Recommendations of the instant report.

2. Make sure that the CICIG, under the direction of its Commissioner, Iván Velásquez, is able to fulfill its mandate with the proper protections, without harassment, threats or undue interference, in accordance with the Agreement creating it.

3. Endow COPREDEH and the Office of the Human Rights Ombudsman with sufficient human and budgetary resources to be able to fully comply with its mandate.

4. Ratify the Inter-American Convention against All Forms of Discrimination and Intolerance, the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, the Inter-American Convention on Protecting the Rights of Older Persons and the Additional Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

5. Continue with efforts to eradicate extreme poverty and hunger, especially, to adopt emergency measures to eliminate the serious issue of child malnutrition, such as programs and policies to prevent maternal and infant mortality in the country.

6. Adopt emergency measures to ensure the economic, social, cultural and environmental rights of the population, in particular, the persons living in a situation of major exclusion described in the instant report.

B. Recommendations regarding administration of justice

7. Approve constitutional reform on justice as soon as possible while ensuring compliance with international standards on the subject matter, in order to strengthen the judicial career. For this purpose, it must be ensured that the processes of selection and appointment of the operators of justice are carried out in keeping with Inter-American standards, under merit and professional qualification-based criteria, free of any improper political interference.

8. Examine the factors limiting expeditious and effective access to justice and take corrective measures. For example, ensure that the
amparo appeal mechanism and the application thereof in Guatemala meet Inter-American standards on the subject.

C. **Recommendations regarding Transitional Justice and Reparation to Victims of the Internal Armed Conflict**

9. Approve Law 35-90 to create the National Commission to Search for Victims of Forced Disappearance and to push forward the search for missing persons in accordance with international standards on the subject matter.

10. Approve Law 3551 to provide solidity and certainty to the National Reparations Program (PNR).

11. Reinforce actions to combat impunity for human rights violations committed during the internal armed conflict, through prompt, thorough and impartial investigations, punish the perpetrators and masterminds and provide reparation to the victims.

12. Earmark sufficient resources to the Archive of the National Civilian Police.

D. **Recommendations regarding the Situation of Citizen Security**

13. Draft and implement public prevention policies, based on the root causes of violence and the high crime rates, in order to continue to bring these rates down substantially, and to ensure that Guatemalans live in a country free of violence.

14. Continue with efforts to strengthen the PNC and withdraw the armed forces from duties of citizen security.

15. Ensure the regulation and effective oversight of private security firms and their agents, registration and punishment of those who do not comply with requirements; as well as carry out strict gun control.

16. Adopt specific measures to address the issue of lynching in the country.
E. Recommendations regarding Specific Segments of the Population

**Women**

17. Take decisive action to ensure for all women victims of violence and discrimination access to justice at all stages (complaint, investigation and trial proceedings) through accessible information in terms of language and culture, staff training, specialized legal assistance and through outreach services for victim assistance.

18. Promote political participation of women and, in particular, indigenous and Afrodescendant women, in decision-making positions through the design and implementation of affirmative action measures.

19. Include sexual crimes in all reparation and justice policies for victims of the armed conflict, especially with regard to implementation of the National Reparation Plan, and to take the necessary measures for the PNR to seriously address without discrimination complaints of sexual violence. These measures must include clarification of the criteria to gain access to justice and to the mechanisms of reparation, as well as the design of reparation measures that meet the specific needs of the women.

**Children and Adolescents**

20. With respect to the high rate of child institutionalization, implement measures to do away with institutionalization and review legislation, policies and practices to bring them into line with international standards, particularly, reinforcing social policies of support to families in order to help them to provide adequate care for their children, as well as social policies aimed at ensuring rights, such as health, education and nutrition, and taking into account the best interests of the child.

21. Clearly regulate measures involving the removal of a child from his or her family for reasons of protection, on an exceptional basis and for the shortest length of time possible, and making it applicable only in limited circumstances provided for by the law, and stipulating that the decision must be subject to periodical review, in keeping with international standards.
22. Adopt public policies and legislative measures to implement a true model of full implementation of all rights of all children and adolescents, which creates an adequate institutional framework to ensure their rights, with special emphasis on services for children at the local level, endowing the framework with sufficient human, material and economic resources.

23. Put an end to the model of residential institutions for children and adolescents, inasmuch as it runs counter to international standards.

**Indigenous Peoples**

24. Prior to granting concessions, licenses or permits for the exploration or exploitation of natural resources that affect the ancestral lands or territories of indigenous peoples and communities, carry out a prior, free and informed consultation, with a view to obtain consent, in keeping with Inter-American standards on the subject, and taking into account the characteristics, practices and customs of the indigenous peoples and communities involved.

25. With respect to concessions previously granted or in the process of implementation, establish a mechanism to be able to assess the need for a change in the terms thereof in order to preserve the physical and cultural survival of indigenous communities and peoples. Adopt the necessary measures to ensure that indigenous peoples and communities, who have suffered the effects of projects about which they had not been consulted, are able to gain access to mechanisms that enable them to mitigate the effects and receive adequate reparation, that is culturally appropriate.

26. Adopt immediate measures to protect collective intellectual property of indigenous women with regard to apparel and designs that represent their traditional identity.

**Persons Deprived of Liberty**

27. Implement in practice a model of juvenile justice that regards deprivation of liberty as a measure of last resort and for the shortest length of time possible, and with a rehabilitative instead of a punitive approach.

28. Adopt judicial, legislative, administrative and other types of measures required to correct the excessive use of pre-trial detention, ensuring that this measure is used as an exception and is bound by the
principles of legality, presumption of innocence, need and proportionality. In particular, the State must promote, regulate and apply alternative measures to pre-trial detention. Accordingly, it must repeal any legal provisions ordering compulsory use of pre-trial detention for the particular type of offense, and not establish further restrictions on procedural mechanisms and opportunities for release.

29. Strengthen public criminal defense systems, attaching priority to coverage and quality of service in order to provide, from the time of arrest, a service aimed at timely and effective protection of fundamental rights.

30. Implement judicial and prison information management systems at all detention facilities of the country, in order to provide up-to-date data and ready access on cases and the custody status of persons deprived of liberty in the country, and correct the lack of an automatized and unified system of registry of the proceedings of persons deprived of liberty.

31. Implement on-premise hearings at prison facilities in the presence of the judicial authorities in order to conduct particular proceedings to deal with the high rates of suspended court hearings and overcome difficulties in transferring persons inmates to courthouses.

32. Take the necessary steps to ensure that persons deprived of liberty are transferred to detention facilities meeting the minimum conditions compatible with the rights of persons deprived of liberty. This is inasmuch as police stations used as permanent detention facilities and military bases do not meet the minimum requirements for the detention to be compatible with international standards on the subject matter.

33. Change Guatemalan law against money laundering and the Criminal Code to meet the following requirements: a) that the punishment for money laundering does not amount to de facto imposition of a double sentence of deprivation of liberty, and b) that the law not continue to perpetuate the deprivation of liberty based on the mere material impediment that the persons have to cover the cost of the fine imposed.

**Persons with Disabilities**

34. Investigate ex officio and, when appropriate, punish those responsible for any violation of the personal integrity of persons with
disabilities at psychiatric institutions. Establish an independent mechanism to oversee the institutionalization of patients at the Federico Mora Hospital in order to protect against acts of torture or mistreatment.

35. In light of the lack of community-based options for patients of the Federico Mora Hospital to receive the necessary services and treatment outside the institution, the IACH recommends the State to ensure the community life of these persons, by creating and establishing community-based services. For this purpose, the Commission urges the State to adopt, among other ones, the following measures: a) expeditiously define a strategy for the de-institutionalization of persons with disabilities, with a timeline, sufficient resources and specific evaluation measures; b) ensure the participation of persons with disabilities, directly and through the organizations representing them, in the design and implementation of said strategy, and c) allocate sufficient resources for the development of support services.

**Human rights Defenders**

36. Approve and implement on an emergency basis a public protection policy for human rights defenders. This policy should include implementation of a comprehensive protection program, and incorporate a model of risk assessment to make it possible to determine the particular protection needs of each defender, using, for example, from a perspective of gender or of groups in an especially vulnerable situation.

37. Hold public hearings or interviews where citizens, civil society organizations and other interested parties are able to learn the selection criteria of operators of justice, as well as challenge candidates and express their concerns or their support, in order to strengthen the independence of the operators of justice holding the high-level positions in the judiciary, the office of the prosecutor and the public defender’s office.

38. Adopt measures to ensure that operators of justice carry out their duties impartially and independently, respecting the principle of separation of powers and free of all threat or pressure. For this purpose, the State must strengthen the work of the Crimes against Operators of Justice Unit by recognizing the importance of its function in protecting the right of access to justice, as well as to due process.
39. Ensure that the authorities or third parties do not manipulate the punitive power of the State and its organs of justice in order to harass human rights defenders and operators of justice. Likewise, authorities should refrain from making statements or assertions that stigmatize or discredit human rights defenders, journalists, ancestral authorities or leaders, who suggest that the authorities are acting improperly or illegally, when they are simply doing their job as human rights defenders. In this regard, the Commission calls on the State to advance in the drafting of guidelines against criminalization by the Office of the Attorney General.

40. Ensure that human rights defenders are not subjected to criminal proceedings for unnecessarily summary and protracted periods of time. Additionally, the State of Guatemala should cease using arrest warrants as mechanisms of punishment or retaliation against human rights defenders.

41. Take measures to prevent the use of criminal charges against human rights defenders aimed at keeping them from doing their job. Operators of justice must consider, in response to the charges, whether or not the accused was acting in the capacity of a human rights defender, as well as the context of the facts, and in this way be able to identify whether the charges were used as a means of hampering their work as defenders. Likewise, the authorities in charge of the investigation of the crimes must make sure to gather the necessary evidence to determine whether there was unlawful conduct before they proceed to issue precautionary measures or formally open a case against the defenders.

42. Establish specialized police and prosecutorial units with the necessary resources, training and specific investigation protocols in order to act in a coordinated fashion and respond with due diligence to the investigation of attacks on human rights defenders, establishing a hypothesis of the crimes and guidelines for the investigation thereof, taking into account vested interested that may have led to retaliation for the activities of the defender attacked. In this regard, the IACHR urges the State of Guatemala to adopt with urgency the General Instructions within the Office of the Public Prosecutor to guide prosecuting attorneys when investigating attacks on defenders.
Internally Displaced persons, Migrants, Asylum Seekers, Refugees, and Victims of Trafficking in Persons

43. Adopt measures to prevent the causes of the forced migration of persons, as well as adopt measures of protection, humanitarian assistance and lasting solutions for internally displaced persons and ensure the right of migrants and persons with the need for international protection to leave the territory.

44. Adopt specific legislation at the federal and state level to address internal displacement in keeping with the Guiding Principles on Internal Displacement.

45. Amend Article 50 of the Code of Migration in keeping with human rights norms and standards in order to ensure that persons requiring international protection are never returned to a country where their life, safety and liberty are in jeopardy.

46. Regulate the Code of Migration and other norms relating to persons in the context of human mobility in keeping with the norms and standards of the Inter-American human rights system, in the framework of a participatory process with civil society organizations and other relevant stakeholders.

47. Ensure access to justice for migrants and their families, as well as implement measures to search for and identify missing migrants.

48. Implement effective measures to ensure the effective enjoyment of the human rights and reintegration of deported and returning persons.

49. Ensure that expansionist business and development activities are carried out in keeping with international human rights standards, analyzing legal aspects, potential social conflicts, environmental and social impacts, the right to consultation, the conduct of authorities and corruption, as well as their repercussions in the short and long term. The Guatemalan State must exercise adequate oversight of business activities in order to comply with its international obligations.

50. Ensure that evictions are conducted only in observance with human rights norms and standards and with the principles of exceptionality, legality, proportionality and suitability, in order to promote social wellbeing and by ensuring solutions for the evicted population, such
as restitution and return, resettlement and rehabilitation or fair compensation.

51. Pursuant to the Peace Accords, promote the creation of an agrarian and environmental jurisdiction within the judicial apparatus through enactment by the Congress of the Republic of the respective law.

52. Adopt measures to ensure the protection of the dignity, life and security of the evicted persons, by ensuring at a minimum access to food, potable water and sanitation, lodging, clothing, access to medical services, means of subsistence and access to justice, as well as ensure access to humanitarian assistance and independent monitoring.

Afrodescendants

53. Create institutions to formulate and develop policies for persons of African descent through a national action plan.

LGBTI Persons

54. Adopt the necessary measures to discourage intolerance and abolish any type of law that discriminates against persons based on their sexual orientation, gender identity or expression.

55. Act with due diligence to prevent, investigate, punish and provide reparation for any type of violence committed against LGBTI persons.

56. Adopt the necessary legislative measures and policies to prevent violence, discrimination and prejudice against persons because of their sexual orientation, diverse gender identity and expressions or whose bodies depart from male and female standards.

Freedom of Expression

57. Acknowledge, from the highest levels of government, the legitimacy and value of the work of journalists, and condemn attacks committed in retaliation for the exercise of freedom of expression.

58. Investigate crimes committed against journalists completely, effectively, and impartially. Additionally, in cases involving the murder of journalists, establish the motive and judicially determine any possible connection to journalistic activity and freedom of
The authorities should not rule out the practice of journalism as a motive for the attack and/or assault before the investigation is completed.

59. With respect to the program for the protection of journalists and media workers—the creation of which was announced by the President of the Republic during the visit—ensure that its content is consistent with the international parameters, in broad and effective consultation with civil society organizations, journalists, and media workers.

60. Take measures to guarantee the exercise of freedom of expression, plurality, and diversity in the digital transition process. Among other things, bring the license access, renewal, and revocation processes into line with the inter-American standards.

61. Promote a pluralistic approach to information and multiple points of view by fostering the full enjoyment of freedom of thought and expression, access to the media, and diversity in media ownership and sources of information through, among other things, transparent licensing systems, and, as appropriate, effective regulations that prevent the improper concentration of media ownership.

62. Adopt the legislative measures and public policies to recognize and ensure community media outlets’ access to radio and television frequencies and licenses; in the meantime, abstain from criminally prosecuting community radio stations.

63. Enact special, clear, and precise laws to regulate advertising at each level of government. Such provisions should clearly define government advertising and establish appropriate penalties for their violation. The Office of the Special Rapporteur reiterates that government advertising should never be allocated by the States to reward or punish media outlets for their editorial and news content.

64. Ensure that its administrative laws and practices are compatible with the prohibition against the participation of the armed forces in public safety operations, in particular, the control of violence at social protests. Limit budget allocations to matters concerning national defense.
Tab 5
IACHR Repudiates Murder of Defender of Trans Rights in Guatemala

December 2, 2016

Washington, D.C. - The Inter-American Commission on Human Rights (IACHR) repudiates the murder of Evelyn Zulma, a trans leader and activist who belonged to the organization OTRANS Reinas de la Noche (“Queens of the Night”) in Guatemala. She was a beneficiary of precautionary measures granted by the IACHR on February 3, 2006. The Commission urges the Guatemalan State to investigate these acts of violence and prosecute and punish those responsible.

According to information received by the IACHR, the body of Evelyn Zulma Algrcia Robles was found in her home on November 18, with bruises on her arms and around her jaw, her teeth missing, and her hair pulled out. The Guatemalan National Institute of Forensic Sciences (INACIF) informed the family that Evelyn Zulma Algrcia Robles’ throat had been cut and that the toxicology report showed traces of high toxicity apparently consistent with the administration of poison.

“The State of Guatemala should investigate this brutal murder with due diligence and ensure that justice is pursued, both for the murder of Evelyn Zulma Algrcia Robles and for all acts of violence reported against trans women in Guatemala,” said Commissioner Francisco Egilguera Praeli, IACHR Rapporteur on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons (LGBTI). “The State should ensure that there is no impunity for this crime, or for any crime against trans women. To that end, it should clear up what happened and unmask possible motives of prejudice, as this is a critical component of the right to access justice and obtain reparation,” he added.

The Commission is dismayed by the information it has received regarding an exponential increase in recent killings of trans women in Guatemala. Last week, there were three such deaths, characterized by disturbing levels of brutality and extreme cruelty. Moreover, the IACHR continues to receive troubling information concerning the situation of human rights defenders who advocate for the rights of LGBT persons in Guatemala. Various LGBT rights organizations in that country have said publicly that they are targets of violence, threats, attacks on their premises, and harassment because of their work as activists.

The Inter-American Commission reiterates that States have the obligation to investigate acts of this nature on their own initiative and to punish the perpetrators and masterminds. The IACHR takes note of the investigations underway in the killing of Evelyn Zulma Algrcia Robles, and calls on the State of Guatemala to continue investigating with due diligence. The State should ensure that the investigations are conducted with a differentiated focus, pursuing lines of investigation that consider the hypothesis that such killings could have been motivated by prejudice based on gender identity or expression and/or the victim’s actual or perceived gender expression, or by the person’s work as a human rights defender.

The Inter-American Commission also calls on the State of Guatemala to develop investigation guidelines or protocols that include indications or elements that would assist police officers, prosecutors, and other investigators in determining whether a crime was committed based on prejudice against the victim’s actual or perceived gender identity or expression.

Finally, the IACHR urges the State to adopt all necessary measures to guarantee the right to life, integrity, and safety of those who defend the human rights of trans persons in Guatemala. In its country report Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion, the IACHR expressed its concern regarding the situation of constant harassment and threats suffered by human rights defenders and the large number of acts of violence, noting that 55% of those attacked were women.

A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the OAS Charter and the American Convention on Human Rights. The Inter-American Commission has a mandate to promote respect for human rights in the region and acts as a consultative body to the OAS in this area. The Commission is composed of seven independent members who are elected in an individual capacity by the OAS General Assembly and who do not represent their countries of origin or residence.

No. 181/16
Tab 6
Situation of Human Rights in Guatemala
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion

2015

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EXECUTIVE SUMMARY
EXECUTIVE SUMMARY

1. In the present report the Inter-American Commission on Human Rights (IACHR) addresses the situation of human rights in Guatemala, and a number of structural challenges in access to justice and impunity, citizen security, marginalization and discrimination which have affected severely the human rights of its inhabitants. Special attention is given to the situation of human rights defenders, journalists, women and children, LGBTI people, migrant population, among others. In this context, the report also addresses the situation of the indigenous peoples, who has seen their rights to ancestral lands, and to consultation affected due to grave levels of exclusion and inequality with generations of malnutrition due to structural discrimination and racism.

2. The IACHR has focused specific attention on the independence and autonomy of the administration of justice in Guatemala and the selection processes and guarantees of tenure for the positions of justice operators. It has also focused on the need for the State to provide an adequate, efficient, independent, and impartial system for the administration of justice to tackle the persistent structural impunity with respect to severe human rights violations in both the past and the present.

3. The IACHR is especially troubled by the State’s failure to comply with the recommendations and judgments of the organs of the inter-American human rights system (IAHRS). Despite the fact that Guatemala accepted the jurisdiction of the Inter-American Court of Human Rights on March 9, 1987 and undertook to abide by its decisions, under the administration of former president Otto Pérez Molina, in adjudicated cases including those where the State accepted its responsibility, the Government denied its obligation to live up to its commitments questioning the temporal jurisdiction of the Court and stressing the legitimacy of amnesties during the internal armed conflict, including that contained in the National Reconciliation Act of 1996. The IACHR observes with concern that, during the administration of former President Pérez Molina, the government refused to characterize the incidents of the conflict, with its devastating impact on indigenous communities, as genocide.

4. In this regard, in a private hearing to monitor compliance with 11 judgments against Guatemala, the Inter-American Court in its last resolution of August 21, 2014, indicated that the position taken by Guatemala constituted “an act of obvious contempt of State regarding the enforceability of the judgments delivered by the Court, contrary to the international principle conform to its treaty obligations.” The Court explained the inapplicability of the Reconciliation Act to the cases subject to the supervision and ordered the State to adopt “all measures necessary to comply promptly with the judgments, and "comply in good faith with their
treaty obligations and inform the Court. During a hearing held in the 156 period of session of the Commission, held from October 17 to 28, 2015, the State reiterated to the IACHR its approach as to the scope of the jurisdiction of the Inter-American Court; also reiterated its position with regard on the alleged legitimacy of the amnesty as a cause of extinction of criminal responsibility in cases of human rights violations committed during the internal armed conflict. The Commission restates to the Government of Guatemala that this position is contrary to the standards and inter-American jurisprudence and contributes to the prevailing of impunity.

5. Notwithstanding, the IACHR recognizes progress in different areas which has a direct impact on the situation of human rights. The IACHR notes changes in favor of a society committed with human rights, promoted by the work of public officials compromised with justice and human rights defenders as well as social leaders. The support of international human rights agencies, as well as the International Commission against Impunity in Guatemala (CICIG, for its acronym in Spanish), has been critical to those efforts.

6. Throughout this report, the Commission highlights for example reduction of the rate of homicide; and, on indigenous rights, the decision of the Constitutional Court of September 2015 by which for the first time ordered the practice consultation with indigenous communities affected by an investment project.

7. Also in the administration of justice it is worth noting the work of the CICIG and the Public Ministry in the dismantling of criminal networks and the fight against corruption. In this regard the IACHR appreciates that in 2015 the State extended the mandate of the CICIG. Moreover, the Commission appreciates the State’s efforts to create a protection program for journalists and the actions taken to prevent and combat human trafficking, and the creation of differentiated statistics on violence against women, which would contribute to the development of public policies, among others.

8. The year 2015 has had a special impact in the Guatemalan society. Since the revelation of the so called “case La Linea” and another series of acts of corruption, Guatemalan society took to the streets to demand the resignation of the President of the Republic. On September 3, 2015 Otto Perez Molina resigned from the Presidency of the Republic having been indicted for his alleged role in the network of customs fraud. According to the Office of the High Commissioner for Human Rights in Guatemala (OHCHR-Guatemala) "amid the deep political and institutional crisis in decades, and the Guatemalans are aware that only through comprehensive reforms will real change be achieved in the country."

9. On October 25, 2015 James Ernesto Morales was chosen in the second round as President of the Republic, and will take office on January 14, 2016. The new government has crucial challenges on human rights. To take steps to ensure that Guatemalans live in a country free of violence, continue the fight against impunity, corruption, exclusion and discrimination are just some of them. The Commission

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urges the new government to resume the agenda of the peace agreements and ensure compliance with the recommendations of the Commission and judgments of Inter-American Court.

10. With regard to the preparation of the present Report and, as a result of the information received in recent years about the situation of human rights in Guatemala, the IACHR sought the consent of the State of Guatemala to conduct an on-site visit so as to verify the situation for itself. Apart from verification, the visit would also have provided an opportunity to meet with government officials, civil society representatives, and indigenous leaders in order to gather and share information. Regrettably, that visit was unable to come to fruition in 2015 in feasible dates. In light of that, the Commission requested information on the human rights situation in the country from the State, the Human Rights Ombudsman (PDH, for its acronyms in Spanish), and civil society organizations. The IACHR has also taken into account the information and perspectives reflected through its mechanisms including public hearings, precautionary measures and the case system.

11. Poverty, racism, discrimination, exclusion, violence and impunity have been constantly observed in Guatemala by this Commission in the exercise of their various functions. This, framed in a weak state structure, with few resources by poor tax collection and high level of corruption.

12. The IACHR is mindful that the serious human rights situation in Guatemala affects all its inhabitants and permeates every sphere of society. In recognition of that, the IACHR decided that this report should focus on three fundamental aspects: citizen security, administration of justice, and the inequality and exclusion suffered by indigenous peoples.

13. The Commission analyzes the inequality and exclusion suffered by indigenous peoples in Guatemala as a consequence of racism and structural discrimination, situation that is also reflected in the State denial of the genocide suffered by the Maya people during the internal armed conflict. The IACHR also notes the ongoing lack of protection for the human rights of indigenous peoples and communities in accordance with international standards, which is causing social and environmental harm in indigenous areas, including the dispossession of their lands and contamination of their water sources.

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14. The chapter entitled "Inequality, Discrimination and Exclusion: The Situation of Indigenous Peoples" draws on valuable information and testimony gathered during the visit made from August 21 to 30, 2013, by Dinah Shelton, the IACHR Rapporteur on the Rights of Indigenous Peoples at that time. During the 10-day visit, former Commissioner Shelton met with government officials and indigenous authorities and leaders. She also met scholars and representatives of civil society organizations. The various activities took place in Guatemala City, Cobán, Valle del Polochic, Nebaj, Huehuetenango, Totonicapán, San Marcos, and Chichicastenango. The aim of the visit was to gather information on the situation of indigenous peoples in Guatemala, with special emphasis on the discrimination and exclusion experienced by indigenous peoples, as well as the situation involving their lands, territories, and natural resources and their right to free and informed prior consultation.

15. With regard to citizen security in Guatemala, the IACHR notes that for several years, particularly since 2000, there has been a wave of generalized violence that has spiked (in 2008 and 2009) and waned, though without ever falling below levels that make Guatemala one of the most violent countries in Latin America. According to the United Nations Development Programme (UNDP), the high rates of violence and insecurity that plague Guatemala have to do with social exclusion and a failure of law enforcement. This occurs in a context of institutional weakness on the part of the State where the inefficiency to deal with the problem only increases the levels of violence allowing clandestine groups to establish themselves and create hidden networks with State institutions. In this context of violence and insecurity, the IACHR has observed a number of circumstances that make the situation worse, such as the resurgence of missing persons associated with the activities of organized crime groups; the serious problems of lynching and the seldom supervised and disproportionate use of private security providers.

16. The Guatemalan State has attempted a series of policies and strategies in response to the violence and insecurity. However, some of its acts (or omissions), such as the continuous weakening of the National Civilian Police (PNC, for its acronym in Spanish), the disproportionate use of states of emergency, militarization of citizen security, and the creation of special squads, have only increased tensions and exacerbated the problem.

17. Aside from the context of violence and insecurity, there is the situation of those whose role in society or because they have been subjected to a historic discrimination are disproportionately affected by the violence and discrimination. They include individuals who defend human rights, including indigenous authorities and leaders, environmental activists, trade union leaders, and justice

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3 On that occasion, the former commissioner said that “racism and discrimination against indigenous peoples persists in Guatemala, but also that the government has initiated several new programs intended to address this situation. Unfortunately, disproportionate rates of poverty, extreme poverty, and child malnutrition, persist among the rural indigenous population.” She also said, “It is also of concern that the current licenses for mining and hydroelectric plants were granted without the State having implemented prior, free, and informed consultation with affected indigenous communities, as it is obligated to do under international treaties signed by Guatemala.” IACHR, Press Release 66/13 - Office of the Rapporteur on the Rights of Indigenous Peoples Conducted Working Visit to Guatemala. Washington, D.C., September 18, 2013.
operators, among others. Others groups affected include women, children and adolescents, journalists, migrants and refugees, LGBTI persons, people with disabilities, and persons deprived of liberty.

18. According to reports from the NGO Protection Unit Defenders of Human Rights in Guatemala (UDEFEGUA) there would have recorded 380 attacks against defenders of human rights from January up to September 2015. Attacks and aggressions that include murder, threats, arbitrary detentions, persecution and surveillance. According to the same organization, in 2014 they have recorded 814 attacks. The attacks have been directed at human rights defenders who work the main problems affecting the country’s human rights, such as those dedicated to defending the rights of indigenous peoples, territory, land and environment healthy, representing victims of the internal armed conflict or union. The IACHR laments these deaths and calls for their clarification, and reiterates that the work of human rights defenders is fundamental for the implementation of human rights and for the full existence of democracy and the rule of law.

19. The IACHR stresses the need in Guatemala for an efficient, independent, autonomous justice administration to strengthen democracy and the rule of law because a judiciary with those characteristics puts limits on abuses of power and guarantees the rule of law and protection of human rights for all. In that regard, of special concern for the IACHR has been the independence of the judicial branch in light processes of selection and tenure of justice operators, access to justice and impunity, and the legacy of the internal armed conflict.

20. In 2014 and 2015, the IACHR received information about the impacts on the independence of the judiciary in Guatemala from the absence of suitable processes to appoint and select justice operators. It also continued receiving information about the distressing rates of impunity, which among other impacts have direct repercussions for the access to justice. The IACHR observes that the impunity rate for the crime of homicide from 2008 to 2014, according to a report from the CICIG of November 2015, fluctuated between 99.1% and 98.4%, with certain drops depending on the years and the subject. To this can be added the fact that most of the incidents that took place during the armed conflict (1960 to 1996) went unpunished. Notwithstanding, it is worth mentioning the progress made by judicial officials as self-executing the statement issued by the Inter-American Court rulings handed down by the Criminal Chamber of the Supreme Court, as well as progress in the investigation, prosecution and conviction in various cases. In this regard, by the magnitude of the cases that are still unpunished further efforts are required, including the correction of the position of the Government, as to question of the competence of the Inter-American Court and insist position of the State on the legitimacy of amnesties for cases during the internal armed conflict.

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4 The CICIG defines impunity as the failure to report, investigate, arrest, bring to trial, find positive solutions for the victims, and/or convict those responsible for crimes classified in Guatemalan law and focuses its report on the subject of judgments of conviction. CICIG, Press release 091, Sistema de Medición de Impunidad en Guatemala [System to Measure Impunity in Guatemala], November 27, 2015.
21. At the end of the report, the IACHR makes a series of recommendations to the State and offers its good offices for working with it in the implementation process. In its observations about this draft report, the Guatemalan State indicated that it would deploy its best efforts to tackle the challenges that persist arising from the manifestations of multi-causal violence, discrimination, and exclusion, and would implement the measures that are indispensable to make it possible to eliminate critical poverty, prevent and combat crime, as well as unrest, which prevent the full development of its inhabitants, as a result of which it is useful to implement those recommendations from the country report that are deemed relevant and timely [...].

22. The Commission appreciates the contributions of the state and civil society in the preparation of this report; in particular, the testimony of hundreds of authorities and indigenous leaders that allowed him to better understand, from their voices, the situation experienced in Guatemala.


The testimonies were received during the visit of former Rapporteur Dinah Shelton to Guatemala in 2013.
CHAPTER 1

INTRODUCTION
BACKGROUND

23. In January 2015, the IACHR sought the consent of the State of Guatemala to conduct an on-site visit and verify the situation firsthand. Apart from verification, the visit would also have provided an opportunity to meet with government officials, civil society representatives, and indigenous leaders in order to gather and share information. Although the Guatemalan State gave its consent for the IACHR to visit the country, unfortunately, in the course of 2015, the said visit could not be carried out on feasible dates because of the agendas of both the State and the IACHR.

24. In view of the difficulty in reaching a consensus on a feasible date for the on-site visit, on August 3, 2015, the IACHR notified the State that it had decided to draw up a report on the situation of human rights in Guatemala. Accordingly, on August 14, 2015, the Commission asked the State to supplement the information that it (the IACHR) had on the following: citizen security, access to justice, protection program for defenders, progress in implementing the National Compensation Program, measures adopted to ensure the rights of indigenous peoples to consultation and free and informed prior consent in accordance with international standards, and any other information that the State considered pertinent.

25. On September 14, 2015, the State requested more time to present its response in light of "the conditions in the country and the difficulty in compiling information." On October 6, 2015, the State, presented the Report of the State of Guatemala on the “Draft General Report on the Situation of Human Rights in Guatemala and the Communication of the IACHR of August 14, 2015.”

26. On December 2, 2015, the IACHR transmitted to the State a copy of the preliminary draft of the present report approved by the IACHR on November 29, 2015 and requested that it send its observations by December 23, 2015. On December 11, 2015, the IACHR received the State’s observations dated December 9, 2015. The observations and comments were reviewed by the Inter-American Commission and, in those matters considered relevant, have been enshrined in this final version of the report on Guatemala, which was adopted by the IACHR on December 31, 2015.

27. In its additional observations, the State of Guatemala extended its appreciation for the Draft Country Report and reiterated its pledge to protect and ensure human...

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rights, which is evident "on the basis of various actions and efforts of the State and its institutions [...] whose ultimate goal is to facilitate the conditions that guarantee the full enjoyment and exercise of human rights and universal liberties on the country’s territory.” It also stated that

it would deploy its best efforts to tackle the challenges that persist arising from the manifestations of multi-causal violence, discrimination, and exclusion, and would implement the measures that are indispensable to make it possible to eliminate critical poverty, prevent and combat crime, as well as unrest, which prevent the full development of its inhabitants, as a result of which it is useful to implement those recommendations from the country report that are deemed relevant and timely [...]. \(^9\)

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\(^9\) Additional observation from Guatemala. Ref. Note P-925-2015/AFAF/hm of December 9, 2015 received at the Secretariat on December 11, 2015, pp. 1 and 5.
CHAPTER 2
BRIEF OVERVIEW OF THE HISTORICAL AND CURRENT TRENDS THAT AFFECT THE ENJOYMENT OF HUMAN RIGHTS
BRIEF OVERVIEW OF THE HISTORICAL AND CURRENT TRENDS THAT AFFECT THE ENJOYMENT OF HUMAN RIGHTS

A. Diversity, inequality and exclusion

28. Guatemala, which in the Náhuatl language is written Quauhtlemallan, meaning “place of many trees,” is a country with an area of 108,809 km² and a population of around 16 million, most of it living in rural areas. According to data from the most recent census, taken in 2002, 40% of the population identifies as indigenous; other sources say that 60% of the population belongs to that category.

29. Today it is a multiethnic, pluricultural, multilingual society in which indigenous Maya, Xinka and Garífuna peoples and Ladinos coexist. The Maya group comprises 22 distinct sociolinguistic communities. Guatemala’s cultural diversity is evinced by the 25 different languages spoken on its soil: Spanish and 24 indigenous tongues.

30. Its history has been characterized by war, domination, subjugation, and military dictatorships. The country had its first democratically elected president, Juan José Arévalo, in 1945. He was succeeded in 1951, likewise in a democratic election, by Jacobo Arbenz Guzmán. Both instituted sweeping educational and agrarian reforms. Arbenz was overthrown in 1954. On the same day, the 27th, a military government junta was established and, after a succession of triumvirates, on July 7, 1954, Carlos Castillo Armas rose to power as the head of a new military junta.

Afterwards, there was a series of coups d’état and a long-term armed conflict.

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10 According to the census, in 2002 Guatemala’s population numbered 15,073,375, 48.8% of whom were male and 51.2% female. INE, Caracterización Estadística de la República de Guatemala.
11 51.0% of the population resided in rural areas. INE, Caracterización Estadística de la República de Guatemala.
13 The mestizo or mixed-race Hispanic community that only speaks Spanish (Central America). Dictionary of the Spanish Royal Academy.
14 Ministry of Education of Guatemala. Guatemala, Un país con Diversidad Étnica, Cultural y Lingüística.
15 The CEH report Memory of Silence points out the role played by the United States in the process of overthrowing President Arbez, when it states the following: “It has been described by many authors, among whom Nicholas Cullather, who worked for the Central Intelligence Agency (CIA). Cullather described in detail how the United States achieved its objective of overthrowing the administration of Arbenz, using tactics of misinformation, psychological operations, and even drafting a list of civil servants who had to be killed.” CEH, Memory of Silence, Volume I, Causas y orígenes del enfrentamiento armado interno [Causes and origins of the domestic armed conflict], pp. 105 and 106.
16 CEH, Memory of Silence, Volume I, Causas y orígenes del enfrentamiento armado interno, paras. 105-113.
From 1986 to 1996, there was a political transition period with governments elected by universal suffrage,\(^ {17}\) a trend that was afterwards upheld.

Guatemala’s social and economic situation has been blemished by poverty, racism, exclusion, violence, and impunity. The above has occurred in a framework of weak state institutions with few resources as a result of a meager tax take and widespread corruption. In this troubling scenario, the force of civil society, the toil of human rights defenders and public officials committed to justice, and the struggles of indigenous leaders, trade unionists, and journalists, among others, have promoted and instigated profound changes in Guatemalan society in their efforts to establish a more just and equal nation. There is still a lot of work to be done in Guatemala. The numbers speak for themselves.

As for poverty,\(^ {18}\) according to Guatemala’s National Statistics Institute (Instituto Nacional de Estadísticas—INE), 53.7% of the population lives in poverty, and of this percentage, 13.3% pertains to extreme poverty. As for the United Nations Development Programme (UNDP),\(^ {19}\) it indicates that 62.4% of Guatemala’s population lives in medium poverty; 29.6% lives in extreme poverty; and 3.6% lives in severe poverty.\(^ {20}\) According to UNDP, between 1990 and 2015, “the number of persons living in poverty rose.”\(^ {21}\) According to the World Bank’s rural poverty map,\(^ {22}\) there were areas of Guatemala where the percentage of extreme poverty was over 70%. The most critical conditions were recorded in the department of Alta Verapaz, with 89.6% of its rural population living in poverty, of which 46.7% in extreme poverty. In various municipalities of Alta Verapaz, more than half the rural population lives in extreme poverty, for example in Panzos (76%), Tucurú and Chisec (both with 65%), Santa Catalina La Tinta (61%), and San Cristóbal Verapaz (54%).\(^ {23}\) In this scenario, according to the UNDP, in Guatemala

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\(^ {17}\) CEH, Memory of Silence, Volume I, Causas y orígenes del enfrentamiento armado interno, paras. 105-113.

\(^ {18}\) Poverty is “a human condition characterized by the sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights” and extreme poverty is “the combination of income poverty, human development poverty and social exclusion,” where a prolonged lack of basic security affects several aspects of people’s lives simultaneously, severely compromising their chances of exercising or regaining their rights in the foreseeable future. United Nations, Guiding Principles on Extreme Poverty and Human Rights [Guiding Principles on Extreme Poverty and Human Rights], Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda. Adopted by the Human Rights Council on September 27, 2012, para. 2.


\(^ {20}\) UNDP-Guatemala, Guatemala en Breve.

\(^ {21}\) UNDP-Guatemala, Los Objetivos de Desarrollo del Milenio.

\(^ {22}\) Mapa de Pobreza Rural 2011, drawn up on the basis of information from the Municipal Rural Census (Censos Rurales Municipales) from 2008 to 2011 and the Living Conditions Survey (Encuesta de Condiciones de Vida—ENCOVI), 2011. World Bank.

49.8% of children under five years of age are suffering from chronic malnutrition.24

33. According to UNICEF, the global economic crisis and the effects of climate change, especially droughts, are disproportionately impacting the economies and particularly the subsistence of indigenous families and of the poorest, with children being the worst affected. Around 3 million Guatemalans lack access to safe drinking water and some 6 million are without access to improved sanitation services. School retention remains a critical problem, given that only four in ten children who start elementary school complete it. Indigenous girls attend for only three years on average.25 More than 1.8 million children and adolescents aged 10 to 19 are not in school.26 According to the UNDP, recent years have seen some progress in education, although Guatemala still faces crucial challenges. Among the advances are progressive increases in primary education enrollment; almost complete gender parity in education and an increase in youth literacy (from 76% to 91.9% between 1994 and 2011).27 As regards the right to health, there seems not to be access without discrimination to quality care services. With respect to the right to housing, “50% of the Guatemalan population reportedly lack decent, adequate, and healthy housing.”28 About the housing situation, the State reported that it replaced the National Housing Fund of Guatemala (Fondo Nacional de la Vivienda de Guatemala―FODIGUA) by the National Fund for Housing (Fondo Nacional para la Vivienda―FOPAVI), which started functioning in 2013. One of the principal reforms had been the rise in the direct subsidy received by beneficiary families from 15,000 quetzales (about US$1,900) to 35,000 quetzales (about US$4,600). Regarding this, the State added that, since its establishment, FOPAVI had provided services to more than 26,000 families living in poverty or extreme poverty.29

34. With regard to the right to work, according to official statistics in Guatemala, the great majority of workers "do not even manage to earn more than the statutory minimum wage, much less enough to cover a basic food basket or their basic needs." Furthermore, “there is also widespread violation of labor rights where working conditions and access to social security are concerned.”30 In that regard, the UNDP said that the labor indicators reflect "the labor vulnerability of the majority" of the Guatemalan population.31 In that connection, the IACHR takes a positive view of the decision of the Constitutional Court on September 8, 2015, to declare unconstitutional the monthly minimum wage of 1,500 quetzales (approximately US$195) decreed in government decisions for employees of

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24 UNDP-Guatemala, Guatemala en Breve.
25 UNICEF-Guatemala, Malnutrition.
26 Information provided by the State of Guatemala at the 154th regular session of the IACHR.
28 Informe Alternativo al III Informe Periódico del Estado de Guatemala sobre la Aplicación del Pidesc, March 21, 2014, pp. 75-76.
companies in the light manufacturing for export sector installed or to be installed in the economic zones of the municipalities of San Agustín Acasaguastlán and Guastatoya, El Progreso; Estanzuela, Zacapa; and Masagua, Escuintla.\(^{32}\)

35. In addition, according to the representative of the United Nations High Commissioner for Human Rights, public services in Guatemala are not ensured in terms of their availability, accessibility, acceptability, quality, and nondiscrimination.\(^{33}\)

36. In that context of poverty, the plight of indigenous peoples exemplifies structural tendencies and confirms the persisting levels of racism and discrimination in Guatemala that verge on segregation. The exclusion is visible in all spheres, including land ownership, access to basic services, working conditions, access to the formal economy, access to justice, participation in decision-making and state institutions, and representation in the major media outlets and the forum of public debate.\(^{34}\)

37. The United Nations guiding principles on extreme poverty and human rights recognize that poverty is an urgent human rights concern in itself and that it is both a cause and a consequence of human rights violations and an enabling condition for other violations, adding that not only is extreme poverty characterized by multiple reinforcing violations of civil, political, economic, social and cultural rights, but persons living in poverty generally experience regular denials of their dignity and equality.\(^{35}\)

Persons living in poverty are confronted by the most severe obstacles—physical, economic, cultural and social—to accessing their rights and entitlements. Consequently, they experience many interrelated and mutually reinforcing deprivations—including dangerous work conditions, unsafe housing, lack of nutritious food, unequal access to justice, lack of political power and limited access to health care—that prevent them from realizing their rights and perpetuate their poverty. Persons experiencing extreme poverty live in a vicious cycle of powerlessness, stigmatization, discrimination, exclusion and material deprivation, which all mutually reinforce one another.

Extreme poverty is not inevitable. It is, at least in part, created, enabled and perpetuated by acts and omissions of States and other economic actors. In the past, public policies have often failed to reach persons living in extreme poverty, resulting in the transmission of poverty across generations.

\(^{32}\) In its ruling, the Constitutional Court upheld the action for partial general unconstitutionality brought by the Ombudsman and declared unconstitutional Article 2 of Government Decisions 471-2014, 472-2014, 473-2014, 474-2014, which would have set the minimum wage for the light manufacturing sector in each municipality. Constitutional Court, CC dicta sentencia en Inconstitucionalidad por Salarios Diferenciados, September 8, 2015.

\(^{33}\) Prensa Libre, Q1,500, salario digno? October 1, 2015.


Structural and systemic inequalities—social, political, economic and cultural—often remain unaddressed and further entrench poverty. A lack of policy coherence at the national and international levels frequently undermines or contradicts the commitment to combat poverty.

That extreme poverty is not inevitable means that the tools for ending it are within reach. A human rights approach provides a framework for the long-term eradication of extreme poverty based on the recognition of persons living in extreme poverty as rights holders and agents of change.36

38. Coupled with the situation of poverty that affects the majority of Guatemalans, is the situation of widespread violence and insecurity, impunity, and corruption.

39. According to Guatemalan civil society organizations, the principal obstacles in the exercise of fundamental rights derive from the way the Guatemalan State had been structured to ensure “the enjoyment of privileges by a small part of the population to the detriment of the majority.” According to those organizations, the greatest victims of human rights violations are indigenous people and women. Inhabitants of rural areas in Guatemala face severe exploitation, and poverty and chronic malnutrition are rife in the country.37

B. Armed conflict: Repercussions on Guatemalan society

40. The legacy of the internal armed conflict that Guatemala lived through from 1960 to 1996 exacted an enormous human, material, institutional, and moral cost. Multiple, systematic human rights violations were committed on a mass scale during that period: massacres, extrajudicial executions, forced disappearances, rape, scorched-earth operations, forcible displacement, torture, illegal detentions, and kidnappings, many of which were part of a campaign of genocide.38 While the conflict lasted it is estimated that more than 200,000 people were victims of arbitrary executions and forced disappearance as a result of political violence.39 In ethnic terms, 83% of victims were members of the indigenous Maya population.40


37 Committee on Economic, Social and Cultural Right hears from stakeholders on Guatemala, Nepal and Romania, 17 November 2014.

38 In its reports on the merits in the cases of the Plan de Sánchez Massacre and the Río Negro Massacres, the IACHR concluded that the mass killings amounted to genocide: “[T]he massacres against the Río Negro community were planned by Guatemalan State agents with the objective of exterminating the community and constituted genocide. The massacres were executed within scorched-earth (tierra arrasada) policy directed by the Guatemalan State against the Maya people, who were referred as the ‘enemy within,’ in a context of discrimination and racism. These acts implied a violation of the fundamental human rights of individuals, indigenous peoples, and the values shared by the inter-American community.” Report on the Merits 86/10, Case 12.649. Community of Río Negro of the Maya Achi People and Its Members (Río Negro Massacres), Guatemala, July 14, 2010.

39 The Commission for Historical Clarification (CEH) registered 42,275 victims of arbitrary executions and forced disappearance in the course of its documentation efforts. 23,671 people were arbitrarily executed and 6,159
41. In its 1985 report on Guatemala, the Commission recorded the extent and seriousness of the internal turmoil in that country and the way in which this had spawned a dramatically escalating spiral of violence “that remained ever latent throughout those years with periods of greater or lesser intensity.” Even before then, in its first Report on the Situation of Human Rights in Guatemala, in 1981, the IACHR had noted its concern at the existence of a veritable “state of terror,” where repression reached all entities critical of the government.

42. State forces and related paramilitary groups—putting into practice the National Security Doctrine—were responsible for 93% of the violations documented by the Commission for Historical Clarification (Comisión para el Esclarecimiento Histórico—CEH), including 92% of the arbitrary executions and 91% of forced disappearances. For their part, the actions of insurgent groups accounted for 3% of such acts. It should be noted that 91% of all the violations recorded by the CEH were committed between 1978 and 1984, a period that coincided with the dictatorships of Generals Romeo Lucas García (1978-1982) and Efraín Ríos Montt (1982-1983).

43. According to the report of the CEH, “Guatemala: Memory of Silence” (Guatemala: Memory of Silence), multiple coinciding factors caused the armed conflict in Guatemala, including structural injustice, the closing of political spaces, racism, the increasingly exclusionary and anti-democratic nature of institutions, as well as the reluctance to promote substantive reforms that could have reduced structural conflicts.

44. As well as the underlying causes found in Guatemala’s national history, the Cold War, the attendant anti-communist policy prevalent in the region, and the National Security Doctrine as an ideological manifestation of the struggle against the
“enemy within,” played a key role in the origin, spread, and perpetuation of the conflict.\textsuperscript{50} In keeping with these ideas, the “enemy within” concept encompassed not only the armed rebel groups, but progressively expanded to include any opinion or movement that dissented or differed from the government line, including intellectuals, artists, students, teachers, trade union leaders and others; in short, a host of different actors who suffered the consequences of the systematic violence that existed during that period.\textsuperscript{51} Particularly dramatic was the impact generated by the internal conflict to the detriment of peasants, students, members of religious congregations and community leaders or cooperative.\textsuperscript{52} With regard to the Maya population, the CEH concluded that agents of the State of Guatemala, in the framework of counterinsurgency operations conducted between 1981 and 1983, perpetrated acts of genocide against the groups of the Maya People living in the regions of Ixil, Zacualpa, Huehuetenango, and Rabinal.\textsuperscript{53} The IACHR, in the cases of the massacres of Plan de Sánchez, Río Negro, and the Aldea de Chichupac submitted to the Inter-American Court, concluded that the massacres, killings, and disappearances perpetrated in the above-mentioned cases, respectively, turned out to be especially severe because they took place as part of the genocide committed in Guatemala against the Maya People.\textsuperscript{54}

Time will never be sufficient to heal the wounds left in men, youths, children, old people and especially women, originated from that violence. Our relatives were cut off from their circle of life, they were tortured or made to disappear, kidnapped and massacred. Both men and women found their early, violent and unknown deaths, and their hundreds of bodies are buried in clandestine cemeteries located on cliffs, roads, forests and underneath buildings, making it impossible to exhume them. Animals ate some of the bodies and others were thrown in rivers such as the Motagua, Pixcayá and Usamacinta, and still others were thrown in volcano craters. It will be thus impossible to get to these bodies. This is the road to Calvary for multiple families, wives, parents, children and grandchildren of survivors of the genocide carried out by the military in Guatemala.\textsuperscript{55}

\textsuperscript{50} CEH, Volume V, Memory of Silence, Conclusiones y Recomendaciones, p. 24.
\textsuperscript{51} CEH, Guatemala, Volume II, Memory of Silence, Chapter XI: Forced Disappearances, p. 426.
\textsuperscript{52} CEH, Guatemala, Volume II, Memory of Silence, Chapter XI: Forced Disappearances, p. 426.
\textsuperscript{53} CEH, Volume V, Memory of Silence: Conclusions and Recommendations, p. 51.
\textsuperscript{54} IACHR, Case 11.763, Massacre of Plan de Sánchez, Report on the Merits 25/02, para. 100; Case 12.649, Río Negro Community of the Maya Indigenous People and their members (Río Negro Massacres), Report on the Merits 86/10, para. 229; Case 12.788, Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal, Report on the Merits 6/14, para. 229.
\textsuperscript{55} “From war to peace: A slow, difficult and traumatized process.” Statement by Rosalinda Tuyuc, President of CONAVIGUA, to the IACHR at its 118th regular session, October 2003.
45. With the signing of the Accord for a Firm and Lasting Peace in December 1996,\textsuperscript{56} the government of President Álvaro Arzú and Guatemala National Revolutionary Unity (URNG) brought an end to 36 years of civil war. The Accord for a Firm and Lasting Peace comprised 10 other agreements that expressed national consensus on a variety of issues, the whole usually being referred to as the "Peace Accords."

46. The Peace Accords provided the basis for addressing the causes and consequences of the armed conflict, and a roadmap for the reforms necessary to construct a system based on respect for human rights, democratic participation, and the rule of law.\textsuperscript{57} For many years, the agenda of the State and civil society was shaped by the Peace Accords, which, energetically supported by the United Nations Verification Mission in Guatemala (MINUGUA 1994–2004) and international cooperation agencies, brought about substantial reforms in the area of human rights.\textsuperscript{58} The State, for its part, created the Secretariat for Peace (SEPAZ, for its acronym in Spanish) in 1997,\textsuperscript{59} as an entity to support advice on, and coordinate compliance with the government’s commitments under the Peace Accords. For example, in the area of demilitarization, MINUGUA verified important institutional reforms envisaged in the Peace Accords, including the demobilization and disarmament of URNG; the creation of the new PNC; reductions in the armed forces and their redeployment for peacetime purposes; and changes to the army’s mission, doctrine and educational system, bringing them into accordance with human rights norms.\textsuperscript{60} In addition, a law was passed by which for the first time the Guatemalan Criminal Code recognized racial discrimination and other forms of discrimination as offenses.\textsuperscript{61}

47. The Peace Accords were an opportunity for profound change in Guatemala. The succeeding administrations since the end of the armed conflict have made efforts to implement. Notwithstanding most of the gross human rights violations committed during the armed conflict have gone unpunished. Therefore, the IACHR calls for the implementation of the Peace Accords to be reintroduced on the State’s agenda.

\textsuperscript{56} The Accord for a Firm and Lasting Peace was signed and entered into force on December 29, 1996.


\textsuperscript{58} MINUGUA began operations on November 21, 1994, under the terms of the Comprehensive Agreement on Human Rights. The accord committed both parties to respect international human rights standards and invited the United Nations to deploy a verification mission that would observe compliance with those commitments and, through its presence on the ground, help to build confidence in ongoing peace negotiations that were being moderated by the United Nations. “Human rights verification was in many ways the signature activity of MINUGUA, given its origin as a human rights mission, the centrality of human rights to the peace accords and Guatemala’s active community of non-governmental human rights organizations.” MINUGUA completed operations on December 31, 2004. United Nations Verification Mission in Guatemala, Report of the Secretary-General, March 18, 2005.

\textsuperscript{59} Established by Decree No. 17-97 of March 12, 1997, which was substituted by Government Decision No. 115-2001 of March 13, 2001.

\textsuperscript{60} United Nations Verification Mission in Guatemala, Report of the Secretary-General, March 18, 2005.

\textsuperscript{61} Decree No. 57-2002 of the Congress of the Republic of Guatemala, published on October 9, 2002.
C. Guatemalan democracy: Obstacles and challenges

48. As noted above, Guatemala’s republican history is marred by coups d’état, military dictatorships, exclusion, discrimination, and a long, painful internal armed conflict that claimed hundreds of thousands of victims, leaving a country with an immense debt in terms of justice and reparation. After the end of the internal armed conflict there were a series of democratically elected governments under the respective presidencies of Álvaro Arzú (1996-2000), Alfonso Portillo (2000-2004), Oscar Berger (2004-2008), Álvaro Colom (2008-2012), and Otto Pérez Molina (2012-2015).

49. Since 1996, the ensuing administrations have faced significant challenges in the wake of the armed conflict, including, dire socioeconomic conditions with high incidences of inequality and exclusion and widespread child undernourishment, all in the context of discrimination, corruption, increasing violence, the creation or continuation of de facto criminal powers, and the gradually increasing occupation of territory and power by drug trafficking organizations and gangs (pandilleros). Added to this, the institutional framework is weak, and with a system of justice with high levels of impunity. Compounding the above are ever-louder calls from civil society for justice and reparation for the gross human rights violations that were committed during the internal armed conflict and the rights ignored for decades as a result.

50. On the other hand, important progress has been made in the area of human rights under the post-conflict administrations. Important examples include the signing of the Peace Accords in 1996; the acknowledgment of the State’s responsibility in a number of massacres, extrajudicial executions, and forced disappearances during the internal armed conflict; the decision of the United Nations to establish and install the CICIG; and the appointment of the first female Attorney General (Fiscal General).

51. Guatemala’s post-conflict governments have not escaped the challenges and obstacles posed by the country’s history and political dynamics. “To understand how a country’s politics works, one must consider its history and political culture, the variables that mold the system overall.” In its report on political financing in Guatemala, CICIG mentioned that since 1984 the political system has acquired a series of unique characteristics that set it apart in the region, peculiarities that include the fluidity of the party political system, electoral volatility, the concentration of electoral options in the center and right of the political spectrum, the influence of de facto powers, and the continuity of the economic and social status quo. With regard to the country’s political culture, it said that Guatemala society is deeply fractured and split by multiple divisions, including the ethnic divide, urban-rural disparities, tensions between the metropolitan area and the rest of the country, and the persistence of a racist, exclusive ethos among the elites.

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52. CICIG says that criminal drug trafficking organizations’ links to political circles stem from their need for political protection, intelligence, and freedom of action in their areas of operations and that since the beginning of the democratization process such groups have financed electoral campaigns and funneled resources to political parties at different levels. By providing political funding, criminal organizations seek not only to benefit from certain levels of protection and information, but also to occupy key positions in the State to enable them to diversify their business interests and exert partial control or influence over security and justice institutions.\textsuperscript{63}

53. Corruption has also been a part of the post-conflict administrations, not only undermining the legitimacy of the country’s rulers and the rights of the ruled, but also deeply eroding the State’s coffers, which are already insufficient to meet the basic needs of the citizenry in terms of decent living standards, health, work, education, and justice. A study on fiscal policy and human development in Guatemala concluded that

\begin{quote}
Over the past 25 years the Guatemalan State has failed fully to harness the potential of fiscal policy to stimulate human development, in spite of concrete efforts at improvement in the form of instruments such as the peace agreements and the Fiscal Pact. This is explained by a variety of shortcomings and hurdles, such as lack of diversification in government finances, paltry fiscal pressure, and corruption, the largely outdated structure of the collection system, and insufficient and inequitable public and social spending.\textsuperscript{64}
\end{quote}


\textsuperscript{64} A reform of the tax code that constitutes the basis of the current taxation system was introduced at the beginning of the 1990s in a bid to strengthen government finances. With the signing of the Peace Agreements in 1996, fiscal policy became particularly important for the State to meet its constitutional obligations. In 1998 negotiations began on a Fiscal Pact that was eventually signed in 2000 and embodied the spirit of the peace accords. In the first decade of the new century, particularly between 2003 and 2006, the State renewed efforts to implement the Fiscal Pact. It set up the Fiscal Pact Technical Committee (CTPF), which proposed a tax reform that was adopted in 2004. The business and farm tax (Impuesto a las Empresas Mercantiles y Agropecuarias—IEMA) was replaced with a temporary special tax in support of the peace accords (Impuesto extraordinario y temporal en apoyo a los Acuerdos de Paz—IETAAP) and income tax (ISR) collection increased. In January 2008, the National Council for Implementation of the Peace Accords (Consejo Nacional para el Cumplimiento de los Acuerdos de Paz) put forward a fiscal modernization plan for Guatemala that sought to inject something of the spirit of the peace agreements into fiscal policy. In 2009, as part of the Emergency Economic Stimulus Program (Programa de Emergencia y Reactivación Económica) a fiscal reform package was proposed for delivering additional funding to municipalities, education, health, rural development, and security. The goals of this reform, which underwent several changes in 2010, are still pending approval. In conclusion, Guatemala’s fiscal history has seen a number of government efforts that have produced partial results but failed broadly to strengthen either the taxation structure or the State’s collection capacity, undermining the fiscal policy’s impact in terms of benefiting social well-being.

1. 2015: Political and institutional crisis

54. This context of institutional weakness served to intensify the political crisis associated with government corruption in 2015. The investigation of the so-called “La Línea” case and the Guatemalan Social Security Institute disclosed a network of corruption which is under investigation and that involved state officials at the very highest level.

55. With respect to the “La Línea” case, on April 16, 2015, it was publicly announced that in May 2014 probes had been opened in response to suspicions that a group of importers was involved in smuggling activities and had contacts with a network of customs agents to avoid paying duties. As a result of the investigation, in April 2015, the Office of the Attorney General’s Special Anti-Impunity Prosecution Unit (Fiscalía Especial contra la Impunidad—FECI), in coordination with CICIG arrested Álvaro Omar Franco Chacón, Chief of the Tax Authority (Superintendencia de Administración Tributaria—SAT) and Carlos Enrique Muñoz Roldán, the former head of that agency, along with 19 other individuals, including senior officials, employees, and private citizens. It was reported at the time that Juan Carlos Monzón Rojas, a private secretary in the office of the vice president of the Republic, was involved in the criminal structure. Vice President Roxana Baldetti resigned from her position in early May and was arrested on August 21.

56. After the “La Línea” case and a series of other acts of corruption were exposed, Guatemalans took to the streets to demand the resignation of government authorities, including the President of the Republic and the restitution of public funds. The IACHR observes and appreciates that Guatemalans taught a lesson in democracy when they achieved key changes on the basis of public participation and without any violence. According to OHCHR-Guatemala, “amid the most serious political and institutional crisis in decades, Guatemalans realize that only comprehensive reforms will bring genuine change to the country.”

What started in April as a peaceful movement organized through social media under the hashtag #RenunciaYa (#ResignNow), mainly involving a number of groups in the capital, has spread to encompass people from all over the country and different social sectors: families, students, women, indigenous peoples, LGBTI groups, children, persons with disabilities, older persons, and urban and rural populations, who have staged weekly peaceful protests outside the Palacio Nacional (the presidential palace) in Guatemala City and other parts of the country. Even Guatemalans living abroad added their voices to the discontent.

65 In May 2015, a separate investigation by the Office of the Attorney General (Ministerio Público) and CICIG uncovered another case of corruption involving a contract worth US$14 million (116 million quetzales) from the Guatemalan Social Security Institute for the provision of dialysis services. The investigations are still ongoing as several patients reportedly died as a result of not receiving adequate dialysis treatment. OHCHR-Guatemala, A Guatemalan awakening: the revolt for justice and change.


67 OHCHR-Guatemala, A Guatemalan awakening: the revolt for justice and change.
The protesters have moved from calling for a clampdown on corruption to demanding the resignation of government officials and the return of public funds. In a country where 53% of the population lives below the poverty line and one in two children under age five is undernourished, the people are demanding the transparent use of the public budget to ensure basic rights such as food, health, and education. With three months to go before the general elections, disaffection with the political class is also a recurring theme on protesters’ banners.\(^{68}\)

57. Regarding the political crisis because of corruption, the State affirmed that this crisis was overcome in the framework of the Constitution and other laws, without breaking away from constitutional law and order, and it contended that "combating corruption and impunity has been the result of the State, developed since the year 2007, with the establishment of the International Commission against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala—CICIG) and institutional capacity building of security and justice institutions, where the principle of legality prevails and where no one is above the law owing to judicial guarantees of due process of law."\(^{69}\)

58. On August 21, 2015, articles of impeachment were presented against former President Otto Pérez Molina charging him with the crimes of taking bribes, conspiracy to commit crimes, and customs fraud. The press release issued by CICIG indicated:

> Articles of impeachment were brought against the president of the Republic for his suspected participation in these unlawful activities of the criminal organization known as ‘la línea.’ The judicial authorities were informed that, based on the documents seized in the searches and telephone intercepts, the president of the Republic likely participated in the commission of the same punishable acts of which the individuals who belonged to the organization have been accused.\(^{70}\)

59. On September 1, 2015, the Congress of Guatemala removed Otto Pérez Molina’s immunity from prosecution.\(^{71}\) On September 3, he resigned as president of the Republic and that same day was "remanded in custody to ensure that the hearing to take his first statement could continue.”\(^{72}\) That hearing was set for September 8, 2018. On September 8, Judge Miguel Ángel Gálvez ordered him to be tried and investigated for his alleged participation in the customs fraud network.

60. Upon Pérez Molina’s resignation, Alejandro Maldonado, who had been vice president since May 14, 2015, when he replaced Roxana Baldetti,\(^{73}\) took up the

\(^{68}\) OHCHR-Guatemala, A Guatemalan awakening: the revolt for justice and change.
\(^{70}\) CICIG, Press Release 050, Capturan a ex Vicepresidenta Ingrid Roxana Baldetti y solicitan antejuicio contra Presidente Otto Pérez Molina, August 21, 2015.
\(^{71}\) Deputy Amílcar Pop filed a complaint against former president Pérez Molina in May 2015, alleging acts of corruption.
\(^{72}\) Prensa Libre, Pérez Molina queda sin inmunidad, September 1, 2015.
\(^{73}\) On September 16, 2015, the Congress elected Alfonso Fuentes Soria as vice president of the Republic.
presidency. He will remain in office until January 14, 2016, when James Ernesto Morales Cabrera, elected on October 25 in the second round of voting in the presidential election, will take office.

61. In that connection, on August 13, 2015, the Congress passed a series of amendments to the Electoral and Political Parties Law and submitted its opinion to the Constitutional Court to determine if that high tribunal had any objections. The amendments to the Electoral and Political Parties Law, which passed with the vote in favor of 122 of 158 lawmakers, require the democratization of political parties, oversight of public and private financing, and recognition of voided ballots and absentee voting, among other measures. They also prohibit the reelection of a deputy for more than two terms. Civil society and private organizations lobbying for the reforms after the Office of the Attorney General and CICIG dismantled 13 corruption rings in the three branches of government.74

62. The Commission underscores the importance of the democratic system and observance of the rule of law for effective protection of human rights. In a democratic society, the rights and freedoms inherent in the human person, the guarantees applicable to them, and the rule of law form a triad. Each component thereof defines itself, complements and depends on the others for its meaning. Democracy and the rule of law are prerequisites for achieving the enjoyment and observance of human rights in a society. One of the main threats to the observance of the rule of law is impunity. In its reports on Guatemala, the Commission has repeatedly drawn attention to the existence of a structural impunity in the country’s justice system, which weakens the rule of law. The Commission urges the State to continue along the path to overcome this situation.

63. Human rights defenders have a key role to play in the process leading to the full attainment of the rule of law. Their action, through the defense of individuals and groups who are victims of human rights violations, public disclosure of injustices affecting large sectors of society, and the necessary monitoring they exercise on public officials and democratic institutions, among other activities, makes them an indispensable building block in the construction of a strong and lasting democratic society. When human rights defenders are silenced by intimidation and fear, thousands of people are deprived of the opportunity to find answers to the violations and injustices besetting vast sectors of society. The Commission would like to take this opportunity to congratulate those who devote their work and lives to the defense of human rights in order to bring about a more equitable society.

74 La Vanguardia, Congreso de Guatemala aprueba reforma de ley electoral y de partidos políticos, August 14, 2015.
CHAPTER 3
DIVERSITY, INEQUALITY AND EXCLUSION: THE SITUATION OF THE INDIGENOUS PEOPLES
As observed, Guatemala is a highly diverse country, ethnically and culturally, whose territory is home to the Maya people, the Xinka people, and the Garifuna people. According to the last population census (2002), 41% of the population self-identifies as indigenous, with 99.5% of those self-identifying as part of the sociolinguistic community of the Maya people. The IACHR values the use, in the 2002 census forms, of categories on self-identification and belonging to an ethnic group or specific people. Nonetheless, as observed, there is a difference between this source and others that indicate that the indigenous peoples account for nearly 60% of the population of Guatemala. Most of the indigenous population is in the rural area, whereas in the urban area 13.87% are indigenous females and 13.28% indigenous males. In 12 of the 22 departments, at least 25% of the population is indigenous. The departments of Totonicapán, Sololá, Alta Verapaz, Quiché, and Chimaltenango have 75% to 100% indigenous population.
65. The Mayan people are significantly more numerous and are distributed across different departments of Guatemala. Of the 22 socio-linguistic communities that constitute the Maya, the most numerous are the K’iche’ (28%), Q’eqchi’ (19.3%), Kaqchikel (18.9%), and Mam (14%). The Maya share common institutions and characteristics, such as their spirituality; ways of caring for the environment; the celebration of the Wajxaqi’ B’atz’ and the B’eleje’ B’atz’; the writing and numbering systems; toponomies; and growing corn, beans, and squash; among other aspects. The Xinka people have origins that go back to the pre-colonial period; since that time they have constructed, consolidated, and safeguarded their own culture; and resisted attempts to exert cultural domination, maintaining their cosmovision and defending their territory. Even though the Xinka have existed for thousands of years, it was the process and signing of the peace accords that gave them public recognition once again. The origin of the Garifuna people goes back to the 17th century; they arose from the syncretism of indigenous and African peoples. During the colonial period they were known as “Vincentian black Caribs” (“caribes negros vicentinos”); as of Independence they were known as “morenos”; and since 1980 they have been identified as Garifunas, as they call themselves. It was only in the Agreement on Identity and Rights of the Indigenous Peoples that the Garifuna people were recognized by the State.

66. The IACHR continued receiving information on the racism and discrimination that affect indigenous peoples in Guatemala and the situation of exclusion in which they are found. In addition, the IACHR observes the lack of regulation and protection of the human rights of the indigenous peoples and communities pursuant to international standards, which also is causing social and environmental harms in the indigenous territories, such as the dispossession of their lands and the contamination of their waters.
A. **Structural Discrimination**

67. The American Convention forbids discrimination of any kind, including unjustified distinctions based on race, color, national or social origin, economic position, birth, or of any other kind.

68. In Guatemala, being indigenous historically has negative connotation, which has placed indigenous peoples in a balance of power of extreme inequality.

69. Since the 1985 Report on Guatemala, the IACHR has voiced its concern about the situation of discrimination and social exclusion of indigenous peoples.\(^{86}\) In 2003, the former Special Rapporteur, Rodolfo Stavenhagen, identified the existence, in Guatemala, of legal, interpersonal, institutional, and structural discrimination against the indigenous peoples.\(^{87}\) As the Rapporteur explained, in the legal sphere, discrimination is evident in "the omission, in laws, of statements fostering the full enjoyment, by indigenous peoples, of all their human rights and the still insufficient adjustment of national legislation to the principles enshrined in the Peace Accords."\(^{88}\)

70. Historical discrimination against the indigenous peoples is evident in the lack of respect for and enforcement of human rights of which they are the holders, places them in a situation of poverty and extreme poverty, and situates them among the majority of the population in the departments with the highest rates of social exclusion.\(^{89}\) This exclusion can be observed in various areas, including land ownership, access to basic services, working conditions, access to the formal economy, participation in decision making and State institutions, and representation in the media and public debates.\(^{90}\) The situation of extreme inequality and exclusion experience by the indigenous peoples in Guatemala, as a result of racism and structural discrimination, is evident as well in the State’s denial that the Maya People suffered from genocide during the domestic armed conflict.

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71. The persistence of historical and structural problems, created from the time of colonization, has posed difficulties in the path to achieving recognition of indigenous peoples as collective peoples vested with rights, and the full observance of their rights. The 1996 Peace Accords represented the historical opportunity to overcome the scourges of exclusion and discrimination affecting indigenous peoples in Guatemala, and to remove the historical causes that gave rise to the armed conflict. The IACHR has received repeated references to the need to fully carry out the Peace Accords, especially the Agreement on Identity and Rights of the Indigenous Peoples (Acuerdo de Identidad y Derechos de los pueblos indígenas), trusting that for indigenous communities, leaders, and organizations it will mean substantial progress in the full observance of their rights. The IACHR has received expressions from the highest authorities of Guatemala indicating progress in implementing the Peace Accords and that they ”continue to be valid and in force, and should guide the change in recognition as a multiethnic, multilingual, and multicultural Nation.” Despite what was stated, the Commission regrets that according to the Secretariat of Peace (SEPAZ), the Agreement on Identity and Rights of the Indigenous Peoples and the Agreement on Socioeconomic Aspects and Agrarian Situation “are the ones with the largest number of commitments not yet implemented, which has a negative impact on the country’s socioeconomic and cultural situation.”

72. Along these lines, the IACHR wishes to reiterate that the Peace Accords are commitments that the State of Guatemala is called upon to carry out through decisive actions by all the public institutions, in keeping with the Framework Law on the Peace Accords (Decree 52-2005), the Constitution of Guatemala, and international law.

73. Regarding this, the State of Guatemala pointed out that, according to the Constitution, natural resources belong to the State and not to any individual, specific person, or community. Regarding the right to consultation, it indicated that there was no binding human right to consultation and that the IACHR was not empowered to interpret and enforce Convention 169 of the International Labor Organization (ILO). It also declared that the right of indigenous peoples to be

91 In a similar vein Rodolfo Stavenhagen, then United Nations Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples stated: “The present status of the indigenous peoples in Guatemala is the result of a long process of colonial subjection of the Maya people starting in the sixteenth century, which was reinforced during the liberal period in the nineteenth century, when a governing class was formed that based its power and its privileges on large rural estates and the exploitation of indigenous labour, under authoritarian and property-based regimes.” United Nations. Report by Rapporteur Rodolfo Stavenhagen. Mission to Guatemala. February 10, 2003, para. 5.


94 Information received by the IACHR at a meeting with SEPAZ, COPREDEH, and the PNR, August 22, 2013, Guatemala City.


consulted was incontrovertible, and that a proposal was in the process of being drafted to establish the procedures for consultations and those in charge of conducting them. 97

74. In this regard, as will be seen in the section on property of indigenous peoples of this report, it should be noted that the jurisprudence of the Inter-American human rights system has maintained that indigenous peoples are entitled to the natural resources they have traditionally used and which are in their territories. Specifically, the Commission, “through its reports on individual petitions and on the general situation of human rights in member states, as well as in its authorization of precautionary measures, has pronounced upon the necessity of States to take the measures aimed at restoring, protecting and preserving the rights of indigenous peoples to their ancestral territories” 98. It has also maintained that respect for collective property and ownership rights of indigenous peoples to ancestral lands and territories constitutes an obligation for Member States of the OAS. The I/A Court on its part, has said that

the members of tribal and indigenous communities have the right to own the natural resources they have traditionally used within their territory for the same reasons that they have a right to own the land they have traditionally used and occupied for centuries. Without them, the very physical and cultural survival of such peoples is at stake. Hence the need to protect the lands and resources they have traditionally used to prevent their extinction as a people. 99

75. On the State’s contention that there is no human right to the binding nature of consultation, the IAHRS has also been consistent in establishing the human right of indigenous peoples to consultation, and the corresponding obligation of States, because "the right to consultation of indigenous and tribal communities and peoples is precisely recognition of their rights to their own culture or cultural identity, which must be assured, in particular, in a pluralistic, multicultural and democratic society”. 100 Regarding the State's claim on which the Commission does not have authority to interpret and apply the ILO Convention 169, the Commission has held previously that

in the "development of the corpus of international human rights law it is pertinent “to draw from the provisions of other prevailing international and regional human rights instruments. This includes the American Convention on Human Rights which, in many instances, may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration. Pertinent developments have also been drawn from the provisions of other multilateral treaties adopted inside and outside of

the framework of the inter-American system, including the Geneva Conventions of 1949, the United Nations Convention on the Rights of the Child, the Vienna Convention on Consular Relations and, of particular pertinence to the present case, International Labor Organization Convention (Nº 169) concerning Indigenous and Tribal Peoples in Independent Countries and other instruments concerning the rights of indigenous peoples.  

76. In such regard, the Commission "has developed the content and scope of Article 21 and has interpreted its dispositions in an evolutionary manner interpreting in a broad way the enjoyment and exercise of the rights recognized [by the State] in other articles, such as ILO Convention 169. Through that convention and through normative and case-law developments, international law has given a specific content to the right to prior consultation of indigenous people in situations that affected their territory."  

B. Inequality, social exclusion and conditions of poverty

77. While ethnic discrimination and economic and social inequality are distinct concepts, such categories are interrelated, further aggravating the situation of discrimination against the indigenous peoples of Guatemala. Discrimination is one of the factors increasing social inequality and furthering the conditions of poverty affecting the indigenous population. Beyond the constitutional recognition of the principle of equality and gains in some aspects, de facto exclusion of the indigenous peoples continues as regards access to and effective and egalitarian enjoyment of rights in the economic and social spheres. The Commission notes as a positive aspect that the persistence of racism and discrimination, and its relationship with the situation of poverty of the indigenous peoples is recognized at the highest level of the Government.  

78. As noted, the highest levels of poverty are concentrated in 12 departments with the largest indigenous population, with nearly 75% of the population living in poverty and 40% in extreme poverty. In this regard, in 2006 National Survey of Living Conditions (ENCOVI, for its acronym in Spanish) found that 74.8% of the indigenous population was poor, compared to 36.2% of the non-indigenous population. According to the ENCOVI as of 2011, of the total number of persons in poverty, 54.7% are indigenous persons, compared to 45.3% non-indigenous;
whereas of the total number of persons in extreme poverty, 66.8% are indigenous and 33.2% are not.\textsuperscript{105} Approximately 65% of the indigenous population does not have access to a water supply system, more than 80% has no connection to sewerage systems, and half are not connected to the electricity grid. The IACHR takes note, moreover, that the Human Development Report by the UNDP shows that the indigenous population is the most vulnerable and most socially excluded sector, and that the incidence of the privations of certain basic services is more severe in the rural population, which is mostly indigenous.\textsuperscript{106}

79. This persistence of the correlation between the social map of poverty and the marginalization of the indigenous peoples evidences the deep roots of structural discrimination.\textsuperscript{107} Some of the areas of greatest concern to the IACHR refer to the situation of malnutrition, access to education in equal conditions, with culturally relevant education; the labor situation of indigenous persons subjected to various forms of exploitation, especially in agricultural work; and access to sufficient and culturally appropriate health services.

80. Literacy among the indigenous population in Guatemala is much lower than for the rest of the population, especially among women. In some rural communities illiteracy in adult indigenous women reaches 90%,\textsuperscript{108} which poses an important challenge to carry out the commitment to assure education for indigenous women. In the job market they also suffer different forms of discrimination, and in general they have access to less skilled and poorly paid jobs.\textsuperscript{109} Many indigenous women work as domestic workers without receiving a dignified salary,\textsuperscript{110} in addition to being subject to various forms of violence and discrimination.\textsuperscript{111} There are also cases of prostitution, exploitation, and trafficking of indigenous women in clandestine bars and taverns in the urban area of several municipalities.\textsuperscript{112}

\textsuperscript{105} INE. ENCOVI 2011. Table 9. Population by poverty level in %. By sex and ethnic group, 2011.
\textsuperscript{108} INE. ENCOVI, 2006.
\textsuperscript{109} Therefore, for example, 90% of farm laborers earn monthly wages below the minimum wage that has been set and this percentage rises to 97% in the case of women. ODECA. Situación laboral de trabajadores/as agrícolas en Guatemala. Síntesis del estudio sobre las condiciones laborales de trabajadores agrícolas en las fincas [Labor Situation of Farm Laborers in Guatemala: Summary of the Study on Working Conditions of Farm Workers]. 2013, p. 6.
\textsuperscript{110} “Indigenous women are in houses where the minimum wage for being of Maya descent is not even being given.” Information received at the meeting with indigenous leaders, communities, and organizations held on August 21, 2013 in Guatemala City.
\textsuperscript{111} “Young women are employed for domestic help and oftentimes leave because they are cheated and are forced into prostitution or are raped by their employers.” Complaint by the Q’eqchi’, Poqomchi’, and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received August 23, 2013, in Cobán, Alta Verapaz, Guatemala.
\textsuperscript{112} Complaint by the Q’eqchi’, Poqomchi’, and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received August 23, 2013, in Cobán, Alta Verapaz, Guatemala.
1. Right to food and the situation of malnutrition

81. The food and nutrition situation of Guatemalan children, and more so indigenous children, is extremely serious. In Guatemala there were 672 deaths due to malnutrition in 2011, and 1,053 in 2012. The food and nutrition situation reaches critical levels in rural areas, as observed, mainly affecting children under 5 years, the school population, and pregnant and nursing women, and is aggravated to an alarming extent in the indigenous population. In effect, the highest rates of chronic malnutrition and risk of food insecurity coincide with the populations in the rural areas, where there is a predominance of indigenous population. According to UNICEF, in Guatemala chronic malnutrition affects eight of every ten indigenous children (80%); it contributes to dropout rates, lowers productivity, is associated with a propensity to become infected by disease, and also with a loss of the intellectual coefficient, effects that are irreversible. Those children who up to the age of 3 years have continuously maintained below-normal weight and height suffer a loss in their learning abilities and productivity, and are more vulnerable to diarrheal diseases and respiratory infections, which are the main causes of child morbidity and mortality. The food and nutrition situation has a significant impact on school-age children.

82. The Commission observes that Guatemala has institutions and public policies aimed at reducing malnutrition and that there has also been litigation of the right to food with some success. One of the programs is known as “Bolsas Seguras” (Assured food baskets) to ensure that families rendered vulnerable by poverty be provided periodically with a bag of food. Another is the “Hambre Cero” (Zero Hunger) pact, whose objective is to reduce chronic nutrition 10% over four years. One of the main concerns observed is that those programs are not aimed at strengthening the communities’ food sovereignty, but rather are welfare-type

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113 Regarding the figures for 2014 and 2015, there was a discrepancy between what was reported by the administration of former President Pérez and what was reported by the National Epidemiology System of the Ministry of Public Health. Plaza Pública, Las cifras de desnutrición y mortalidad infantil del gobierno son falsas, January 19, 2015.

114 La Hora, Registraron 1,053 muertes por desnutrición en 2012, February 16, 2013.


116 This is found in the departments of the northwestern Altiplano, Alta and Baja Verapaz, and the municipalities of the area of Chortí, in Chiquimula. Secretariat for Food and Nutrition Security. Strategic Plan for Food and Nutrition Security, p. 4.


119 The Court of Children and Adolescence and Adolescents in Conflict with the Criminal Law of Zacapa held the State of Guatemala liable in four judgments in April and May 2013 for breach of economic, social, and cultural rights and for omission in the duty to protect children, on not guaranteeing the rights of five children, three boys and two girls, from Chiquimula. The state institutions involved filed amparos against the judgments for alleged due process violations. The Supreme Court of Justice reportedly issued provisional amparo judgments in response to those requests, setting aside the actions ordered by the court. Office of the Human Rights Ombudsman. Informe Anual Circunstanciado. 2013, pp. 300-302. Peace Brigades International (PBI). Agencia EFE, Juzgado condena Estado de Guatemala por no garantizar derecho a alimentación, July 8, 2013.

120 Ministry of Social Development. Programas Sociales Mi Bolsa Segura.
(asistencialista) measures\textsuperscript{121}, which reportedly do not reach all the population with similar needs and are used politically by local authorities and as a mechanism of political cooption.\textsuperscript{122} In addition, information was received indicating that institutional factors such as the lack of adequate cooperation and of capacity to secure financial resources play a part in thwarting attainment of the objectives proposed. In contrast, the State also reported the drafting of the Agricultural Policy for 2011-2015, which is aimed at building up the family economy on the basis of the Fertilizer Program, for example, which would provide one quintal sack of fertilizer per beneficiary; the Food for Action Program, and would supplying food to farmers for the time they spent on community activities; the Food Assistance Program would supply food to persons hit by natural disasters; and the Family Garden Program, which would support food production in vulnerable communities, among other programs.\textsuperscript{123}

83. The programs and public policies on food and nutrition implemented in the future should consider that the problem of malnutrition has many causes and is closely related to the lack of access to and the juridical insecurity affecting indigenous lands and territories, as well as the acquisition of such lands and territories by third persons.\textsuperscript{124} The indigenous peoples have referred to this aspect as a key part of their proposals for designing a policy for food and nutrition security.\textsuperscript{125}

2. Right to education

84. The IACHR takes note of the constitutional provisions that recognize the right to education and in particular free access to early childhood, pre-primary, primary, and basic education. According to information gathered, the percentage of GDP earmarked for education in 2013 amounted to 2.9%, in 2014 to 3.2%, and in 2015 to 3.1%.\textsuperscript{126} As can be observed, although there was a rise between 2013 and 2014, the share of GDP for education, according to the 2015 Draft Budget, declined by

\textsuperscript{121} Information received in a meeting with indigenous leaders and organizations on August 21, 2013 in Guatemala City.

\textsuperscript{122} In this respect, one Ixil Maya woman who works as a nurse in Nebaj said: “At times the personnel weighs and measures the child. They say yes he is malnourished, but as he is not affiliated with the official party they do not give him the ‘bolsa segura’ or the benefits that the government is promoting.” Testimony received at a meeting with indigenous leaders and organizations on August 25, 2013 in Nebaj, Quiché. Similar information was received at a meeting with indigenous leaders, communities, and organizations on August 21, 2013 in Guatemala City.


0.1% in 2015\textsuperscript{127} and, according to the multiannual budget for 2015–2017, this percentage shall continue to decline in 2016 and 2017.\textsuperscript{128} Regarding the right to education in areas with the largest indigenous population, Article 76 of the Constitution provides: "In the schools established in predominantly indigenous areas, education should be given preferably in bilingual mode."\textsuperscript{129} The IACHR is satisfied to receive the information according to which in recent years the number of teachers in rural schools has increased, schooling has increased notably, and actions have been taken to implement a bilingual and intercultural education model, mainly through the General Bureau of Bilingual and Intercultural Education of the Ministry of Education.\textsuperscript{130}

85. At the same time, the IACHR received information on important limitations on access, quality, and cultural adaptation in the education of the indigenous peoples, in conditions of equality. In particular, one observes that in some communities access to schools is very limited, and numerous communities do not have any teachers.\textsuperscript{131} Indigenous children in rural areas attend school, on average, for just over two years, while girls receive barely one year of schooling. It was reported that the determinant factor in dropout rates among indigenous children is poverty, as they have to perform domestic activities in their homes or work on the farms.\textsuperscript{132} The schools in the communities only offer the opportunity to study the primary cycle, and there is minimal coverage at the secondary level. To be able to continue studying indigenous children and youth must enroll in urban schools, and few families can cover the associated costs. In addition, the IACHR has been informed that public higher education is highly centralized, which in practice often excludes indigenous youth and reduces their possibilities of getting a higher education.\textsuperscript{133}

86. As for cultural adaptation, the IACHR has found in general that strengthening bilingual and intercultural education continues to be a repeated request of the


\textsuperscript{129} Constitution of Guatemala, Articles 72 to 77.

\textsuperscript{130} Information received at a meeting with the Minister of Foreign Affairs and COPREDEH, August 29, 2013, Guatemala City.

\textsuperscript{131} Information received at a meeting with the indigenous communities and organizations, August 23, 2013 Cobán, Alta Verapaz.

\textsuperscript{132} OHCHR-Central America. Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central, 2011. Volume I, p. 226. "Many parents decide to remove the girls from school because they already learned to read and write, and in the near future they will contract marriage, for they opt or are forced to marry at a very young age, from ages 13 to 15." Complaint by the Q’eqchi’, Poqomchi’, and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received August 23, 2013, in Cobán, Alta Verapaz.

various peoples and organizations.134 A small number of schools have bilingual intercultural education, including in the departments that have more than 90% indigenous population.135 According to the information available, bilingual intercultural education does not cover all the grades136 and does not extend to the various socio-linguistic communities.

3. Labor rights

87. The information available to the IACHR suggests that 69.2% of the population employed nationwide works in the informal sector of the economy. In the rural area almost 8 of every 10 workers is employed in that sector.137 According to the INE, one finds greater vulnerability in the indigenous population, since in this group almost 9 of every 10 are in the informal sector and therefore lack basic job benefits.138 Some 33.8% of workers are employed in agriculture139, 3 of every 4 of whom are poor, and 1 of every 4 of whom is extremely poor. Nearly 91% of agricultural workers in Guatemala are indigenous.140 Racism has impacted and continues to impact directly social relations of production to the extent that it influences forms and types of work.141 Forced labor and servile exploitation of indigenous persons has been a fundamental element in the subjugation of indigenous peoples throughout the history of Guatemala.142

88. The labor situation of indigenous persons continues to be extremely worrisome, as they are subject to various forms of exploitation; the unlawful use of certain labor arrangements to avoid the responsibilities associated with hiring workers on permanent employment contracts, especially on the African palm plantations; the

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134 The testimony taken from several witnesses indicates that studying in one’s own language and with culturally appropriate and quality contents continues to be very limited. Information received by the IACHR at a meeting with indigenous communities and organizations on August 23, 2013 in Cobán, Alta Verapaz, Guatemala.


138 INE. Encuesta nacional de empleo e ingresos (INEI) [National Employment and Income Survey]. INEI 1-2013, September 2013, p. 12.

139 See in this respect Linares, Luis; Prado, Pedro; and Zelaya, Raquel. El comercio exterior y el empleo agrícola en Guatemala. ILO and ASIES. 2012, p. 9.


142 This is evidenced in colonial institutions such as the encomienda and the repartimiento, and the libreto de jornaleros, which made it possible to continue to legislate the forced labor of the indigenous population until the mid-20th century. The conditions of indigenous exploitation, and on the plantations and estates, were some of the historical causes behind the armed violence of 1960 to 1996.
scant availability of health centers and limitations on access due to the distances; and children who support their parents in agricultural tasks. The Commission also received consistent information that indicates that in rural areas salaries are less than half the minimum salary established by law.\(^{143}\)

89. The IACHR notes with profound concern that contemporary forms of slavery, which have colonial origins, continue to exist in Guatemala for economic exploitation. According to the 2008 National Agricultural Survey, there are 5,043 agricultural productive units in which systems of labor servitude persist that are known as "*colonias de peones* (colonies laborers) or "*mozos colonos* (resident laborers). These are groups of families or communities that have lived on farms generation after generation, and who survive by serving the "bosses" (*patrones*) in exchange for miserable salaries or food. These persons are "inherited" or "transferred" to the new owners of the farms along with the land.\(^{144}\) Also reported was the existence of a severe child labor problem in the agricultural sector, not only in view of the high percentage of indigenous children working, but also because of the overexploitation and working conditions, without payment or recognition of any rights.\(^{145}\) The IACHR forcefully condemns the continuation of these situations as an extreme expression of the discrimination that the indigenous peoples of Guatemala have suffered historically and continue suffering; such discrimination should be eradicated.

90. While Guatemala has certain domestic provisions on agricultural workers, the Commission considers that actions should be taken to bring them into line with international instruments and international standards, and that greater efforts should be made to enforce them in practice.\(^{146}\) Along with strengthening legal and practical protection, the Commission considers that there is a direct relationship between dispossession and lack of protection for territories and the labor

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143 According to a research study based on field information at 609 agricultural properties, situated in 14 of 22 departments of the country, 90% of the agricultural workers earn a monthly salary below the established minimum salary. Some 70% of agricultural workers work nine to 12 hours without overtime pay; 90% have no vacation; a similar percentage is not affiliated with social security; and the vast majority does not work with adequate protection, nor does it have adequate and hygienic places for eating during work. CODECA. *Situación laboral de trabajadores/as agrícolas en Guatemala. Síntesis del estudio sobre las condiciones laborales de trabajadores agrícolas en las fincas.* 2013, p. 6.

144 “For some years on the farm [today called Finca Empresa Agrícola San Francisco S.A.] they have promoted forced work without pay or labor benefits, for the [126] families [that have lived on and possessed the lands for more than two centuries], which is translated into carrying bunches of plantain on human backs, carrying them two hours to their destination, as well as growing and harvesting coffee.” CUC. Casos de violaciones a derechos de comunidades indígenas y campesinas en Guatemala en el Departamento de El Quiché (Caso Regadillos, Sanchina y Buena Vista). Letter to Rapporteur Dinah Shelton, August 22, 2013.


146 According to the information provided to the IACHR, there is a lack of effective supervision by the State, through the General Office of Labor Inspection, due to the insufficient number of inspectors, the lack of adequate professional training for them, and the lack of the needed tools and logistics. Its inoperative state is also due to labor inspectors receiving bribes from the farm owners for not reporting the workers’ conditions. CODECA. *Situación laboral de trabajadores/as agrícolas en Guatemala. Síntesis del estudio sobre las condiciones laborales de trabajadores agrícolas en las fincas.* 2013. pp. 40-42.
exploitation of the indigenous peoples and their members, as evidenced by numerous examples throughout history. Accordingly, it considers that comprehensive attention to the situation described requires promoting the recognition and effective enjoyment of the rights of indigenous peoples to their ancestral lands and territories such that they can strengthen their autonomy, their own ways of life, and their own development.

4. Right to health

While Article 93 of the Constitution of Guatemala recognizes that the enjoyment of health is a fundamental right of the human being without any discrimination, there are major gaps between the health indicators of the indigenous and non-indigenous population. For example, morbidity and mortality indicators are higher in areas with larger percentage indigenous populations. As has been indicated by the United Nations Rapporteur on the right to health, Anand Grover, these gaps have historical causes that are marked by discrimination and structural inequality and de facto have brought about a sharp contrast between the health outcomes of indigenous communities and non-indigenous persons. Similarly, the OHCHR has noted that in the area of health there is a differentiated citizenry that is determined fundamentally by the economic opportunities of some population groups and the low financing of health care in the public sector.

The IACHR has been informed that there is a lack of adequate and accessible health services for indigenous peoples, as is required to counter this situation. According to the available information, in the departments with the largest indigenous population the health system is obsolete, and lacks the human, financial, and medical resources necessary. The IACHR also observes that there are serious geographic obstacles to the effective delivery of health services. In several regions of the country, indigenous persons must travel long distances to get to the nearest health center, which is more serious in emergencies. In addition to the scarcity and

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147 IACHR, Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources, 2009, paras. 163 and 164.
148 Information received by the IACHR on the 2013 visit.
150 According to a study by the Instituto Centroamericano de Estudios Fiscales (ICEFI) [Central American Fiscal Studies Institute] and UNICEF Guatemala in 2011, major differences persist in child mortality between the rural areas (38%) and the urban areas (27%) and between the indigenous population (40%) and the non-indigenous population (30%). ICEFI and UNICEF. Series of review papers. ¡Contamos! El remedio de nuestros males. Un análisis sobre los mecanismos, costos y formas de financiamiento para mejorar el sistema de salud pública en Guatemala [A Review of the Mechanisms, Costs, and Forms of Financing to Improve the Public Health System in Guatemala], 2012-2012. Bulletin No. 06, 2011, p. 54.
insufficiency of health services is the lack of culturally appropriate services, expressed for example in the lack of medical personnel who speak the indigenous language of the zone, or interpreters.

93. The IACHR considers that one of the main challenges in indigenous health is providing culturally appropriate services, for the state health system is perceived to be alien to the indigenous peoples’ conception of themselves, and its design and implementation has been decided upon with their systematic exclusion. In this respect, the Commission recalls that Article 98 of the Constitution provides that the communities have the right and the duty to participate actively in the planning, implementation, and evaluation of health programs; that provision is complementary to the obligations contained in ILO Convention 169\(^{153}\) and in the Declaration on the Rights of Indigenous Peoples.\(^{154}\) In addition, the IACHR considers that the implementation of these duties must take into account as central aspects the strengthening and consolidation of traditional medicine by establishing instruments and mechanisms that allow for its practice; as well as the special relationship of the indigenous peoples with their territories and the natural resources found on them.\(^{155}\)

94. According to the information available, indigenous women continue having least access to basic services, such as health and education. Maternal mortality is estimated at 137 per 1,000 live births, and according to the Reproductive Health Observatory (Observatorio de salud sexual y reproductiva), Guatemala has the third highest maternal mortality rate in Latin America; the figure is three times higher in indigenous women.\(^{156}\) The high level of maternal mortality is due to several factors, such as the lack of health centers, and their inaccessibility, in addition to the lack of culturally appropriate services, thus women generally turn to curanderas (traditional healers) and give birth in precarious conditions.\(^{157}\)

95. The IACHR is especially concerned over the persistence of several forms of violence against indigenous women. According to what was reported by the Office for the Defense of Indigenous Women (DEMI: Defensoría de la Mujer Indígena), family violence is present in all age groups but affects young women to a greater extent; and it is estimated that one-third of women who live with a man suffer family violence. Nonetheless, there is no ethnic classifier in the statistics, reports, files, and other documentation of complaints received by the Attorney General's

\(^{153}\) Articles 24 and 25 of ILO Convention 169.

\(^{154}\) Articles 21, 23, 24, and 25 of the UN Declaration on the Rights of Indigenous Peoples.

\(^{155}\) “Development-related activities that displace indigenous peoples from their traditional lands have been noted to negatively affect health outcomes. The consequences from this cultural disconnection notwithstanding, removing indigenous peoples from their land also contributes to poverty and food insecurity and alienation from mainstream society.” United Nations. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Mr. Anand Grover. Mission to Guatemala, May 12-18, 2002, para. 39.

\(^{156}\) Emisoras Unidas, Analizan cifras de mortalidad materna en Guatemala, May 22, 2013.

Office, the judiciary, the PNC, and others. Nor are there mental health programs for indigenous women who have been victims of violence or programs to provide psychosocial care for their children.\textsuperscript{158} In addition, it was reported that while one of the concerns of the DEMI is the large number of femicides in Guatemala – 755 cases in 2013 – there are no statistics on the percentage of indigenous women who are victims of this phenomenon.\textsuperscript{159}

5. \textbf{Legal and institutional framework for combating discrimination against indigenous peoples and their main challenges}

96. The IACHR observes that the Guatemalan State continues to have important tasks pending to combat discrimination against indigenous peoples and fully assume the guarantee of their rights from a multicultural perspective, through laws, institutions, and public policies. As observed, discrimination is prohibited by Guatemalan law. Nonetheless, the Commission observes that indigenous peoples continue experiencing a series of obstacles for their complaints regarding discrimination to be accepted and investigated, and for sanctions to be imposed. The IACHR has been informed of certain actions aimed at overcoming this situation, such as the construction of a Protocol and Critical Path for Addressing Discrimination Cases\textsuperscript{160}, holding trainings for judicial personnel and the Attorney General’s Office on the statutory definition of discrimination in the criminal law, and the use of cultural and language experts and the work of the Indigenous Peoples Unit of the SCJ to compile good practices in relation to discrimination-related judgments.

97. After the signing of the Peace Accords, a process of institutional reform took place in Guatemala in various areas recognizing the ethnic-cultural differences of the Guatemalan population. Several state offices were established such as the Academy of Maya Languages of Guatemala, the DEMI, the Presidential Commission against Discrimination and Racism, the Guatemalan Indigenous Development Fund, the Office of the Ombudsman for Indigenous Persons and Communities in the Office of the Human Rights Ombudsperson, and the Indigenous Prosecutor’s Office (Fiscalía Indígena) within the Attorney General’s Office. In addition, many of the government ministries have “indigenous venues”, such as the General Bureau of Bilingual Intercultural Education. While the IACHR considers their establishment very significant, these measures are insufficient, and are plagued by serious limitations that have enormously reduced their impacts and results. Among the main concerns is the lack of representativity, participation, and input of the indigenous peoples and their representatives, the lack of capacity for decision-making, the scant effectiveness of their action, and the insufficient economic and

\textsuperscript{158} DEMI. Statistics with ethnic characterization and typology of cases served by the DEMI.
\textsuperscript{159} Information received at a meeting with DEMI, CODISRA, and the Ministry of Culture, August 21, 2013 in Guatemala City.
\textsuperscript{160} CODISRA. Presentation to the IACHR. August 21, 2013, Guatemala City.
To these failings are added the legacies of authoritarianism, such as the fragmentation of powers, corruption, and the existence of de facto powers.\textsuperscript{162}

98. The IACHR would like to refer, in particular, to the Presidential Commission against Discrimination and Racism (CODISRA, for its acronym in Spanish) and the DEMI, which have important mandates for fighting discrimination. As regards CODISRA, according to Executive Decree 390-2002, that entity is entrusted with “designing public policies aimed at eradicating racial discrimination.”\textsuperscript{163} One of its specific functions is “to keep a record of complaints of cases of racism and discrimination and channel them to the competent institutions.”\textsuperscript{164} CODISRA reported that 60% of the persons against whom the complaints are filed, directly or indirectly, are public servants.\textsuperscript{165} Among the problems the institution faces for carrying out its mandate is the lack of financing and the lack of sufficient personnel, lack of training for personnel to accompany victims, and failure to monitor the complaints received.\textsuperscript{166} One challenge has to do with the need to strengthen its autonomy and independence for furthering policy the fight ethnic discrimination, for example through appointment procedures that take account of professional capabilities and ensure the broad participation of indigenous peoples. The IACHR considers that this institution can play a key role in fighting discrimination but it requires decisive measures to strengthen its capacities.

99. The DEMI was established by Executive Decree 525-99, which resulted from the struggle of the indigenous peoples, and especially indigenous women, for a state institutional framework to ensure respect for their rights.\textsuperscript{167} The IACHR values the gains made so as to address comprehensively the cases of violations of the rights of indigenous women.\textsuperscript{168} Even so, the IACHR notes some aspects of concern that consist of budgetary insufficiency, the scant presence in the different regions of the


\textsuperscript{163} Executive Decree 390-2002 of October 8, 2002, Article 1.

\textsuperscript{164} Executive Decree 390-2002 of October 8, 2002, Article 2(e).

\textsuperscript{165} Information received at a meeting with DEMI, CODISRA, and the Ministry of Culture, August 21, 2013 in Guatemala City.

\textsuperscript{166} Complaint of the Q’eqchi’, Poqomchi’, and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received August 23, 2013, in Cobán, Alta Verapaz.

\textsuperscript{167} Executive Decree 525-99 of July 19, 1999.

\textsuperscript{168} Information received at a meeting with DEMI, CODISRA, and the Ministry of Culture, August 21, 2013 in Guatemala City.
country, the weak institutional framework, the lack of decision-making capacity at the local level, and the real possibilities for having an impact in support of indigenous women’s rights. Of particular concern are the apparent setbacks in institutional independence, given the change in the mechanism for appointing the Defender (la Defensora) of the DEMI through Executive Decree 38-2013, suppressing the functions of the Coordinating Board and the Advisory Council of proposing the slate of three candidates to the President of the Republic based on consensus. The information received suggests that neither the indigenous women nor the indigenous peoples had an opportunity to participate or to oppose that Executive Decree.

6. Lack of an integral public policy on indigenous peoples and the need to strengthen the indigenous institutional framework

The IACHR was informed of the existence of a “Public Policy for Living Together and the Elimination of Racism and Racial Discrimination” and at the same time of the lack of effective implementation and performance of the strategic actions proposed. In addition, it was informed of the approval of a Plan to activate and adapt the National Policy on Integral Rural Development, which targets the rural areas with the greatest concentration of poverty. The IACHR is pleased to receive that report as it understands that the establishment of an integral rural development policy is a request from the indigenous peoples and organizations going back several years and its success is closely bound up with overcoming the conditions of exclusion that persist. Nonetheless, the IACHR takes note that this public policy is being promoted without their full participation and through measures that are not culturally appropriate.

The IACHR observes that while State’s initiatives have been taken to address the situation of discrimination and exclusion of the indigenous peoples, they have been presented in a fragmented manner and without occupying a central place in the actions and presence of the government. In addition, it notes that the public policies are not prepared through a process of consultation with the indigenous communities.

The DEMI informed the IACHR that it currently has 11 regional offices that are insufficient for the national territory. Information received at a meeting with DEMI, CODISRA, and the Ministry of Culture, August 21, 2013 in Guatemala City.

Based on the Peace Accords the process was established that is regulated by said Executive Decree 525-99 to designate the Indigenous Women’s Defender (Defensora de la Mujer Indígena), which consisted of the Coordinating Board and the Advisory Council proposing to the President of the Republic the slate of three candidates, after a public call to the national and regional women’s organizations for them to propose a slate of three candidates. Executive Decree 525-99 of July 19, 1999.

According to CODISRA, the Executive Decree is pending approval, after which it is to be implemented. CODISRA. Presentation to the IACHR. August 21, 2013, Guatemala City.

Executive Decree No. 196-2009.

Information received at a meeting with FONTIERRAS, SAA, RGP, and RIC, August 21, 2013, Guatemala City.

Information received at meeting with indigenous leaders and organizations, August 21, 2013 in Guatemala City; and August 23, 2013 in Cobán, Alta Verapaz.
peoples; they do not have sufficient political will or an adequate budget, or a system of accountability or for reporting progress that would allow one to verify results. In that sense, the IACHR considers that an integral public policy should be implemented—with the full engagement of the indigenous peoples—that addresses the different areas and expressions of ethnic discrimination and economic and social exclusion, especially mindful of the intersectionality of the factors of discrimination. The Commission emphasizes that this presupposes articulating a legal and institutional basis as well as allocating the human and financial resources necessary, and ultimately putting forward a vision of the State that includes the concept of equality and respect for the rights of the indigenous peoples as the central pillar and guide of its action.

102. The Commission takes note that Executive Decree 117-2014 established the Cabinet of Indigenous Peoples and Interculturalism (Gabinete de Pueblos Indígenas e Interculturalidad) as “a high-level advisory and deliberative body” under the Presidency of the Republic, and with a temporary life of 10 years. While this office could turn out to be an important space for an integral approach to the relevant public policy, the representation of the indigenous peoples is very limited to only three representatives for each people, compared to more than 20 representatives of State institutions. During its last visit, several indigenous and civil society organizations raised questions above the scope and dimension of this cabinet, and its capacity to contribute on key issues such as the protection of their lands and territories and the right to prior consultation.

103. In the Commission’s opinion, one crucial aspect in this area is to recognize and respect indigenous peoples’ own organizational forms and to guarantee their political participation. While there has been some progress at the local and regional levels, oftentimes such efforts are self-initiated and are not respected by the institutions of the State that have a presence in these spaces, through coordination and consultation with the indigenous authorities. In addition, it is not possible to identify national organizations or channels through which they can mobilize their demands and be the ones to bring about changes from the State itself. Along these same lines, both the State authorities and public officials and the representatives of indigenous peoples agreed on the need to strengthen the indigenous institutional framework within the State apparatus. The Commission considers that such a measure requires that a process be carried out that is participatory and that makes it possible to construct a proposal that reflects the vision of the indigenous peoples.

104. Eliminating every form of discrimination and intolerance as well as promoting and protecting the human rights of the indigenous peoples and respect for ethnic and cultural diversity contribute to strengthening democracy and citizen participation. To this end, the IACHR considers that the rule of law in Guatemala

175 Articles 1 and 10 of Executive Decree 117-2014 of March 25, 2014.
can only be consolidated when these historically excluded sectors achieve more egalitarian participation in society and in decision-making.\textsuperscript{177}

\textsuperscript{177} IACHR, Justice and Social Inclusion: The Challenges of Democracy in Guatemala, 2003, Chapter IV, paras. 234 and 434.
CHAPTER 4

CITIZEN SECURITY
CITIZEN SECURITY

A. Violence and insecurity

105. The Commission’s concept of citizen security is a situation in which persons are able to live free of the threats caused by violence and crime, and the State has the necessary means to guarantee and protect the human rights directly threatened by violence and crime. Taking a human rights approach, citizen security is, in practical terms, a condition in which individuals live free from the violence practiced by State and non-state actors.  

106. In that connection, for the UNDP, citizen security is one of the dimensions of human security and therefore of human development, defined as the condition of living without fear and without need. According to that agency, this dimension is linked to the interrelated presence of multiple actors, conditions and factors. Among these factors are: the history and structure of the State and society; the policies and programs of governments; the effective exercise of economic, social and cultural rights; and the international and regional context. In its report “Citizen Security with a Human Face: Evidence and Proposals for Latin America” it says that citizen security consists of protection of a basic core of human rights, including the right to life, to respect for the physical and material integrity of the person, and to live with dignity. It also underscores the pivotal importance of the real observance and protection of a series of human rights that the State has a duty to ensure. Thus, unemployment, poverty, inequality or the lack of freedoms, to mention just some examples, are direct obstacles for citizen co-existence and security For the UNDP, the provision of citizen security is an essential prerequisite for human development.

107. The threats to citizen security are manifold and citizen security problems usually occur whenever States fail, either completely or partially, to protect their population from crime and social violence, signaling a breakdown in the basic...

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179 UNDP. Citizen Security with a Human Face : Evidence and Proposals for Latin America, p. 5.
180 UNDP. Citizen Security with a Human Face : Evidence and Proposals for Latin America, p. 5.
181 This concept recognizes that the true wealth of a nation resides in its people, and that the aim of development should be the “creation of conditions that enable people to enjoy a long, healthy, and creative life.” Human development should be understood as the process of expanding people’s choices, freedoms, and capacities in order to enjoy health and wellbeing, and to have access to knowledge and resources necessary to lead life with dignity. UNDP. Citizen Security with a Human Face : Evidence and Proposals for Latin America, p. 3.
relationship between those governing and the governed.\textsuperscript{182} According to the above UNDP report, in addition to crime and violence, other threats include street crime, violence and crime by and against youth, gender violence, illegal violence by state actors, organized crime. According to the UNDP, all these threats are widespread in the region and adversely affect human development in Latin America. The UNDP draws a distinction between the objective and subjective dimensions of citizen security: the objective dimension relates to crime and violence, while the subjective dimension depends on the perception of insecurity, which manifests itself as sensations of fear and vulnerability\textsuperscript{183}.

\begin{quote}
\begin{itemize}
\item That is why a public policy with regard to citizen security must addresses the causes of crime and violence specifically guided by human rights and aimed at ensuring the observance of rights on the normative and operational planes as well as in the practices of institutions and agents of the State.
\end{itemize}
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\item In its Report on Citizen Security and Human Rights, the IACHR considered that while the international legal order of human rights does not expressly define a right to be safe from crime or interpersonal or social violence, whose prevention and control are the object of citizen security policies, States are bound by a normative core demanding the protection of rights particularly vulnerable to criminal or violent acts: the right to life, the rights to physical integrity, the right to personal liberty, the right to due process, and the rights to peaceful use of property and possessions. States' obligations in the area of citizen security also involve the right to a fair trial and the right to judicial protection, the right to privacy and the right to have one's honor respected and dignity recognized; the right to freedom of expression, the right to freedom of assembly and association, and the right to participate in public affairs. In broad terms, citizen security may also entail measures to guarantee other human rights, such as the right to education, the right to health, the right to social security, and the right to work, among others.
\end{itemize}
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\item As regards international human rights standards in relation to citizen security, particularly with reference to the instruments embodied in the Inter-American human rights system, of particular import are the obligations of States with respect to human rights associated with the security of all persons under their jurisdiction, especially the rights of crime victims where violence committed by State and non-state actors is concerned. In addition, there are the international obligations of states as regards prevention and combating violence and crime and the design, implementation, and evaluation of citizen security policies in light of international human rights law and of the principles of participation, accountability, and nondiscrimination.
\end{itemize}
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\item The positive obligations undertaken by member states demand public policies on citizen security contemplating as a priority an efficient institutional structure that guarantees the public the exercise of human rights related to the prevention and
\end{itemize}
\end{quote}


\textsuperscript{183} UNDP. Citizen Security with a Human Face : Evidence and Proposals for Latin America, p. 7.
control of violence and crime. In that regard, the Commission has noted the
difficulties that the region has had in the past in creating a set of institutions to
enable the State to function properly in this area. These difficulties are particularly
evident in the following areas: (1) the treatment of victims of violence and crime;
(2) the privatization of security services; (3) the governability of citizen security;
(4) the professionalization and modernization of the police forces; and (5) the
intervention of the armed forces in tasks related to citizen security.\textsuperscript{184}

112. It is a fact of life that the rates of crime and violence in the Hemisphere continue to
make citizen security one of society’s chief demands on state officials. The
situation today is the result of a process that has been underway for decades, in
which social, economic, cultural, and institutional factors have converged,
operating as enablers allowing various forms of violent behavior to develop and
multiply, mirroring the sharp increase in crimes that pose a threat to the effective
exercise and enjoyment of human rights.\textsuperscript{185}

113. The Commission has called attention to the effects of violence and crime on
governance in the countries of the Hemisphere and indicated that citizen security
requires a civil police to protect citizens, the strengthening of the administration of
justice, the elimination of corruption or impunity, and a prison system aimed at the
genuine rehabilitation and social reintegration of prisoners.\textsuperscript{186} It has also said that
in their domestic laws and procedures every State, without exception, must
operate on the premise that the instruments that make up the universal and
regional systems of human rights “[…] enable them to enforce measures to deal
with the threats to citizen security […] within a framework of the rule of law. Such
measures must be put in place in such a way as to guarantee full respect for the
basic, inalienable rights recognized under international law.”\textsuperscript{187}

114. To live in a place without violence is not one that most Guatemalans enjoy. Sadly,
the end of the armed conflict did not mean an end to violence. For several years,
particularly since 2000, there has been a wave of generalized violence that has
spiked (in 2008 and 2009) and subsequently waned, though without ever falling
below levels that make Guatemala one of the most violent countries in Latin
America.

A common thread runs through the country’s recent history and its color is
red. In spite of real and significant differences between the internal armed
conflict that spanned 36 years (1960–1996) and the postwar period up to the
present day, there is a tragic continuity: the unrelenting accumulation of
fatal victims of different types of violence.

\begin{footnotesize}
\footnotetext[184]{IACHR, Report on Citizen Security and Human Rights, 2009, para. 7.}
\footnotetext[185]{IACHR, Report on Citizen Security and Human Rights, 2009, para. 217.}
\footnotetext[186]{IACHR, Report on Citizen Security and Human Rights, 2009, para. 2.}
\footnotetext[187]{IACHR, Report on Citizen Security and Human Rights, 2009, para. 2.}
\end{footnotesize}
An examination of murder rates in the postwar period and their comparison with the overall statistics from the internal armed conflict reveals that continuity.\textsuperscript{188}

115. Violence in Guatemala encompasses different dimensions. The high homicide rate has to do particularly with organized crime and the activities of common criminals. However, domestic violence, violence that affects certain groups whose position in society makes them most vulnerable, or violence caused by deprivation, the repercussions of which include high incidences of chronically undernourished children, are dimensions of violence in Guatemala that paint an overall picture of extreme vulnerability.

116. Violence has social effects and economic costs. They include impacts on the consolidation and development of democracy with a high human cost. Violence annually consumes approximately 7.3\% of GDP, predominantly in the form of spending on health care for victims and private security.\textsuperscript{189} According to the UNDP, it saps economic activity as the country’s budgetary resources are siphoned away from social or productive spending toward agencies in charge public security. It also causes losses in tourism receipts and healthy life years. It also harms people’s daily lives by having an impact on their mental and physical health.

117. According to figures provided by the National Forensic Sciences Institute (\textit{Instituto Nacional de Ciencias Forenses}—INACIF) between January 1 and December 31, 2013, there were 6,072 crime-related deaths. Based on the homicide statistics for 2013, the United Nations Office on Drugs and Crime (UNODC) found that there were 39.9 murders per 100,000 inhabitants\textsuperscript{190}, a level only surpassed by Honduras, Venezuela, Belize and El Salvador. This means that the homicide rate in Guatemala is one of the highest in Latin America and the Caribbean, which is significant bearing in mind that Latin America is considered one of the world’s most violent regions.

118. In the same period in 2014 (January to December), 5,924 people were killed in violent circumstances\textsuperscript{191}, with firearms used in 4,494 cases.\textsuperscript{192} By the INACIF estimates, the number of deaths in 2014 boiled down to almost 16 a day.\textsuperscript{193} In the first nine months of 2015, there were 4,261 homicides, corresponding to 3,705 men and 556 women.\textsuperscript{194}

119. The Ombudsman notes that the overall murder rate in the country has declined in recent years; in 2009 it was 46 per 100,000 inhabitants, compared with 39 in 2013\textsuperscript{188}.

\textsuperscript{188} ODHAG, \textit{Violencia en Guatemala. Estudio estadístico en cinco departamentos: Chiquimula, Guatemala, Petén, Quetzaltenango y San Marcos"}, 2011, p. 11.

\textsuperscript{189} Contribution of the Ombudsman’s Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

\textsuperscript{190} UNODC, Homicide Statistics, 2013.

\textsuperscript{191} \textit{Prensa Libre}, Inacif reporta 16 crímenes diarios en el país, January 2, 2015.

\textsuperscript{192} \textit{NTV Guatemala}, Inacif registra 5 mil 924 asesinatos en 2014.

\textsuperscript{193} \textit{Prensa Libre}, Inacif reporta 16 crímenes diarios en el país, January 2, 2015.

\textsuperscript{194} \textit{El Nuevo Diario}, Homicidios en Guatemala se reducen 2.92\% en primeros nueves meses de 2015, October 14, 2015.
and 37 in 2014; the forecast for 2015 (based on data as at August 31) is 35 per 100,000, although there are departments where it is projected to be as high as 80 (Escuintla and Zacapa) or 60 (Chiquimula, Santa Rosa, Izabal, and Guatemala).\footnote{Contribution of the Ombudsman’s Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.}

The State, for its part, says that the homicide rate is a good deal lower than the one recorded by the IACHR in its on-site visit in 2003.\footnote{Report of the State of Guatemala on the “Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015,” October 6, 2015.}

The Commission welcomes the drop in the homicide rate in Guatemala. However, if cannot fail to be concerned by the fact that it remains high in the regional context and signifies that several human lives are lost each day to violence.

In Guatemala, most crime is attributed to the violence generated by criminal organizations, such as drug trafficking cartels and gangs or maras. Of all violent deaths, 85.4% were due to firearms, a 4.3% increase from 2013. The Directorate-General of Arms and Munitions Control (DIGECAM) reported that it had registered only 56.7% of the nearly 500,000 privately owned firearms before registration deadline at the end of April. The remaining 214,023 were pending legalization, along with another estimated 800,000 unregistered firearms. A debate was also initiated on the proposed destruction of the more than 49,000 firearms deposited at DIGECAM.\footnote{OHCHR-Guatemala. Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala (2014). 12 January 2015, paras. 38-43.}

A related problem concerns the possession and carrying of firearms and ammunition. In general terms, the rules in force in this area are extremely lax. For example, the Constitution of Guatemala "recognizes the right to possess arms not legally prohibited for personal use in the home" and that their owners are only required to turn them in if “ordered [to do so] by a competent judge.”\footnote{Article 38 of the Constitution:} The Firearms and Munitions Law (\emph{Ley de Armas y Municiones}) Decree 15-2009 sets certain rules on carrying of firearms for civilian use that security companies have to satisfy; however, these demands are hardly ever met or enforced by the competent authorities.\footnote{Article 79 of the Firearms and Munitions Law, Decree 15-2009.}

Thus, for example, the Commission heard that indigenous leaders had to demand that the authorities verify the firearms registration and licenses of companies in regions historically occupied by indigenous peoples.\footnote{In Santa Cruz Barillas private security guards had the local population in a state of constant fear and anxiety, prompting hundreds of community members to demand that the authorities step in and conduct checks on the firearms carried by the security guards. Informe Q’an B’alam Cataratas de Encuentros y Discordia: Santa Cruz Barillas.}

The Commission reiterates its call to the Guatemalan State regarding the lack of enforcement of the Firearms Control Law and urges it to adopt effective plans to control and eradicate illegal possession of firearms.\footnote{IACHR, Justice and Social Inclusion: The Challenges of Democracy in Guatemala, December 29, 2003, para. 91.} A national disarmament plan has yet to be proposed and challenges remain in the registration and control of firearms and munitions.
122. There has been a high incidence of extortion in recent years. According to the Office of the Attorney General, between 2012 and 2015 there were 24,221 registered complaints of extortion, intimidation and extortion, and extortive obstruction of traffic, and that over the same period the courts issued 2,051 judgments for such offenses: 1,694 convictions and 447 acquittals.\(^{202}\) The Ombudsman said that extortion is another of the phenomena that undermine the security of the Guatemalan population. He said that the Office of the Attorney General had registered an average of 7,400 cases a year in the last four years, predominantly in the Department of Guatemala, although in the last two years cases were recorded in 321 of the country’s 338 municipalities. Criminal organizations are said to be responsible for 10% of extortions. The Ombudsman reports that this led to the creation in July 2015 of the Special Prosecution Unit against Extortion (Fiscalía Especial contra las Extorsiones), which has a staff of 130 and plans to extend its coverage through offices in six departments.\(^{203}\)

123. Violence on public transport has increased, especially in the form of attacks with firearms; between 2013 and 2014, 737 people were murdered and 640 wounded; as at September 9, 2015, 180 individuals had been murdered and 115 wounded in the year in acts of violence in the urban transport system.\(^{204}\)

1. Situations that exacerbate the violence and insecurity

124. In this context of violence and insecurity, the IACHR has observed a number of circumstances in Guatemala that make the situation worse. The resurgence of disappearances, currently associated with the activities of criminal organizations, is extremely serious. Also of great concern are certain responses by the public to the violence, such as lynching and disproportionate use of private security providers.

a. Disappearances

125. On top of the high murder rate in Guatemala, disappearances have reemerged at increasingly high and alarming levels. The Guatemalan Criminal Code, forced disappearance is committed not only by any person who acts on the orders or with the authorization or support of the State authorities or security forces, but also by “members of organized groups or gangs having terrorist, insurgent or subversive

\(^{202}\) La Hora. 84 linchamientos evidencian colapso del sistema de justicia, June 1, 2015.


purposes or any other criminal purpose who, as members of or participants in such groups or gangs, engage in abduction or kidnapping.”

126. Civil society organizations report that more than 25,000 people disappeared in Guatemala between 2003 and 2014 according to figures from the National Civil Police (PNC). Approximately 13,000 were women and 12,000, men. According to the PNC, the causes of the disappearances over the last 12 years are illegal capture by organized crime groups, trafficking in persons, domestic violence, absconding for financial and romantic reasons. The Mutual Support Group (GAM) says that “[m]ost disappearances are connected with violence against women in Guatemala and trafficking in persons” and that “the peace agreements signed in 1996, putting an end to 36 years of civil war, were supposed to close the chapter on disappearances; on the contrary, however, the number of cases increases every year.”

127. Since 2007, civil society has been lobbying the Congress to pass law 35-90 to create the National Commission on the Search for Victims of Forced Disappearance and Other Forms of Disappearance, with the purpose of establishing the whereabouts of more than 45,000 victims of forced disappearance and other forms of disappearance during the 1960–1996 period. This proposed law remains pending.

128. The Commission notes the pressing need to approve the proposed law, to which another must be added, aimed at resolving the serious problem of forced disappearances that have occurred since the end of the internal armed conflict. The families of the victims urgently need a response.

Criminal Code, Article 201 ter: The offense of forced disappearance is committed by any person who, on the orders or with the authorization or support of the State authorities, deprives a person or persons of their liberty for political reasons, concealing their whereabouts or refusing to reveal their fate or acknowledge their detention, or by a public official or employee, whether a member of the State security forces or not, who orders, authorizes, supports or acquiesces in any such acts.

The offense of forced disappearance shall consist of the deprivation of the liberty of one or more persons, even in the absence of political grounds, by elements of the State security forces in their official capacity, if they act arbitrarily or with an abuse or excess of force. The offense of forced disappearance is also committed by members of organized groups or gangs having terrorist, insurgent or subversive purposes or any other criminal purpose who, as members of or participants in such groups or gangs, engage in abduction or kidnapping.

The offense shall be deemed to persist until such time as the victim is released.


129. In this context, during the ex President Pérez Molina administration, the IACHR received information about measures adopted in the area of citizen security, particularly regarding coordination:

between the Ministry of the Interior and the Office of the Attorney General, through the establishment of task forces as a strategic component for combating the frequent crimes of paid assassinations, femicide, extortion, kidnapping, human trafficking, and automobile and cellular telephone theft. A task force was set up for each of these areas by General Order 9-2012 of the Director of the National Civil Police, staffed exclusively with police personnel and duly empowered to strengthen the criminal investigation of complex cases for periods of six months, subject to extension, all in coordination with the Office of the Attorney General.

In that regard, since their implementation, "more than 30 organizations that engaged in assassinations have been dismantled, reducing the number of homicides in the country by 16% compared to 2011, with 86 criminal groups broken up by 2014." According to the information, efforts centered on implementing the Pact for Security, Justice and Peace.

130. The IACHR notes that the State does not offer information on homicides disaggregated by ethnic origin and/or economic background, but that the identification categories are the individual's parents' names, their first and last names, and their age, sex, gender, place of birth, place and neighborhood of residence, personal identity number, and civil status.

131. Although it values the information supplied by the State, the IACHR observes that behind the high rates of violence are thousands of murdered individuals and thousands of affected families, groups, and sectors that coexist in circumstances of constant insecurity and vulnerability. The Guatemalan State should create integral policies directed at generating the conditions whereby those who live in its territory can lead lives without the threat of violence and crime.

b. Lynchings

132. Lynchings are heinous acts of violence against individuals, whether they involve one or more victims and whether those victims perish or not as a result. This social phenomenon is perpetrated not by ordinary criminals, nor on individual impulse,
but by normal citizens who act as vigilante groups, or even entire communities
that participate in lynching. Victims are generally seized under suspicion of
committing a crime, but they can also be taken from their homes or workplace. The
victims, who are generally males, and to a lesser extent women and children, are
normally tortured before they are executed, in order to force them to reveal the
names of their presumed accomplices, and they die after beatings, mutilation,
stoning, shooting or being burned alive. 212

133. From 2008 and October 2015, 297 people died and 1,043 were injured by
lynching. In 2008 19 people died, while from January to September 2015 there was
an increase to 44 deaths. 213 In 2013 53 people died due to lynching. According to
the National Civil Police (PNC), of the 84 people who died at the hands of lynch
mobs in Guatemala from January 2012 to May 2015, 76 were men and 8 were
women, 214 and they were mostly carried out in Huehuetenango, Guatemala and
Alta Verapaz. 215 The condition of public authority serves no guarantee against this
phenomenon, such was the situation then Mayor of Concepcion, Solola, Bacilio
Juracán, who was allegedly severely beaten and burned by community members in
October of 2015, time in which his son resulted also wounded. 216

134. The high incidence of extortion has been pointed to as one of the causes of
lynchings. However, the problem would appear to be more complex, with lack of
confidence in the State apparently an important factor:

The public ends up taking desperate measures because the public security
system does not work; it does not justify it at all, but it is a fundamental
reason. There is a feeling in the population that there is no longer any point
in waiting for state institutions where health, education, hospitals, and
security are concerned. This produces a perverse knee-jerk reaction,
leading communities to dispense ‘justice’ for themselves. 217

135. The Commission reiterates that the State has a duty to prevent crime and resolve
conflicts. The Commission urges the State to adopt a comprehensive policy for
preventing and combating lynchings. The State must provide a prompt,
coordinated and interinstitutional response in places where lynchings could be
committed. There must be a rapprochement between the State and the
communities, and the Government must have with a prevention policy, and the
political will to enforce it. There must also be collaboration with municipal
authorities, traditional indigenous authorities, and the Ombudsman’s Office.

133.
214 La Hora, 84 linchamientos evidencian colapso del sistema de justicia, June 1, 2015.
215 La Hora, 84 linchamientos evidencian colapso del sistema de justicia, June 1, 2015.
216 Bbc.com, Linchan y queman vivo a alcalde en Guatemala, October 13, 2015.
217 La Hora. 84 linchamientos evidencian colapso del sistema de justicia, June 1, 2015.
c. Private security

136. An especially critical issue in the field of security is the operation of private security forces in Guatemala. As the IACHR observed in its report “Justice and Social Inclusion,” in 2003 there were three private police officers for every public officer.\footnote{IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, December 29, 2003, para. 93.} Over the last decade, the number of private security firms and personnel in Guatemala has risen substantially, to the point where, according to official information, at present, private security guards outnumber police personnel by five to one.\footnote{Information received during the visit to Guatemala in March 2012.} It is estimated that there are at least 120,000 private security agents in the country, roughly half of whom are illegal because the firms that employ them have not been set up under a governmental or ministerial decision, while the status of 94% of the other half has not been regularized in accordance with the laws in force.\footnote{Crónica de Actualidad. "Policías privadas: Un ejército paralelo" [Private Police: A Parallel Army] Ministry of the Interior. General Directorate of Private Security Services. Press note from the newspaper *El Periodico* entitled El Estado también utiliza seguridad privada, May 8, 2014.} The information available to the IACHR suggests that the State is one of the main entities that hire private security services.\footnote{OHCHR-Guatemala. Report on the activities of the office in Guatemala, year 2013, January 13, 2014, para. 44}

137. According to the Office of the United Nations High Commissioner for Human Rights in Guatemala (OHCHR-Guatemala) only 24 of the 151 registered private security companies were assessed to be in compliance with Decree 52-2010, which regulates private security services. The General Directorate of Private Security Services increased actions to control private security companies. However, major challenges persist, such as training and certification of guards and improvement of their working conditions. Only 477 of the estimated 46,000 private security agents are certified. Several cases illustrate the consequences of insufficient oversight on these companies. In July, a woman was killed and a police officer wounded when a private security guard opened fire in a pharmacy in Guatemala City. In October, two private security guards were apprehended in Mixco, Guatemala, for the kidnapping and murder of a 62-year-old woman.\footnote{OHCHR-Guatemala. Report on the activities of the office in Guatemala, January 12, 2015.} In the year 2013 OHCHR-Guatemala registered various complaints of abuse by private security from companies in the context of protest against extractive industry projects. As an example, the OHCHR-Guatemala informed that in May a private security person from the San Rafael mine was processed for the crimes of leassion and obstruction of justice in relation to an attacked perpetrated by private guard of such company against a group of protesters. Additionally, the Supreme Court of Ontario, Canada admitted three complaints against the Hudbay Minerals Company for the crimes of homicide, injuries and sexual violence presumably committed by the security personal in El Estor (Izabal).\footnote{OHCHR-Guatemala. Report on the activities of the office in Guatemala, January 12, 2015.}

138. In this context, information received indicates that companies interested in undertaking extractive projects on indigenous lands and territories often subcontract security services from private companies owned by or connected to
serving or retired members of the Army. The IACHR also notes that members of private security forces have been accused repeatedly of violating the rights of indigenous communities and their members defending their land and territory. At the same time, private security guards are said to have taken part in joint operations with members of the public security forces, such as the detention of citizens or court-ordered and extrajudicial evictions.

139. The IACHR recalls that, as the organs of the inter-American system have found, the State’s international responsibility may be engaged by the attribution to it of human rights violations committed by third parties or private individuals. The Court has held that:

Said international responsibility may also be generated by acts of private individuals not attributable in principle to the State. The States Party to the Convention have erga omnes obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons. The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals. The State may be found responsible for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these erga omnes obligations embodied in Articles 1(1) and 2 of the Convention.

140. The IACHR has offered guidelines on compliance with the duty to prevent violations. In particular, it underscored the need for the domestic legal system to

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224 Information received at a meeting with leaders of indigenous communities and organizations in Guatemala City on August 21, 2013.
225 The communities of the Xinka people in the municipalities of Casillas and San Rafael Las Flores, Department of Santa Rosa, and in the municipalities of Mataquescuintla and Jalapa, Department of Jalapa, have been opposing mining operations by the company Mina San Rafael for several years. On April 27, 2013, at least 10 protesters came under attack with firearms by the company’s private security guards, leaving six villagers wounded. The chief of the company’s security service, who allegedly ordered the attack, is reportedly being prosecuted and is said to have been remanded in custody along with a member of the military who was apparently as a security advisor to the company. Information received by the IACHR on a visit in August 2013.
226 Acting alongside the police, private security guards with the Chabil Utzaj company took part in the violent eviction of Maya Q’eqchi’ communities in the Polochic Valley area in March 2011, as well as in subsequent attempted evictions in Cahaboncito and Sepurlimite. Those incidents resulted in several community members being killed and injured. Information received by the IACHR on a visit in August 2013.
227 The Commission also heard that, in 2006 and 2007, Compañía Guatemalteca de Niquel instigated the forcible eviction from the Polochic Valley of Q’eqchi’ communities in the Municipality of Panzos, Alta Verapaz Department and in El Estor, Izabal Department, for the purpose of mining operations. On January 17, 2007, “11 women were gang-raped by several men (security guards of the company, policemen, and Army soldiers) who carried out the eviction. All of these incidents have remained unpunished.” Letter to the Inter-American Commission on Human Rights from the Q’eqchi’ community in Block 8, Chacapayla, Municipality of El Estor, Izabal Department, dated August 19, 2013. Also, testimony received by the IACHR at the community of El Rodeo, Cahaboncito, Panzós, Alta Verapaz Department, August 24, 2013. See also, complaint of the Q’eqchi’, Poqomchi’ and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received by the IACHR on a visit in August 2013.
regulate the functions that private security services may perform, the types of weapons and materials they are authorized to use, proper mechanisms to oversee their activities and the introduction of a system of licensing that is accessible and offers sufficient information. It has also recommended the introduction of a system whereby such private security firms are required to report their contracts on a regular basis, detailing the type of activities they perform. Likewise, the public authorities should demand compliance with selection and training requirements that individuals hired by these private security firms must meet, specifying which public institutions are authorized to issue certifications attesting to the firms’ employees.229

141. As regards Guatemala, specifically, more than 10 years ago the Commission referred to problems associated with the increasing involvement of private companies in security services. In its report “Justice and Social Inclusion” the IACHR drew attention to the numerous charges of human rights violations by private security forces, as well as the lack of oversight laws and mechanisms.230 Although some progress has been made, the IACHR regrets to note that significant challenges remain with respect to licensing, oversight, and criminal investigation and prosecution, leading to multiple abuses as a result, as the preceding paragraphs denote.

142. In this regard, the Commission is encouraged by the fact that on November 23, 2010, Decree No. 52-2010 was enacted, adopting the Private Security Services Law, thus fulfilling a commitment contained in the Agreement on Strengthening Civilian Power and the Function of the Army in a Democratic Society. The Law established the General Directorate of Private Security Services (DIGESSP) within the Ministry of the Interior and security firms were given one year to comply with stricter requirements.231 In spite of that, according to information available to the IACHR, the Law’s enforcement has encountered serious delays and challenges. In particular, the Commission has learned that although the Law went into force in May 2011, the Ministry of the Interior did not pass Government Decision 417-2013 approving its implementing regulations until October 2013. Available information indicates that by May 2014, 148 companies had registered, having being set up under a governmental or ministerial decision, with a total of 50,000 agents in their ranks. However, 139 of them (94%) are not yet in compliance with the requirements set forth in the above law, despite which they continue to operate,232 notwithstanding that the provision of services "without authorization or an operating license" constitutes a criminal offense.233 The Commission also observes that there are dozens of unregistered companies and, as it noted in its report

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231 Article 67 of the Private Security Services Law.
233 Article 66 of the Private Security Services Law.
"Justice and Social Inclusion," as a result "the State has no control over their sometimes criminal activities, which is a factor enabling abuses." 234

143. As regards oversight activities, the available information indicates that between January and May 2014, the DIGESSP carried out around 75 operations, compared with 33 in the same period for the year 2013. 235 The Commission acknowledges that the number of oversight actions doubled year on year; however, the large number of private security agents and the seriousness of the abuses reported suggest that these actions remain highly insufficient. According to information provided to the Commission the above has to do with the Directorate’s lack of human and logistical resources. Therefore, the Commission urges the State to take decisive measures to ensure that the Private Security Services Law is effectively enforced through strict oversight by the Directorate, supported by the PNC, particularly its Supervision and Oversight Division for private security companies.

144. Additionally, the IACHR notes that, according to the law, security services providers are required to render assistance when requested to do so by the competent authority. 236 In that regard, the IACHR wishes to remind the State that private firms only offer security for assets and valuables, and are not intended to augment or supplant member states’ obligations in the area of citizen security, as the state’s responsibility for the protection of human rights is a non-delegable duty. 237 Private security bodies should be regulated and monitored; however, above all, the primary challenge for governments should be to strengthen the police. As the Commission has noted previously, the privatization of the functions involved in citizen security is a departure from the concept of human rights, where the State is responsible for guaranteeing that citizen security is defended and ensured. Instead, citizen security becomes a mere product to be bought on the market. To be in compliance with the duty to ensure human rights, member states must undertake the mission of preventing, deterring and suppressing crime and violence, as theirs is a monopoly on the legitimate use of force. 238

145. The IACHR stresses that the State has a fundamental duty to investigate and, as appropriate, punish the perpetrators and architects of human rights violations that come to their attention. As the Commission and the case law of the Inter-American Court have consistently held, that obligation requires that all perpetrators directly involved in the crimes, as well as those who instigated them, be punished. 239 To fulfill its obligation to investigate with due diligence, the State must conduct “an effective search for the truth,” it should seek to punish those directly responsible

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235 DIGESSP, Se incrementan supervisiones, May 9, 2014.
236 Article 4 of the Private Security Services Law.
as well as the masterminds, and the investigation “must be undertaken in a serious manner and not as a mere formality preordained to be ineffective,” and must involve every State institution. In that regard, the available information indicates that at the time in 2014, the DIGESSP had filed nine complaints for illegal provision of private security services and the Office of the Attorney General had designated a prosecution unit to take up the cases reported by the DIGESSP. Nevertheless, based on the information at its disposal, the IACHR finds that the effective performance of those obligations has encountered serious snags, as evinced by reported cases that remain in partial or total impunity; the imposition of penalties not commensurate with the injury; and failure to investigate and punish all those involved in the alleged offenses, particularly the architects, such as the head of the security firm or extractive company, or the state authorities for failure of their duty to prevent the violations.

2. The State’s response: Security policies, National Civil Police, states of emergency, role of the armed forces and special squads

146. In this context of violence and insecurity, the State has responded with a series of policies and strategies. However, some of its acts or omissions, such as the continuous weakening of the National Civil Police, the abusive use of states of emergency, militarization of citizen security, or the creation of special squads, have only increased tensions and exacerbated the problem.

a. Security policies and the National Civil Police

i. Security policies

147. In 2012, the Government of Guatemala drafted the Covenant for Security, Justice and Peace with the overall aim of implementing a cooperative strategy that engages and gives joint responsibility to all social sectors and states institutions for legitimizing and enabling a series of changes and outcomes that will have an impact in terms of achieving improved governance, security, and protection against crime, violence, and impunity in the country.
According to the State, the core focus of the Covenant is to strengthen the institutions involved in ensuring democratic security and justice, which, in its opinion, has brought about a significant reduction in homicides in the country. 244

148. In its observations on the Draft General Report on the Situation of Human Rights in Guatemala, the Guatemalan State pointed out that the recommendations of the Inter-American System, in the context of social unrest, have outlined a critical institutional roadmap that has led to the discussion of the need to redesign public policies in the area of public security and protocols for the action of the police force in situations of social protest with emphasis on the protection of human rights. As for the State, it has adopted the recommendations of the Human Rights Ombudsman to fine-tune mechanisms to oversee the combined forces of the Civilian Police Force and the National Armed Forces, relegating the latter to intervene in case of situations of social unrest. 245

149. In reference to the Covenant for Security, Justice and Peace, OHCHR-Guatemala welcomed the creation in 2013, within the Ministry of the Interior, of the Third Vice Ministry for Prevention of Violence and Crime. It also noted that steps were made towards a comprehensive approach to violence prevention, including the approval, in August, of the National Policy for Violence and Crime Prevention, Citizen Security and Peaceful Coexistence 2014-2034. However, owing to the extensive scope of the Covenant, preparations were still underway in areas such as deprivation of liberty, local security boards, and prevention of armed violence, with the result that its impact could not yet be assessed. It said that the Government’s response to violence and insecurity remained predominantly reactive and without a focus on structural causes. 246

150. The Ombudsman informed that in 2012 Guatemala adopted the National Security Policy (PNS) and the Strategic Plan for National Security, which highlighted as risks the latent social tensions; the deterioration of governance; the weakness of the security and justice institutions; corruption; impunity and lack of integral development; illicit trafficking in firearms, ammunition, and explosives; human trafficking; illegal armed groups; paid assassinations; kidnapping and extortion; robbery, and theft of personal property. Despite that assessment, however, it says that the State has not offered an effective response to combat crime and ensure public safety and that the absence of a legislative and public policy response as well as the weakening of institutions are ongoing problems. 247

151. According to the Ombudsman, the Strategic Plan for National Security set forth a series of measures that should have been carried out in 2013 but were not. They included infrastructure projects to modernize prisons and the creation of the National Penitentiary Institute and National Institute for Migration and Naturalization. Other measures that were neglected include the gradual scaling back of the Army’s participation in public security operations, the introduction of protocols for joint and combined security forces operations, and the drafting of a proposed reform of the Public Order Law. The Ombudsman also says that nor has the necessary legislative agenda concerning security issues been advanced, although the Congress did set up the Working Group on Security and Justice (Mesa de Seguridad y Justicia) in 2014.

152. Another measure adopted in this area was the National Policy for Violence and Crime Prevention, Citizen Security and Peaceful Coexistence 2014-2034, although, thus far, no resources have been allocated for its implementation. In his 2014 annual report, the Ombudsman recommended that the above policy be harmonized with the National Youth Policy (2012-2020), the National Policy on Advancement and Integral Development for Women and Equal Opportunities Plan (2008-2023), and the National Security Policy (2012). In relation to specific policies, in its response of October 6, 2015, the State enlists the public policies for addressing insecurity in Guatemala, in particular the specific measures for protecting women, children and adolescents, human rights defenders, social leaders, journalists, and migrants, among others.

ii. National Civil Police: Police reform

153. The Agreement on Strengthening Civilian Power and the Function of the Army in a Democratic Society, signed on September 19, 1996, envisaged a security system that reflected an interest in reforming the State’s relationship with the public. The National Civil Police (PNC) was established in 1997 in accordance with the Peace Agreements, which called for creating a civilian police force to deal with the country’s internal security matters. It is essential that the PNC carry out its functions properly in order to increase security and people’s sense of safety, to improve relations between the police and the public, and to demilitarize internal security.

154. The PNC has been plagued with difficulties and problems since its inception. Lack of resources, unqualified personnel, corruption, the involvement of its personnel in serious crimes, and impunity are just some of the problems that the institution has faced.

The institutional instability and weakness of the National Civil Police produced a gradual process of internal and public decline that coincided


with (and to a large extent also caused) the worsening of the security situation in recent years.\textsuperscript{250}

155. On December 22, 2010, the Government of Guatemala adopted Government Decision 361-2010, creating the National Commission for Police Reform, whose purpose is to “promote, propose, and monitor implementation of the measures, strategies, plans and programs associated with the reform of the National Civil Police that would enable an institutional modernization process aimed at strengthening the democratic rule of law,” based on the National Agreement for the Advancement of Security and Justice.\textsuperscript{251} As a result of that initiative, in 2011, human rights defender Helen Mack was sworn in as the Presidential Commissioner for Police Reform. She worked on a diagnostic assessment and drafted a continuity plan to present to the 2012–2015 government administration. According to the diagnostic assessment, there was a clear need for a culture shift within the police, so that it could change from being a reactive to a preventive force. The need was also noted to boost the self-esteem of the institution and police personnel on the understanding that the police itself had to carry out the reforms and, therefore, it was necessary to empower them. There were five planks to the proposed strategy: prevention, professionalization, criminal investigation, control, and planning.

156. In keeping with the proposals of the National Commission for Police Reform, two regional PNC academies were set up along with an officer training school, with an intake of approximately 3,000 new recruits.\textsuperscript{252} The police reform made progress in the area of police professionalization: there have been at least 156 police sciences graduates and 13 police chiefs gained a master’s in criminal investigation. The Office of the Inspector General was strengthened with the addition of 100 new members in 2014, taking the total number of inspectors to approximately 600; the resources and technological capabilities of the Police Information System (SIPOL) were enhanced; the number of cases referred to the Office of the Attorney General as a result of internal inquiries by the PNC Office of Professional Responsibility into suspected wrongdoing by official personnel increased; in December 2014, the PNC National Policy on Gender Equality was adopted with the aim of ensuring dignity for women who work in the police.\textsuperscript{253} However, in addition to low pay in the PNC, operational shortcomings persist, such as lack of fuel and equipment, patrol cars in poor condition, deteriorated infrastructure at police facilities, which causes overcrowding, lack of cleanliness, and service disruptions and, in general, impairs the operational capacity of the PNC.\textsuperscript{254}

157. On the measures adopted to strengthen the PNC, the State noted that major efforts have been made to consolidate the police force. These include increasing the

\textsuperscript{250} National Commission for Police Reform, Reforma Policial: Sistematización de una experiencia, 2011.
\textsuperscript{251} Government of Guatemala, Reforma Policial
\textsuperscript{253} Contribution of the Ombudsman’s Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.
number of police by 9,984 agents in three years (2012-2014); as for education and professionalization, 4,881 new agents have graduated\(^\text{255}\).

158. According to the Ombudsman, the number of police personnel in 2014 totaled 34,099,\(^\text{256}\) of which 14% were women. He specified that the figure of 34,099 police officers meant there were two police officers for every thousand inhabitants although the figure would be affected by the number of personnel who are discharged, either through retirement or because of involvement in illicit conduct and corruption.\(^\text{257}\) In spite of that upswing, as is noted above, the number of private security personnel still outstrips that of the National Civil Police.

159. The IACHR values the incorporation of new agents to the National Police as well as the efforts made with regard to their professionalization and training. Also, the IACHR notes in responses to the violence and insecurity, the State's has continued to boost the involvement of the armed forces in internal security. In this regard, the IACHR calls on the state to retake the agenda of the police reform, specially to continue with its plan "La policia que queremos" (The police we want), set by the National Commission of the Police Reform.

b. States of emergency

160. The IACHR has noted a practice in Guatemala of declaring states of emergency in response to public protests,\(^\text{258}\) usually organized by indigenous peoples and communities in defense of their land. Often they are not declared for a set length of time, the respective government decision is sometimes issued after the state emergency actually occurred,\(^\text{259}\) and the announcement of the measure is not culturally adequate.\(^\text{260}\) Furthermore, declarations of states of emergency and the

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\(^{256}\) In 2014, the total number of active officers in the police came to 29,798. OHCHR-Guatemala. Report on the activities of the office in Guatemala, January 12, 2014. p. 39.


\(^{258}\) In 2012 and 2013, 10 states of emergency were decreed; of those seven were “states of calamity” connected with the earthquake on December 7, 2012; one was a “state of prevention” in Jalapa, Santa Rosa, declared on May 9, 2013, by Government Decree 8-2013; and two were “states of siege,” one of which was related to the same situation in Jalapa, Santa Rosa, while the second, announced on May 4, 2012, by Government Decree 1-2012, concerned Santa Cruz Barillas, Huehuetenango, which was declared for 30 days but lasted 16 days in practice. UN. OHCHR-Guatemala. Report on the activities of the office in Guatemala, January 26, 2011. p. 14.

\(^{259}\) Government Decree 1-2012, concerning the state of emergency in Santa Cruz Barillas, Huehuetenango on May 1, was announced in the Diario de Centroamérica newspaper on May 4, 2012.

\(^{260}\) Declarations of states of emergency are published in the official gazette, which is only circulated in Spanish in the country's main cities.
massive presence of soldiers and police that generally accompanies such pronouncements induce uncertainty, worry, fear, and anxiety in the population.  

161. States of emergency in Guatemala are governed by Articles 138 and 139 of the 1985 Constitution and the Constitutional Law of Public Order (Decree 7 of December 9, 1965). Article 138 of the Constitution provides that states of emergency are appropriate “in case of invasion of the territory, serious disturbance of the peace, activities against the security of the State, or a public calamity,” it enumerates the rights whose "full observance [may cease],”  and it provides that the decree will specify "the causes that justify it; the rights that cannot be fully ensured; the territory affected; and the time that it will be in effect," which may not exceed 30 days.

162. Regarding states of emergency, the State pointed out that it had temporarily suspended some constitutional guarantees on the basis of the articles of the Constitution indicated in the preceding paragraph and in fulfillment of the obligations set forth in Article 27 of the American Convention, without obstructing the work of the Human Rights Ombudsman during states of emergency, in the light of Article 275 of the Constitution and for the basic purpose of managing the emergency, and without any discrimination, not for the purpose of containing social protest, the freedom of expression, let alone for the purpose of criminalizing indigenous leaders or human rights defenders or developing militarization of the areas where they were applied. [...] The State also rejected indications that] in the management of the State there is a process of militarization or abuse of States of Emergency.

As for civil society organizations, they have voiced particular concern about the use of states of emergency as mechanisms to suppress situations classed as social unrest, and at the same time they have reported abuses committed by army personnel while they are in effect.

163. The IACHR recalls that, under the terms of Article 27 of the American Convention, the suspension of guarantees is any applicable “[i]n time of war, public danger, or other emergency that threatens the independence or security of a State Party.” As the Inter-American court has found, “[t]he starting point for any legally sound analysis of Article 27 and the function it performs is the fact that it is a provision

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262 Those rights are freedom of action (Article 5), right to legal detention (Article 6), right of detainees or prisoners to be questioned by judicial authorities within 24 hours (Article 9), freedom of movement (Article 26), rights of assembly and demonstration (Article 33), freedom of expression (Article 35, first paragraph), right to bear arms (Article 38, second paragraph), and the right of state workers to strike (Article 116, second paragraph). Constitution of the Republic of Guatemala, Article 138.


In situations where it is declared, the organs of the system have explained that Article 27 of the Convention only authorizes the suspension of certain rights and guarantees, and even then only "to the extent and for the period of time strictly required by the exigencies of the situation." Such measures as are adopted must not violate the State Party’s other international legal obligations, nor may they involve "discrimination on the ground of race, color, sex, language, religion or social origin." The need for those specific guarantees must be strictly ensured by domestic provisions of law, in accordance with the obligation set forth at the Article 2 of the Convention. Likewise, the International Covenant on Civil and Political Rights indicates, in Article 4, that, in situations of emergency that jeopardize the life of the nation and whose existence has been officially proclaimed, the States Parties could adopt provisions that, to the extent that is strictly confined to the requirements of the situation, suspend obligations incurred as a result of the Covenant, as long as said provisions are not incompatible with the other obligations imposed on them by international law and do not entail any discrimination based only on reasons of race, color, gender, language, religion, or social origin. The law points out that this provision does not authorize the suspension of Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, and 18 of the above-mentioned international instrument. Both the American Convention and the International Covenant on Civil and Political Rights point out that the use of the right to suspension must be reported to the other States Parties to the respective instruments, through the Secretary General of the OAS or the United Nations, as appropriate.

164. As the Inter-American Court has found,

any action on the part of the public authorities that goes beyond those limits [of Article 27 of the Convention], which must be specified with precision in the decree promulgating the state of emergency, would also be unlawful notwithstanding the existence of the emergency situation. ... [T]he specific measures applicable to the rights or freedoms that have been suspended may also not violate these general principles. Such a violation would occur, for example, if the measures taken infringed the legal regime of the state of emergency, if they lasted longer than the time limit specified, if they were manifestly irrational, unnecessary or disproportionate, or if, in adopting them, there was a misuse or abuse of power.

The IACHR recalls, likewise, that certain essential judicial guarantees are not subject to suspension, that is, “those judicial procedures, inherent to representative democracy as a form of government ... provided for in the laws of the States Parties as suitable for guaranteeing the full exercise of the rights referred to in Article 27 (2) of the Convention and whose suppression or

restriction entails the lack of protection of such rights,” which procedures should be exercised in accordance with the principles of due process of law.²⁶⁸

165. As regards the Public Order Law of 1965, the OHCHR has recommended that it be brought into line with the purposes of Guatemala’s international obligations.²⁶⁹ A few years ago, the former Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, noted the need to reform the law owing to its incompatibility with international human rights standards. Concretely, he said:

> The public order law should be reformed as it dates from 1965, is based on the previous Constitution, and is not compatible with international standards in this area. For example, it states that arrests may be made without a judicial order and may be prolonged indefinitely until the end of the state of emergency, which may be renewed indefinitely, provided that a new decree is issued before it expires.²⁷⁰

166. In this regard, the Ombudsman has said that the Public Order Law of 1965 does not have a human rights approach, nor is it consistent with international instruments on such matters.²⁷¹

167. The State on its part indicated that although the Public Order Law of 1965 may have legal incongruities with the Constitution, it is a law in force that cannot be attacked as unconstitutional and any amendment must be done by means of a legal reform.²⁷² On the subject of states of emergency, the State says that it has acted in accordance to law and in observance of both the pro homine principle and the guarantees recognized in Articles 27 of the American Convention on Human Rights and 4 of the International Covenant on Civil and Political Rights by informing the other states parties through the general secretariats of the OAS and UN. It also says that it acts within its sovereign power in limiting the exercise of certain freedoms and human rights based on the needs to restore the constitutional order, peace, governance, and public security, as well as to ensure and protect the universal human rights and freedoms of the country’s inhabitants. Furthermore, the State reported that, in terms of security, the National Policy for Prevention of Violence and Crime, Public Security and Peaceful Coexistence for 2014–2034 was drawn up as a part of the National Policy for Human Rights, as well as mechanisms for the protection of human rights defenders for 2006–2015 and the National Policy against Human Trafficking and its Plan of Action for 2008–2017.²⁷³

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²⁷¹ Report by the PDH to the IACHR on the Situation of Human Rights in Guatemala, September, 2015.
168. The Ombudsman has determined that the Government uses states of emergency as a means of social control amid the prevailing climate of unrest in the country, rather than employing effective dialogue and dispute settlement mechanisms. He says that between 2008 and 2014, 14 states of emergency were decreed, of which only those declared in 2011 in Alta Verapaz and Petén were in response to the activities of organized crime groups.\textsuperscript{274}

169. The Commission also notes that during the administration of Otto Pérez Molina there were at least two declarations of a "state of siege"—the second most serious category after a "state of war"—and one of a "state of prevention" in areas inhabited by indigenous peoples and communities.\textsuperscript{275} Those situations came about for reasons to do with the implementation of projects on indigenous land without prior consultation. The IACHR is concerned that the declaration of states of emergency might be designed as an attempt to stall community consultations or suppress social protests over investment or exploitation projects.\textsuperscript{276}

170. For example, by Government Decree 6-2014 of September 21, 2014, a 15-day state of prevention was announced in the municipality of San Juan Sacatepéquez after a clash between local residents left eight people dead in the village of Pajoques. The incidents allegedly occurred because of differences over the building of a regional highway and a cemetery. According to the Decree, holding outdoor meetings, public demonstrations or other shows and the right to strike or work stoppage of public services are limited; the same decree stated that "the right to bear arms or other elements of violence, except for security forces" are also limited. Although the duration of the decree was set for 15 days as of September 21, it lasted six weeks when it was repealed by Government Decree No. 11-2014 of October 31,

\textsuperscript{274} Contribution of the Ombudsman’s Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.
\textsuperscript{275} Public Order Law, Constituent National Assembly Decree No. 7, Articles 16-19.
\textsuperscript{276} Regarding the state of prevention in San Rafael Las Flores, the State indicated that: “In the context of social conflict that has appeared as a result of opposition to mining activities in San Rafael Las Flores, the Minister of the Interior stated that the scope of the state of prevention is aimed at “separating criminal acts between individuals and organized crime from the legitimate protest against mining activities in the region,” which is a matter that, in the opinion of the Minister of the Interior, leads to a confusion that is not beneficial to anybody.” Observations by the State of Guatemala on the “Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015,” October 6, 2015, p. 21. See also Government Decree 06-2013 of May 1, 2013, which declared a state of siege in the municipalities of Casillas and San Rafael Las Flores, department of Santa Rosa; and in the municipalities of Mataquescuintla and Jalapa, department of Jalapa. See Government Decree 06-2013 of May 1, 2013, published on May 2. According to Articles 3 and 4 of Government Decree 06-2013, as a result of the declaration, among others, the following constitutional rights had been restricted: freedom of action, legal detention, questioning of detainees or prisoners, freedom of movement, right to assembly and protest. In view of the above, the State indicated the following: “the State of Guatemala informs that, under no circumstance, did the security institutions incur in the perpetration of crimes or human rights violations, as there are not complaints being filed with the Human Rights Ombudsman, which is an institution that acts as a guarantor and observer of the actions of the State to restore public law and order and ensure the peace in the context of a state of emergency.” Observations by the State of Guatemala on the “Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015,” October 6, 2015, p. 23
2014. According to reports, certain constraints to human rights would have presumably contravened international and constitutional standards.277

171. The fact that declarations of states of emergency are often declares and are accompanied by a disproportionate deployment of security personnel, which, according to some testimonies, can number in hundreds or even thousands of soldiers and police in small municipalities or communities, is also a matter of concern to the IACHR. In addition, on occasion, the measure authorizing the state of emergency has been published after the actual date of its application278; the communities were not informed about the declaration of a state of emergency, its scope, and the rights restricted; or it was not done through culturally appropriate media, given that it was announced in the official gazette (Diario de Centroamerica), which is published exclusively in Spanish and only distributed in the country’s main cities.

c. Military participation in citizen security and militarization of zones of social unrest

172. One of the State’s responses to the violence and insecurity has been to boost the military’s internal security role.279 According to a member of one of the affected communities:

In many cases, far from safeguarding human life in communities, the State has protected private property, pouring in large quantities of soldiers and police, imposing terror once more on communities.280

173. According to the Ombudsmen of Guatemala, militarization of citizen security exists because the participation of the Army in that area remains a recurring theme. In that regard he says that for the past four years the Ministry of Defense has increased its reserves for citizen security as well as its specific budget for providing assistance in that area, while the PNC has kept its budget the same, despite an increase in personnel. He says that the military’s involvement in citizen security has not produced positive results as violence and crime in the country have not declined discernibly. He also says that the permanent presence of the army in citizen security matters runs counter to the Peace Accords, as that task is


278 For example, Government Decree 1-2012 of May 1, 2012, which declared a state of siege in the municipality of Santa Cruz Barillas, Huehuetenango, was published in the Diario de Centroamérica on May 4, 2012.

279 With the decree on May 1, 2013, of a state of siege in the Departments of Santa Rosa and Jalapa the number of police and soldiers in the municipalities reportedly swelled by around 3,500. Coordinación y Convergencia Nacional Maya Waqbib’Kej. Informe preliminar sobre Violaciones a los derechos humanos durante el estado de sitio en Jalapa y Santa Rosa [Preliminary Report on Human Rights Violations during the State of Siege in Jalapa and Santa Rosa]. 2013. pp. 3-4. “On the night between May 1 and 2, 2012, hundreds of soldiers and police arrived in Santa Cruz Barillas (approximately 800).” Information received by the IACHR on a visit in August 2013.

280 Information received by the IACHR on a visit in August 2013.
the exclusive purview of the civilian police, and it is an obstacle to strengthening civilian authority.\textsuperscript{281}

174. The militarization of internal security remains a constant in Guatemala, where military personnel frequently take part in citizen security tasks and are sometimes put in command of the PNC. In Guatemala it is a recurring practice for military forces to take charge of internal security on grounds of an increase in violent or criminal activities, even due to roads being cut off or obstacles blocking transportation routes.\textsuperscript{282} The presence of organized crime, especially in border areas, is also linked to the increase in military presence and the performance of citizen security tasks by soldiers.\textsuperscript{283} At a public hearing held at the 153rd regular session of the IACHR, Guatemalan civil society organizations warned about the dangers that the increasing militarization of citizen security functions poses to the rule of law and observance of human rights.\textsuperscript{284}

175. According to OHCHR-Guatemala, the army’s participation in citizen security increased in 2014. In that regard, it mentioned joint military/police patrols made up of a majority of military personnel, that the presence of Reserve Army Squads for Citizen Security was extended from 2 to 12 departments in two years, and the military officially took part in guarding detention centers. Thus, the army continued to participate in task forces with the police, but this has not resulted in visible improvements in security. It noted, in that regard that in areas of the capital where the Maya (zone 18) and Kaminal (zones 7 and 12) task forces operate, the number of attempted murders and homicides increased by 5\% and 38.8\%, respectively, despite a decline in 2012 when the task forces began operations.\textsuperscript{285}

176. The IACHR has verified that, in clear contradiction of the Peace Agreements, military garrisons were set up on ancestral lands and territories of indigenous communities and municipalities, particularly in areas where there were strong protests in defense of indigenous rights, purportedly as a strategy to allow projects to go ahead, in addition to which, Army personnel were said to be engaging in illegal acts.

177. The State has argued that the use of the Army in security tasks has a constitutional basis and is determined by the need to assist the PNC in meeting challenges that surpass its possibilities while the capacities of the police are strengthened. However, the IACHR observes that the efforts underway to enhance the capacity of the PNC are not sufficient.

178. The IACHR reiterates that a clear and precise distinction between internal security as a function for the police and national defense as a function for the armed forces

\textsuperscript{281} Contribution of the Ombudsman’s Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.


\textsuperscript{283} Information received by the IACHR on a visit in August 2013.

\textsuperscript{284} IACHR, \textit{Hearing: Reports of Militarization in Guatemala}, October 28, 2014.

is essential to guarantee a use of force that does not violate the right of assembly. 286

The IACHR has stated more than once that the police and armed forces are two substantively different institutions insofar as the purposes for which they were created and their training and preparation are concerned. 287

The armed forces are trained "to fight against enemies and not to protect and control civilians, a task that is typical of police forces." 288 However serious the internal security situation or even the level of ordinary crime may be, it does not constitute a military threat to the sovereignty of the State. 289

As a rule, the intervention of the armed forces in internal security matters is accompanied by violations of human rights in violent circumstances. Therefore, it is advisable to avoid the intervention of the armed forces in matters of internal security since it carries a risk of human rights violations. 290

179. It also recalls that the Agreement on Strengthening Civilian Power and the Function of the Army in a Democratic Society includes a commitment to the demilitarization of Guatemalan society and, therefore, improving internal security as a means of strengthening the democratic State. The Commission reiterates that this implies reducing the influence and involvement of the Armed Forces in issues beyond their specific responsibility, i.e. questions of external security, and avoiding their interference in all matters of government. 291

The Commission also recalls that the PNC was established in 1997 in accordance with the Peace Agreements, with the intention of creating a civilian police force to deal with the country's internal security matters. As the IACHR has noted previously, it is vitally important that the PNC carry out its functions properly in order to increase security and people's sense of safety, to improve relations between the police and the public, and to demilitarize internal security. 292

At the same time, the IACHR is concerned that the Guatemalan system of laws still contains provisions, such as ones contained in the Support for Civil Security Forces Law, which would allow the intervention of the Armed Forces in citizen security matters. 293

The lack of precision with regard to the conditions in which the intervention of the Armed Forces would be allowed permits a broad interpretation by the authorities that has enabled the use force to suppress peaceful social protests.

293 Article 1 of the Law authorizes the Army to provide support to the PNC “in its functions of preventing and combating organized crime [...] when security conditions in the country demand such assistance or the regular means at the disposal of the civilian security forces are considered insufficient.” Decree 40-2000 of June 16, 2000.
With regards to intervention by the armed forces in citizen security tasks and militarization of areas of social unrest, the information received by the IACHR records numerous cases of military garrisons being set up on ancestral lands and territories of indigenous communities and municipalities engaged in efforts to defend their rights against the implementation of infrastructure projects without prior consultation, presumably as a strategy to allow the installation of projects.\textsuperscript{294} A permanent garrison has been established—with reports of the introduction of a second brigade—in the 12 communities of San Juan Sacatepéquez that oppose activities being conducted by a cement company without prior consultation;\textsuperscript{295} in March 2013 a garrison was reportedly set up in the Queqchi communities on the Dolores River in Cobán, Alta Verapaz, where there are plans to build a hydroelectric plant, which occurred after the communities organized a demonstration that led to the suspension of activities. In the Ixil region, one of the worst affected by the armed conflict, the number of military personnel was increased at the base in Chajul and at the garrison in Nebaj. A new garrison was also established in Cotzal.

\textsuperscript{296} [the soldiers] come to impose greater control on the people for the companies that want to come in. If people protest, they control the demonstrations. [...] They intimidate the population, especially the victims and survivors of the conflict. The wounds have not yet healed and now they are being opened again.

The Commission also observes that the strategy of the State is contributing to the re-militarization of a country that experienced an armed conflict in its recent history, and it not only creates tremendous fear in the areas where it is declared, but also has an intimidating effect on other demonstrations.\textsuperscript{297} As expressed by a resident of Santa Cruz Barillas:

\textquote{In Santa Cruz Barillas the state of emergency caused fear and anxiety in the population of the municipality of Barillas, and in the Q’anjob’alano territory “we, the grandmothers, grandfathers, and small children, fled our homes on May 4 because of the Hydro Santa Cruz company.”}\textsuperscript{298}

In this context, soldiers are also engaging in unlawful acts, such as participating in the irregular purchase of community lands,\textsuperscript{299} holding recruitment drives in communities, in contravention of the procedure governed by the Civil Service Law,\textsuperscript{300} and allegedly imposing the requirement on communities that a member of

\textsuperscript{294} For example, the following areas were mentioned: Chisec, Cobán, Fray Bartolomé de las Casas, Raxruha, among others. Complaint of the Q’eqchi’, Poqomchi, and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received by the IACHR on the visit of August 2013.

\textsuperscript{295} According to the testimony of one community leader, “militarization has been used to clear the way in the area, so that no one bothers the people doing the work for the cement company’s installation.” Information received by the IACHR on a visit in August 2013.

\textsuperscript{296} Information received by the IACHR on a visit in August 2013.

\textsuperscript{297} Assembly of the Peoples of Huehuetenango. Informe Q’an B’alam Cataratas de Encuentros y Discordia: Santa Cruz Barillas.

\textsuperscript{298} Information received by the IACHR on a visit in August 2013.

\textsuperscript{299} Information received by the IACHR on a visit in August 2013.

\textsuperscript{300} Civil Service Law, Decree No. 20-2003, Chapter III.
the military or persons representing them sit on the Consejo Comunitario de Desarrollo (COCODE), the community representatives’ body. Military personnel are also carrying out acts to intimidate community leaders in areas of intense social unrest brought about by the presence of extractive enterprises. Thus, for example, according to testimony given to the IACHR by a community leader in San Juan Sacatepéquez:

On July 27 this year [2013], the Army went into the communities to ask for names. They went into schools, gave out candy, piñatas, to gather the children. They asked them where the mayor, the community leader lived, what he was doing, where he was. There is persecution. There is a psychological war; they are not killing us with the gun, but it is psychological harm, nonetheless. The children are worried about going to school. We have filed habeas corpus petitions, complaints. We are still waiting to hear from the Supreme Court of Justice.

In relation to the states of exception, the State indicated that it informed the IACHR on October 24, 2014, of the conflicts and violent acts that occurred on September 19 and 20, 2014, in the village of Los Pajones, San Juan de Sacatepéquez, and the reasons for decree a state of prevention (estado de prevención) in the zone. The order states the reasons for having decreed a state of siege in Santa Cruz de Barillas on May 1, 2012, which was lifted May 18, 2012. That State reports that while it was in effect, 30 searches were conducted and 23 persons detained. On the state of prevention decreed on May 2 in Jalapa and Santa Rosa, the State affirms that is not a policy to criminalize social protest, and that in its view such statements reflect an ideological approach associated with certain residents’ or communities’ opposition to mining. It states that criminal acts occurred against the governability and internal security of the State.

On social unrest, the State noted that through inter-institutional coordination priority is accorded to democratic and participatory dialogue and indicates that the lead agency on the subject is the National System of Dialogue. It indicates that in 2013 and 2014 more than 39 cases of social unrest were filed with the Presidential Dialogue Commission, which would have avoided the intensification of the conflict, promoting its resolution and favoring democratic governance. Among the cases it notes the unrest in La Puya around a mining project.

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301 Complaint of the Q’eqchi’, Poqomchi’ and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz.
302 Information received by the IACHR on a visit in August 2013.
**d. Special Reserve Army Squads for Citizen Security**

185. Another response of the State was to adopt Government Decision 31-2015, legalizing Special Reserve Army Squads for Citizen Security and creating nine such squads with the mission of supporting civilian security forces in their functions of preventing and combating organized and common crime and restoring or maintaining citizen security. The squads, which will include career officers, reserve officers, and hired personnel, will operate in Guatemala City, adjacent municipalities, and the departments of San Marcos, Quetzaltenango, Huehuetenango, Quiché, Zacapa, Chiquimula, and Izabal. According to the above government decision, the special squads will act strictly in accordance with human rights and the Constitution. Human rights organizations have offered the following statement on the subject:

> The creation of a squad within the military hierarchy implies the Army taking full and complete charge of citizen security and not as an incidental or momentary measure. In other words, the formation of these squads is a step toward the institutionalization of the Army's involvement in citizen security, making it a de facto sentinel of territorial occupation.

Government Decision 31-2015 is patently unconstitutional and contrary to the spirit and letter of the Peace Agreements and to a vision of security that is respectful human rights. It lacks clear administrative controls that would allow the actions of those squads to be correctly guided, with result that they can be used to apply strategies of repression and criminalization of vulnerable sectors, without oversight institutions being able to supervise them.

186. In addition to the foregoing, "military commands, organized by brigades, were created with the aim of bolstering internal peace and security in the national territory and, in order to continue the process of designing the force envisaged in the Integrated Defense Planning and Management System, it is necessary to restructure military units and create, to that end, the Central Regional Command with the composition, location, and jurisdiction set out in Government Decision 189-2015 of July 21, 2015", thus constituting Military Command, organized by Brigades.

187. The IACHR worries that the Guatemalan State will resort to militarization to address the challenges of violence and citizen security.

**3. Disproportionate impact of violence on certain groups**

188. Violence transects Guatemala, affecting the whole of society and all groups. Aside from the context of violence and insecurity, there is the situation of those whose role in society or particular vulnerability due to historic discrimination and

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306 Comunicado Convergencia por los derechos humanos, February 12, 2015.
exclusion leads them to be disproportionately affected. They particularly include individuals who defend human rights in Guatemala, among them, indigenous authorities and leaders, environmental activists, trade union leaders, and justice sector operators, among others. Others groups affected include women, children and adolescents, journalists, migrants and refugees, LGBTI persons, people with disabilities, and persons deprived of liberty.

a. Human rights defenders

189. Human rights defenders are an essential pillar for the strengthening and consolidation of democracies, since the purpose that motivates their work involves society in general, and seeks to benefit society. Accordingly, when a person is kept from defending human rights, the rest of society is directly affected.

190. In the inter-American system, the Court has noted that "the States have the duty to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity." The aforementioned duties of the State are related to the enjoyment of several rights contained in the Declaration of Rights and Duties of Men and in the American Convention on Human Rights, such as the rights to life, personal integrity, freedom of expression, judicial guarantees, and judicial protection, among others—rights which, taken together, allow for the free exercise of activities of defense and promotion of human rights. Thus, an attack on a human rights defender in reprisal for his or her activities can have the effect of violating several rights recognized in the inter-American instruments.

191. The situation of human rights defenders in Guatemala has been a constant concern for the IACHR, given the dangers and harassment to which they are permanently exposed, often of such a degree as to result in murder. Between 2000 and August 2014, the Unit for the Protection of Human Rights Defenders of Guatemala (UDEFEGUA) reported 174 murders of defenders. As for the State, it reported that, since 2001, it has a specialized prosecution service for the investigation of crimes "against human rights activities, trade unionists, journalists, social leaders, media persons, children and young people." Likewise, it

"has developed an entire infrastructure that guarantees the discharge of its duties without any type of obstacle, implementing precautionary measures and creating ad hoc institutions to tackle the problems they are facing, such

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as the establishment of the Unit for Reviewing Attacks against Human Rights Activists.”

192. Without detriment to the above, during 2015 the Commission has continued to receive information about the persistence of murders, intimidation, and criminalization of human rights defenders in Guatemala. From January to September 2015, UDEFEGUA had recorded 380 attacks or acts of aggression against human rights defenders. These attacks or acts of aggression included murder, threats, arbitrary arrests, following, and surveillance.

193. In 2014, UDEFEGUA recorded 814 attacks against human rights defenders and in the course of 2013, 657 violent incidents were documented, while 2014 was an even more violent year for human rights defenders. The attacks have mainly targeted defenders who work to address the country’s predominant human rights problems, such as those who defend the rights of indigenous peoples, land rights and the environment, and the rights of victims of the internal armed conflict and trade union leaders. In this context, the organizations found that 55% of those attacked were women. Several environmental defenders are also awaiting decisions in proceedings instituted against them.

194. Recent years have seen a rise in attacks on human rights defenders who advance indigenous peoples’ rights and economic, social, and cultural and environmental rights, which “represent 90% of attacks, while civil and political rights represent 5%.”

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312 UDEFEGUA, Informe parcial de la situación de defensores/as de derechos humanos a la segunda quincena de noviembre del 2014 [Partial Report on the Situation of Human Rights Defenders up to the second half of November 2014]. The attacks documented include: 7 murders, 12 threats, 201 cases of property damage, 22 lawsuits, 9 arbitrary arrests, 53 unlawful arrests, 47 acts of deformation, 20 attempted murders, 1 attempted abduction, 244 acts of intimidation, 26 instances of mistreatment and cruel and inhuman punishment, 143 cases of being followed, 4 robberies, and 7 acts of surveillance. UDEFEGUA has been systematizing statistics on attacks against defenders since 2000. See UDEFEGUA, El silencio es historia: Informe sobre situación de Defensoras y Defensores de Derechos Humanos, enero a diciembre de 2013.
314 UDEFEGUA, El Acompañante” Informe parcial de la situación de defensores/as de derechos humanos al mes de julio de 2014.
315 Contribution of UDEFEGUA, Information on the situation of human rights in Guatemala, September 2015, p. 60.
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195. The Ombudsman reported that more than 60% of the defenders attacked were members of indigenous peoples and worked in defense of land rights.\(^{316}\)

The majority of instances in which defenders have been criminalized have had to do with defense of the environment; the rights of indigenous peoples to consultation prior to implementation of administrative, economic, or productive measures in their places of habitation or surrounding areas; and land rights. Other defenders that have been highly criminalized are those that work in cases of transitional justice.\(^{317}\)

196. The IACHR notes how frequently the attacks have targeted traditional indigenous authorities or leaders.\(^{318}\) The Commission has heard how in recent years several indigenous leaders and authorities in different parts of the country have been murdered for reasons presumably to do with their activities in defense of the rights of their peoples or communities. In addition, a series of attacks and arrests have occurred in the context of evictions and demonstrations. In that connection, numerous acts of violence have been observed against indigenous communities that oppose development and investment projects, in particular, attacks, intimidation, and harassment against their leaders. According to reports, such acts have consisted of destruction, looting, and burning of homes and crops; blockading of roads or destruction of bridges that are sometimes the only means of communication; verbal intimidation and threats with knives and firearms; discharging of firearms into the air or at community members; filing of complaints with local courts to obtain warrants for their arrest; and direct physical assaults of villagers, including children, among others.\(^{319}\)

197. Compounding the above, the information shows a series of alleged cases of presumed criminalization of activities in defense of indigenous peoples' lands, territories, and natural resources. Criminalization, understood as excessive and unwarranted use of criminal law, is presumably being utilized against indigenous authorities and leaders,\(^{320}\) in contexts of investment projects implemented without prior consultation and protests over land rights. According to UDEFEGUA, there has been "a disproportionate increase in judicial complaints brought against human rights defenders," which totaled 61 in 2013 alone, 40 of which were

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\(^{318}\) In the words of one community leader, “[t]oday we are suffering another level of harassment, like one that we have suffered before. By harassment I mean threats, intimidation and even attacks and attempted murders of leaders because of the role they play. Just as they did in the Peace Agreements process.” Information received by the IACHR on a visit in August 2013.

\(^{319}\) Complaint of the Q’eqchi’, Poqomchi’ and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz.

accompanied by allegedly unlawful detentions. One emblematic case was that of the leaders of the 12 Kaqchikel Maya communities in San Juan Sacatepéquez, who oppose a mining project and have “86 criminal suits against them, [...] six of their fellows in jail, and another four with warrants issued for their arrest.”

### i. Murderers, attacks, threats, and harassment

198. According to news articles, Telésforo Odilio Pivaral González was murdered on April 5, 2015, in Las Nueces, a village in the municipality of San Rafael Las Flores, Department of Santa Rosa, Guatemala. Pivaral González was a member of the Committee for the Defense of Life and Peace in San Rafael Las Flores (CDVPSRLF-SR), which had been opposing the El Escobal mining project since 2011. The human rights defender was allegedly attacked by unknown assailants and shot five times while waiting for a bus.

199. Alfredo Ramos, member of the Central Campesina Ch'ortí Nuevo Día (CCCND), a peasant farmers' union, died on June 7, 2015 following a knife attack on May 28, 2015.

200. Sebastián Sajic Córdova, the 70-year-old spiritual leader of the Ixil and member of the Council of Elders of the Village of San Antonio Titach, San Juan Cotzal, Quiché, and of the Ixil Council of Elders of San Juan Cotzal, was murdered on September 10, 2015. According to the PNC, the crime occurred in Santa Avelina de Nebaj, where, using machetes, individuals attacked the spiritual guide, "who was a victim of the genocide and was involved in the native peoples' struggle to ensure that the dictator Efraín Ríos Montt pays for his crimes." A propos of the murder of the spiritual leader Sebastián Sajic Córdova, OHCHR-Guatemala called on "the State to adopt the necessary measures to ensure the safety and physical integrity of the
indigenous authorities of the Ixil Council, given its importance for maintaining social cohesion and for allowing indigenous peoples to exercise their autonomy and right to self-determination.”

201. On September 15, 2015, three armed men wearing ski masks broke into the offices of the organization Mamá Maquin and held up four workers and a five-year-old girl at gunpoint. According to their complaint, they stole all the organization’s information. Mamá Maquin is a women’s organization established in 1990 that is located in Nueva Libertad, a community in Fray Bartolomé Municipality, Alta Verapaz.

202. Rigoberto Lima Choc, a 28-year-old human rights defender and recently elected member of the Sayaxché Municipal Council in Petén, was murdered in Sayaxché on September 18, 2015. Lima Choc was at the forefront of the complaint against the palm oil processing company blamed for causing environmental damage on La Pasión River. He was shot dead by two men on a motorcycle. "The victim was outside a courthouse where the day before the palm oil plant had been ordered to suspend its operations for six months.”

203. According to OHCHR-Guatemala, three human rights defenders (Lorenzo Pérez, a leader of Coordinadora Nacional de Desplazos de Guatemala; Hermelindo Asij; and Manuel Pérez Ordoñez) would have been illegally detained that same day, September 18, but released in the afternoon later that day. "According to information received, they were illegally detained by persons said to work for Reforestadora de Palma de Petén, S.A. (REPSA), following the company's temporary closure ordered yesterday by the Petén Criminal Court of First Instance in the context of the investigations under way into the pollution of La Pasión River.”

204. Rigoberto Patzan was arrested by members of the PNC on September 21, 2015. He was allegedly tortured while in detention. Rigoberto Patzan is one of the representatives of Pajoques, a community affected by the San Gabriel cement plant belonging to Cementos Progreso in San Juan Sacatepéquez, as well as by the construction of a private road (regional ring road project). According to community press reports:

He was violently arrested without an arrest warrant being shown to him; there was no prosecutor from the Attorney General's Office or a competent judge present; his captors, whom he recognized as National Civil Police agents, beat and tortured him as well as stealing part of his produce (1.5

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327 OHCHR-Guatemala, Condena muerte de autoridad indígena ixil, September 11, 2015.
328 The organization is named in honor of the Q’eqchi’ Maya leader Adelina Caal Maquin, one of the victims of the massacre perpetrated by the Guatemalan Army on May 29, 1978, in the Municipality Panzós, Alta Verapaz.
329 PCS, Guatemala, Organizaciones rechazan agresiones contra colectivo feminista mama maquin, September 29, 2015.
330 BBC Mundo, Guatemala: matan a tiros a un activista comunitario que denunció ecociidio, September 19, 2015.
331 OHCHR-Guatemala, OACNUDH condena hechos violentos en Sayaxché, Petén, September 18, 2015.
liters of milk). He also lost 15 bottles of milk, had to abandon a cow, and, worst of all, had to leave his family, crops, and work for the community untended.\textsuperscript{332}

205. According to news media, on August 14, 2014, the National Civil Police, acting in coordination with the Army, reportedly carried out eviction operations in the Q’eqchi’ Maya communities of Cobán, Chisec and Raxruhá in Alta Verapaz, with the alleged involvement of private security guards and members of communities in favor of the hydroelectric plant in the area.\textsuperscript{333} The following day, several members of the indigenous people reportedly attempted to prevent the operation from going ahead by blocking the Chisec-Raxruhá road, which reportedly prompted a violent reaction from the agents of the State, who entered homes without a court order, damaged property and personal belongings, fired tear gas grenades, and used firearms against the protesters.\textsuperscript{334} According to reports, three community leaders died from gunshot wounds allegedly inflicted by the security forces and around 40 people were detained.\textsuperscript{335} On April 22, 2014, human rights defender Yuri Melini allegedly found the name of the national policeman in charge of his personal security painted on his front gate.\textsuperscript{336} Yuri Melini is a director of Centro de Acción Legal, Ambiental y Social de Guatemala (CALAS), which promotes community participation and collective indigenous rights in relation to environmental matters. In 2008, he was shot four times in a suspected attack on his life, \textsuperscript{337} which was why the officer had been assigned for his security. In addition to this security measure, the police monitor Mr. Melini’s home three times a day.

206. The IACHR issues a reminder that, pursuant to the State’s obligation to guarantee human rights, protecting the right to life of human rights defenders entails not just prohibitions but also obligations of a positive nature. Accordingly, in addition to the absolute ban on arbitrary executions and forced disappearances, States are obliged to take positive steps conducive to generate the conditions needed to eradicate violations of the right to life and personal security by state agents or private individuals, in such a way that human rights defenders can freely go about their work.\textsuperscript{338}

207. Furthermore, as the Commission has previously stated on several occasion, acts of violence and other attacks against human rights defenders not only affect the

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\textsuperscript{332} Prensa Comunitaria, San Juan Sacatepéquez: Rigoberto Patzan detenido por defender el territorio, September 22, 2015.
\textsuperscript{333} Front Line Defenders, Guatemala — Asesinatos y detenciones de líderes indígenas comunitarios Maya Q’eqchi’ en Alta Verapaz por defender los derechos del medio ambiente, August 21, 2014.
\textsuperscript{334} Front Line Defenders, Guatemala — Asesinatos y detenciones de líderes indígenas comunitarios Maya Q’eqchi’ en Alta Verapaz por defender los derechos del medio ambiente, August 21, 2014.
\textsuperscript{335} Front Line Defenders, Guatemala — Killings and detention of Mayan Q’eqchi indigenous community leaders in Alta Verapaz for defending environmental rights, August 21, 2014; Prensa Libre, Organizaciones indígenas denuncian tres ejecuciones.
\textsuperscript{336} Front Line Defenders, Guatemala: Intimidation of human rights defender Dr Yuri Melini, April 30, 2014.
\textsuperscript{337} Front Line Defenders, Guatemala: Assassination attempt against human rights defender Yuri Melini, December 9, 2008.
\end{center}
guarantees of every human being, but undermine the fundamental role that human rights defenders play in society and leave all those for whom they fight defenseless. The Commission also calls to mind that the work of human rights defenders is essential for the construction of a solid, lasting democratic society, and rights defenders play a leading role in the process of pursuing the full attainment of the rule of law and the strengthening of democracy.\textsuperscript{339}

208. Of particular concern to the IACHR are the lack of attention to official complaints of threats against social and community actors so as to prevent the materialization of risks, and the lack of presence of public authorities when called upon by communities to guarantee their security and protection. The available information also indicates that complaints of attacks are not being properly investigated or punished by the competent institutions. As the IACHR has seen, such attacks usually result in murders, most of which remain unpunished. Moreover, the above has also been identified as factors that help to create fuel or exacerbate the conflicts and, in general, the violence that affects the communities.\textsuperscript{340}

\textbf{ii. Criminalization and arbitrary detention}

209. The IACHR has received information which suggests a misuse of the criminal law system against defenders in the form of presumably unfounded criminal proceedings, arbitrary arrests, and prolonged use of pretrial detention.

210. Among some of the examples denounced by human rights organizations include the situation of Francisco Juan Pedro, Arturo Pablo Juan, and Sotero Adalberto Villatoro, community leaders from the Municipality of Santa Cruz Barillas who have acted as mediators in conflicts between civil society and the authorities since 2008, particularly in relation to the Hidro Santa Cruz company’s hydroelectric project. According to the information received, in February 26, 2015, the Seventh Division of the Huehuetenango Court of Appeals for Criminal, Drug Trafficking, and Environmental Offenses ordered their preventive detention for the offenses of making threats, illegal detention, coercion, and kidnapping of the company workers. According to information from April 2015, the community leaders are still in pretrial detention in a process which allegedly presents serious irregularities with regard to their detention and pretrial.\textsuperscript{341}

211. The indigenous leaders Domingo Baltazar and Rigoberto Juárez, representatives of the plurinational government of the Q’anjob’al, Chuj, Akateka, Popti and mixed-race nation of Huehuetenango, were arrested on March 24, 2015, accused of having led a group of people from the area to destroy the facilities of the San Luis Farm (offenses of coercion, illegal detention, and making threats). According to the information available, they were detained after lodging a complaint against the


\textsuperscript{341} Front Line Defenders, Guatemala – Continued detention of three environmental rights defenders, March 25, 2015.
Mayor of Santa Eulalia, Diego Marcos Pedro, for attacks on traditional authorities and journalists on March 19, 2015, the day on which the attempt was made to reopen the Snuq Jolom Konob community radio station, which had been closed in January.\textsuperscript{342} In spite of being granted house arrest, on March 27, 2015, the day they were due to be released, they were again arrested and charged with kidnapping, coercion, and inciting crime.\textsuperscript{343}

212. In addition, Bárbara Díaz Surín, a community leader from the 12 Kaqchikeles Communities of San Juan Sacatepéquez, was arrested by a contingent of 40 policemen on October 29, 2014; she is reportedly being tried for murder. According to the information received from various human rights organizations, her detention was allegedly unjust and she would have been on trial as a reprisal for her struggle against the construction of a cement plants as well as her participation in a march on October 24, 2014, to call for an end to the state of emergency in San Juan Sacatepéquez and denounce sexual harassment of women and girls by members of the police and army as a result of the state emergency.\textsuperscript{344} According to the information received, the cement company had tried to negotiate with the human rights leader her release in exchange for a public tour of all the communities where should accept her mistake, apologize and call the community to support the plant.\textsuperscript{345}

213. Also, Jacinto Pineda Catalán, Fernando Castro Carrillo, Eusebio Muralles Díaz, and Gregorio de Jesús Catalán Morales, environmental human rights defenders and activist against the activities of La Puya were reportedly being charged with the offenses of “illegal detention,” “coercion,” “making threats,” and “causing injuries” to former workers of the EXMIGUA mining company. It is alleged that the charges would be motivated in reprisal for their activities of defense of the environment.\textsuperscript{346} In another matter, the court has reportedly dismissed the accusation against Yolanda Oqueli, a human rights defender who has been a beneficiary of precautionary measures granted by the IACHR since August 24, 2012,\textsuperscript{347} on the basis that it lacked merit.\textsuperscript{348} Ramiro Choc, a Q’eqchi’ leader, was imprisoned from February 14, 2008 to August 14, 2013, after being convicted of robbery in aggravating circumstances (continuous offense). He was originally

\textsuperscript{343} \textit{Contrapoder}, Rigoberto Juárez fue capturado por segunda vez, March 28, 2015, Comunicado Ch’ortí’ en apoyo a presos políticos de representantes del Gobierno Plurinacional de Guatemala, March 27, 2015; Cmiguate.org, ¿Qué hacen tres líderes comunitarios de Barillas en el Preventivo de la Zona 18?, March 25, 2015.
\textsuperscript{344} Asociación para los Derechos de la Mujer y el Desarrollo, Detienen a Bárbara Díaz Surin por defender La Vida y las Flores, October 30, 2014; Front Line Defenders, Guatemala: Criminalisation of human rights defender Bárbara Díaz Surín, November 11, 2014.
\textsuperscript{345} FIDH, Guatemala: Faltas al debido proceso en la sentencia contra los Sres.Alonzo de Jesús Torres Catalán, Valerio Carrillo Sandoval y Jorge Adalberto López Reyes, May 9, 2014.
\textsuperscript{347} IACHR, PM 207/11 – Telma Yolanda Oqueli Véliz and family, Guatemala.
charged with illegal detention, encroachment, and aggravated robbery.\textsuperscript{349} Choc has started peasant struggles in Izabal, Alta and Baja Verapaz and Peten and alleged that his arrest and conviction was plagued by irregularities and have been motivated by interests of landowners. Timoteo Chén Tun, a rights defender from the community of Monte Olivo in Alta Verapaz, has been in pretrial detention since April 2014. According to an NGO, the criminal trial against him has to do with his activities in opposition to the operations of Hidroeléctrica Santa Rita, S.A.\textsuperscript{350}

214. The IACHR notes with concern that arrest warrants are issued and executed at critical moments in communities’ struggles. An example of this situation is the case of Saul Mendez and Rogelio Velasquez, community leaders, native of Santa Cruz Barillas, who after more than two years in prison on charges of femicide and murder by lynching occurred on 19 August Barillas 2010, were acquitted on 28 October 2015 by the Court of Femicide of Quetzaltenango. In the acquittal the Court noted that "the Court accepts the argument of the defense" in the sense that the case was "a matter of retaliation" and that "testing the repression and retaliation for a hydroelectric resistance." The Court, citing the opening statements of defense, described that this kind of cases (of criminalization against human rights defenders and community leaders) are repeated elsewhere in Guatemala, as in the cases of San Juan Sacatepequez, San Rafael, Chiquimula, among others.\textsuperscript{351}

215. The information suggests also the use of pretrial detention against human rights defenders and leaders, in situations where there would no risk of leaks or obstruction of justice. The Commission also notes that criminal complaints might be used as a means of exerting pressure by companies or their representatives, who then offer to withdraw the charges or desist from the proceeding if the leaders accept a given project or promote its acceptance.\textsuperscript{352} Furthermore, community members perceive that complaints brought against them are admitted, while the same is not true for the ones lodged by them in response to intimidation or attacks. According to a local leader:

\begin{quote}
The state brings the full weight of its judicial apparatus to bear in favor of companies but against us. That is why so many of our community leaders have arrest warrants hanging over them.\textsuperscript{353}
\end{quote}

216. The IACHR also notes that prosecutors frequently present indictments for numerous criminal offenses presumably without gathering the necessary evidence to establish whether or not there was wrongdoing, which goes against the principle of no crime and punishment without prior law and creates considerable difficulties for community members to mount a defense.\textsuperscript{354} One area of particular

\textsuperscript{349} Prensa Comunitaria, Una entrevista con Ramiro Choc, July 3, 2015.
\textsuperscript{351} Acoguate, Saúl Méndez y Rogelio Velásquez tras más de dos años en prisión son declarados inocentes, 30 de octubre de 2015.
\textsuperscript{352} Complaint of the Q’eqchi’, Poqomchi’, and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz.
\textsuperscript{353} Information received by the IACHR on a visit in August 2013.
\textsuperscript{354} The usual charges are conspiracy, terrorism, activities against the internal security of the Nation, incitement to commit crime, aggravated encroachment, making threats, coercion, arson, intimidation, abduction,
concern is the use of the criminal charge of aggravated encroachment. The crime of encroachment is committed by whomsoever "unlawfully, for any reason ... occupies a property"; this crime is considered "flagrant" in the case of "remaining on the property"; it is aggravated by "inciting," "proposing," or "inducing" others to "commit this crime or cooperate in its planning, preparation, or execution"; and that if such a crime is committed, the police, the Attorney General's Office, or the judge are required to carry out an "immediate eviction." As there is no precise definition of what "unlawfully, for any reason" means and because the required intent on the part of the perpetrator is not clearly described, this criminal charge is often used broadly and to encompass very different situations. Thus, for example, the vague definition of this criminal offense reportedly allowed arrest warrants to be issued against eight indigenous women from the village of Ángel de San Miguel Ixtahuacán for preventing a company from installing electricity cables that passed through their homes.\(^{355}\)

217. The State emphasizes that it does not promote or carry out actions to criminalize human rights defenders who participate in movements or social protests and that it does not prohibit or impair their individual and collective rights and guarantees. It notes that perpetrating violent acts or propagating violence does not qualify any individual or group of individuals as human rights defenders.\(^{356}\)

218. In that regard, the Commission recalls that, in addition to the obligation to investigate and punish those who violate the law within their territory, States have the duty to take all necessary measures to prevent unfair or unfounded trials to people who legitimately demand respect and protection of human rights. Opening groundless criminal investigations or judicial actions against human rights defenders not only has a chilling effect on their work but it can also paralyze their efforts to defend human rights, since their time, resources, and energy must be dedicated to their own defense.\(^{357}\)

### iii. Stigmatization and defamation

219. Sometimes, criminal complaints against indigenous authorities and leaders are accompanied by terms belittling them personally and the work they do, which undermines the credibility and integrity of human rights-related activities in the eyes of society\(^{358}\) and those leaders' right to have their honor respected and their

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\(^{355}\) Movimiento de Mujeres Indígenas Tz'unik'in. Sistematización de caso legal de ocho mujeres de San Miguel Ixtahuacán, San Marcos. Information received by the IACHR on a visit in August 2013.


dignity. In this regard, the UN Special Rapporteur on the Situation of Human Rights Defenders expressed concern said that "[t]he multitude of arrests and detentions of defenders also contributes to stigmatization, as people perceive and as troublemakers". Moreover, criminalization in itself delegitimizes social struggles, discredits community struggles, and casts doubt on the legitimacy of community claims, thereby creating a false impression in public opinion.

Information was likewise received regarding media campaigns by organizations or foundations related to serving or retired military officers against indigenous leaders and civil society organizations, purportedly aimed at discrediting their activities in defense of indigenous lands and territories. National and local State authorities are reported to have made public statements along the same lines, discrediting the work of these organizations. According to the Unit for the Protection of Human Rights Defenders in Guatemala (UDEFEGUA), in 2013 defamation accounted for 26% of the attacks on defenders that year.

iv. Forced migration and displacement

The IACHR observes with concern how other forms of violence are triggering the forced migration of communities and indigenous people. As already noted, in recent years, the Guatemalan State has had serious problems controlling illegal drug trafficking groups and mafias. Moreover, one outcome of the Mexican State’s fight against drug trafficking cartels has been an increase in their operation and in levels of violence in Guatemala. The IACHR notes that the impact of organized crime has forced Guatemalans to seek asylum in neighboring countries and may be driving the internal displacement of people within Guatemala. Although quantitative data are hard to come by, information received by the IACHR indicates that organized crime is impacting indigenous peoples and communities. Information available to the IACHR suggests that some communities, because of either the poverty or coercion they are exposed to, are being used to plant opium poppy. Other communities are reported to have been forced to sell their land for use by drug traffickers, above all in the North and East of the country. The places where drug trafficking is most prevalent are the country's western borders, in departments like Huehuetenango and San Marcos, in areas where indigenous peoples and communities live.

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360 UDEFEGUA. El Silencio es historia. Informe sobre situación de Defensoras y Defensores de Derechos Humanos, p. 28.
362 IACHR. See IACHR, Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico, December 30, 2013.
222. It has also been reported that illegal groups are responsible for the forced displacement of indigenous communities in order to illegally acquire their lands for organized crime and drug trafficking activities. Compounding the problem have been rural development policies conducive to the expansion of agroindustrial projects at the expense of subsistence agriculture, which are said to have led to extrajudicial evictions and hence the forced displacement of communities. To cite one example, the Q’eqchi’ Maya Community of Santa Elena Samanzana II in the Municipality of Cobán, Alta Verapaz has allegedly been subjected to several acts of harassment, threats, and violence by individuals said to be interested in appropriating their lands, for which land titling procedures are reportedly under way with the Land Fund (FONTIERRAS, for its acronym in Spanish).\(^{365}\) There are reports that in March 2014, violent acts against the community were stepped up, to a point at which, on March 14, 30 heavily armed men irrupted into the community in search of its leaders, locked up several families in the Church and threatened that they would “kill and burn them all alive.”\(^{366}\) As a result, by the end of March, four families are reported to have moved to Guatemala City, while the remaining 27 families reportedly escaped to the jungle of the Santa Elena Samanzana Mountain, where they remained without access to food, medicine, or health care. These facts are said to have been brought to the attention of various State authorities, such as the PNC and the PDH (Ombudsman), without any timely steps being taken to prevent them and protect the community.\(^{367}\)

v. Justice system operators

223. The IACHR has been especially worried about the security situation of justice system operators, as the defenders of access to justice for thousands of victims of rights violations in Guatemala. On several occasion, the Commission has had to grant precautionary measures to request protection for them. For example, the deputy prosecutor at the Public Prosecution Service (Ministerio Público), Edgar Ariel Morales Cahuec, was murdered on December 4, 2014 while driving his vehicle near Police Station 33 of the PNC in Mazatenango, Suchitepéquez.\(^{368}\) The Public Prosecution Service condemned that act and stated that it was conducting the corresponding investigations with a view to identifying, capturing, and achieving the conviction of the perpetrators and instigators of the crime.\(^{369}\)

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\(^{365}\) On August 20, 2013, private individuals allegedly entered the community firing at its dwellings and wounding two people. They also allegedly destroyed some crops and put up barriers to prevent the community from harvesting. Similar acts are said to have been perpetrated in January 2014. UDEFEGUA Guatemala. Complaint 2-2014. April 2, 2014.


\(^{367}\) The motives for extrajudicial appropriation of land are reported to be drug crop cultivation and hydroelectric projects, due to the fact that the Canguinic river, which flows through the Community, is a major tributary of other rivers where hydroelectric plants are to be built. UDEFEGUA Guatemala. Complaint 2-2014, April 2, 2014.

\(^{368}\) Noticias.emisorasunidas.com Asesinan a auxiliar fiscal del MP frente a comisaría de PNC. December 4, 2014.

224. According to information received by the Commission, between 2002 and 2012, 640 judges and magistrates were subjected to threats and intimidation, 24 were assaulted, and 5 kidnapped. Eleven administrators of justice were murdered. Thirty-two of the cases of threats and intimidation occurred in first half 2012. According to information provided by the Guatemalan State, there were 54 denunciations of crimes against prosecutors in 2010; 57 in 2011; and 61 in 2012. The State of Guatemala also told the Commission that between 2010 and 2013, it had received 124 denunciations of crimes committed against public defenders.

225. According to the Ombudsman, justice system operators engaged in transitional justice proceedings and/or proceedings relating to corruption by officials and authorities are the main victims of attacks. He indicated that, justice operators conducting these kinds of proceedings have even been attacked by the authorities or their peers, in the form of verbal abuse, insults, and threats, attempts to impeach or bring criminal charges against them, complaints, and even harassment of family members.

226. At the same time, the IACHR has been told that those who denounced irregularities in the process for selecting and appointing high court judges in 2014 were victims of reprisals by the judiciary in the form of unwarranted dismissal, "preventive supervision," and allegedly illegal transfers. The IACHR received information concerning the election of Supreme Court and appeals court judges by the Congress of the Republic at legislative sessions of September 25 and 30, 2014, respectively. In that framework, Claudia Escobar, one of the judges-elect, resigned and reported a series of irregularities in the election and appointment process for Supreme Court and appeals court judges in Guatemala. Among other things, the judge claimed that Vernon Eduardo González Portillo, a lawyer, and Wilfido...
Gudiberto Rivera Estrada, a member of Congress, came to her office and advised her that a petition for constitutional relief had been brought against the Citizens Register (Registro de Ciudadanos) and that she should admit the petition "if she wanted to be reelected." The judge apparently reported this intimidation to the CICIG together with evidence that included an audio recording of the conversation with Mr. Gonzales and Deputy Rivera. As a result of those denunciations, her life and personal integrity were presumably at risk, so that, on November 10, 2014, the IACHR requested the State of Guatemala to adopt precautionary measures in favor of the Judge and her nuclear family.\textsuperscript{375}

227. The IACHR was also informed of the transfers ordered by the Supreme Court of Justice to the detriment of Judges Patricia Gámez and Jennie Molina, for no good reason warranting such transfers. The measure against the judges was reportedly due to their support of Claudia Escobar in October 2014, when she denounced the irregularities in the proceedings for the election of new judges to the Supreme Court of Justice, Appeals Courts, and tribunals of similar stature.\textsuperscript{376} The Court for Constitutional Matters (Corte de Constitucionalidad—CC) provisionally stayed the transfer of the three judges ordered by the Supreme Court of Justice (CJJ) sitting en banc, stating that they had concluded their constitutional period.\textsuperscript{377} The Commission voiced its concern regarding this matter and recalled the importance of transfers of justice system operators being based on public and objective criteria,\textsuperscript{378} otherwise they could be considered or used as reprisals.

vi. Trade union leaders

228. On September 24, 2015, Mynor Rolando Ramos Castillo, a trade union leader, was murdered when he was leaving his home in Jalapa. The alleged murderer captured on that occasion, 28 year-old Ever Leonel Sandoval Orellana, reportedly said he had charged 1,500 quetzales (approximately US$196) for the crime. Mynor Rolando Ramos Castillo had been a member of the Workers Union of the Municipality of Jalapa (SITRAM), dismissed in May 2012 for having formed a trade union, reinstated in December of that same year, and then dismissed in 2013. Along with others, he was waiting for the Municipal Mayor to comply with a Labor Judge’s order to reinstate those who had been dismissed.\textsuperscript{379} Referring to this matter, in a letter addressed to the President of the Republic, the Confederation of Workers of Mexico wrote: "This cowardly murder, once again plunging Guatemalan families and the Guatemalan and international trade union movement into grief, reflects the climate and culture of terror, persecution, and physical

\textsuperscript{375} MC 433/14 – Claudia Escobar and others., Guatemala.
\textsuperscript{376} Fundación Mirna Mack, "La Fundación Myrna Mack ante el Irregular traslado de las Juezas Patricia Elizabeth Gámez Barrera y Jenni Aimee Molina Morán", March 5, 2015.
\textsuperscript{377} Siglo 21, CC suspende traslado de jueces del OJ, March 20, 2015.
\textsuperscript{378} Report on the 154th Session of the IACHR.
\textsuperscript{379} Prensa Libre, Ultiman a sindicalista de la comuna de Jalapa, September 24, 2015.
elimination that persists in Guatemala, the brunt of which is borne by workers, and social and trade union leaders."³⁸⁰

229. The International Trade Union Confederation reported that 53 trade union leaders were murdered between 2007 and 2013.³⁸¹ Allegedly, acts of violence against trade unions continued in 2014, without investigations into those crimes. One case reported was the murder, in January 2014, of 19 year old Marlon Dagoberto Vásquez López, a member of the National Trade Union of Construction and Services Workers of Guatemala (SINCSG).³⁸² Three member of the Municipality of Jalapa’s Workers Union were reportedly murdered in April.³⁸³ Then, in July, the Guatemalan Autonomous Trade Union and People’s Movement condemned the murder of Joaquín Chiroy y Chiroy, Assistant Secretary General of the Trade Union of Vendors and Similar Workers of the Municipal Market in Sololá, and of Gabriel Enrique Ciramagua Ruiz, Secretary for Organization of the Municipal Workers Union of Guatemala.³⁸⁴

230. Although, for some of these murders, it has not been shown whether they were acts committed by criminal groups, or had to do with trade union and other fights for rights, or with the administration of justice, the IACHR has pointed out that the State is duty bound to investigate whether those acts were committed because of the victims’ activities. The Commission has further pointed out that the fact that the sources of the attacks may not have been State agents does not exempt the State from its obligations to protect the lives and personal integrity of trade union leaders.³⁸⁵

vii. Protection programs

231. In 2004, the State approved Executive Decree 11-2004 of the Presidential Commission for Human Rights, which established the Coordinating Unit for Protection of Human Rights Defenders, Judicial Administrators and Officers, Journalists and other Media Workers, which currently has the status of a bureau (dirección). It is the organ entrusted with

“coordinating with the institutions of the Executive branch in charge of granting and implementing the measures of protection for persons who request precautionary measures, provisional measures, and security measures from the Inter-American Commission on Human Rights, the Inter-

³⁸⁰ Letter from the Confederation of Workers of Mexico to the President of the Republic of Guatemala, October 5, 2015.
³⁸¹ International Trade Union Confederation, Countries at risk. Violations of Trade Union Rights, 2013.
³⁸² International Trade Union Confederation, Guatemala: Asesinato de un miembro de la red de jóvenes sindicalistas de Quetzaltenango, January 13, 2014.
³⁸³ International Trade Union Confederation, Tres Sindicalistas son asesinados en Guatemala, April 14, 2014.
In this regard, the Commission has identified certain challenges that persist in implementing precautionary and provisional measures: (i) the lack of sufficient trained personnel to provide an adequate protection scheme; (ii) the lack of coordination among the units that provide protection; (iii) on some occasions, security schemes have been removed without prior notice; and (iv) the beneficiaries have had to cover the food expenses of the persons assigned to protect them, or adapt the space in their home or office for security personnel.

In addition, the Office of the Analysis of Attacks on Human Rights Defenders in Guatemala was established in 2008, by ministerial decree No. 103-2008. Among its functions will be preparing an analysis of cases to be able to determine the existence of patterns of attacks as well as to make recommendations to investigate cases of attacks on human rights defenders. In its Second Report on the Situation of Human Rights Defenders in the Americas, the IACHR noted that while that office could make a significant contribution to the situation of human rights defenders, it would have a fragile and provisional institutional grounding since its mandate was to expire in 2012. While the IACHR recognizes as a positive measure the renewal of this office’s mandate for another four years. Considering that the mandate is about to expire in 2016, it urges the State to ensure that it continues and is made permanent.

In the period from 2012 to 2014, the Office held 139 meetings, without interruption. Among the accomplishments noted by the State are: (i) incorporating 12 agents to the Unit for Investigation of Attacks on Human Rights Defenders of the PNC, for a total of 20 investigators and two commanding officers, which has made it possible to assign five investigators to each prosecutorial unit in the Human Rights Section of the Attorney General’s Office; (ii) strengthening of the Prosecutorial Unit for Crimes against Unionists; and (iii) implementing properly the mechanisms of protection and preventive security in favor of human rights defenders by the PNC.

The Commission recognizes and views in a positive light the gains made in the Office, yet it observes that challenges persist in its implementation. In this respect, the United Nations High Commissioner for Human Rights has emphasized that this entity alone cannot replace the functions of a mechanism of protection that can produce a comprehensive risk and context analysis on deciding whether to grant or lift security measures. In addition, in its 2014 report it indicated that the

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Office of the Analysis of Attacks on Human Rights Defenders in Guatemala was no longer as important, since the representatives of the organizations participating in it were replaced by technical staff, which led some civil society organizations to decide to no longer work with it.\textsuperscript{390}

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\textbf{236.} The IACHR has noted that adopting special measures of protection contributes to major progress in implementing its recommendations. It has also indicated that the adequate implementation of these mechanisms may help the state carry out its obligation to protect, on allowing for closer contact with and specific knowledge of the particular situation of the human rights defenders at risk, and consequently being able to provide a timely, specialized intervention proportional to the risk the defender may be facing.\textsuperscript{391} In this regard, it recalls that for a protection program to be effective, it must have a strong political commitment on the part of the State as well as sufficient, trained human resources capable of receiving the requests for protection, evaluating the levels of risk, adopting and implementing the measures of protection, as well as monitoring the measures in place.\textsuperscript{392} It should be noted that pursuant to the decision of the Inter-American Court in the \textit{Case of Human Rights Defender et al. v. Guatemala}, the State must implement a public policy for the protection of human rights defenders within a reasonable time.\textsuperscript{393}
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b. Women

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\textbf{237.} Several international organizations have spoken out emphatically about the seriousness of the problem of violence against women in Guatemala and the generalized impunity surrounding such crimes. The IACHR has repeatedly voiced its concern at the prevalence of this type of violence. Femicide in Guatemala would have risen 400\% between 2001 and 2010.\textsuperscript{394} According to Economic Commission for Latin America and the Caribbean (ECLAC) in 2014 there were 876 femicides.\textsuperscript{395} This grave problem besetting Guatemalan society is echoed by the failure of the State to perform due diligence to prevent, investigate, and punish acts of violence against women even as the problem is becoming more acute.\textsuperscript{396}
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\textsuperscript{390} OHCHR-Guatemala. Informe sobre las actividades de su oficina en Guatemala, year 2013, January 13, 2014, para. 49.
\textsuperscript{391} IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, para. 484.
\textsuperscript{392} IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, para. 487.
\textsuperscript{395} La Hora, Cepal advierte sobre alto número de femicidios, November 25, 2015.
238. In 2001, the IACHR pointed out that one of the serious limitations on the design of effective responses to gender violence in the country was the lack of clear data on the precise magnitude of the problem. In 2003, the IACHR reiterated that while precise statistics were difficult to obtain, the number of murders involving female victims had risen and that these cases had not been properly investigated nor the guilty parties punished. In 2004, the IACHR Office of the Rapporteur on the Rights of Women announced in the context of its working visit to Guatemala that several sources had stated that there had also been an increase in the degree of violence and cruelty displayed against the bodies of many of the victims. In 2012, the IACHR reiterated that the high levels of violence against women in Guatemala constituted an issue of grave concern. At the time, it was pointed out that, according to Public Prosecution Service figures, violence against women was the most frequently denounced crime in the country, with over 40,000 such denunciations each year. According to data provided at the time by the Presidential Commission against Femicide, in 2001, 705 women were murdered and 28 cases of dismemberment of the victim’s bodies were reported. Moreover, for every 10 cases of femicide, women had complained of being victims of acts of violence or had had judicial orders to protect them. According to civil society sources, there was still a tendency to blame women for the violence to which they were subjected.

239. In its concluding observations on Guatemala adopted in 2013, the United Nations Committee against Torture welcomed the legislative and other measures adopted by the State party to prevent and punish violence against women, particularly the definition of femicide as a specific offense, addressed in the "Law on Femicide and Other Forms of Violence against Women" of 2008. However, the Committee noted with deep concern that the level of violence against women, including murders, remained high. Accordingly, it urged the State to redouble its efforts to prevent and combat violence against women, including gender-related murder; ensure the full and effective application of the relevant legislation; and ensure effective coordination between the various bodies that have a role to play in tackling violence against women. In addition, in its Concluding Observations on the combined fifth and sixth periodic reports on Guatemala, the Committee noted that, according to the National Institute of Forensic Sciences, there were 709 violent...
deaths of women in 2012 and 200 more between January and March 2013, and it observed with concern the low number of convictions handed down for offenses relating to violence against women.

240. In January 2014, the Office of the United Nations High Commissioner for Human Rights (OHCHR) pointed out that in 2013 there had been 198 denunciations of femicide and 31,836 complaints of other forms of violence against women. In the Report presented in January 2015, it stated that INACIF had reported 774 violent deaths of women. 1,236 femicide denunciations were filed, along with 281 complaints regarding other forms of violence against women. It also reported that courts specializing in femicide and other offenses involving violence against women handed down 1,400 sentences, compared to 779 in 2013, and that the Judiciary had inaugurated four specialized courts in four departments, bringing the total number of departments covered to 11. In its response to the draft report received on October 6, the State reported the creation of "14 specialized national courts and 8 specialized tribunals."

241. The National Institute of Statistics (Instituto Nacional de Estadísticas, INE) drafted the report entitled "Violencia en contra de la Mujer (2008-2013)", as part of its commitment "to implement and strengthen the National Information System on Violence against Women –SNIVCM- with a view to providing the statistics needed to advance knowledge of the causes and consequences of violence against women." That report shows the following denunciations of offenses under Decree 22-2008 [Law against Femicide and Other Forms of Violence against Women], received by the Public Prosecution Service (2010-3013):

<table>
<thead>
<tr>
<th>TYPE OF OFFENSE</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>OTHER TYPES AND COMBINATIONS</td>
<td>2</td>
<td>-</td>
<td>-</td>
<td>223</td>
</tr>
<tr>
<td>FEMICIDE</td>
<td>205</td>
<td>245</td>
<td>246</td>
<td>300</td>
</tr>
</tbody>
</table>

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403 United Nations, Committee against Torture, Concluding Observations on the combined fifth and sixth periodic reports of Guatemala, adopted by the Committee at its fiftieth session (6–31 May 2013), 24 June 2013, para. 13.
406 According to the National Civil Police (PNC), in that same period there were 603 violent deaths of women. The difference in the figures is explained by the fact that the PNC statistics are based on crime scenes in which there are both corpses and wounded people. When one of the latter dies in hospital, that statistic is never recorded in the PNC’s database. El Quetzalteco, Persiste cifra de muertes violentas, April 25, 2015.
The same report points out that between 2011 and 2013, there was an increase in the number of judgments—convictions and acquittals—handed down for offenses covered by the Law against Femicide and other Forms of Violence Against Women:

<table>
<thead>
<tr>
<th>Type of Violence</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONVICTIONS</td>
<td>271</td>
<td>386</td>
<td>983</td>
</tr>
<tr>
<td>ACQUITALS</td>
<td>112</td>
<td>139</td>
<td>347</td>
</tr>
<tr>
<td>TOTAL</td>
<td>383</td>
<td>525</td>
<td>1.330</td>
</tr>
</tbody>
</table>

243. The IACHR welcomes the effort undertaken by the INE. Precisely one of the problems detected by the IACHR during its visits and in reports on violence against women was the lack of differentiated statistics for shaping public policies. The IACHR values in particular the efforts to investigate and sanction the crimes contemplated in the Law against Femicide and other Forms of Violence Against Women, reflected in the increase of sentences.

244. The 2014 Annual Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala (OHCHR-Guatemala) commended the fact that the start-up of the Special Cabinet for Women (Gabinete Específico de la Mujer) began triggering greater interagency coordination on behalf of women’s rights, as well as the activation of the gender units in ministries and secretariats, which are to advise the Executive when it comes to formulating gender policies.

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That notwithstanding, OHCHR-Guatemala expressed its concern at the delays in providing funding for the Centers for Comprehensive Support of Women Survivors of Violence (CAIMUS), the nonexistence of a breakdown of the data on violence against women with respect to indigenous and Afro-descendant women victims, and the high level of impunity (reportedly 93% of cases) for offenses covered by the Law against Sexual Violence, Exploitation, and Trafficking in Persons. In particular, the Report underscored the effectiveness (in terms of the number of judgments handed down) of the courts specializing in assassination of women and other forms of violence against women, because 427 of the 556 judgments handed down in such cases were issued by those specialized courts. In its 2015 report, OHCHR-Guatemala stated that it had conducted a review of the judgments of specialized courts in cases of femicide and other forms of violence against women and found that there was a significant difference in enforcement of the law between specialized and ordinary courts. Women in rural areas do not benefit from such protection and reparation, since they lack access to the specialized courts. Some of the deficiencies found in the approach to violence against women in ordinary courts include application of the criterion providing for a chance to refrain from bringing criminal suit; changes in the definitions of offenses; failure to analyze other kinds of discrimination, including ethnic origin and age; and gender stereotypes in the rationale given for some decisions. On this, the Report stressed that, in its judgment in the María Isabel Veliz Franco v. Guatemala case, the Inter-American Court of Human Rights established that gender stereotypes had had a negative impact on the investigation by shifting the blame for what happened on to the victim and her family members, thereby precluding other possible lines of investigation.

With regard to the initiatives adopted to tackle insecurity in Guatemala, the State indicated the following specific measures to protect women: the National Policy for the Integral Promotion of Women (Política Nacional para la Promoción Integral de la Mujer—PNPDIM); Program for the Prevention and Elimination of Domestic Violence (Programa de Prevención y Erradicación de la Violencia Intrafamiliar—PROPEVI); the Equal Opportunity Plan for 2008-2023; the Integral Training Plan of the Office for the Defense of Indigenous Women; Implementation of Municipal Agreements with Equity in four departments, through municipal offices for women; the Institutional Strategy Plan for Gender and Ethnic Groups, for the exercise of human rights by indigenous women for 2011-2015; in addition to the activities undertaken by the Prosecution Service for Women of the Public Prosecution Service; the Institute for Public Criminal
Defense (Instituto de la Defensa Pública Penal—IDPP); the Sexual Crimes Unit of the Division Specializing in Investigation of the National Civilian Police Force; and the participation in regional efforts such as the Regional Project for the Prevention of Violence against Women, Trafficking, and Femicides.

246. The State reports on the attachment of this program to the Presidency's Secretariat for Women (Secretaría Presidencia de la Mujer—SEPREM), which was able, between 2012 and 2014, to rescue 320 victims of domestic violence, including women, children, and adolescents; to provide legal and psychological assistance and social orientation to 6,385 victims and assailants; to provide training in the prevention of domestic violence to 453 fathers, mothers, and community leaders and to 2,744 civil servants; to carry out family education and reinsertion programs attended by 89 persons deprived of their liberty for domestic violence and against women, among other achievements. Also, the Institute of Public Defense (in Spanish IDPP) reports having responded to 15,236 cases of violence against women, human trafficking, and femicide in 2012; 19,563 cases in 2013; and 11,878 cases up to July 2014.

247. As regards indigenous women, the United Nations Deputy High Commissioner for Human Rights, Flavia Pansieri, met in 2014 with indigenous women victims of sexual violence during the internal armed conflict and reiterated to the State that it was obliged to guarantee to victims of serious human rights violation during the internal armed conflict the rights to the truth, justice, reparation, and measures to preclude a repetition of those violations. She also emphasized the need to strengthen traditional mechanisms for dialogue and for indigenous women's participation in community decision-making.

248. On this issue, it is important to consider that in 2014 the IACHR submitted to the Inter-American Court three cases relating to women's rights: denial of health care to a woman (María Inés Chinchilla et al.); acts of sexual violence committed against indigenous women during the armed conflict (Members of the Chichupac).
settlement and neighboring communities in the Municipality of Rabinal424, and acts of extreme violence, including the murder of a woman (Claudina Isabel VelásquezPaiz) 425.

c. Children and adolescents

249. Almost half the population of Guatemala—6.7 million people—is comprised of children and adolescents under the age of 18.426 According to the State census, 41%, that is to say, approximately 2.7 million are indigenous members of the Maya, Xinka, and Garífuna peoples.427 The situation of the children and adolescents of Guatemala has been a matter of constant concern for the IACHR. There are numerous factors still affecting this especially vulnerable group. The long periods of internal armed conflict (1960 to 1996) affected and did grave harm to Guatemalan children. On this, in its “Memory of Silence” report, the Commission for Historical Clarification ascertained

"with special concern that large numbers of children were among the direct victims of arbitrary executions, forced disappearances, torture, and rape, as well as other violations of fundamental rights. In addition, the armed conflict left huge numbers of children orphans and bereft of any help, especially in the Maya population, who experienced the rupture of their family ties and were unable to experience the kind of childhood that their culture traditionally nurtured."428

250. Children and adolescents continued to have their human rights severely violated by the social and economic situation; domestic violence; collective violence (crime, organized crime, gangs or "maras") and by the State’s failure to comply with its duty to afford them special protection. Such factors have a grave impact on, for instance, violence and impunity; migration; trafficking;429 the right to nutrition; child labor; children in institutions; adoptions; adolescent pregnancies; the juvenile justice system, and other areas.

251. Children and adolescents are both direct and indirect victims of violence. According to UNICEF, on average 46 children—mostly adolescents—are murdered every month, most of them shot. In 2008-2009, 53,764 crimes were committed against children under 17 years of age, the most common offenses being murder, rape, bodily harm, disappearances, kidnapping, robbery, corruption

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424 IACHR, Press release 100/14 - IACHR Takes Case Involving Guatemala to the Inter-American Court of Human Rights, September 17, 2014.
425 IACHR, Press release 29/14 - IACHR Takes Case Involving Guatemala to the Inter-American Court of Human Rights, April 1, 2014.
428 CEH, Memory of Silence, Volume V, Conclusiones y Recomendaciones [Conclusions and Recommendations], p 28.
429 A topic that will be addressed in the Chapter on migrants.
of minors, and sexual assault.\textsuperscript{430} UNICEF informed that convictions were handed down for 24\% of crimes against children and adolescent; for 2010, the figure was just 4\%.\textsuperscript{431}

252. The death of Keneth López, a four-year-old boy who was kidnapped in December 2009 and then murdered triggered a campaign headed by UNICEF and the Survivors Foundation to adopt the Alba-Keneth Warning System, a national law in honor of Keneth and a girl called Alba España, who was also kidnapped and murdered. The Warning System seeks to prompt the search, finding, and immediate rescue of children and adolescents who are abducted or disappeared, through coordinated responses by a number of governmental, justice system, and border patrol institutions, working together with grass-roots groups. The Law requires the authorities to undertake an immediate search as soon as the disappearance of a child is reported. In Keneth's case, the PNC began looking for him 72 hours after his disappearance was reported. According to UNICEF "Murders such as those of Alba and Keneth still occur, but less frequently than before the law was passed." "For that reason, we have put pressure on the authorities to start searching immediately after a disappearance has been reported, because had that law been in effect when Keneth was kidnapped, maybe he would still be alive."\textsuperscript{432}

253. According to public information put out by the Attorney General's office, between June 18, 2012 and August 6, 2015, the Alba-Keneth Warning System was activated 4,720 times.\textsuperscript{433} Notably, between January and April 2015, nearly 1,800 warning alarms were activated in respect of disappeared children. Of those, 1,046 cases were resolved, meaning that 786 are still active cases of children who presumably have still not reappeared.\textsuperscript{434} Regarding specific public policies to protect children and adolescents, the State, in its response of October 6, 2015, points out the following: National Youth Policy updated for 2012-2010; Policy for the Integral Protection of Children and Young People for 2004-2015; and Policy for Integral Development of Early Childhood for 2011.\textsuperscript{435}

254. With deep concern, the IACHR has received information appearing to indicate that gangs and organized criminal groups have been victimizing ever younger children by making them participate in their activities. According to reports in several media, some groups recruit children from age 11 and, in some cases, even 6-year-olds, to be used in criminal activities ranging from transporting drugs and

\textsuperscript{430} UNICEF-Guatemala. Violence and Impunity.


\textsuperscript{433} Government of Guatemala. Alerta Alba-Kenneth.

\textsuperscript{434} La Hora, Más de 1 mil 800 alertas Alba-Kenneth/, May 5, 2015.

weapons to murder, the latter often as part of a ritual marking their affiliation to the gang.\footnote{Agence France-Presse, Guatemalan gangs recruiting kids as young as 6 years old (Pandillas Guatemaltecas Reclutando Niños tan joven como de 6 años de edad), October 2, 2013; Teletica, Violentas pandillas reclutan a niños de hasta seis años en Guatemala, October 2, 2013.}

255. The murder of 12-year-old Ángel Ariel Escalante Pérez is a ferocious example of the impact of gangs and organized crime on Guatemala’s children. Reportedly, he was kidnapped by gang members and, when he refused to kill a bus driver, he was thrown off the 125-meter-high Belice bridge. The child suffered multiple fractures and died 20 days later, on July 4, 2015. Before dying, he said:

"Some men abducted me at midday on Tuesday. They took me to a house; I think it was in the Paraíso district in Zone 18. On Wednesday, they handed me a pistol to go and shoot a bus driver, but I refused. They got angry with me and told me they were going to kill me. They even asked me if I preferred to be quartered or thrown off the Belice bridge. I said the latter was the better of the two; they took me and threw me off the bridge."\footnote{Siglo21.com.gt, Vive tras ser lanzado desde puente Belice, June 19, 2015.}

\section{i. The right to food: Chronic malnutrition}


257. According to UNICEF, four out of every 10 (43.4\%) of boys and girls under the age of five in Guatemala suffer from chronic malnutrition (on a height-to-age ratio). Among indigenous children, the chronic malnutrition percentage increases to 80\%, since eight out of every 10 are affected.\footnote{UNICEF-Guatemala, Malnutrition.} Guatemala has the sixth highest rate of malnutrition in the world. The Food and Agriculture Organization of the United Nations (FAO) points out that chronic malnutrition is fairly severe in El Salvador, Honduras, and Nicaragua and very severe in Guatemala, where almost half all children suffer from stunted growth.\footnote{FAO, Panorama of Food and Nutrition Security in Central America and Dominican Republic, 2014, p. 6.}

258. Chronic malnutrition causes lower school retention rates, lower productivity, a propensity to contract diseases, and even a loss of I.Q., with irreversible effects throughout life.\footnote{UNICEF-Guatemala, Malnutrition.} A report by the World Food Programme (WFP) points out that:
"child malnutrition in the first years of life is irreversible and has consequences for both the child's development and health in adult years, including a higher risk of contracting chronic diseases. Areas in which hunger is rampant reflect profound inequalities, with stunted growth rates among indigenous children of over 70%, while the rate in poor rural areas is four times that of urban areas.\textsuperscript{442}

259. According to data published by the Economic Commission for Latin America and the Caribbean (ECLAC), the United Nations Children's Fund (UNICEF), and the World Food Programme (WFP),

"the groups most vulnerable to hunger and malnutrition are the poor living in rural areas, indigenous people and persons of African descent, and those with a low level of education and scant access to drinking water and sewer systems. Moreover, given that malnutrition negatively impacts health, education, and productivity, it becomes one of the main mechanisms for transmitting poverty and inequality from one generation to another."\textsuperscript{443}

260. In January 2015, the Government of Guatemala presented the National Food and Nutrition Security Information System (Siinsan), which will measure progress achieved under the Zero Hunger Pact, a social program created in 2012 to reduce child malnutrition in Guatemala.\textsuperscript{444} The IACHR has taken note of progress made toward eliminating this scourge by implementing food plans and programs. It was said during the ex President Pérez Molina administration that "thanks to the timely interventions of the anti-hunger strategy, the lives of 99% of the 16,000 children under the age of 5 diagnosed with severe malnutrition last year (2013) were saved."\textsuperscript{445} In addition, according to the Government another 800,000 children under the age of five were reportedly treated, bringing the mortality rate among severely undernourished children from 2.2 to 0.68 per 100,000 children.\textsuperscript{446}

261. According to the 2014 Global Hunger Index, malnutrition declined from 17.0 in 2005 to 15.6 in 2014, and declined further (to 13.0) in respect of children aged 0 to

\textsuperscript{442} World Food Programme (WFP) Eradication of child malnutrition. Joint IDB-WFP Regional Programme, Towards the Eradication of Child Malnutrition in Central America and the Dominican Republic.

\textsuperscript{443} United Nations, Centro de Noticias, Desnutrición infantil afecta a 8,8 millones de niños en América Latina, April 28, 2006.

\textsuperscript{444} The objectives of the Zero Hunger Pact program are: To combat hunger and promote food and nutrition security in the 166 municipalities on the priority list; To reduce by 10% the prevalence of chronic malnutrition among children under 3; To prevent and reduce mortality in children under 5 years of age related to severe malnutrition; and to prevent and address the food and nutrition emergency. Ministry of Education of Guatemala.

\textsuperscript{445} Reliefweb, El sueño de una Guatemala sin hambre sigue siendo mi compromiso, afirma el Presidente”, January 14, 2014.

\textsuperscript{446} Reliefweb, El sueño de una Guatemala sin hambre sigue siendo mi compromiso, afirma el Presidente”, January 14, 2014. In the observations made by the State of Guatemala on the “Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015,” of October 6, 2015, it contended that despite the "rise in the recording of cases of acute malnutrition, [with] the implementation of the Zero Hunger Pact, it had been possible to reduce the cases of mortality due to acute malnutritions from 2.20% in 2011 to 0.68% by 2013. Regarding the nutritional status from 2012 to 2013, the degree of chronic malnutrition in the population under five years of age, pregnant women, and breast-feeding infants fell 1.7%.”
5 years of age with chronic malnutrition. Thus UNICEF has welcomed the implementation of State plans to expedite the reduction of malnutrition, underscoring the urgent need to prioritize them.

Nevertheless, the overall situation in Guatemala has deteriorated significantly due to the shortage of rain in the region in recent years, which has hurt agriculture, livestock rearing and other income-earning activities and left 236,000 families in Guatemala suffering from food insecurity. According to estimates by the Food and Nutrition Security Secretariat, the above-mentioned climate change that has impacted 70% of the country has hit the population living below the poverty line hardest, particularly children and adolescents, and has resulted in malnutrition, health problems, child labor, school dropout rates, and chronic malnutrition among children of 0 to 5 years of age. Indigenous children and adolescents are the hardest hit by poverty and lack of food, and have the highest levels of malnutrition. Furthermore, multiple and serious health issues related to insufficient food have been identified, including stunted growth, fatigue, weakened immune systems, and so on.

In 2015, the IACHR received information indicating that there had not been satisfactory compliance with the measures ordered in 2013 by the Court for Juveniles and Juvenile Criminal Offenders of the Department of Zacapa, in five judgments that held the State "responsible by omission for the violation of the human rights to food, life, health, education, housing, and work." The five complaints filed on November 17, 2011 by a coalition of nongovernmental organizations against the State of Guatemala, were based on medical, psychological, nutritional, socioeconomic, and anthropological examinations of three girls and three boys belonging to families living in the communities of Lela Chancó and Cañón Tisipe of the municipality of Chiquimula. The complaints alleged the violation of the human right to food and the State’s omission for not having adopted the measures needed to ensure enforcement of the human right to

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447 State Secretariat for Food and Nutrition Security (SESAN), Guatemala reduce desnutrición según índice global del hambre elaborado por IFPRI, October 14, 2014.
448 UNICEF, Press release, Hay que acelerar el progreso para los niños y niñas de Guatemala o se corre el riesgo de perder una generación, March 22, 2013.
449 OXFAM, Alerta del impacto de la prolongada sequía sobre más de dos millones de centroamericanos, August 28, 2014.
450 World Bank, Record Drought: Four countries, 40 days without rain, two million facing hunger, September 10, 2014.
451 UNICEF Annual Report 2013–Guatemala; See also the publication by Humanium, Los niños de Guatemala. La implementación de los derechos infantiles en Guatemala. Oxfam publication, Guatemala
According to the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), the prevalence of malnutrition in the region is not fortuitous, but rather the reflection of huge income inequality and of the scant importance attached to food and nutrition on the countries’ political agenda. In UNICEF’s opinion, malnutrition is a vicious circle: undernourished women give birth to underweight babies, thereby increasing the possibilities of malnutrition in the following generations. By impairing a child’s intellectual and cognitive capacity, malnutrition lowers school performance and the ability to acquire skills throughout life. It therefore limits the ability to become an adult able to contribute, through his/her life and profession, to the advancement of her/his community and country. When malnutrition is perpetuated from one generation to another, it becomes a serious obstacle to development and sustainability.

ii. Migration: assaults, sexual violence, and return

Violence, impunity, and threats to join gangs and take part in acts of violence and criminal activities, along with the lack of effective protection by the national authorities, are all factors prompting migration to countries regarded as being safer, among them the United States, in order to safeguard one’s personal integrity. The IACHR has heard testimony from Guatemalan children in migration stations in Mexico and the United States, who report having undergone multiple assaults during their journey, not only by gangs but also by State police authorities. The IACHR has also received worrying information regarding the sexual violence to which girls and female adolescents are subjected during their journey. The Commission was also told of the failure by Guatemalan consulates to respond and assist in a timely manner, especially in Mexico, which increases the length of time that unaccompanied minors are detained, given that they cannot be returned without information concerning their family in Guatemala.

According to information published by the General Directorate of Migration, 313 cases of deportation of children from the United States were reported in 2013 (along with 2,532 from Mexico). Statistics for 2014 show that, through June of that year, 67 children and adolescents were deported by air from the United States and 1,394 were deported overland from Mexico. As for the State, it reported that, on July 8, 2014, it launched the Campaign for the Prevention of Migrant Children and

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457 Secretariat of Social Communication Gobierno brinda atención a niños migrantes no acompañados, June 8, 2014.
Adolescents called Stay Here! (¡Quédate!). And that same year, the Program for Unaccompanied Migrant Children and Adolescents was created.\footnote{458}

267. The Commission reiterates its concern that the lack of an effective system for promoting rights fosters the vicious circle of violence in the country, when children face the same situations that prompted them to emigrate, combined with the traumatic experiences that most of them experienced during their journey. For their part, the gangs have a well-organized system for welcoming and recruiting those deported children.

iii. Child labor

268. According to UNICEF, in Guatemala child labor\footnote{459} makes registered from 2002 to 2012 is approximately up to 25.8\% of the labor force.\footnote{460} For its part, the Ombudsperson’s Office reckons that nearly 850,000 children are engaged in some kind of economic activity.\footnote{461} Most (58.8\%) of the child workers are Maya: "three out of every 10 indigenous children work, compared to 1.5 for every 10 non-indigenous children."\footnote{462} In June 2015, the Vice-Minister of Labor indicated that "children who are prematurely forced to enter the labor market are deprived of their right to education and recreation, because of the vicious circle of poverty they are trapped in."\footnote{463} Thus, she explained that 67\% of exploited minors are in rural areas of the country, working in agriculture, cattle-raising, making fireworks, or as domestic servants or sex workers.\footnote{464} Of all the countries in the region, Guatemala has the largest number and greatest share of people under the age of 18 participating in the economy. It is also estimated that 20\% of GDP is produced by children under the age of 14.\footnote{465}

269. Associated with this state of affairs are a series of challenges in the educational sphere. 28 percent of the population aged 4 to 17 is not enrolled in the educational system. The lack of access to school is particularly worrisome with respect to

\footnote{459} The term "child labor" is usually defined as any work that deprives children of their childhood, potential, and dignity, and that is detrimental for their physical and psychological development. Thus the term refers to work that is dangerous or detrimental to the physical, mental or moral wellbeing of the child; interferes with their schooling because it deprives them of the possibility of attending classes; forces them to drop out of school prematurely, or requires them to combine their studies with work that is both burdensome and time-consuming. In the most extreme forms of child labor, children are subjected to slave-like conditions, separated from their family, exposed to serious dangers and or diseases; and/or left to their own devices on the streets of big cities (often at a very tender age). ILO, What is child labour.
\footnote{460} UNICEF-Guatemala. Statistics.
\footnote{461} La Hora, PDH 850 mil niños trabajan en el país, June 12. 2015.
\footnote{462} La Hora, PDH 850 mil niños trabajan en el país, 12 de junio de 2015.
\footnote{463} La Hora, PDH 850 mil niños trabajan en el país, 12 de junio de 2015.
\footnote{464} La Hora, PDH 850 mil niños trabajan en el país, June 12. 2015.
\footnote{465} Publinews, Preocupa que el trabajo infantil siga en aumento en Guatemala, June 11, 2013.
indigenous children and adolescents, who on average attend school for only 3.7 years, far less than the average 6.5 years for non-indigenous children.  

A large percentage of children and adolescents below the minimum age for employment are still being forced to perform child labor, mainly due to poverty-related causes, as ascertained by the ILO in its 2013 Global Report on Child Labour. Moreover, it has also been noted that 65.6% of child workers come from rural communities and the poorest segments of the population. The most frequent working activities for children involve mostly work in the farming, livestock, hunting, forestry, and fishing sectors (60.2%); commerce, hotels, and restaurants (19.7%); manufacturing industries (9.5%); and community, social, and personal services (4.5%). There are also records of children working in hazardous sectors such as mines and quarries (3.9%), as well as in transportation (1.5%) and construction (1.3%). National and international organizations, and the State itself, are especially worried by the finding that children and adolescents are being exploited for dangerous jobs and in other at-risk situations, which violates their rights to education and health. The State informs that the Secretariat against Sexual Violence, Exploitation and Human Trafficking (Secretaría contra la Violencia Sexual, Explotación y Trata de Personas—SVET) installed, implemented, and coordinated the National Forum against Child Labor Exploitation, which is an initiative that brings together the establishment of the National Commission for the Prevention and Elimination of Child Labor and Protection for Working Adolescents (Comisión Nacional para la Prevención y Erradicación del Trabajo Infantil y Protección a la Adolescencia Trabajadora—CONAPETI) in 2002 and the 12 Departmental Committees for the Prevention and Elimination of Child Labor and Protection for Working Adolescents (Comités Departamentales para la Prevención y Erradicación del Trabajo Infantil y Protección a la Adolescencia Trabajadora—CODEPETI) in whose framework plans to prevent and eliminate child labor and protect working adolescents are discussed, designed, implemented, and supported. The IACHR voices the pressing need to continue working to build up measures to respond to and eliminate child labor.


La Vía Campesina, Trabajo, trabajo y más trabajo para los niños y niñas, June 12, 2014.


As reported by the State, the CODEPETI are located in Chiquimula, Huehuetenango, Jalapa, Jutiapa, Retalhuleu, Sacatepéquez, San Marcos, Sololá, Totonicapán, Zacapa, Quiché, and Quetzaltenango. Observations by the State of Guatemala on the “Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015,” October 6, 2015, p. 95.
iv. Children in institutions

271. UNICEF established that, in 2013, there were 5,474 children, including adolescents, in institutions in Guatemala as measure of protection: 1,925 in public institutions and 3,549 in private establishments. Although lower than the figures for 2011, the number of children in institutions remains very high, a situation exacerbated by the fact that only 35% of institutionalized children are under proper judicial protection.\textsuperscript{473} The main reasons detected for children to become separated from their families in Guatemala include domestic conflicts, domestic violence, sexual abuse within the family circle, neglect, addictions to narcotic drugs, and other—poverty related—causes. Moreover, it is especially alarming that because of the violence and high homicide rates in Guatemala, some 40 boys and girls are orphaned every day.\textsuperscript{474} In particular, UNICEF has noted that in 2013 there were 5,558 cases of emergency warnings of disappeared children and 3,096 reported cases of domestic violence against children. The Commission observes with concern the high rates of mistreatment and violence inside institutions, the absence of ties with family members, as well as the lack of parallel opportunities for family members to help with looking after children who need alternative care and the delays in judicial proceedings aimed at finding definitive solutions in life for these children.

272. The violence in institutions is generally the result of a set of factors related to the way they operate, such as the precarious state of the facilities in terms of health and safety, overcrowding, the lack of staff trained to work with children, social isolation, the use of disciplinary and oversight methods that include the use of violence or unnecessary psychiatric medication, the practice of some forms of treatment that themselves constitute a form of violence, and other practices.\textsuperscript{475}

v. Illegal adoptions

273. Another issue impacting children in Guatemala is illegal adoption. The combination of armed conflict\textsuperscript{476} and external demand brought as a consequence that international adoptions grew exponentially, mainly due to lack of government oversight, corruption, and permissive legislation. Just to give an idea of the dimension of the problem: between 2000 and 2007, more than 20,000 children left Guatemala without even minimum procedures for overseeing their fate.\textsuperscript{477}


\textsuperscript{474} UNODC, Homicide Statistics, 2013.


\textsuperscript{476} During the internal armed conflict, the Guatemalan armed forces played a major role in adoptions. CICIG, Report on Players Involved in the Illegal Adoption Process in Guatemala.

\textsuperscript{477} CICIG, Report on Players Involved in the Illegal Adoption Process in Guatemala, p. 20, December 1, 2010.
Guatemala was one of the major "child-exporting" countries. The CICIG, an agency with ties to the United Nations, points out that child adoptions got caught up in human trafficking networks, comprised of "recruiters" (enganchadoras) who took or "bought" children from their biological mothers, or in other cases threatened, coerced and deceived mothers in order to garner children for adoption.

The statistics reveal that only 10% of notarial proceedings refer to abandoned children, even though, in 2007, there were 5,600 children assigned by juvenile court judges to foster care due to abandonment or who were under protection measures due to maltreatment of child abuse. That same year, 5,110 young children meeting demand criteria were handed over for adoption. Most of the institutionalized children (5,295) remained in institutions in 2010, supporting the conclusion that the children handed over for adoption were not necessarily abandoned or needing adoption.

On December 11, 2007, the Guatemalan Congress passed the Adoption Law (Decree 77-2007), which contemplated a follow-up mechanism to check on how the system was working and thereby guarantee the circumstances, safety, and integrity of adopted children. Three years later, the implementing regulations for the Adoption Law were put in place by Government Decision 182-2010. The new legal regime was an advance in that it incorporated international standards for international adoptions and gave preference to adoption by families residing in Guatemala. It also established procedures supervised by a specialized juvenile court judge and the National Council for Adoptions (CNA), the main authority for adoption cases. During the transition to the new law, CICIG found that 60% of the adoption cases processed during that period exhibited some kind of irregularity, and yet in more than 90% of cases they were allowed to proceed.

Between 2008 and 2015, the CNA reported having conducted 708 adoption procedures, all of them adoptions within Guatemala. Despite the regulations and substantial reduction in the number of irregular proceedings, according to the CICIG:

"everything suggests that, until effective protection is assured and guaranteed by investigations and judicial oversight of the situation of children up for adoption, the networks, groups, and criminal arrangements formed in connection with trafficking in persons to carry out illicit adoptions will seek new loopholes in order to continue their activities, given that the financial incentives remain."

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478 Revista Contralínea, Guatemala paraíso de tráfico de niños, March 2006.
482 Siglo 21, Por ahora no hay adopción internacional, June 7, 2015.
483 CICIG, Report on Players Involved in the Illegal Adoption Process in Guatemala, p. 84.
vi. Teenage pregnancies

276. The Commission notes with concern that in 2013 some 2,850 girls and adolescents between the ages of 10 and 14 became pregnant. Teenage pregnancies are associated with multiple impairments of girls' and adolescents' rights and are highly risky for the health of both the mother and her unborn child. In addition, all such pregnancies are presumably the result of sexual abuse. In 2013, 2,609 cases of sexual violence were reported, and more than 80% of cases abuse of girls and female adolescents is allegedly committed by family members.484 And yet, as UNICEF observed, impunity is still the norm with these grave cases of rape.

277. In view of this highly alarming scenario, the State reported the adoption of various measures aimed at tackling the problem of teenage pregnancies, as follows: 1) National Plan for the Prevention of Pregnancy among Adolescents and Young People of Guatemala for 2013-2017, whose implementation started in 5 departments and 16 municipalities, in the hopes of "reducing to 5% teenage pregnancies, raising awareness about increasing the age of first pregnancy, providing access to comprehensive instruction about sexuality, disseminating family planning methods, fostering the relevance of sexual education in secondary education and among adolescents;" 2) Roadmap to Addressing Services for Children under 14 years of age (September 26, 2012), which defines the cooperation parameters between the Ministry of Public Health and Social Welfare, the Ministry of Education, the Ministry of Social Development, and the Secretariat against Sexual Violence, Exploitation, and Human Trafficking for the purpose of implementing actions and a roadmap for services aimed at preventing pregnancies and helping pregnant adolescents, reaching out, as of 2012, to 2,500 pregnant adolescents; 3) the Consolidated File to identify cases of pregnant teenagers under 14 years of age taken care of in hospitals, a tool that makes it possible to compile information about pregnant girls or adolescents; 4) the campaign "Protect me from pregnancy" (Protégeme del embarazo) that was launched in 2013,485 aimed at raising the awareness of families, educators, and civil society in general about the legal consequences of pregnancy for girls under 14 years of age; 5) the Ministry of Public Health has implemented the Handbook for Addressing Sexual and Reproductive Health; Guide for the Implementation of Adolescent-Friendly Spaces; Guide on Contraceptives for Adolescents; Circle of Pregnant Adolescents; and it "has trained 180 health providers in a strategy for integral and differentiated services and integral education in sexuality, 148 local operating plans for integral services aimed at adolescents and young people, monitoring and evaluation plan for the implementation of the integral education in sexuality strategy, dildos


supplied to each one of the health districts to teach the adequate use of a condom.”\textsuperscript{486}

d. **Journalists and freedom of expression**

278. The Commission and its Special Rapporteurship for Freedom of Expression have paid close attention to the status of freedom of expression in Guatemala\textsuperscript{487}, because the right to freedom of expression is essential for democracy to develop and become stronger, as well as for the full exercise of human rights. Respect for the exercise of freedom of expression is a priority on the Commission’s agenda when it reviews the human rights situation in any member state of the Organization of American States. Freedom of expression consolidates other fundamental freedoms by facilitating citizen participation in decision-making processes, by serving as a tool to attain a more tolerant and stable society, and by dignifying human beings through the exchange of ideas, opinions and information. In addition to contributing to the protection of other fundamental rights, freedom of expression plays an essential role in the control of public administration, by exposing abuses of power and infractions of the law committed to the detriment of the citizenry. The Inter-American Court has consistently emphasized the importance of this right, stating:

“Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a \textit{condition sine qua non} for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, one can assert that a society that is not well informed is not entirely free.”\textsuperscript{488}

279. As regards violence against journalists and others because of their exercising freedom of expression, the Special Rapporteurship has underscored, based on inter-American doctrine and case history, the importance of three positive obligations emanating from the rights to life, personal integrity, and freedom of expression: that is to say, the obligation to prevent, the obligation to protect, and the obligation to investigate, try and punish according to criminal law the perpetrators of those crimes. As the Special Rapporteurship has pointed out, these obligations complement one another: for there to be free, robust, and unfettered democratic debate, violence against journalists has to be fought through a comprehensive policy of prevention, protection, and prosecution.\textsuperscript{489}


\textsuperscript{487} Monitoring through visits, annual and country reports, the cases system, and precautionary measures.

\textsuperscript{488} I/A Court H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85, November 13, 1985, para. 70.

\textsuperscript{489} IACHR, Special Rapporteurship for Freedom of Expression, “Violence against Journalists and Media Workers: International Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators,”
280. Article 35 of the 1985 Political Constitution of the Republic of Guatemala, as amended in 1993, establishes that "The expression of thought through any mass medium without censorship or prior permission is free [...]" (Tr.: http://www.right2info.org/resources/publications/laws-1/guatemala.constitution_eng) Despite the text of the Constitution, during its many years of monitoring the human rights situation in Guatemala, the Commission has constantly received information to the effect that the full exercise of that right has been obstructed by acts of intimidation against independent media and journalists. The Commission notes with particular concern the attacks against social communicators covering investigations into public administration, acts of corruption, and human rights violations.

281. In the hearing on the "Situation of Human Rights Defenders in Guatemala," held on October 28, 2014, the Commission received information about the increase in alleged detentions and acts of violence against journalists and social communicators in Guatemala and the impunity associated with those crimes. It also heard of alleged spying and cyber-attacks against media and of lawsuits filed as reprisal against critically-minded journalists in Guatemala; about alleged problems with devising and implementing a protection mechanism for journalists; and about the activities of the Unit for Investigation Crimes against Journalists (Unidad Fiscal de Delitos Contra Periodistas). In that regard, the organizations requesting the Hearing reported that, based on official figures, through August 2014, the aforementioned Unit had opened 44 cases to investigate assaults on 89 journalists (including 19 women). Sixty of the perpetrators are said to be government officials and 37 private individuals. For its part, the State said it respected journalists and that it was untrue that acts of violence against defenders had increased in Guatemala. It also reported that it had set up mechanisms and institutions to protect human rights defenders and journalists and that it had provided protection to a number of at-risk individuals.490

i. Murders of journalists and reporters

282. Thus far in 2015, two journalists and one reporter have been murdered in Guatemala. Reporter Guido Villatoro was murdered on March 13, 2015 in the municipality of Chicacao, department in Suchitepéquez. According to the information received, 20-year-old Villatoro was gunned down outside the television company for Servicable subscribers, where he worked as a cameraman. He was taken to a hospital, where he died.491

283. On March 10, 2015, journalists Danilo López and Federico Salazar were murdered in the municipality of Mazatenango, in the department of Suchitepéquez. According to information received, the journalists were covering an official event in the

central square in Suchitepéquez, opposite the departmental government building and barely a few yards away from a police station, when they were gunned down allegedly by two men who then escaped. Reportedly another journalist—Marvin Túnchez—was wounded in the attack and taken to hospital. Danilo López worked at the daily newspaper *Prensa Libre* and had reportedly been threatened previously by a former mayor due to articles he had written on improper practices by government officials. He had reported those threats to the authorities. Federico Salazar worked at Radio Nuevo Mundo and was not known to have received any threats. Both were part of the recently established Press Association of Suchitepéquez, where they were Vice Chair and Secretary, respectively.

284. Journalist Danilo López had given an interview on February 20, 2014, in which he said he feared for the possible consequences of his investigations. He had reported on operations by organized criminal groups, police corruption, and drug trafficking.

"My name is Danilo López. I work for Prensa Libre in Guatemala. I am a correspondent for the department of Suchitepéquez.

Working as a journalist in Mazatenango is quite tough. We journalists are vulnerable, particularly due to the criminal activities that can be seen every day in the department. Unlike journalists working in cities, we have no security.

In some cases, there have been attacks in reprisal for reporting denunciations of corruption. Suchitepéquez is a department riddled with corruption.

I had to greet this mayor and say: Pleased to meet you. Good morning. As he shook my hand, he tells me that he is in power and can do anything he wants against me.

In Guatemala, that is normal. You find bodies tied hands and feet, with tourniquets; headless, with their mouths stuffed, hanging from bridges or trees. Such things happen in Mazatenango, too."

285. At the same time, the IACHR appreciates the fact that, thanks to a decision by the judges of the Criminal Division of the Supreme Court of Justice (CSJ), the case involving the murder of journalists Danilo López and Federico Salazar is being heard by the High-Risk B Court. The Public Prosecution Service had requested that the case be referred to the Capital, because the District Prosecutor's Office in Suchitepéquez had received a phone call "warning the prosecutors not to investigate, because if investigations continued they would kill more journalists in Suchitepéquez." In June 2015, the security forces captured two PNC officers and a third individual implicated in the murder of journalists Danilo López and

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494 The full interview with correspondent Danilo López can be heard at Danilo López: "Mi nombre es Danilo López," March 14, 2005.
495 *Prensa Libre, Juzgado de mayor riesgo conocerá crímenes contra periodistas*, April 8, 2015.
Federico Salazar. The PNC officers captured—León Cabrera Solís and Luis Emerio Juárez Pichiya—were members of the unit responsible for protecting VIPs. The investigation is being led by the Unit for Crimes against Journalists of the Ombudsperson’s Office (*Fiscalía de Derechos Humanos*)\textsuperscript{496}.

286. On the day of the attack, the police captured Sergio Valdemar Cardona Reyes and, two days later, Artemio de Jesús Ramírez Torres, charged with being the person who fired the shots at the journalists.\textsuperscript{497} All the detainees were brought to trial.\textsuperscript{498}

287. The IACHR also appreciates the fact that a man charged with participating in the murder of two journalists in the department of Jutiapa in 2013 had been captured and brought to trial. According to the information received by the Commission, on June 30, 2014, the PNC allegedly captured Byron Amílcar Vásquez following a warrant for his arrest by the Criminal Court in Guatemala City. Amílcar Vásquez reportedly is a member of a gang of hired assassins charged with having participated, inter alia,\textsuperscript{499} in the murder of Jaime Napoleón Duarte, a correspondent for *Nuestro Diario*, on March 20, 2013 in the city of Pedro de Alvarado, and in the murder, on April 7, 2013, of Luis Alberto Lemus Ruano, a former governor of Jutiapa, director of *Radio Stereo Café*, owner of the *Café TV* cable channel, and Vice President of the Jutiapa Journalists’ Association.\textsuperscript{500}

ii. Threats, detention, harassment, and assaults on journalists and media outlets

288. Dozens of journalists and media outlets were subjected to attacks, threats, and harassment of various kinds in a context of elections and political turmoil. Given the difficulties surrounding their work, some journalists are said to have opted in the past year for self-censorship to protect themselves from attacks and threats.\textsuperscript{501} The State Attorney’s Office for Crimes against Journalists received 81 complaints

\textsuperscript{496} *Prensa Libre*, *Capturan a dos agentes de PNC y un civil implicados en crimen contra periodistas*, June 26, 2015.

\textsuperscript{497} *Prensa Libre*, *Juzgado de mayor riesgo conocerá crímenes contra periodistas*, April 8, 2015.

\textsuperscript{498} *Prensa Libre*, *Ligan a proceso detenidos por muerte de periodistas*, July 1, 2015.

\textsuperscript{499} Office of the Director General of the National Civil Police. *Capturado por muerte de periodista y exgobernador de Jutiapa*, July 1, 2014.


between January and August 2015, more than in any of the previous three years.\footnote{Sistema de Protección al Ejercicio Periodístico en Guatemala [System for Protecting the Practice of Journalism in Guatemala]. August 2015 Avances en la propuesta [Progress made with the proposal]. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Cerigua. August 2015 Avance del Informe sobre la situación de la libertad de expresión y de prensa [Progress with the report on the situation of freedom of expression and the press]. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.}

Following are some of the more egregious cases.

289. Journalist Gustavo Berganza reported in January about a series of attacks that other colleagues and media outlets had been subjected to. "Orchestrated attacks continue against Juan Luis Font and Pedro Trujillo, precisely because of their criticism of Manuel Baldizón", said Berganza\footnote{Soy 502 (via YouTube). January 17, 2015. Entrevista Gustavo Berganza.}. Baldizón was the presidential candidate of the Partido Libertad Democrática Renovada (Lider). Font directs the magazine \textit{Contrapoder} and \textit{Canal Antigua}, both owned by the former Minister of Energy and Mines, Erick Archila. Font and his colleague Pedro Trujillo were singled out by media allegedly linked to Lider, such as \textit{La Nación}, \textit{Es Primicia}, and \textit{NTV}, and by a cloned version of the \textit{Prensa Libre} website. In addition, criminal charges were brought against both journalists for alleged crimes.\footnote{La Nación. May 16, 2015 Ministro del MEM Erick Archila renuncia y es arraigado; La Hora. May 15, 2015. Piden arraigo del exministro Erick Archila.} The magazine \textit{Contrapoder} had been critical of Baldizón and in 2014 had published several investigations claiming that the politician had plagiarized parts of a book published under his name as well as his doctoral thesis.\footnote{La Nación. January 6, 2015. ¿Pertenece Juan Luis Font a estructuras de corrupción?; Juan Luis Font (via Twitter). July 15, 2015. Baldizón manda a sus vasallos a denunciarme (7ma vez) por lavado y testaferrato. Sabe q no prosperará, pero le da materia para desprestigiar; NTV (via YouTube). July 16, 2015. Denuncian a Juan Luis Font por lavado de dinero y otros ilícitos; Soy 502. July 15, 2015. Una vez más intentan coaccionar contra periodista Juan Luis Font; Prensa Libre. July 20, 2015. Identificado autor de falsificación de sitio de Prensa Libre; República GT. September 26, 2014. Un consorcio de medios para un líder; Es Primicia. June 19, 2015. Pedro Trujillo acusado de defraudación tributaria; La Nación. June 9, 2015. Denuncian a Pedro Trujillo por lavar Q13,8 millones; República GT. June 1, 2015. Pedro Trujillo habla sobre las acusaciones en su contra.}

Font and his colleague Pedro Trujillo were singled out by media allegedly linked to Lider, such as \textit{La Nación}, \textit{Es Primicia}, and \textit{NTV}, and by a cloned version of the \textit{Prensa Libre} website. In addition, criminal charges were brought against both journalists for alleged crimes. The magazine \textit{Contrapoder} had been critical of Baldizón and in 2014 had published several investigations claiming that the politician had plagiarized parts of a book published under his name as well as his doctoral thesis.\footnote{Contrapoder. Undated. Copy/Paste de Baldizón; Contrapoder. Undated. Karen Fischer denuncia a Baldizón por su libro; Contrapoder. Undated. ¿La tesis también, doctor?; Contrapoder. Undated. El plagio que la Usac no quiso ver (y que Baldizón no quiere admitir); Plaza Pública. February 4, 2015. 2015, un año complicado para la Libertad de Expresión.}

290. Another journalist they tried to intimidate because of her work was Susana Morazán, of the local channel \textit{Azteca Guatemala}. She was beaten and robbed on January 20. Morazán said: "[The robber] told me that if I continued to talk and say the things I did on the newscast and in my reports against the Government, worse things would happen to me."\footnote{Soy 502 (via YouTube). January 20, 2015. Comunicadora es agredida y amenazada en asalto; Azteca Guatemala (via Twitter). January 20, 2015. "@susamorazan vicitma de amenza y agresión fisica hace unos minutos. Se presentarán denuncias #LibertadDeExpresion"; Siglo 21. January 20, 2015. Susana Morazán denuncia agresión y amenazas.} Erick Archila resigned from his position as Minister of Energy and Mines in May 2015 after charges of corruption were brought against him by an organization associated with Lider.\footnote{La Nación. May 16, 2015 Ministro del MEM Erick Archila renuncia y es arraigado; La Hora. May 15, 2015. Piden arraigo del exministro Erick Archila.}
leaving office, Archila said he was the victim of "political persecution" designed "to silence freedom of expression in the media" in which he had shares.\footnote{Canal Antigua (via YouTube). May 18, 2015. 15 05 15 CA, Erick Archila renuncia a su cargo de Ministro de Energía y Minas.}


293. Numerous journalists and cameramen were attacked on various occasions when they covered news relating to the judicial proceedings faced by former Vice President Roxana Baldetti, when she entered jail, and during her hearing before the judge. Journalists complained that they were beaten on those occasions and that the PNC used pepper spray against them. Following those incidents, the Attorney General of Guatemala ordered an investigation ex officio.\footnote{República GT. August 21, 2015. Agreden a periodistas durante traslado de Baldetti; Sergio Osegueda (via Twitter). August 21, 2015. "PNC lanzó gas pimienta a periodistas que cubrían ingreso de Roxana Baldetti a Matamoros. @CanalAntigua"; Sergio Osegueda (via Twitter). August 21, 2015. "Periodista Daniela Alvarez de radio Punto afectada por gas pimienta lanzado por PNC. @CanalAntigua"; Sergio Osegueda (via Twitter). August 21, 2015. "#CoberturaBaldetti Durante el traslado de Roxana Baldetti a Matamoros, policías rociaron gas pimienta a la prensa"; Prensa Libre. August 24, 2015. Roxana Baldetti enfrenta primer día de audiencia; EFE (via La Razón). August 25, 2015. Periodistas denuncian agresiones después de audiencia de
Ana Verónica Sandoval, of the Centro de Medios Independientes, said she had been detained by police on September 6, when she was recording the capture of two men, and that a police officer took away her camera. After she was forced to delete the photos she had taken, she was released. On another occasion, journalist Rolando Hernández, a correspondent of Prensa Libre in Jalapa, was attacked by people who appeared to be followers of the Unión del Cambio Nacional political party while he was covering a demonstration. In that incident, an alleged bodyguard of the local mayor snatched his camera.514

294. The IACHR notes that the Unit for Crimes against Journalists in the Public Prosecution Service, has been a welcome improved in terms of investigation and the arrest of aggressors, only has five attorneys to investigate, crimes, attacks, and threats against media personnel, with more than 100 cases still awaiting clarification.515

295. All types of threats, attacks, or harassment directed against journalists, media personnel, or media outlets themselves must be investigated by the justice system and the authorities should not proceed to discard the practice of journalism as the motive for criminal acts before an investigation is over. States have an obligation to take effective steps to prevent attacks against journalists and others exercising their right to freedom of expression and to combat impunity, specifically by vehemently condemning such attacks when they occur, through prompt and effective investigation, in order to duly punish perpetrators and make reparation to victims, as appropriate. States also have an obligation to provide protection to journalists and others exercising their right to freedom of expression, who run a grave risk of being attacked.516

296. Principle 9 of the Declaration of Principles on Freedom of Expression provides that:

"[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation".

iii. Program to protect journalists and social communicators

297. During the Universal Periodic Review of October 2012, Guatemala committed to establishing a Program for the Protection of Journalists, a commitment reiterated by former President of the Republic, Otto Pérez Molina, on November 28, 2013. On February 4, 2014, a high-level round table and a technical group were installed to coordinate the process of constructing a Program for the Protection of Journalists. In April 2015, several press associations called upon the State to meet its commitment of implementing a Program for the Protection of Journalists and Social Communicators before the end of President Otto Pérez Molina’s term in office, and to include journalists and social communicators in the process.

298. The IACHR has been told that, in 2015, workshops have been conducted to disseminate and discuss the preliminary proposed mechanism for the protection of journalists. They were convened by the Ministry of the Interior (MINGOB), the Presidential Commission coordinating the Executive’s Policy on Human Rights (COPREDEH), and the Public Prosecution Service (MP), with the backing of the Social Communication Secretariat of the office of the President of the Republic (SCSPR), the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

299. On the other hand, information received by the IACHR in 2014 indicated that the mechanism had not been allocated a budget that would allow it to operate. The IACHR appreciates the efforts by the State of Guatemala to establish a Program for the Protection of Journalists. At the same time, it reiterates the need for it to follow international parameters in consultation with civil society and journalists’ and media personnel organizations, whose participation in the implementation and operation of that program must also be assured.

300. Along those lines, the IACHR and its Special Rapporteurship for Freedom of Expression have developed some guidelines worth taking into account in the design and workings of programs to protect journalists, including: (1) the political commitment of the State, which must include: an appropriate legal framework; sufficient well-trained staff, who inspire confidence in the beneficiaries of the protection provided; the budgetary resources needed to cover the personnel costs

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517 The Commitment was signed in the presence of the Vice President, the Minister of the Interior, the President of the Presidential Commission coordinating the Executive’s Policy on Human Rights (COPREDEH), along with representatives of the Ombudsperson’s Office and the Public Prosecution Service. Acting as witness of honor were the Resident Coordinator of the United Nations and the Representative of the United Nations Educational, Scientific and Cultural Organization (UNESCO).


of those working under the program, as well as the costs of the protection measures themselves; the adoption of rules clearly demarcating the spheres of competence and responsibilities of the authorities intervening in the implementation and oversight of the protection measures; (2) appropriate identification of the potential beneficiaries and the criteria for a potential beneficiary being able to seek protection; (3) appropriate risk analysis with a gender perspective, that enables the State to discern the most effective way it can meet its protection obligation, taking specific and contextual circumstances into account and providing for active participation by the beneficiary; (4) the provision of suitable and effective protection measures to safeguard the life and integrity of the beneficiaries and that match the professional needs of journalists and allow them to continue their work; (5) clear criteria and procedures for monitoring the danger faced by the beneficiary and for monitoring the effectiveness of the measures selected and, if they are not effective, for tailoring them to the specific circumstances of the beneficiary; (6) the performance of a risk assessment to decide when to lift the protection measures, a decision that must be made with the participation of the beneficiary, so as to ascertain his or her opinion about their being lifted; and (7) exhaustive and independent investigations by the competent authorities, in addition to the material protection measures, with a view to preventing or reducing the underlying sources of risk.  

iv. Community radio broadcasting

301. No progress has been noted with respect to the obligation, acknowledged by the State on numerous occasions, to legally recognize the community radio broadcasting sector and grant the permits needed for its use of frequencies. On the contrary, radio broadcasters continue to be arrested and their equipment confiscated.

302. The Commission was informed of the arrest, on February 27, 2014, of radio broadcaster Andony Godínez Pérez by officials from the Public Prosecution Service and the PNC in the course of a raid on the installations of Radio San José, in the village of San José Cabene in the municipality of San Pedro Sacatepéquez. Godínez was reportedly taken to the detention center in the city of Quetzaltenango. In reaction, the community reportedly took two policemen hostage. According to the information received by the Commission, the communicator was free and the authorities undertook not to conduct more raids on the radio station. However, it is said that criminal proceedings were then brought against Godínez. The IACHR


was also notified that, on April 21, 2014, two community radio stations had been raided in the municipality of Ixčán, in the department of Quiché, in which the authorities reportedly confiscated transmission equipment and arrested one individual. Public Prosecution Service agents are said to have gone into the Estéreo Luz with their guns pointing at women there and seized equipment worth 30,000 Quetzals (approximately US$3,800). La Voz de Sonora station is also said to have been raided. One man was allegedly arrested and equipment seized that was worth 60,000 Quetzals (about US$7,700).523

303. Since 2000, the IACHR and its Special Rapporteurship for Freedom of Expression have been issuing recommendations to the State of Guatemala regarding two issues in particular: the need for a fairer legal framework that includes radio broadcasting and decriminalization of unlicensed radio broadcasting.524 Likewise, on a number of occasions, the Office of the Special Rapporteur has pointed out that using criminal law to punish violations of radio broadcasting rules may turn out to be problematic from the standpoint of the American Convention on Human Rights. Accordingly, the IACHR issues a reminder to the effect that imposing criminal sanctions for conduct relating to the irregular or unauthorized practice of commercial or community radio broadcasting is disproportionate.525

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304. For the Commission, it is a matter of great concern that, despite the judgment of March 14, 2012 handed down by Guatemala’s Constitutional Court, in which it urged the Guatemalan Congress to design a specialized legal framework,\textsuperscript{526} and despite the Agreement on Identity and Rights of Indigenous Peoples,\textsuperscript{527} Congress has still not solved the legal lacuna preventing recognition of community radio stations. Accordingly, the Commission reiterates its recommendation that "the State must promote different groups’ access to radio and television frequencies and licenses under conditions of equality and non-discrimination, no matter their technology."\textsuperscript{528}

305. In addition, information was received of harassment against the \textit{Snuq Jolom Konob’ community radio station} of the municipality of Santa Eulalia, which was closed down by the local authorities on January 20, 2015.\textsuperscript{529} An attempt was made to re-open it on March 20, but, apparently in the midst of violent incidents, the mayor prohibited the reopening. \textsuperscript{530}

306. As regards community radio stations, the State indicates that, as a member of the International Telecommunications Union and the Inter-American Telecommunication Commission, they must regulate the use and operation of radiofrequencies uniformly and efficiently, without one use prejudicing or interfering with others. Thus the issue should not be seen as a conflict between the freedom of expression of the indigenous peoples as a human rights and the use of radiofrequencies.\textsuperscript{531} The State of Guatemala also pointed out that, since 2003, it had granted "at least" 18 radio frequencies to Maya and indigenous community associations and that only two take advantage of this opportunity. "In the country


\textsuperscript{527} Agreement on the Identity and Rights of Indigenous Peoples. March 31, 1995. Mexico City. Section H(2)(b) of Chapter III establishes that the Guatemala State should "promote before the Congress of the Republic the necessary reforms in the present Law on Radio-broadcasting with the objective of facilitating frequencies for indigenous projects and of assuring the importance of the principle of non-discrimination in the use of the communications media. Also promote the abolition of any provision within the legal framework that obstructs the right of the indigenous people to use the communications media for the development of their identity."


there are about 50 authorized radio stations that could be called 'community radios' out of the 550 operating on an FM frequency. In contrast, there are about 2,000 community radios operating without having met the legal requirements for their operation."

v. Disproportionate use of force during protest demonstrations

307. The interest and presence of companies on traditional indigenous lands and territories has led to serious unrest in several parts of Guatemala, generating social protests and sometimes triggering violent incidents. In some communities there have been Civilian Police and Army operations designed to intimidate and silence social protests and force the implementation of extractive industry projects.

308. The IACHR received information of a series of alleged violent evictions by the PNC directed against persons demonstrating against the construction of mega-projects in various parts of the country. For instance, the IACHR was notified that on Friday, May 23, 2014, some 500 PNC officers had allegedly used violence to remove a stand kept by the Peaceful Resistance Movement of La Puya opposite a mining project's facilities between the municipalities of San José del Golfo and San Pedro Ayampuc. The demonstrators, who had been given permission by the Governor's Office to demonstrate at the entrance to the mining project, reportedly tried to no avail to talk to the police officers guarding the entry of machinery. Reportedly, in the afternoon anti-riot police used tear gas, pepper gas, smoke grenades, rubber bullets, sticks, and stones against the demonstrators in an attempt to evict them.


533 A fairly typical instance of this is what happened to the communities of San Juan Cotzal, and Nebaj, in the Ixil region, El Quiché, which defended their territorial rights against construction, without prior consultation, of the Palo Viejo hydroelectric plant. On February 14, 2010, allegedly more than 1,000 police and soldiers turned up "masked as they had been when the Army committed massacres during the internal war." In addition, similar police and army operations were reportedly carried on on February 23 and March 18 of that same year, designed to intimidate the communities. In 2011, hundreds of policemen and soldiers were sent in and three helicopters flew over the Cotzal communities "sowing," according to an indigenous mayor, "tremendous fear among the communities,. who remembered the genocide." Under those circumstances, they had to initiate talks with the company and State authorities, "under pressure from 700 policemen and soldiers drawn in from all over the country to be stationed in the Municipality of Nebaj. Indigenous mayors in the Ixil region. Demands of the indigenous communities and ancestral authorities of Cotzal to the Italian corporation ENEL. June 30, 2011.

Another case was the Army's violent suppression of a demonstration by K'iche indigenous people in the 48 cantons of Totonicapán of October 4, 2012. Six indigenous people were killed: "When the people see the soldiers getting down from their vehicles, they approach them and begin to be hostile. Then the military tried to withdraw. At some point they felt unsafe and began tossing tear gas and shooting indiscriminately at the people. [...] They were using heavy weapons, weapons of war, against the population [...] They forced more than 300 bullets. Apart from the six people killed, 33 community members and 13 soldiers were wounded. The Commission lamented and condemned these events. The IACHR was informed that Congress allocated 20 million Quetzals for reparation for the victims and that, in February 2014, President Pérez Molina had delivered 6.55 million Quetzals (US$841,161) to the families of the six people killed and more than 30 wounded. The criminal proceedings are continuing. OACNUDH-Guatemala. Tototonican: presentacion de los hallazgos, October 4, 2012; IACHR, Press release 127/12: IACHR Deeply Regrets Killings of K'iche's Indigenous Persons in Totonicapán, Guatemala. Washington, D.C., October 23, 2012. Deguate, Estado entrega ayuda humanitaria a afectados por disturbios en Totonicapán, February 20, 2014.
Several people are said to have been poisoned by the gas, others dragged, beaten, threatened, and arrested. In addition, some members of national and international human rights organizations accompanying the demonstrators were reportedly beaten and required to show their documents to show their migration status. The clashes allegedly ended with at least 23 demonstrators injured. There were also reports that some policemen were also wounded. On July 31, 2014 there was, reportedly, another attempt to bring machinery into the territory in an operation involving 200 member of the PNC's anti-riot policy, who allegedly threatened to once again evict the population if it tried to prevent equipment from entering or leaving the area.

309. According to OHCHR-Guatemala, violent incidents were registered during police operations, essentially due to the lack of appropriate operational protocols, equipment and training. In May 2014, in San José del Golfo, Guatemala, 11 demonstrators were injured, the majority by tear gas projectiles, while police cleared the entrance to the El Tambor mine. In August 2014, in Samacoch, Alta Verapaz, three indigenous people were killed by gunfire and eight were wounded, allegedly by police agents, during the clearing of a road block. In November 2014, in Sanarate, El Progreso, a community member was injured during protest and subsequently died. In those situations, some police officers were also victims of violence — nine police officers were injured in San José del Golfo, six in Samacoch and seven in Sanarate.

310. It further transpired that on June 26, 2014, two International Peace Brigade volunteers, one Spanish and the other Chilean, who had accompanied the activities in La Puya on May 23, received written notification that they should present themselves to the General Directorate of Immigration in order "to provide information regarding their temporary residence." Later, on July 1, 2014, the Office of the Assistant Director for Immigration Operations in the General Directorate of Immigration allegedly issued written orders canceling those two volunteers' temporary residence permits. Apparently those orders gave no grounds for the decision but were allegedly based on Article 92 of the Immigration Law, which provides that: "The General Directorate of Immigration may prevent entry or suspend temporary residence for reasons of public law and order, the national interest, or State security." The volunteers were also allegedly told that they had 10 days to leave the country.

311. Regarding these incidents, according to information received, the Minister of the Interior, Mauricio López Bonilla, said he had evidence showing that members of

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534 On June 10, 2014, under the powers granted it by Article 41 of the American Convention on Human Rights, the Commission requested the State for information about these incidents but has so far received no answer.


538 FIDH, Guatemala: Cancelación de la residencia temporal a dos voluntarios de PBI, July 7, 2014.
the International Peace Brigade had thrown stones at PNC officers.\(^{539}\) Apparently, the Minister of the Interior had already that foreign nationals entering Guatemala with a tourist visa, regardless of whether or not they were ecologists or human rights defenders, would be expelled from the country if they incited disturbances of the peace. The Office of the United Nations High Commissioner issued a communiqué on this matter, expressing concern at the decision by the General Directorate of Immigration to cancel the temporary residence permit of the two human rights defenders and urging the Guatemalan authorities to revisit the decision to cancel the temporary residence permits of the members of the Peace Brigade.\(^{540}\) Later, it transpired that the Minister of the Interior did revoke the order to cancel the temporary residence permit of the two International Peace Brigade volunteers.\(^{541}\)

e. **Migrants, refugees, internally displaced and trafficking in persons**

312. For many years, the Inter-American Commission monitored the situation of people displaced internally or forced to flee Guatemala for other countries in the region, especially Mexico, during the armed conflict. In recent years, the Commission has observed how the various forms of violence in Guatemala today are again forcing tens of thousands of people to migrate, either as internally displaced persons or as emigrants. Nevertheless, this impact of violence in terms of forced migration has not been widely publicized or even quantified due to the fact that those forced to flee in order to protect themselves generally do not denounce their plight to the authorities and in many cases the displacements are not massive but piecemeal, i.e. involving individuals or families.\(^{542}\)

313. For migrants and others, Guatemala is, in terms of human mobility, a country of destination, origin, transit, and return. Because of its geographical location, it is a major transit country for people heading for countries like Mexico, but mostly for those trying to reach the United States and, to a less extent, Canada. In mid-2013, Guatemala’s international migrants numbered 1,050,904, while the number of international migrants staying in Guatemala was 72,764.\(^{543}\)

314. The most worrying development in 2013-2014 was the drastic increase in the numbers of unaccompanied migrant children and family members of Guatemala origin reaching the southern border of the United States. According to official

\(^{539}\) *Prensa Libre*, Migración regula situación migratoria de extranjeros, July 10, 2014.

\(^{540}\) OHCHR-Guatemala, ONU derechos humanos manifiesta su preocupación por vulnerabilidad que afrontan defensoras y defensores de derechos humanos, July 7, 2014.

\(^{541}\) OHCHR-Guatemala, ONU derechos humanos valora la decisión del Ministro de Gobernación de revocar la cancelación de residencia temporal a dos defensores de derechos humanos, July 10, 2014.


\(^{543}\) United Nations Population Division, Department of Economic and Social Affairs, Trends in International Migrant Stock: Migrants by Destination and Origin. Table10 (September 2013).
figures gathered by U.S. Customs and Border Protection, by August 31 in fiscal year 2014 (beginning on October 1, 2013 and ending on September 30, 2014), 16,528 unaccompanied Guatemalan children would have arrived. The number of Guatemalan family members arriving was 11,433. This was a stark increase compared to fiscal year 2013, when (between October 2012 and August 2013) 8,068 unaccompanied children from Guatemala arrived, together with a total of 12,098 family members from all countries.

i. Refugees and asylum-seekers

Violence and persecution have caused the number of asylum-seekers and refugees to skyrocket. By end-2014, UNHCR listed 7,483 Guatemalan refugees and 15,806 Guatemalan asylum seekers, compared with 6,615 and 8,442, respectively, at end-2013, showing a huge increase in the number of Guatemalans having to flee their country in order to seek international protection. The Commission notes with concern this 13% increase in the number of refugees and 87% increase in the number of asylum seekers between 2013 and 2014.

ii. Internally displaced persons

According to the Internal Displacement Monitoring Center (IDMC), in December 2014, 248,500 people remained internally displaced within Guatemala, most as a result of the armed conflict. In addition to them, as we have seen, there has been displacement as a result of the activities of criminal organizations, gangs and maras, including, specifically, drug trafficking, illegal exploitation of natural resources, and illicit land expropriations. According to the IDMC, as a result of the turf wars among drug-trafficking cartels and moves by the gangs to obtain control over the palm oil business and smuggle merchandise across the country’s northern borders at least 1,770 families were displaced between 2011 and 2014. Of those, 350 families, or about 1,400 people, fled their homes in 2014. The International Center for the Human Rights of Migrants (CIDEHUM) has noted that, when faced with violent organized crime, the two options are forced recruitment or to leave. Under the second option, people move within the country in such of other areas or lands, but if they are identified by criminal groups they find themselves forced to

544 Department of Homeland Security: Customs and Border Protection, Southwest border unaccompanied alien children, USA.
545 Department of Homeland Security. Customs and Border Protection, Southwest border unaccompanied alien children, USA.
emigrate to the north, mainly Mexico or the United States.\footnote{CIDHUM, Diagnostic: “Forced Displacement and Protection Needs , produced by new forms of Violence and Criminality in Central America” (May 2012), p. 18.} In addition, according to the IDMC at least 10,400 people were internally displaced due to natural disasters in 2014.\footnote{IDMC, Guatemala}

317. The IACHR observes that the issue of internally displaced persons in Guatemala is not being addressed adequately or comprehensively due to the fact that the Guatemalan Government allegedly does not acknowledge the dimension that the problem has changed and persisted beyond the internal armed conflict.\footnote{See: Government of Mexico, Secretariat for Foreign Affairs; Office of the United Nations Secretary-General’s Representative on Internally Displaced Persons; and the Brookings Institution-Johns Hopkins SAIS Project on Internal Displacement, “A Framework for Action on Internal Displacement in the Americas (February 18-20, 2014), p. 1. [http://www.brookings.edu/fp/projects/idp/conferences/mexreport.pdf]} The Commission notes the lack of a comprehensive diagnostic assessment of this problem and the lack of official figures regarding the real extent of internal displacement in Guatemala.

### iii. Deported or "returned" migrants

318. Data garnered by the National Council for Assisting Guatemalan Migrants (CONAMIGUA), Mexico’s Secretariat of the Interior (SEGOB), and the United States’ Department of Homeland Security (DHS) show an increase in the number of Guatemalans deported from the United States and Mexico, including a significant increase in the number of child and adolescent deportees.\footnote{CONAMIGUA Noticias; SEGOB, Office of the Undersecretary for Population, Migration, and Religious Affairs, Migration Policy Unit, Center for Migration Studies, National Institute of Migration, Migration Statistics, Annual editions 2012, 2013, and 2014; DHS, Immigration and Customs Enforcement (ICE), Immigration Enforcement Report, 2012, 2013, and 2014 annual editions. *Note: In the United States, the fiscal year runs from October 1 through September 30. For that reason, the numbers of deportations carried out may vary from those collected by Mexican and Guatemalan officials. For example, in fiscal year 2013, 47,769 Guatemalan nationals were deported. In fiscal year 2014, the number was 54,423.}

<table>
<thead>
<tr>
<th>YEAR</th>
<th>NUMBER OF GUATEMALAN NATIONALS DEPORTED FROM USA</th>
<th>NUMBER OF GUATEMALAN NATIONALS DEPORTED FROM MEXICO</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>40.365</td>
<td>33.239 (*enero-noviembre)</td>
</tr>
<tr>
<td>2013</td>
<td>50.221</td>
<td>30.005</td>
</tr>
<tr>
<td>2014</td>
<td>51.157</td>
<td>42.808</td>
</tr>
<tr>
<td>*2015</td>
<td>18.888 (*enero-julio)</td>
<td>36.084 (*enero-22 de junio)</td>
</tr>
</tbody>
</table>
319. The deportations of Guatemalans, including children and adolescents, from countries like Mexico and the United States create serious difficulties with respect to care, protection, and their reintegration into their country. In 2013, Guatemala was the country with the second largest number of migrants detained in Mexican migration centers (31,664).\footnote{National Migration Institute. Boletín mensual de estadísticas migratorias 2013. [Monthly Bulletin of Migration Statistics, 2013] Mexico.} That same year, undocumented migrants from Guatemala were the second largest contingent in the United States, after Mexicans (38,450 Guatemalans detained in migrant detention centers in the United States).\footnote{Department of Homeland Security, Immigration Enforcement Actions, USA, 2012.} Likewise, in fiscal year 2013, undocumented Guatemalan migrants were the second largest group of deportees from the United States (47,769).\footnote{Department of Homeland Security, FY 2013 ICE Immigration Removal, USA.} The State appears to have done very little to integrate these people into either society or the labor market.

320. Although Guatemala has ratified several human rights treaties,\footnote{Guatemala has signed bilateral and regional agreements setting migration parameters: Memorandum of Understanding on the Human Rights of Migrants, Mexico-Guatemala (2002); Memorandum of Understanding on the protection of women and children from people-trafficking and -smuggling on the border between Mexico and Guatemala (2004); Memorandum of Understanding between the Government of the United Mexican States, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras, and the Republic of Nicaragua, for the Dignified, Orderly, Swift, and Safe Repatriation of Central American Migrants by Land, signed on May 5, 2006.} the Commission has been told that migration rules have taken a national security approach. The Commission notes the lack of comprehensive regulations on migration matters in accordance with the country’s human rights obligations. Accordingly, Guatemala’s Ombudsperson has urged the Guatemala State to amend the regulatory framework governing migration to include fundamental human rights principles and to eschew the predominantly national security-oriented approach.\footnote{Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges, February 2015 Coordinated and edited by Karen Musalo and Pablo Ceriani Cernadas, p. 186. [http://cgrs.uchastings.edu/sites/default/files/Childhood_Migration_HumanRights_FullBook_English.pdf]} According to civil society organizations, this situation has led to a lack of coordination among the various State institutions responsible for migration matters and has hampered compliance with the existing provisions in applicable laws.\footnote{University of California Hastings Center for Gender & Refugee Studies; Migration and Asylum Program of the Justice and Human Rights Center of the National University of Lanús, Argentina; Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges, p. 179.}

321. As regards repatriated Guatemalan children and adolescents, the Commission observes that the Comprehensive Protection of Childhood and Adolescence Law of 2003 (the "PINA" law) establishes certain guarantees for their protection. Specifically, Article 58 thereof provides as follows:

Guarantees. Children and adolescents who request or have refugee, returned, or relocated status pursuant to applicable domestic or international procedures are entitled to receive, if they are alone or accompanied by their parents, any relative or other person, protection and appropriate humanitarian assistance so that they can enjoy the rights

322. According to this law, the Social Welfare Secretariat (SBS) is responsible for receiving and handing over children and adolescents deported by air and by land from, for the most part, the United States and Mexico, as part of the "Migrant Program." According to the law, the Attorney General’s Office (PGN) is the legal representative of the unaccompanied children and adolescents and is responsible for receiving them and handing them over to the most suitable family members, while the SBS provides support to the PGN representative for the transportation of the deportees from the border at El Carmen, San Marcos to the city of Quetzaltenango. In both cases, the SBS is supposed to expedite the immigration control process in coordination with the General Directorate of Immigration.

323. Regarding this, the Commission has received information regarding failings in implementation of the PINA law and lacunae in the protection and human rights guarantees provided for in Guatemala’s immigration rules. One is that, when the PGN fails to appear or does not comply, it is the SBS that often undertakes the procedure of locating a suitable family member for handing over the children and adolescents.

324. A study carried out by the International Organization for Migration (IOM), the International Labour Organization, and the United Nations Children’s Fund (UNICEF) found that many children and adolescents returned to their country of origin make as many as three attempts to emigrate again, which means that the factors driving them to emigrate are still there, forcing them to emigrate. The IACHR also calls upon the State to establish a comprehensive policy to ensure the effective enjoyment of human rights and to attend to the needs of returned children and adolescents, by clearly demarcating institutional responsibilities (including the assignment of an oversight agency) and allocating it appropriate resources. In the Commission’s view, it is vital that this policy be implemented along with others that directly address the expulsion factors driving Guatemalan children and adolescents to emigrate.

325. It is worth noting, with regard to adults repatriated to Guatemala that, according to public sources of information, they do not receive any social services or individual attention when they arrive back in the country. For instance, if someone urgently needs medical care, it is the Red Cross that will provide that kind of service. Even phoning and locating family members may be difficult for those who have spent a long time abroad. On this, the IACHR recommends that the State adopt the measures needed to improve the reception given to returning migrants and have

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562 Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges, pp. 182.
access to the services they need upon their return. In addition, the State should open more facilities or safe shelters where repatriated persons can stay until they locate family members, and it should establish programs to assist with the reintegration process, including medical and psychological services, and access to education and training program to facilitate reinsertion into the job market.

iv. Trafficking in Persons

326. As Guatemala is a country which migrants come from, go through, go to, and return to, combined with the socioeconomic and political conditions in the country and high levels of impunity, means that Guatemala is fertile ground for the crime of human trafficking. Many who decide to migrate, mostly to northern countries such as Mexico and the United States, get caught up in trafficking networks.

327. Because of the movements of migrants in Guatemala, most of the international trafficking in persons takes place along the country’s borders with Belize, El Salvador, Honduras, and Mexico.

328. The expulsion and attraction factors affecting migration in Guatemala are numerous and complex. Many of those who emigrate come from a situation of inter-sectoral discrimination resulting from various forms of violence, poverty, and economic and gender inequality, as well as the effects of natural disasters. In the Guatemalan case, the attraction factors are often the better opportunities abroad to find work and/or have access to education, family reunification, and higher levels of human security. The multiple causes of migration mean that there is a wide variety of types of human mobility all along the migration corridors, especially for undocumented migrants, including victims of human trafficking.

329. As the Commission has previously pointed out, within those mixed movements, there are several groups of persons who are more at risk of becoming victims of trafficking, including children and adolescents, women, LGBT persons, and indigenous persons. It is estimated that many cases of trafficking in Guatemala involve networks operating in the interior of the country, who recruit children and adolescents and then take them to urban areas where they are sold to brothels for commercial sexual exploitation.  

330. During a thematic hearing of the Commission at its 154th period of sessions, the organizations requesting the hearing explained that, according to records kept by the Office of the Ombudsperson, there had been an "alarming" increase of 44.4% in the number of human trafficking victims between 2012 and 2013. Women continue to be the main victims (66% of the total), almost half of whom are girls.


The Commission notes that Guatemala has ratified international treaties on trafficking and that, internally, it has passed laws to implement those treaties, in addition to several other efforts to combat and eradicate trafficking in persons. Laws adopted include the Comprehensive Protection of Childhood and Adolescence Law; the 2009 Law on Sexual Violence, Exploitation, and Trafficking in Persons; and the Alba-Keneth Warning System Law of 2010. The Commission likewise notes that trafficking in persons was defined as a crime in Article 202 of the Criminal Code and that, in 2011, an Inter-Agency Protocol was adopted for the Repatriation of Victims of Trafficking in Persons: children and adolescents. That protocol established two procedures for assisting with the repatriation of trafficking victims: one for children and the other for adults.

331. As regards other efforts to prevent and combat trafficking in persons, the State reported adopting the following measures: (a) prioritization of a strategy and plan against trafficking in persons adopted by the PNC in 2008; (b) participation in a regional plan to combat trafficking in persons and related crimes (known as Regional Freedom Plan I and II), a process headed by the INTERPOL office in El Salvador, in August 2013; (c) the implementation of courts specializing in trafficking in persons cases; the establishment of a Government Attorneys office in the Public Prosecution Service specializing in trafficking in persons and a division of the PNC specializing in criminal investigations into human trafficking; the training of 70 police academy investigators for specialization in human trafficking; and activation of the Inter-Agency Commission against Trafficking in Persons, all of which were accomplished in 2012; (d) the setting up, in 2013, of courts specializing in trafficking in new parts of the country and the establishment of three shelter homes for child and adolescent victims of trafficking and exploitation; (e) the training, in 2014, of more than 61,657 children and adolescents and 1,628 state school teachers in preventive aspects of combating these crimes; and (f) the implementation, in February 2015, of three joint departmental divisions to oversee all areas of competence in this field.

332. The Commission appreciates the actions taken by the State to prevent and fight trafficking in persons. However, it notes with concern that serious deficiencies persist with regard to access to justice and care for victims. Along those lines, the Commission has received worrying information suggesting that, as far as prevention is concerned, the general public and officials are still widely uninformed as to what trafficking in persons is, the different forms it takes, its


567 Thanks to execution of Freedom Plan I and II, eleven criminal organizations devoted to trafficking in persons were dismantled and 68 individuals were arrested in 2013, followed by 94 arrests in 2014. In 2014, 109 children and adolescents were also rescued from various forms of human trafficking. The rescue operations were ongoing in March 2015.

causes, effects, and recruitment mechanisms, and preventive measures available for individuals. Civil society organizations have also pointed out that the State is not addressing the root causes or the social, political, economic, and cultural factors that render people vulnerable to trafficking.

333. With respect to the comprehensive system for protecting children and adolescents, civil society organizations have pointed out the dispersed nature of access to the system, whereby several bodies may be processing one and the same case, without coordinating with each other. The lack of training for the personnel involved hampers identification of different victims’ needs, which can result in victims being sent to institutions that are not specialized in human trafficking cases and lack appropriate care facilities and psychological and social services. This may also result in children and adolescents being institutionalized for long periods of time, next to other kinds of victims, and receiving inappropriate treatment, and so on. According to Public Prosecution Service figures, between January and August 2014, only 34% of victims received care and protection in some institution. Civil society organizations have also stressed that there is no proper follow-up to precautionary reparation or restitution measures, or with respect to the victims’ reintegration into their homes and communities.

334. As for investigations and punishment of the perpetrators of human trafficking only 390 (30%) of the 1,285 cases reported to the Public Prosecution Service between 2010 and 2014 were brought to trial. Of those cases, only 23% ended in a conviction. That is, from the total of complaints, only 7% of cases reported ended with a judgment being handed down by a judicial body. These figures clearly demonstrate the flaws in applying the criminal definition of trafficking, due to a series of limitations in the investigations conducted by the Public Prosecution Service, namely: the lack of training of justice system officials and operators; the lack of directives regarding criminal investigation of human trafficking offenses; and the failure to include all types of trafficking in instructions guiding investigations (investigations are restricted to just three types of trafficking: sexual exploitation; financial exploitation, and illegal adoptions).

v. Disappeared migrants: Forensic database

335. In response to the large numbers of migrants who have disappeared in recent years en route to the United States, organizations and committees of family members of disappeared migrants have been formed in countries like El Salvador, Honduras and Guatemala. In the past two years, the Commission has also noted that, based on an initiative by civil society organizations, forensic databases have been constructed of migrants who have disappeared in El Salvador, Honduras, the state of Chiapas, in Mexico, and Guatemala. The purpose of these databases is to identify disappeared migrants by cross-comparing the data with information on

569 In March 2015, the Guatemalan State reported that altogether 68 officials (judges and magistrates) were specialized in, and made aware of, sexual violence, violence against women, human trafficking, and femicide. IACHR, 154th session, Hearing on "Reports of Trafficking of Women and Children in Guatemala," March 19, 2015.
the remains of migrants found all along the migration routes. The databases contain background information on each disappearance (date of departure, date and place of the last phone call, route taken, and so on), ante mortem data (physical information corresponding to when the person was alive) and samples and genetic profiles of family members.

336. Currently, the forensic databases for migrants who have not been located or who have disappeared contain information for 449 cases of migrants whose family members have reported them as missing in Mexico, the United States, and Central America. As of late September 2012, a total of 1,253 family members of disappeared migrants had supplied their genetic samples to the forensic databases. In El Salvador, there are currently 168 cases of disappeared migrants with 456 samples from family members; in Honduras there are 168 cases and 78 samples from family members; in Guatemala, 80 cases with 297 samples from family members; and in the state of Chiapas, 25 cases with 78 samples.\footnote{IACHR, Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico, para. 200.}

337. There are no data or estimates of how many people disappear and/or die en route to the United States. Thus, "(...) the greatest risk to which migrants are exposed is violence against them by organized crime while they cross Mexico, which includes extortion, kidnappings, and even murder."\footnote{Contextos de desaparición [Contexts of Disappearance], quoting Rodríguez, Ernesto; 2011.} When persons disappear during migration, the impact on their families is grave. Apart from the absence of their disappeared loved ones, family members have to confront legal, financial, social, and emotional issues that urgently need to be taken care of and addressed by the Government and civil society as a whole.\footnote{Fundación de Antropología Forense de Guatemala (FAFG) [Forensic Anthropology Foundation of Guatemala]. Contextos de desaparición [Contexts of Disappearance].}

338. In April 2015, the Ministry of Foreign Affairs and Fundación de Antropología Forense de Guatemala (Forensic Anthropology Foundation of Guatemala—FAFG) signed a technical and scientific cooperation agreement aimed at helping the family members of disappeared Guatemalan migrants, through DNA tests, fingerprint comparisons, and other measures.\footnote{AGN, “Cancillería y FAFG firman convenio para identificar migrantes guatemaltecos desaparecidos”, April 20, 2015.} The FAFG has been performing these tasks for several years, through various campaigns and actions focused on "identifying disappeared migrants, giving priority to cases of disappeared children, women, and indigenous persons, given their greater vulnerability. The FAFG plans to establish a genetic database of family members of unidentified disappeared migrants that will have access to samples or genetic profiles of the bodies of unidentified migrants so as to compare them with the family members’ genetic database."\footnote{Fundación de Antropología Forense de Guatemala (FAFG) [Forensic Anthropology Foundation of Guatemala]. Contextos de desaparición [Contexts of Disappearance].} The Commission values the efforts aimed at understanding this grave problem.
f. Lesbian, gay, bisexual and transgender persons (LGBT)

339. During 2015, the IACHR continued to receive information regarding the grave situation of violence and discrimination against lesbian, gay, bisexual and transgender (LGBT) persons, in Guatemala, despite the progress shown in particular by the Sexual Diversity Ombudsperson’s Office.

340. The IACHR also welcomes the progress made in this field in Guatemala in recent years, including the establishment of the Sexual Diversity Ombudsperson’s Office, as a dependency of the Ombudsperson’s Office; the signing of an agreement to develop training materials for the School of Penitentiary Studies and to promote separate facilities for LGBT persons in prison; talks on the human rights of LGBT prison inmates; inclusion of the LGBTI category on forms for submitting complaints to the PNC; and the State’s activities designed to monitor the care administered to LGBTI persons with sexually transmitted infections. Regarding the inclusion of the LGBTI box in the form for filing complaints with the police, the IACHR was also told of a series of training courses given in first quarter 2015 to the staff of the 53 Care for Victims offices of the PNC on how to receive complaints and attend to victims in cases involving LGBTI persons. The courses were facilitated by LGBT persons and the Defender for Sexual Diversity.

341. As regards the LGTBI population, the State mentioned that in Guatemala there is no express recognition of the rights of the LGTBI community.

342. On June 4, 2015 the murder of Sandra Caal Morán, a trans woman in San Cristóbal, was reported. According to the Observatory on Murdered Trans Persons in absolute numbers, Guatemala ranks 6th, with 39 cases recorded (The Top 5 are Brazil with 689, Mexico with 194, Colombia with 85, Venezuela with 85, and Honduras with 77). Guatemala likewise ranks in second place in relative terms (% of trans persons murdered per 1,000,000 inhabitants), averaging 2.83 per every 100,000 inhabitants.

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575 The IACHR received no information regarding the rights situation of intersex persons.
577 Carlos Romero Prieto. Hacia el respeto de los derechos de la diversidad sexual en las prisiones guatemaltecas, February 18, 2015.
578 PDH, Imparten charla sobre derechos humanos de las personas LGBTI en cárceles, August 28, 2014.
580 PDH, Supervisan atención a personas LGBTI en Centro de Atención de ITS, August 29, 2014.
581 PDH, Concluye capacitación para enlaces de las oficinas de Atención a la Víctima de la PNC, February 19, 2015.
584 TyT, IDAHOT 2015: Cifras Alarmantes: Más de 1,700 de Personas Trans Asesinadas en los últimos siete años, 2015.
million inhabitants (In Honduras the average is 5.12, in Puerto Rico 2.43, in Brazil 2.35, in Colombia 1.41, and in Mexico 0.94). 585

343. In August 2014, civil society organizations told the IACHR that LGBT persons or individuals perceived as such continue to be assaulted and harassed, including raids on their organizations. 586 During that hearing, the State reported that it had established an Inter-Agency Technical Round table Committee to guarantee their rights.

344. OHCHR-Guatemala reported that in 2014 there were several instances of discrimination against LGBTI persons, in addition to cases of domestic violence and sexual and workplace harassment. 587 The IACHR reported that between January 2013 and March 2014, according to the Register of Violence against LGBTI Persons in America, under Attacks on Life and Bodily Integrity, three trans women were murdered in Guatemala (two cases in 2013 and one in 2014). 588

### g. Persons with disabilities

345. The situation of persons with disabilities in Guatemala has been kept out of the limelight for many years. In fact the only time a survey was conducted to elicit data on persons with disabilities was in 2005. Notwithstanding the accuracy of the 2005 Survey, it is essential to update the statistical data with a view to fostering appropriate public policies of benefit to persons with disabilities. The State submitted its first report to the Committee on the Rights of persons with Disabilities in which it acknowledged the serious difficulties encountered with implementing key provisions in this field, such as the Law on Attending to persons with Disabilities and National Disability Policy, due to insufficient budget allocations, the lack of social awareness, and the absence of specific data, as well as other deficiencies. 589

346. In his report to the United Nations Committee against Torture, in connection with the sixth periodic review of the State of Guatemala, the Ombudsperson reported that in 2012 he had received 135 complaints affecting persons with disabilities: 27.41% of the complaints involved some form of discrimination; 33.33% had to do with mistreatment and physical and psychological violence; and 29.63% involved lack of access to health care. 590 These three reasons account for 90.37% of all complaints received. At the same time, the Initial Report of the State of Guatemala under the Convention on the Rights of Persons with Disabilities states that the

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585 Laura Corcuer. Más de 1,100 personas trans asesinadas en los últimos cinco años, February 19, 2013.
588 IACHR, Register of violence against LGBTI person in America: attacks on life and bodily integrity.
590 PDH-Guatemala, Informe al Comité contra la Tortura de la Organización de las Naciones Unidas en el Marco del VI Examen Periódico al Estado de Guatemala (Actualización), April 2013.
Ombudsperson’s Office took cognizance between January and October 2011, 58 complaints involving possible violations of the rights of persons with disabilities, in connection with different types of violence.  

347. As regards legislation addressing violence against women and girls with disabilities, the Guatemalan Ombudsperson reported that

"the domestic legal system includes a series of laws that define crimes and some of them take into account the special conditions of victims with disabilities, [such as] the Child and Adolescent Comprehensive Protection Law, Legislative Decree 27-2003; the Law against Sexual Violence, Exploitation, and Trafficking in Persons, Legislative Decree 9-2009; the Law on Care for Persons with Disabilities, Decree 135-96; the Law against Femicide and Other Forms of Violence against Women, Legislative Decree 22-2008; the Law on Care for persons with Disabilities, Legislative Decree 35-96." Nevertheless, "no information is available regarding policies specifically crafted to prevent and address violence against women and girls with disabilities, and detrimental practices that may result in disabilities."  

348. One of the measures taken to protect their rights was the establishment of the Office for the Defense of Persons with Disabilities of the PDH (Ombudsperson’s Office), which is located at PDH headquarters and coordinates its work with departmental, ambulatory, and municipal agencies. The State also reported the establishment of Departmental Commissions for Disabilities (Comisiones Departamentales de Discapacidad—CODEDIS), with 18 Commissions in 2013 pursuing the goal of facilitating access to health, education, work, sports, culture, security, and justice for persons with disabilities. To the above must be added the establishment of a Specific Commission on Disability Affairs, on the basis of Agreement No. 6-2014 of the Congress of the Republic, which has been set up as technical body for conducting studies and reviews.  

349. One illustration of the scant protection afforded persons with disabilities in Guatemala is the precautionary measure that the IACHR had to grant on behalf of patients at the Federico Mora Mental Health Hospital (PM 370/12). The IACHR had been advised that all inpatients at the Federico Mora Hospital were at grave risk. The specific reason was that the 334 inpatients at the time of the request, which included children, were sharing the same facilities as mentally ill patients who had been tried and convicted of a number of crimes. The request added that the medical care provided was negligent and that PNC and Penitentiary System

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592 PDH-Guatemala, Replies to the Questionnaire for the Preparation of the Analytical Study on Violence against Women and Girls (A/HRC/RES/17/10).
personnel, responsible for guarding the hospital, used threats, harassment, and acts of violence against the patients, including prolonged periods of solitary confinement. In addition, the request alleged physical and sexual abuse against women and children. In addition, the requesters reported that, according to a study conducted with the help of medical staff, 74% of the inpatients did not need to remain in the institution "for psychiatric or behavioral reasons; they were there basically for lack of social support."

350. On November 20, 2012, the ISCHR granted precautionary measure 370/12 on behalf of 334 patients at the Federico Mora Hospital and requested that the Government of Guatemala take a series of steps to guarantee the life and personal integrity of the inpatients at the aforementioned Hospital. Those steps included, in particular: providing appropriate medical care to the inpatients, based on each individual's pathologies; separating the children from the adults and adopting special measures on their behalf, in accordance with the principle of the child's best interests; separating tried and convicted inpatients, who had been served prison sentences, from the other patients in the Hospital, and that the latter be cared for by unarmed personnel; restricting the use of solitary confinement rooms to situations and under conditions established in international standards for persons with mental disabilities; implementing immediate measures to prevent all patients, especially women and children, from being subjected to physical, psychological, or sexual violence at the hands of other patients, security personnel or hospital staff. The IACHR further requested that agreement be reached with the beneficiaries of the precautionary measures and their representatives on the measures to be adopted.596

351. Since 2013, both the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Committee against Torture (CAT) had been voicing their concern at the alarming conditions reportedly found at the Federico Mora Hospital, including negligent medical care, deficient nutrition for the patients, and the "lack of proper security."597 Specifically, the CAT urged Guatemala to take effective measures to guarantee full and prompt compliance with [...] PM 370/12."598 For its part, for over 10 years, the Ombudspersons Office of Guatemala (PDH) complained of the worrisome conditions found at the Federico

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596 On November 7, 2014, in follow-up on the working meetings held at the 153rd session, the Executive Secretariat send a letter to the State reiterating the Country Rapporteur's interest in visiting Guatemala for the purpose of continuing to monitor the situation of the Hospital Federico Mora Hospital. On February 22, 2015, the State voiced its interest in holding a working meeting and informed that it would consider a suitable date, which IACHR would be informed of. Subsequently, the State did not mention again the working visit as proposed by the Commissioner.


598 Committee against Torture (CAT), Concluding Observations on the Fifth and Sixth Periodic Reports of Guatemala, para. 22.
In particular, in its Detailed Annual Report for 2013, it referred to "situations amounting to abuse and cruel, inhumane and degrading treatment" endured by patients at the aforementioned institution. OHCHR-Guatemala issued a press release on December 7, 2014 in which it called upon Guatemala to expedite implementation of the precautionary measures on behalf of the patients at the Federico Mora Hospital, who were allegedly in "dire" straits.

In the framework of the precautionary measure granted for the benefit of patients of the Federico Mora Hospital, the State of Guatemala stated that it had taken various measures aimed at enforcing the precautionary measure, among which: (i) a series of working meetings had been organized with the petitioners, where various actions had been agreed upon to tackle the situation of persons with mental disabilities in general and in the above-mentioned hospital; (ii) a wall had been erected to separate patients admitted with criminal charges from the other patients of the Hospital, wards IV and V had been refurbished, and a new ward had been built; (iii) follow-up is being conducted on the case files of patients who should no longer be in the hospital and alternatives are being evaluated to establish residential centers as part of the pilot plan to decentralize mental healthcare, with priority being given to six departments strategically located in the country’s inland region; (iv) two health centers would be built up in each one of the departments of Quiche, Petén, Jutiapa, Santa Rosa, Sololá, and Chimaltenango; (v) elderly patients had been released and transferred to the facilities of a home for the elderly in the Department of Zacapa; (vi) a report about the actions that had been taken was presented to the Congress of the Republic; (vii) an Inter-institutional Agreement for Integral Services for persons subject to criminal proceedings and with mental disorders or retardation and persons with these conditions who are subject to Security Measures or Confinement in Special Care Centers has been entered into, on the basis of which the Institute for Public Criminal Defense had requested the release of a large number of patients who had successfully been reinserted into the community, whereas others were being called to court hearings for the review of their legal situation; and (viii) four seminars on Forensic Psychiatry had been planned for judges in the year 2015.

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600 PDH-Guatemala, Informe Anual Circunstanciado, 2013, pp. 245-255.

601 BBC, BBC, Inside the world’s most dangerous hospital, December 2014; Emisoras Unidas, Federico Mora es el peor hospital psiquiátrico de América, según BBC, December 5, 2014.

602 OHCHR-Guatemala, Press Release, OACNUDH llama a garantizar los derechos humanos de pacientes del Hospital Federico Mora, December 7, 2014.

h. Persons deprived of their liberty

353. In regard to people deprived from their liberty, historically, the Inter-American Commission has observed that the Guatemalan penitentiary system has typically been overcrowded, with high levels of violence among the inmates, corruption, a lack of even minimum dignity for satisfaction of inmates’ basic needs, a lack of effective oversight by the authorities on the inside of detention centers, and the absence of opportunities for either education or work for the inmates. In his 2015 Report to the United Nations Committee against Torture, the Guatemalan Ombudsperson reported that the State had neglected the penitentiary system; that it had generated a situation in which the human rights of persons deprived of their liberty are constantly violated; that there have been delays in expanding and improving the infrastructure, exacerbating the overcrowding which gets worse by the year. He also pointed to lack of oversight and security inside detention centers; to violation of the right to health within the penitentiary system because both medical care and access to medicines are very restricted; to signs of corruption on the part of prison authorities, as well as of crimes being committed by inmates from inside the prisons.

354. Guatemala has 22 detention centers, 5 of which are for pre-trial detention, 5 for convicts, and 2 maximum security prisons, the rest is mix. According to the International Centre for Prison Studies, the prison population in May 2015 comprised 19,021 inmates, 9,232 of whom (48.6%) were being held in pre-trial detention. There were 1,709 female inmates (9%).

355. As regards female inmates, cases have been reported of their being subjected to maltreatment, such as being beaten, having plastic bags put over their heads to cause suffocation, being bitten by guards, and threats of reprisals against their families for reporting such incidents. With respect to women inmates, the IACHR notes the practice of body-searching continues, during which women have to strip naked, sometimes in the presence of male wardens, while women wardens search vaginas for drugs and weapons. The situation of indigenous women inmates

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605 PDH-Guatemala, Contributions of the Ombudsman for the adoption, at the 54th session of the Committee against Torture, of the list of issues prior to the presentation by the State of Guatemala of its seventh periodic report, February 5, 2015, para. 88.


607 International Centre for Prison Studies, World Prison Brief – Guatemala.

608 UDEFEGUA and World Organization against Torture, Información para la elaboración de la Lista de cuestiones previa al examen del séptimo informe periódico de Guatemala ante el Comité contra la Tortura (55° periodo de sesiones del Comité contra la Tortura), February 9, 2015, p. 10.
is especially worrying, because they are also victims of other forms of discrimination.\textsuperscript{609}

356. Regarding the situation of adolescents deprived of their liberty, information which is a matter of public record indicates that there has been a rise in the number of cases of adolescent criminal lawbreakers, because in 2012, there were 746 adolescents deprived of their liberty, whereas in 2014 the figure amounted to 867 and in 2014 the figure had risen to 1,117.\textsuperscript{610} The IACHR highlights its concern about the conditions of adolescents deprived of their liberty, because it has received information that would indicate that there are conditions of overcrowding, poor sanitation, and absence of security, as well as acts of violence, cruel, inhumane, and degrading treatment, and torture in detention centers.\textsuperscript{611} In addition, according to UNICEF, adolescents in Guatemala find that their right to procedural guarantees is not respected when they are subject to court proceedings, although there is a Law for the Comprehensive Protection of Children and Adolescents.\textsuperscript{612} In that law, there are specific criminal proceedings enshrined for adolescent criminal lawbreakers, and attempts are being made to make detention an exceptional measure. In that respect, the IACHR notes that, in October 2015, the Public Prosecution Service of Guatemala shall present a Model for Specialized Services and Prosecution of Adolescent Criminal Lawbreakers.\textsuperscript{613}

357. The IACHR also received information regarding the situation of LGBT persons in the penitentiary and prison system, contained in a report by a civil society organization, published in 2015.\textsuperscript{614} According to that report, in interviews with LGBT persons deprived of their liberty, 43% declared that they had been physically and verbally assaulted because of their sexual orientation, and 50% said they were treated differently because of their sexual orientation and gender identity; 20% said they had been segregated because of their sexual orientation and gender (most in solitary confinement); 85% considered that LGBT inmates are discriminated against; all (110%) said they had not complained of the acts of discrimination for fear of repercussions and assault; 96% said they were not granted the right to intimacy with visitors in the same way as heterosexual inmates; and 88% was unaware of any mechanisms for attending to LGBT persons. As for the interviews with prison personnel, 90% did not know the difference

\textsuperscript{609} UDEFEGUA and World Organization against Torture, Information for preparation of the list of issues prior to the review of the seventh periodic report of Guatemala to the Committee against Torture (55\textsuperscript{th} session of teh Committee against Torture), February 9, 2015.

\textsuperscript{610} Newspaper article of February 27, 2015 published in \textit{Prensa Libre}, Aumentan casos de menores en conflicto con la ley penal.


\textsuperscript{612} UNICEF, Guatemala, Adolescents..

\textsuperscript{613} Newspaper article of October 23, 2015 published in \textit{Prensa Libre}, Lanzan modelo para adolescentes en conflicto con la Ley.

\textsuperscript{614} The investigation involved interviews with 54 LGBT inmates in 3 penitentiaries and 62 staff (directors, deputy directors, and multidisciplinary teams) in 7 penitentiaries. REDNADS. Primer diagnóstico: Necesidades de la Población LGBTI Privadas de la Libertad, 2015.
between sexual orientation and gender identity; all (100%) were unaware of standards of differentiated treatment of trans persons and of protocols for dealing with LGBT persons; 90% acknowledge bans on certain personal items, such as clothing, accessories, haircuts, and others; and 70% said they had not received training in non-discrimination against LGBT persons.

358. The prison system has the capacity to accommodate 6,700 inmates, with the current prison population being 270% higher than that, a regression from the already serious overcrowding in 2010, when there was room for 6,610 and an actual population of 10,512 persons deprived of their liberty. According to the Ombudsman, overcrowding in some prisons (actual population vis-a-vis capacity) reached 527%, as with the “Santa Teresita” women’s prison, and 514%, as in the Detention Center for Men (Annex B, zone 18).

359. In its Concluding Observations on the combined fifth and sixth periodic reports of Guatemala, the CAT expressed its concern at the large numbers of people in pre-trial detention (51% of all those deprived of their liberty). One aspect pointed out by the Ombudsperson in his February 2015 Report to the United Nations Committee against Torture was the failure to separate convicts from persons in pre-trial detention. Here, it is worth stressing that very little is being done to seek alternatives to pre-trial incarceration, which is conducive, among other things, to the overcrowding in prisons.

360. The Commission has considered the arbitrary and illegal use of pre-trial detention to be a chronic problem in numerous countries in the region. In its Report on the Human Rights of Persons Deprived of Their Liberty in the Americas, the IACHR pointed to the excessive use of pre-trial detention as one of the most serious and widespread problems in the region; and it stressed that this dysfunctional aspect of the criminal justice system leads to other problems, such as overcrowding and the failure to separate convicts from those awaiting trial.

615 Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG) [Institute of Comparative Criminal Science Studies of Guatemala], figures updated to February 5, 2015.


617 PDH-Guatemala, Contributions of the Ombudsman for the adoption, at the 54th session of the Committee against Torture, of the list of issues prior to the presentation by the State of Guatemala of its seventh periodic report, February 5, 2015, par. 91.

618 United Nations Committee against Torture, Concluding Observations on the combined fifth and sixth periodic reports of Guatemala, adopted by the Committee at its 50th session (6–31 May 2013), CAT/C/GTM/CO/5-6, 24 June 2013, para. 17.

619 UDEFEGUA and World Organization against Torture, Information for preparation of the list of issues prior to the review of the seventh periodic report of Guatemala to the Committee against Torture (55th session of the Committee against Torture), February 9, 2015.

i. Acts of violence that have occurred in detention centers or prisons

361. The IACHR has received information regarding the ongoing high levels of violence in detention centers. For its part, the Committee against Torture has also expressed concern at this state of affairs, as it allegedly reflects the existence of organized groups of inmates who control prisons and, with the acquiescence of the authorities, force other inmates, to make payments either not to be harmed or to be freed from tasks. This practice is known in Guatemala as "talacha," and it means that those who cannot pay are assaulted and sometimes those assaults result in their death. Thus the Committee highlighted the deaths of Víctor Rojas and Efraín Pérez in 2012 from the beating they received for not paying the "talacha." The press, too, has carried reports of deaths allegedly due to the "talacha." In June 2012, for instance, Oscar Martínez Ramos, an inmate at the Jutiapa prison, died as a result of being beaten on the kidneys. In June 2015, there was another report of a person being beaten to death: this time was José Sánchez Gabriel, an inmate at the Pre-Trial Detention Center for Men in Huehuetenango. In July 2015, youths at the Las Gaviotas correctional center rioted, used firearms, killing two wardens and wounding others. According to available information, adolescents detained in this center had access to firearms, encountered conditions of overcrowding and deficient infrastructure. Likewise, the IACHR was informed that there was inadequate nutrition, as well as mistreatment and aggression by the staff towards adolescents deprived of their liberty. In August 2015, the bloodied and beaten bodies of Geovany Yumán, Anderson Orleó Gaitán Arévalo, and Kevin Fernando Véliz were found in the bathroom of a cell at the El Boquerón, Pre-Trial Detention Center.

362. On November 29, 2015, at least 16 persons died during the prison riot in the penitentiary Granja Penal Canadá, allegedly during a clash between rival groups. Also, complaints and investigations continue into involvement by State authorities in acts of corruption and violence associated with detention centers. Thus, on September 3, 2014, in a joint operation by the Public Prosecution Service, the Ministry of the Interior, and the CICIG, members of a criminal group were captured involving the then Director of the Penitentiary System, Edgar Camargo L. According to the head of the CICIG, Iván Velásquez Gómez, "this investigation revolves around the discovery of those parallel powers and their relations with individuals, whereby mention is made of intermediaries or go-betweens inside the penitentiary authorities themselves." In the course of 15 raids, seven people were captured, including government officials, inmates, and private individuals, for

621 United Nations, Committee against Torture, Concluding Observations on the combined fifth and sixth periodic reports of Guatemala, adopted by the Committee at its 50th session (6–31 May 2013), CAT/C/GTM/CO/5-6, 24 June 2013, para. 18.
622 Prensa Libre, Recluso muere a causa de golpiza, June 19, 2014.
623 Prensa Libre, Autoridades investigan muerte de reo, June 23, 2015.
624 Prensa Libre, Dos muertos en motín en Las Gaviotas, July 7, 2015; El Universal, Guatemala: Motín en prisión de menores deja 2 muertos, July 7, 2015.
625 El Periódico, Descubren cuatro reos muertos en dos prisiones, August 9, 2015.
626 CNN, Motín en una cárcel de Guatemala deja varios muertos, November 30, 2015.
crimes such as money laundering and influence peddling. At the heart of this criminal network was the inmate Byron Lima Oliva, a former army captain convicted of murdering Monsignor Juan José Gerardi. The CICIG investigation ascertained, among other things, that:

[I]nmates, directly or indirectly, went to [Byron] Lima Oliva to request their transfers [...] or to obtain favors and privileges within the Penitentiary System in exchange for considerable sums of money. Those sums were collected by Byron Lima [Oliva], who, it transpired, also controlled the inmates’ conduct and put pressure on them to take part in activities that he himself organized, as if he were the principal authority in the detention center (of Pavoncito).  

363. With regard to the existence of criminal groups controlled by inmates, the IACHR reminds the State of Guatemala that the principal duty of the public administration with respect to managing the prisons is to ensure control over them. Without exercising effective control, it is impossible for the State to even minimally perform its functions as the guarantor of the human rights of those it has deprived of their liberty. Hence it is totally unacceptable that there be inmates or criminal groups inside prisons who amount to uncontrolled parallel authorities alongside of those legally appointed, and even more unacceptable that those de facto powers that be devote themselves to committing illicit acts within and from the prisons, and with complete impunity.  

364. The duty of the State to protect the life and personal integrity of all those deprived of their liberty includes the positive obligation to adopt every preventive measure needed to protects inmates from attacks or assaults from either State actors themselves or third parties, including other inmates. Indeed, given that prison is a place where the State has total control over the lives of inmates, it is duty-bound to protect them from acts of violence, regardless where they come from. When the State fails to exercise effective control over prisons, grave situations arise that endanger the lives and personal integrity of the inmates and even of third parties. Such situations include: "uncontrolled-self-government" systems, a product of the corruption endemic to many systems; high levels of prison violence; and the organization and directing of criminal acts from inside the prisons.  

365. In this context, it bears stressing that on June 6, 2014, the Criminal Court in Geneva, Switzerland condemned Erwin Sperisen, former Director of the PNC (who had joint Swiss and Guatemalan nationality) to life in prison for being the actual perpetrator of the murder of inmate Abraham Tiniguar Guevara and co-perpetrator of the extrajudicial execution of six more inmates (Luis Alfonso Zepeda G., Jorge Eduardo Batres P., Mario Misael C., Carlos René Barrientos V., Gustavo

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Correa S., and Erick Estuardo Mayorga G.), during "Operation Peacock," carried out in the prison at Pavón on September 25, 2006. Here, the Inter-American Commission concurs with the statement by the CICIG that it considered that the judgment handed down by the Swiss court constituted "a major contribution to the upholding of rights. it sends a resounding message that no one is beyond the reach of the law, much less in the case of government officials [...]"

Likewise, and in connection, too, with this case in the Pavón prison, on October 13, 2014, the Appeals and Impeachment Division of the Supreme Court of Justice issued a decision upholding the judgment handed down by the Higher Risk Group B Criminal Court on August 8, 2013, sentencing the former head of the Criminal Investigation Directorate of the PNC, Víctor Hugo Soto Diéguez, to 33 years in prison for the crime of extrajudicial execution. The IACHR values the efforts of the administration of Justice in order to fight impunity.

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ADMINISTRATION OF JUSTICE

367. The effective observance of rights and freedoms in a democracy requires a legal and institutional order, in which the laws prevail over the will of the rulers, and in which there is judicial review for the constitutionality and legality of the acts of the authorities, i.e. it presupposes respect for the rule of law.

368. The judicial branch has been established to ensure compliance with the laws and its role is fundamental for protecting human rights. In the inter-American human rights system, designed for a hemisphere of democratic countries, the adequate functioning of the judiciary is an essential element for preventing abuse of power by another organ of the state, and therefore for the protection of human rights. The existence of an independent judicial branch is essential for the effective observance, in practice, of human rights and democracy, and constitutes a right that the member states of the OAS are obligated to respect and ensure for all persons under their jurisdiction.634

369. The efforts carried out in Guatemala to achieve the independence and efficiency of the administration of justice has not been sufficient. The IACHR observes that there are severe problems in administering justice, among which structural impunity covering both human rights violations in the past and present conducts punishable by law, the absence of independence and impartiality of some judges, the politicization of justice, and the lack of access to justice for many sectors of society. Regarding this, the IACHR reiterates to the State the need to adopt all the necessary measures to ensure implementation of the recommendations and judgments pending in respect of justice handed down by the organs of the inter-American human rights system, such as those in the cases: Human Rights Defender; Veliz Franco et al.; García and Family Members; Gudiel Álvarez et al. ("Diario Militar"); Río Negro Massacre; Chitay Nech et al.; The Dos Erres Massacre; Tiu Tojín; Molina Theissen; Plan de Sánchez Massacre; Maritza Urrutia; and Myrna Mack Chang, among others.635

Implementation of the recommendations and judgments of the bodies of the Inter-American Human Rights System is not only an obligation of the State it is also an opportunity to build up the justice administration system in Guatemala, for the purpose of providing its citizens with an efficient, independent, and autonomous system, which all can gain access to without any discrimination or obstacles. Building democracy and ensuring the rule of law require concrete actions and measures in terms of justice. In this context, the following section addresses the situation of judicial independence in relation to the processes for selecting and retaining judicial officers; access to justice and impunity; and the legacy of the internal armed conflict.

A. Judicial Independence: Judicial officers, selection processes, retaining one’s position

The IACHR has highlighted the basic role performed by justice operators to uphold the rule of law, make it possible for all complaints to be processed adequately on the basis of the jurisdictional mechanisms provided by the State, and in cases of human rights violations, make it possible to investigate, effectively punish those responsible, and provide reparations, while guaranteeing due process of law for all persons who are subject to the State’s exercise of its punitive powers. Because of that, the IACHR as the Inter-American Court have indicated that, even when the states may create various procedures for designating judges, not every procedure for designating them satisfies the conditions demanded by the American Convention for implementing a true independent regime. Only a transparent designation process, based on objective criteria and that guarantees the equality of all the candidates, is a fundamental guarantee for the independence of the judiciary. Precisely in light of the important function performed by the organs entrusted with the processes of appointment, promotion, and disciplinary sanctions, and the objectivity required for their activity, the Commission has considered that it is advisable for the states to establish an independent organ whose functions include the appointment, promotion, and removal of judges.

372. In 2014, there were processes carried out in Guatemala to select and appoint justices to the Supreme Court of Justice, the Court of Appeals, and the Supreme Electoral Court, in addition to Attorney General. In Guatemala, the justices of the Supreme Court of Justice, the Courts of Appeal, and the Electoral Court are chosen by the Congress of the Republic from a list of candidates proposed by a Nominations Committee. The Attorney General of the Republic is appointed by the President of the Republic from a list of six candidates proposed as well by a Nominations Committee.

373. With regard to the said process of selection the IACHR received consistent information about the presumed lack of consistencies in the designation and selection process which could have an impact on the independence of the judiciary.

374. With regard to the appointment process of the members of the Supreme Electoral Tribunal in March 2014, the IACHR manifested its concern for information received which questioned the designation process for not offering sufficient guarantees to ensure the capacity and suitability of those nominated since the Congress had elected, by lists arrived at by consensus based on political quotas among the blocs, without any formal discussion on the merits of capacity, suitability, honesty, and reputation of each candidate.

375. Regarding the process of selecting the candidates to be justices of the Supreme Court of Justice (Corte Suprema de Justicia—CSJ) and the Court of Appeals, prior to selection and appointment, the CICIG stressed that candidates had to comply with the merits of qualifications, ability and honesty set out in Article 113 of the Constitution of the Republic. CICIG also handed over to representatives of the postulators for selection of judges to the Supreme Court and Court of Appeals, the Guide to Good Practice for ethical and procedural Nominating Committees. In September 2014, CICIG expressed concern about the process of selecting candidates for Court of Appeals and Supreme Court by the nominating committees indicating: "We do it with the greatest respect for the country's institutions with the sole purpose of contributing to the construction of a system of independent, 

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641 The Nominations Committees are governed by the Political Constitution and the Law on Nominations Committees (Legislative Decree No. 19-2009) and are aimed at proposing and submitting nominations or lists of persons who will have to be elected or appointed by the President of the Republic or parliament for the performance or exercise of high-level offices of the State.


644 Prensa Libre, Organizaciones rechazan elección de magistrados por cuotas políticas, March 10, 2014.

645 CICIG, Magistrados a la CSJ y Apelaciones deben ser idóneos [Judges to the Supreme Court of Justice and Court of Appeals must be qualified], June 12, 2014.

impartial, suitable, suitable justice to face the ever rising increase in organized crime”.

376. With respect to the process for selecting members of the courts of appeals (Salas de Apelaciones) and of the Supreme Court of Justice that ended in October 2014, the IACHR received information according to which members of the Nomination Committees were also candidates to serve on the courts of appeals and the Supreme Court, impairing the transparency of the process. On April 21, 2014, the IACHR issued a press release urging Guatemala to ensure that the processes were carried out transparently, ensuring the independence of the judicial officers elected. On September 27, the IACHR issued another press release reiterating its concern for the processes of selecting and nominating judges for the Court of Appeals and the Supreme Court of Justice, and urged the Congress of the Republic of Guatemala to select judges for the Courts of Appeals based on their merits, capacity, suitability, and honesty, as stipulated by Article 113 of the Constitution of Guatemala, and to observe the minimum standards established by international human rights law to ensure judicial independence. In this context, as mentioned in the section on justice operators, judges were subject to intimidation and reprisals for denouncing irregularities in this process of electing members of the Supreme Court of Justice and the chambers of the Court of Appeals, to the point that the IACHR issued precautionary measures to protect one of the persons negatively impacted.

377. Once the selections were made by the Congress of the Republic, civil society organizations and private citizens challenged them before the Constitutional Court, considering that in these designations both the Nomination Committees and the Congress of the Republic had engaged in a number of vices such as conflicts of interest, influence peddling, and lack of objective criteria for selection and appointment. The International Association of Judges alleged that the selection took place without debate and without taking into account the Law on the Judicial Career Service and its regulation; as a result many judges designated did not meet the requirements of the law and were not part of the judicial career service. Of the

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647 CICIG, Preocupación sobre Procesos de Selección de Candidatos para Corte de Apelaciones y Corte Suprema de Justicia [Concern over the Processes to Select Candidates for the Court of Appeals and the Supreme Court of Justice], September 16, 2014.

648 Press article published in emisorasunidas.com on August 29, 2014. Diputada critica a comisionados que se postularon para una magistratura.


650 IACHR, Press release 108/14. IACHR Reiterates its Concern about the Processes to Select and Appoint Judges to Guatemala’s Appeals Court and Supreme Court, September 27, 2014.

651 Civil society organizations and private persons performed the valuable work of a social audit with the accompaniment of the Office of the Human Rights Ombudsman, the CICIG, and OHCHR-Guatemala. Approximately 100 challenges were filed as well as amparo actions against the decisions adopted by the Nominations Committees and the Congress. OHCHR-Guatemala. Report of the United Nations High Commissioner for Human Rights on the Activities of Her Office in Guatemala, 2014. January 12, 2014. paras. 18-22.
judges chosen, it is said that only 33% had any prior judicial experience, and of these only 10% were in the judicial career service.\textsuperscript{652}

378. For his part, the Human Rights Ombudsman asked the Constitutional Court to annul the election of judges in response to the deteriorating rule of law and the violation of republican constitutional principles, and to repeat the process to ensure its legality. On October 9 the Congress made the list of judges official; the same day the Constitutional Court suspended that election, granting a provisional \textit{amparo} remedy in response to an action brought by several social organizations. As of that date, several challenges were presented, until on November 19 the Court ordered that the 13 judges elected by the Congress for the Supreme Court and the 126 elected for the 42 Courts of Appeals should take their positions.\textsuperscript{653}

379. On November 24, 2014 the members of both the Supreme Court of Justice and the Courts of Appeals took office after the Constitutional Court dismissed those challenges.

380. In its decision of November 19, 2014, the Constitutional Court considered that Congress elected them in keeping with the law, since prior to the election the speaker of the Congress consulted the plenary as to whether it considered that the aspirants met the legal requirements, and then the election took place. In addition, the Court underscored that the Congress is not competent to review the activities of the Nomination Committees, where most of the irregularities said to have impaired the process were purportedly committed.\textsuperscript{654} A dissenting vote indicated that, the \textit{amparo} should have been granted because the process in the Nomination Committee was vitiated and the Congress failed to meet its duty to verify that the list of aspirants resulted from a process in keeping with the constitutional mandate.\textsuperscript{655}

381. In October 2015 the State affirmed that there has been compliance with the terms of the Constitution and the Law on Nominations Committees as regards the procedure for electing members of the Supreme Court and the Court of Appeals. The State indicated that "with the incorporation the Nomination Committees within the legal system the main purpose is to eliminate arbitrariness and subjectivity in the election of aspirants that comprise or lead those courts and other state bodies."\textsuperscript{656}

382. The various questions that were raised about how the process of nominating and selecting judges unfolded in the country led to calls from both civil society and the judicial branch itself to carry out the reforms needed to strengthen the independence of judicial officers. In this regard, the decision of the Constitutional

\textsuperscript{652} Statement by the International Association of Judges with respect to the situation in Guatemala, 2014.
\textsuperscript{653} Contribution of the Human Rights Ombudsman to the report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.
\textsuperscript{654} Constitutional Court, Case 4639-2014 and those joined to it (November 19, 2014).
\textsuperscript{655} Constitutional Court, Separate vote in Case 4639-2014 and those joined to it (November 19, 2014).
Court urges the Congress of the Republic to convene an open dialogue to discuss possible constitutional and statutory reforms to guarantee the quality and independence of the judiciary. According to information available to the public, the Roundtable on Security and Justice (Mesa de Seguridad y Justicia), coordinated by the chairperson of the Committee on Legislation and Constitutional Points of the Congress of the Republic, has proposed an initiative to amend the Law on Nominations Committees, which will be submitted in 2015 to the leaders of the blocs in Congress to consider its inclusion in the legislative agenda. In addition, the CICIG has convened a national dialogue to promote justice sector reforms in 2015. The IACHR calls on the State to strengthen the efforts so as to adopt these essential reforms.

383. In this respect, the OHCHR-Guatemala indicated that an extensive analysis of the current model for selecting and appointing officers of the judicial system is essential for ensuring judicial independence. This process will require a comprehensive review of the legal framework, including, among others, the Constitution, the Law on Nomination Committees, the Law on Judicial Career Service, and the Law on the Judicial Branch. The Commission urges the State of Guatemala to adopt the legislative measures and develop the practices necessary for ensuring the independence of judicial officers. This implies, as indicated by the IACHR in its report on Guarantees for the Independence of Justice Operators, an adequate and transparent process of election and appointment, conditions that enable them to perform their work independently and impartially in those cases they decide, bring, or defend, as well as disciplinary procedures that offer the appropriate guarantees.

384. With regard to the term of then-Attorney General of the Republic Claudia Paz y Paz, who was appointed on December 9, 2010, to serve a four-year term, the IACHR was informed that the Constitutional Court decided on February 5, 2014, that she had to exit from the post seven months before completing her term of office, because her post had been so as to complete the term of an earlier attorney general. On this matter, the OHCHR-Guatemala indicated that the Constitutional Court had set the term of the former attorney general as ending in May and not in December, and her name was not included in the short list sent by the Committee on Nominations to the President, even though she had the second highest score among the candidates. Regarding this, the IACHR states its concern because the change in the term of office that was originally set could lead to undermining the guarantee of job stability.

657 April 23, 2014, Presidente del Congreso instala oficialmente Mesa de Seguridad y Justicia.
659 Press release 043, CICIG llama a diálogo nacional para reforma de la justicia, Guatemala City, November 17, 2014; and Press release 045, Se pospone evento, Guatemala City, November 25, 2014.
661 IACHR, Guarantees for the Independence of Justice Operators, OEA/Ser.L/V/II. Doc. 44, adopted on December 5, 2013, para. 34.
385. In the exercise of the power contained in Article 41 of the American Convention, on February 18, 2014 the IACHR requested information from the State with respect to the conditions of her appointment, among other matters. Three days later, the State answered that the decision of the Constitutional Court did not violate the independence of the Attorney General’s Office. At the same time, it considered it inappropriate for the Commission to call into question the decisions of the Constitutional Court.

386. The IACHR recalls that the duration and stability of the appointment of a judicial officer is a corollary of his or her independence. Such independence is essential for ensuring transparent investigations and eliminating barriers to access to justice in the case of human rights violations. Accordingly, it is essential to ensure and respect the time for which a judicial officer has been appointed.

387. At the same time, the Commission learned of a decision by the Association of Lawyers and Notaries (Colegio de Abogados y Notarios de Guatemala) of January 9, 2014, that decided to sanction with a one-year suspension from the exercise of the profession Judge Iris Yazmín Barrios, the beneficiary of precautionary measures granted by the IACHR, for the way in which she is said to have treated the counsel for defendant Efraín Ríos Montt in the oral and public hearing for the crime of genocide. According to what some organizations reported to the IACHR, that sanction was imposed by an organ without jurisdiction, since that power would correspond to the Disciplinary Board of the Judicial Branch. In addition, that decision was apparently aimed at intimidating and de-legitimating the work of Judge Barrios. For this reason, on April 9, 2014, based on Article 41 of the American Convention, the IACHR requested information from the State of Guatemala with respect to the authority of the Honor Tribunal to impose sanctions, the resolution approving the sanction, and the judicial remedies that would be available to the judge.

388. On April 23, 2014, in its response, the State indicated that the Honor Tribunal does have jurisdiction to impose the sanction, pursuant to the domestic legislation, and that it was imposed because the judge would have committed an ethical breach which would have had affected the honor and prestige of her profession by a morally incorrect practice in the performance of her duties, also resulting in a statutory violation, which is why the Attorney General’s Office acted accordingly. It also indicated that the decision on the appeal filed by the judge against that decision is pending. Subsequently the Commission learned that in the appeal the Assembly of Presidents of the Professional Associations (Asamblea de Presidentes de los Colegios Profesionales) affirmed the alleged breach committed by Judge Barrios and modified the sanction, establishing only a private reprimand and not the suspension from the exercise of the legal profession for one year, as the Association of Attorneys and Notaries decreed. Judge Barrios filed an appeal

664 CEJIL, Persiste afectación a la independencia judicial en Guatemala, May 2, 2014.
against that decision before the Constitutional Court\textsuperscript{665}, which ruled in her favor, and on March 10, 2015 it struck down the decision by the Honor Tribunal of the Association of Attorneys and Notaries of Guatemala.

389. The Inter-American Commission reiterates that the independence of the judiciary and its clear separation from the other branches of government must be respected by both the executive branch and the legislative branch; and that said respect begins with the normative recognition of its independence and the non-interference of other branches of government. For the IACHR this guarantee, in addition to being established in the normative framework through recognition of the principle of separation of powers, should be expressed in practice, for example by avoiding financial dependence on the budgetary allocations made by the legislature; in the timely designation, in proper form, and with respect for an adequate and transparent process of electing and appointing the judges of the high courts, and for the independence of judges in their deliberation, decision, and operations of the judiciary in general, and in disciplinary proceedings that offer guarantees of due process.\textsuperscript{666}

\section*{B. Access to justice}

390. The access to justice in Guatemala has been a priority issue for the IACHR throughout the years. In various reports it has observed the severe violations of this right because of the Guatemalan State's inability to provide an adequate and efficient system for the administration of justice or independent and impartial justice. Among the severest problems identified by the IACHR, there is structural impunity which covers both severe human rights violations perpetrated during the domestic armed conflict and subsequent offenses punishable by law.\textsuperscript{667} According to a report from the CICIG of November 2015, the impunity rate for the crime of homicide fluctuated from 2008 and 2014 between 99.1\% and 98.4\%, with certain drops depending on the year and the subject.\textsuperscript{668} To this must be added that most of the incidents taking place during the armed conflict (1960 to 1996) have gone unpunished.

391. Impunity is one of the severe problems concerning the administration of justice in the Hemisphere and is one of obstacles for definitively building up the rule of law

\textsuperscript{665} Organizaciones internacionales exigen anular la sanción a Yassmin Barrios, Jueza Principal en el Juicio Histórico sobre Genocidio en Guatemala, November 10, 2014.

\textsuperscript{666} IACHR, Guarantees for the Independence of Justice Operators, 2013, para. 34.


\textsuperscript{668} CICIG defines impunity as the failure to report, investigation, arrest, try, find positive solutions for the victims and/or convict those responsible for crimes classified as such in Guatemalan law and focuses its report on the subject of judgments of conviction. CICIG, Press release 091, Sistema de Medición de Impunidad en Guatemala, November 27, 2015.
in various States of the region. In addition, the Inter-American Court has established that:

[The State that leaves human rights violations unpunished would also be failing to comply with its general obligation to ensure the free and full exercise of the rights of the persons subject to its jurisdiction. This Court has referred to the right of the next of kin of the victims to know what happened and the identity of the State agents responsible for the acts. “Whenever there has been a human rights violation, the State has a duty to investigate the facts and punish those responsible, […] and this obligation must be complied with seriously and not as a mere formality.” Moreover, this Court has indicated that the State “is obliged to combat [impunity] by all available legal means, because [impunity] encourages the chronic repetition of human rights violation and the total defenselessness of the victims and their next of kin.”]

392. The IACHR observes that the failure of justice to effectively respond to crimes perpetrated in Guatemala both in the past and the present tend to establish a situation of structural impunity.

According to the OHCHR-Guatemala, and the Commission in recent years some gains were made in the fight against impunity. To this respect, there were verdicts in organized crime cases, including cases of corruption, extortion, kidnapping, rape, and murder, with a major social impact:

Coordination among State institutions in criminal investigation and prosecution led to the dismantlement of several corruption networks, including one involving the mayor of La Antigua and members of the municipal council; the arrest of the alleged perpetrators of the above-mentioned massacres of Nacahuil and Salcajá; and the arrest of alleged drug traffickers, among others.

High-risk courts have played a crucial role in combating impunity for past and present human rights violations. In 2013 and 2014, they had a high rate of effectiveness and reduced the backlog of cases. In 2013, 60 cases were presented and 67 judgments handed down; 42 cases were presented and 78 judgments were handed down in 2014.

The new Attorney General and her Office maintained coordination and cooperation with CICIG in high-impact cases, such as the one related to a corruption network in the prison system, in which both prison officials and detainees were implicated; the case of a corruption network in the judiciary, made up of public officials and private citizens; and the case of an organized criminal network operating in the Petén and Izabal departments. In

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670 I/A Court H.R., Case of the “Street Children” (Villagráñ-Morales et al. v. Guatemala), Judgment on reparations, May 26, 2001, paras. 99 and 100. See also I/A Court H.R., Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 177.

October, a contract killer was sentenced to 90 years in prison for the 2013 murder of lawyer Lea de León. In June, a Swiss court convicted the former Director of the National Civil Police and sentenced him to life in prison for extrajudicial executions at the Pavón penitentiary.  

393. In the area of justice, special mention should also be made of the increase in requests for scientific evidence from the Attorney General’s Office:

394. “In comparison to 2010, there was a 15 per cent increase in scientific evidence requests from the Attorney General’s Office to INACIF in the investigative phase, resulting in accusations that were no longer based primarily on witness testimony. This contributed to a 6.47 per cent increase in the number of accusations as compared to 2012, as well as to an increase of 9.4 per cent in the number of convictions. A positive development was the establishment, in January, of the Criminal Analysis Unit in the Attorney General’s Office, with the mandate to advise prosecutors on strategic decisions related to criminal proceedings.”

395. It is also very significant that the new management model adopted by the judiciary has contributed to reducing judicial backlog. In addition, there has been progress in infrastructure and the drafting of proposed statutory or regulatory reforms aimed at reducing judicial delay in the non-criminal jurisdictions (civil, family, labor, children and adolescents). Mention should also be made of the establishment of the Center for Family Justice (Centro de Justicia de Familia) in Guatemala City, which includes changes in the infrastructure and the creation of a judicial body with special jurisdiction to hear family violence cases. In addition, the OHCHR-Guatemala has observed that there was little progress in implementing the Law on the General Bureau of Criminal Investigation, which would help ensure the sustainability of inter-institutional coordination and that it was not possible to make gains in the vetting of the Attorney General’s Office.

396. In this scenario, the IACHR values the gains made in the fight against impunity, which includes the actions targeting corruption and urges the State to move forward toward resolving all those cases that continue to go unpunished.

397. As has been indicated, corruption in the administration of justice is another serious problem besetting Guatemala; it is one of the causes of the high rates of impunity. A short time after the end of the armed conflict, in the year 2000, it was noted that corruption in the administration of justice and its very real impact on criminal proceedings was one of the main mechanisms of impunity. Along with
other obstructions, or "bottlenecks," such as the intimidation of judicial officials and the arbitrary use of state secrecy to hide information, corruption affected judicial proceedings systematically; independent of whether they concerned human rights violations, organized crime, or common crime.676

Corruption is one of the main problems besetting the administration of justice in Guatemala; it is a fundamental mechanism in the process of generating impunity and the conditions of fragility, deficiency, and atrophy, all of which are characteristics of the judicial system.677

398. As the IACHR has said in several reports, it is undeniable that from 2000 to date important measures have been taken to fight corruption in Guatemala, with both civil society and international cooperation playing fundamental roles in this struggle. Nonetheless, there are clearly many tasks pending, as shown by the persistence of high rates of impunity.

399. The CICIG denounced 16 officials, including several judges, for the crime of breach of public duty (prevaricato) and presented the report Los jueces de la impunidad in which it indicates the transgressions committed by 19 judges of the Guatemalan judicial system in their rulings.678 In addition, in 2014 and 2015 the CICIG has pursued criminal charges in several matters involving judges, among them against Erick Gustavo Santiago de León, judge (Magistrado Vocal II) of the Third Chamber of the Court of Appeals; Adrián Rodríguez Arana, Jisela Yadel Reinoso Trujillo, and Marta Josefina Sierra González de Stalling, judges of first instance; and Carol Patricia Flores Polanco, judge of High Risk Court A. In all the cases the charges were for the criminal conduct of accepting bribes (cohecho pasivo) and breach of public duty (prevaricato).679

400. In September 2015 the CICIG and the Attorney General’s Office coordinated with the PNC the arrests of judges Jisela Yadel Reinoso Trujillo and Marta Josefina Sierra González de Stalling, and of Erick Gustavo Santiago de León, president of the Mixed Regional Chamber of the Court of Appeals of the Civil branch for Quiché, all tied to corruption.

Erick Gustavo Santiago de León: President of the Mixed Regional Chamber of the Court of Appeals, Civil branch for Quiché, is accused of accepting bribes for attempting to collect a commission of some Q10 millions in charge for a favorable ruling for a company.680 Jisela Yadel Reinoso Trujillo: Accused of the possible crimes of laundering money or other assets; illicit enrichment; breach of the duty to present a sworn statement on assets; and

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678 Contribution by the Human Rights Ombudsman to the report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.
679 Contribution by the Human Rights Ombudsman to the report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.
680 CICIG, Press release 065, Magistrado de Corte de Apelaciones ligado a proceso [Appeals Court Judge implicated in the process], September 25, 2015.

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obstruction of a criminal action. Arrested at her residence. Judge Marta Josefina Sierra González de Stalling: Accused of the crimes of accepting bribes and breach of public duty. Arrested at her office. She may have made illegal agreements with six persons from network set up to defraud the customs administration known as "la línea," who are said to have benefited from bond so as to be able to go free.

401. In the month of July 2015, the Supreme Court of Justice unanimously allowing criminal proceedings to go forward against the judge of the high impact court Carol Patricia Flores and stripped her of immunity. This resulted from the complaint filed by the Attorney General’s Office and the CICIG for illicit enrichment. Judge Carol Patricia Flores has had well-known cases such as the trial for genocide, the Alaska Massacre, the criminalization of defenders of the water Rigoberto Juárez, Domingo Baltazar de Santa Eulalia, Arturo Pablo, Adalberto Villatoro, and Francisco Juan de Barillas, all cases in which it is alleged that injustices and irregularities were committed.

"With the commitment we have assumed along the with Attorney General’s Office to struggle against corruption, we can say that no one is above the law, and that the criminal investigation reaches all persons independent of the position they have hold in society or the State. It is also consistent with the need to regain trust when one observes an Attorney General’s Office that is strengthened, active, with initiative, persistent, and bold, despite the pressure entailed in furthering investigations against powers of the State."

402. In this scenario, the IACHR recognizes those prosecutors, defenders, and judges, including those of the high courts, who have performed their work with dignity, commitment, and professionalism, several of them suffering threats, reprisals, and even losing their lives in the endeavor against impunity and corruption, and the protection also to guarantee judicial independence.

1. **Difficulties in effective access to justice and the role of the State institutions**

403. Access to justice should be understood from a perspective that includes the physical possibility of filing judicial actions and of obtaining a response in the short term in keeping with the legislation and the subject matter at hand.

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682. CICIG, Press release 062, Jueza Marta Sierra de Stalling ligada a proceso y enviada a prisión [Judge Marta Sierra de Stalling implicated in the process and sentenced to prison], September 23, 2015.
683. Prensa Comunitaria, Retiran inmunidad de jueza Carol Patricia Flores, July 30, 2015.
684. CICIG, Comisionado exhorta a una cultura de legalidad [Commissioner urges a culture of legality], September 2, 2015.
404. The very act of gaining access to justice requires overcoming obstacles for most Guatemalans; and only a few are able to obtain an effective response. The high rate of impunity in Guatemala reflects this situation and the gap between the inhabitants of Guatemala and access to justice. In a country where more than half the population lives in poverty and a high percentage in extreme poverty one must consider the relationship between this reality and access to justice. According to the Guiding Principles on Extreme Poverty and Human Rights, persons living in poverty face a series of obstacles when it comes to accessing justice:

Persons living in poverty are often unable to access justice or to seek redress for actions and omissions that adversely affect them. They encounter a variety of obstacles, from being unable to successfully register initial complaints owing to costs or legal illiteracy, to court decisions in their favour remaining unimplemented. Power imbalances and the lack of independent, accessible and effective complaint mechanisms often prevent them from challenging administrative decisions that adversely affect them. Without effective access to justice, they are unable to seek and obtain a remedy for breaches of domestic and international human rights law, exacerbating their vulnerability, insecurity and isolation, and perpetuating their impoverishment.  

405. In addition to the condition of poverty, the vast majority is unable to access to the administration of justice given the lack of state presence throughout the territory, the insufficient infrastructure and training of members of the judiciary, and the lack of interpreters and members of the institutions for the administration of justice who are familiar with the indigenous languages and culture, among other factors.

406. In an eminently rural country, several factors persist that influence the real possibility of accessing to the judicial system in the rural areas. These include major geographic barriers, determined by the long distances persons must travel from their communities to the urban centers to lodge or follow up on their complaints; economic barriers given the costs required to make such trips or to pursue the actions entailed in a judicial proceeding. Specifically, in relation to indigenous peoples and communities, linguistic and cultural barriers persist as matters are handled by officials who do not speak the indigenous language and there is a lack of trained interpreters, as well as the lack of sensitivity towards and understanding of the country’s ethnic diversity by those in charge of the administration of justice.

407. In relation to access to justice for the indigenous peoples in Guatemala, the IACHR notes with satisfaction some gains in the institutional sphere, such as the establishment of a Unit on Indigenous Matters of the judiciary and the SCJ, which


began its activities in March 2012 and whose objective is "to promote and advise on the implementation of public policies to foster access to justice for the indigenous population." Similarly, on July 9, 2012, the Attorney General’s Office created the Department of Indigenous Affairs of the Secretariat for Criminal Justice Policy with the aim of strengthening the institution’s actions to benefit indigenous peoples. In the area of training, it was reported that both institutions have undertaken activities to train judges and prosecutors on indigenous rights, though the efforts appear to be limited, considering the generalized lack of awareness of indigenous peoples’ rights that the IACHR has found.

The Commission values the creation of the Centers for the Administration of Justice in predominantly indigenous areas made up of officials of the PNC, the Attorney General’s Office, the Office of the Public Defender, and legal clinics known as Bufetes Populares; however, there is a perception a lack of human and material resources. With respect to the justices of the peace, the IACHR has found that they have a very weak institutional framework, do not receive support from the police to handle their cases, and do not have the capacity to foster state actions for containment, prevention, and immediate resolution of the problem upon arriving at the place in question. This situation is of special concern when it refers to the situation of the Justice of the Peace Courts.

In a country with a large indigenous population, one of the key issues for the Commission is bilingual access to justice, which presupposes ensuring that in the state justice system indigenous persons can be heard in their own language and can express themselves fluently in the criminal proceeding, in accordance to the right recognized in Article 8(2)(a) of the American Convention and Article 12 of ILO Convention 169. The IACHR is pleased to learn that major steps have been taken in this regard and in particular that the system of interpreters in the country includes 89 official interpreters from 13 of the 22 Maya linguistic communities. In addition, videoconferences are held to bolster the capabilities of the interpreters and the Center for Indigenous Interpretation and Translation was inaugurated with offices in Huehuetenango, Chimaltenango, Quiché, Sololá, and Cobán, Alta Verapaz. The Department of Indigenous Peoples of the Attorney General’s Office, as of 2013, had 54 interpreters of 13 Maya languages and

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689 Information received by the IACHR during visit.


691 Information received by the IACHR during visit in August 2013.

692 Article 8(2)(a) of the ACHR. - right of the accused to be assisted at no cost by a translator or interpreter if he or she does not understand or does not speak the language of the court.

693 Article 12 of ILO Convention 169: “... Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.”

694 Information received by the IACHR during visit in August 2013.

695 Judicial Branch of Guatemala. Presidente del Organismo Judicial inauguró el Centro de Interpretación y Traducción Indígena.
Garifuna. On this point, indigenous organizations told the IACHR that there are not enough translators and interpreters, and an even more dire shortage of judges who speak and/or understand the indigenous languages. They added that cases have come up of legal interpreters who do not have mastery of the specific Maya language for which they were contracted.

In this regard, the Ombudsman notes that in April 2014 the Attorney General’s Office created the Office for Attention to Indigenous Peoples in coordination with indigenous authorities from Sololá, Totonicapán, Quiché, and Alta Verapaz and that meetings have been organized to share experiences in the application of indigenous law, bringing together indigenous authorities and Attorney General’s Office prosecutors. In addition, the Attorney General’s Office established the Prosecutorial Unit for Crimes of Discrimination and for the Protection of Indigenous Peoples (Unidad Fiscal contra Delitos de Discriminación y Protección de Derechos de los Pueblos Indígenas) in order to effectively pursue and bring criminal actions in response to crimes of discrimination and related crimes committed against an indigenous person or group of persons, or indigenous associations. It should be highlighted that the Attorney General’s Office has no legal interpreters. Nonetheless, it appeals to indigenous personnel in some offices to support this function. He notes progress by the Unit for Indigenous Affairs’ launching of the first edition of the Bilingual Glossary of Legal Terminology (Glosario Jurídico Bilingüe) in 22 Maya languages; it also prepared the Guide for the Attention of Indigenous Women and Children for Access to Justice (Guía para la Atención a Mujeres y Niñez Indígena en el Acceso a la Justicia). He adds that in August 2013 the judicial branch established the Center for Indigenous Interpretation and Translation, which coordinates the official interpreters of the different regions of the country, and the Institute of Public Criminal Defense which has public defenders in the various language communities through 15 offices that cover 11 Maya languages, Garifuna, and Xinka. Nonetheless, despite the gains, the proposed Law on Jurisdiction of the Ancestral Community Authorities, a law that would allow for a timely intervention of the ancestral authorities in the judicial proceedings in favor of the indigenous peoples, has not been approved yet by Congress.

In relation to access to justice for the LGTBI population, the Attorney General issued General Instruction No. 2-2014, which establishes guidelines for the criminal prosecution of crimes of discrimination, where the motives of discrimination include sexual orientation and general identity. This instruction represents a significant gain for giving visibility to criminal acts that constitute attacks on the integrity of the lesbian, gay, bisexual, trans, and intersex (LGBTI) population, which have remained in impunity for many years given the lack of

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697 Complaint lodged by the Q’eqchi’, Poqomchi’, and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received by the IACHR during visit in August 2013.

698 The program of the Office of the Indigenous Public Defender began in three departments in November 2001. From then until June 2015, a total of 13,917 cases have been handled. Contribution by the Human Rights Ombudsman to the report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.
guidelines in the institutions entrusted with the obligation of ensuring criminal prosecution.\textsuperscript{699}

411. The Ombudsman reports that the lack of economic resources for the Child’s Division of the Procuraduría General de la Nación hinders the defense, protection, and restitution of the rights of children and adolescents. The New Rules for the provision of Child and Adolescent Protective Services by the Procuraduría General de la Nación constitutes a significant step forward.\textsuperscript{700}

412. Given the persistent obstacles referred above, the Commission urges the State to allocate the human and material resources needed to implement measures that effectively facilitate access to justice for the entire population. In particular, it is necessary to adopt measures that alleviate the excessive workload of the courts; expand the use of systems to modernize case file management; reduce delay in the resolution of cases and corruption in the processing of cases; allocate a sufficient budget to the judiciary; and ensure that provisions are adopted to ensure access to justice for indigenous peoples.

\section{2. Right to defense and the use and abuse of procedural motions}

413. The IACHR has found that structural impunity in Guatemala is fostered by the processing of notoriously frivolous or abusive motions whose objective is to obstruct justice.\textsuperscript{701} While every person has the right to file motions in the proper exercise of the right to defense and due process, the Commission has learned that defense counsel for persons accused of committing human rights violations in Guatemala use such motions to delay decisions from the local courts, without the judges, as the stewards of the judicial process, taking the measures necessary to avoid denials of justice in practice.\textsuperscript{702}

414. As will be indicated, since 2003 the Commission has documented that some judges allow the abusive use of such motions, delaying final decisions in several cases. The remedy most often used to this end is the \textit{amparo} remedy, or writ of \textit{amparo}.\textsuperscript{703} In this regard, the then-Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, in his mission to Guatemala in 2009, also made reference to the “abusive use of the \textit{amparo} ... [which] has turned it into a weapon

\begin{itemize}
  \item \textsuperscript{699} Contribution by the Human Rights Ombudsman to the report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.
  \item \textsuperscript{700} Contribution by the Human Rights Ombudsman to the report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.
  \item \textsuperscript{701} IACHR, \textit{Justice and Social Inclusion: The Challenges of Democracy in Guatemala}, 2003, para. 28.
  \item \textsuperscript{702} IACHR, \textit{Justice and Social Inclusion: The Challenges of Democracy in Guatemala}, 2003, para. 28.
  \item \textsuperscript{703} The improper processing of the writ of \textit{amparo} has been evidenced in cases of serious human rights violations such as the massacres of Xaman and Dos Erres, and also in the proceedings for the assassinations of Monsignor Gerardi and Myrna Mack Chang. IACHR, \textit{Justice and Social Inclusion: The Challenges of Democracy in Guatemala}, 2003.
\end{itemize}
for obstructing and delaying justice, without the judges, as the stewards of the judicial process, having adopted the necessary measures to prevent it.”  

415. On December 9, 2013, the Constitutional Court issued regulatory provisions for and provisions supplemental to the Law on *Amparo, Habeas Corpus, and Constitutionality* by Decree 1-2013, with the aim of “expediting the administration of justice, reducing the times for responses, and improving the channels of communication [...]”  

Article 72 of that Decree authorizes the courts to impose fines on those lawyers when an action filed "turns out to be frivolous or notoriously out of order." Without prejudice to the progress that could represent as a measure aimed at limited abuse of the remedy, the IACHR hopes that the law is reformed and that it is guaranteed that the *amparo* remedy meets inter-American standards. Likewise, the IACHR stresses the importance of having those justice operators who are called to rule on these remedies to do so within reasonable time-limits, in conformity with Articles 8 and 25 of the American Convention.

416. The State shares the concern as to the use and abuse of the writ of *amparo* to delay the administration of justice.  

3. CICIG

417. The Commission highlights the work of the CICIG and values the renewal of their mandate. Also it values the collaboration with the Attorney General’s Office and other institutions of the State to fight impunity of crimes committed by illegal bodies and clandestine apparatuses that operate in Guatemala.

418. In the area of justice, the work of the CICIG has been significant, both its investigative work and its support in the form of training and promotion of legal reforms aimed at making the justice system work more effectively. For example, on September 3, 2014, in a joint operation involving the Attorney General’s Office, the Ministry of Interior, and the CICIG, members of a criminal structure were arrested, which included Edgar Camargo Liere, director of the prison system, and Byron Miguel Lima Oliva, who had been deprived of liberty for the assassination of Bishop Gerardi. Both were accused of running a system of illegal payments in the

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705 Constitutional Court, Decision 1-2013, December 9, 2013.


707 The CICIG was created in 2007 as an independent international body whose aim is to support the Attorney General’s Office, the PNC, and other institutions of the State both in the investigation of the crimes committed by members of illegal security groups and clandestine security apparatuses, and in general in the actions aimed at dismantling these groups. This is to be done by supporting the investigation and criminal prosecution of a limited number of complex cases, and through other actions within its mandate aimed at strengthening the institutions of the justice sector so that they can continue confronting illegal groups in the future. The term of the CICIG has been extended until September 4, 2015.
prisons. According to information provided to the press, this investigation revolves around the discovery of parallel power structures and their relationships with particular individuals, including among intermediaries and managers of the prison authorities. Seven people were arrested in that operation, including public officials, prisoners, and private persons.

419. As a result of the cooperation between the CICIG and the Attorney General’s Office, which eventually included the participation of other state agents, according to Guatemalan civil society organizations, it was possible in less than two years:

- To identify judicial officers who are purportedly part of networks of corruption and structures that give rise to impunity.
- To identify and criminally prosecute key figures in organized crime structures who were assassinating large numbers of persons who impaired or thwarted their criminal interests, causing widespread terror.
- To act forcefully against criminal structures which, from within the State, for example in the Prison System and the police forces, engage in criminal conduct and terrorize the defenseless population; and that help consolidate intricate networks of corruption in the State.
- To propose a general outline of new initiatives to pursue in the area of legislative reform and, eventually, constitutional reform.  

420. In this regard, the State also indicated that it values the gains made by the CICIG and the Attorney General’s Office in dismantling criminal networks, such as the one allegedly led by Byron Lima Oliva.

421. In addition, the work of the CICIG with the Attorney General’s Office in “La Línea” case made it possible to investigate and prosecute the members of one of the corruption networks that has been responsible for defrauding the national treasury and where are accused for their involvement high-level authorities of the Guatemalan government, including the former President and Vice President of the Republic. Accordingly, the Commission values the extension of the CICIG’s mandate.

C. Impunity and the legacy of the internal armed conflict

422. With respect to the post-armed conflict situation in Guatemala, the IACHR recalls that in the peace agreements signed by the State, the latter affirmed:

It is a right of the people of Guatemala to learn the full truth about the human rights violations and acts of violence that occurred in the context of

Movimiento Pro Justicia, Pautas para la renovación del mandato de la Comisión internacional contra la impunidad en Guatemala, 2015.

the internal armed confrontation. Objectively and impartially clarifying what happened will contribute to strengthening the process of national reconciliation and democratization in the country.\textsuperscript{710}

423. The IACHR has highlighted major gains in the area of human rights in Guatemala, especially as regards the investigations of some of the serious crimes against humanity committed during the internal armed conflict. In this respect, it reiterates its recognition of the Criminal Chamber of the Supreme Court of Justice for declaring the self-executing nature of judgments of cases referred by the IACHR to the Inter-American Court of Human Rights of grave violations of human rights, including “Street Children (Villagrán Morales et al.)”; “Panel Blanca (Paniagua Morales et al.)”; “Bámaca Velásquez”; “Carpio Nicolle et al.”; and “The Dos Erres Massacre”; and ordering the Attorney General’s Office to conduct new investigations to determine the direct perpetrators and masterminds responsible for the violations of human rights established by the Inter-American Court in the respective judgments.

424. In addition, progress has been seen in the search for investigation and prosecution of human rights violations committed during the internal armed conflict. As noted by the OHCHR-Guatemala, in 2012 a fifth person was convicted in different trials for the Dos Erres massacre occurred in 1982; five persons were convicted for their participation in the 1982 Plan de Sánchez massacre; and one former police chief was convicted for his participation in the forced disappearance of the student Edgar Sáenz Calito in 1981. In addition, investigations were begun in the case of rape and sexual slavery of 15 women at a military base in Izabal, from 1982 to 1986.

425. On January 26, Efraín Ríos Montt was bound over for genocide and crimes against humanity presumably committed in the area of Ixil in 1982 and 1983. On May 21, he was also linked to the Dos Erres massacre. In February, exhumations begun in Cobán military premises (Alta Verapaz). In October, remains of 466 victims had been exhumed, including at least 75 corresponding to minors; many showed possible signs of torture. The OHCHR-Guatemala recognized that these processes, as well as the identification of three persons buried in the former military detachment in San Juan Comalapa (Chimaltenango) whose names apparently appear in the Diario Militar, are the result of the efforts of civil society and the Attorney General’s Office to investigate and prosecute human rights violations of the past.\textsuperscript{711}

426. In 2013, former military commissioner Isidro Cardona Osorio was convicted in the forced disappearance of Edgar Leonel Paredes Chegüén in 1982. Two former high-level leaders of the former National Police were convicted as well for the forced disappearance of student Edgar Fernando García in 1984. In addition, a high-level commander of a non-state armed group was indicted for assassination and crimes against humanity, committed in 1998 against the population of the village of El Aguacate (Chimaltenango). In 2014 the trial began in the case of sexual violence

\textsuperscript{710} Firm and Lasting Peace Agreement, Guatemala City, December 29, 1996, point 4.
against a group of indigenous women in the military detachment of Sepur Zarco in 1982-1983. Furthermore, in January 2015 Pedro García Arredondo was convicted; he directed the squad of the National Police known as "Comando Seis" ("Command Six"), an elite response corps considered to be responsible for hundreds of forced disappearances and assassinations of unionists as well as university students and professors. The trial of García Arredondo was for the death of 37 persons that occurred in the takeover and burning of the Spanish embassy in 1981. The Criminal Court (Tribunal de Sentencia Penal) of Chimaltenango condemned a member of a non-state combatant force for the massacre of 22 persons in the community of El Aguacate, which occurred in 1988. In other cases, including the Panzós massacre of 1978 and the case of the Diario Militar, testimonies were given before the trial began given the advanced age of the witnesses. Nonetheless, many cases remain unpunished. In July, the Criminal Court of Cobán absolved those who were accused in the 1983 forced disappearance of two brothers in Tactic (Baja Verapaz). According to the OHCHR-Guatemala, the delivery of the declassified military documents to the General Archive of Central America (Archivo General de Centroamérica) is an important precedent for the exercise of the victims’ rights to truth and justice. Guaranteeing institutional safeguarding of the historical archives is necessary and it should be done through an appropriate legal framework.\textsuperscript{712}

1. Trial for genocide and other crimes against humanity

427. In 2013, an encouraging step forward was taken with the filing of a criminal complaint for the atrocities committed in the Ixil region in 1982 and 1983 against Efraín Ríos Montt, José Mauricio Rodríguez Sánchez, and other high-level military commanders, for the crimes of genocide and crimes against humanity allegedly committed in the Ixil region in 1982 and 1983. The trial began on March 19, 2013.

428. This trial represented a milestone in transitional justice, as it was the first time in history that a former Head of State was accused on charges of genocide before a national court. Nonetheless, in the course of the year, information was received about intimidations and death threats received by the judges of the First High Risk Court A, who were entrusted with the proceeding against Ríos Montt. As a result, on June 28, 2013, the IACHR granted precautionary measures on behalf of three members of that court.\textsuperscript{713} In addition, the information received suggests that during the Ríos Montt trial one protected witness testified that ex President Otto Pérez Molina had participated in serious crimes against indigenous persons such as acts of torture and extrajudicial executions, after which there was no more witness testimony. It should be noted that Pérez Molina, being a general at the time was the commander of a barracks in Nebaj during the armed conflict, one of the areas where serious violations were committed against the Ixil Maya people.\textsuperscript{714}

\textsuperscript{713} IACHR, MC 125/13 – Iris Yassmin Barrios Aguilar et al.
\textsuperscript{714} Radio Canadá Internacional, En Guatemala el juicio a ex dictador Ríos Montt salpica al actual Presidente Otto Pérez Molina, April 10, 2013.
429. On May 10, 2013, the First High Risk Court A convicted Ríos Montt and sentenced him to 50 years in prison for genocide, and 30 years more for crimes against humanity. In this judgment, for the first time the racial nature of the violence suffered during the armed conflict was acknowledged. Nonetheless, on May 20, 2013, the Constitutional Court, the highest judicial body, annulled the judgment and ordered a retrial. According to public information, the trial was to be resumed in January 2015. Nevertheless, the proceeding was suspended once again after the High Risk Court B accepted the recusal brought by counsel for Ríos Montt against the chief judge of the Court, Jeanette Valdés, an appeal which, according to civil society organizations, was filed after the time period established in the law had elapsed.715

430. In August 2015, the High Risk Court B, presided over by Judge María Eugenia Castellanos, ruled that due to the “proven mental incapacity” of the accused Ríos Montt to appear in a public oral trial, one shall only be held behind closed doors for "the exclusive application of measures of security and correction"716 in January 2016. Ríos Montt is accused of the assassination and torture of 1,771 Ixil Maya indigenous people and for the forced displacement of thousands of other victims when he was president and commander of the Guatemalan Army (1982-1983). Several human rights organizations criticized the decision and noted flaws in the proceeding.717 In December 2015, the Constitutional Court turned down an appeal on constitutional grounds (amparo) filed by the defense attorneys of Ríos Montt, requesting an end to criminal prosecution proceedings against the former general.718 As indicated by the State, “the Constitutional Court ruled that amnesty for the former general José Efraín Ríos Montt was not admissible and that therefore he had to be investigated and tried, with the trial scheduled for the beginning of 2016.”719

431. On the trial of former generals José Efraín Ríos Montt and José Mauricio Rodríguez Sánchez on charges of genocide, the State reports the procedural history of the case in detail and notes that whether criminal sanctions will be imposed depends on what is resolved by the Criminal Court, respecting procedural guarantees such as the presumption of innocence as well as due consideration of the grounds for extinction of criminal liability such as amnesty and prescription, which cannot be considered contrary to international law. It adds that the mechanisms of

715 Press release from the organizations Washington Office on Latin America (WOLA), Center for Justice and International Law (CEJIL), Plataforma Internacional contra la Impunidad, Due Process of Law Foundation (DPLF), Guatemalan Human Rights Commission (GHRC), Organizaciones internacionales se pronuncian frente a la suspensión del proceso por genocidio en Guatemala [International Organizations make a Statement about the Suspension of the Trial for Genocide in Guatemala], January 9, 2015.

716 BBC, “Guatemala: Ríos Montt enfrentará juicio pero no habrá condena” [Guatemala: Río Montt shall fall trial but will not be convicted].


718 El Periódico, CC confirma nuevo juicio por genocidio contra el general José Efraín Ríos Montt, December 8, 2015.

protection and guarantee of human rights are important and necessary mechanisms, so long as those who direct such mechanisms perform their functions objectively and with diligence, but that they should not and cannot become supranational mechanisms.\textsuperscript{720}

2. Amnesty laws

432. On repeated occasions, the IACHR and the Inter-American Court of Human Rights have established that provisions of any nature—legislative, administrative, or otherwise—that impede the investigation and punishment of those responsible for serious human rights violations are incompatible with human rights obligations. For this reason, they have indicated that in the event that a person accused of a crime in this context asks that an amnesty law be applied, the court has the obligation to investigate and clarify the situation, because pursuant to State obligations, amnesty laws or similar measures cannot be applied to serious human rights violations. Along these lines, the Inter-American Court has repeatedly established that, amnesty provisions, limitations periods, and the establishment of grounds for excluding liability that aim to impede the investigation and punishment of those responsible for serious human rights violations such as torture, summary, illegal, or arbitrary executions, and forced disappearances, are prohibited for violating non-derogable rights recognized by international human rights law.

433. Additionally, the inter-American human rights system has emphasized that:

"States, ... may not invoke existing provisions of domestic law, such as the Amnesty Law in this case, to avoid complying with their obligations under international law [...]in the Court’s judgment, the Amnesty Law enacted by [the State] precludes the obligation to investigate and prevents access to justice. For these reasons, [the State’s] argument that it cannot comply with the duty to investigate the facts that gave rise to the present Case must be rejected."\textsuperscript{721}

In practice, the application of amnesty laws has obstructed the clarification of the facts and the prosecution and punishment of the persons responsible for serious human rights violations, leaving them in impunity. Accordingly, based on the obligations of the inter-American system, several States of the region have had to review and strike down amnesty laws.

434. In Guatemala, the Law on National Reconciliation (Decree No. 145-1996 of December 27, 1996), whose purpose was to decree the total extinction of criminal liability for the political crimes committed in the internal armed confrontation,


expressly excluded the crimes of genocide, torture, and forced disappearance, among others.

The extinction of criminal liability to which this law refers shall not be applicable to the crimes of genocide, torture, and forced disappearance, or those offenses that are imprescriptible or that do not allow for the extinction of criminal liability as per domestic law or the international treaties ratified by Guatemala.\footnote{Article 8 of the Law on National Reconciliation (Decree number 145-1996 of December 27, 1996).}

435. There have been efforts to apply the law on national reconciliation at trials for serious human rights violations committed during the internal armed conflict, where some of crimes prosecuted are expressly excluded from that law. In that regard, the United Nations High Commissioner for Human Rights welcomed the incorporation of this principle by the Supreme Court in its decision of August 8 on cassation in the Dos Erres case and declared she hoped that the motions pending on the non-application of amnesties are resolved in keeping with the State’s obligations under international law.\footnote{OHCHR-Guatemala. Informe sobre las Actividades de su Oficina en Guatemala, 2012. January 7, 2013. para. 39.}

436. In addition, in the trial against Efraín Ríos Montt, José Mauricio Rodríguez Sánchez and other high-level military commanders for the crimes of genocide and crimes against humanity, there were several efforts by defense counsel to apply the amnesty provided for in the Law on National Reconciliation of 1996.\footnote{One sign of the degree of tension generated by the debate on the applicability of the amnesties is shown with more than 50% of the judges on the Court of Appeals recusing themselves from hearing an amparo ruling handed down by the Constitutional Court in which it was asked to argue on the application to Efraín Ríos Montt of Decree Law 8-86, which grants an amnesty for political and related common crimes.} While on June 22, 2012, the Fourth Chamber of the Court of Appeals ordered that the judicial proceeding be suspended by granting them a provisional amparo, considering that said statute did apply to them, the high courts of Guatemala have repeatedly rejected that claim.\footnote{In this regard, the Constitutional Court recognized that the case-law of the Inter-American Court of Human Rights is binding and is part of the core content of the Constitution. It also reiterated that the extinction of criminal liability by prescription or by due obedience is not applicable, and that the states cannot invoke provisions of domestic law that impede the prosecution of serious human rights violations. It also recognized the imprescriptible nature of the crime against the duties of humanity in the Criminal Code (Article 378 of the Criminal Code), pursuant to the duty of the state to apply the rules of jus cogens. OHCHR-Guatemala. Informe sobre las Actividades de su Oficina en Guatemala, 2014. January 17, 2012. para. 27.} The last time it rejected it that the IACHR learned of was October 8, 2015, on which occasion the First Chamber of the Court of Appeals of the criminal branch dismissed ("resolvió sin lugar") the motion filed, which was an effort by the moving parties to avail themselves of the amnesty law and avoid a criminal trial.\footnote{CALDH, third party complainant in the genocide case, indicated that “We consider the resolution to be of great importance,” since it came after “two years, five months, 18 days, and more than 100 recusals to hear the matter” by the court. The organization asserted that the judicial decision “sets one more precedent” with respect to the struggle to end “impunity in serious human rights violations committed during the internal armed conflict in Guatemala.” Público, Rechazada la solicitud de amnistía al dictador Ríos Montt, October 9, 2015.}
3. State’s position regarding the decisions of the inter-American system - Genocide Denial

During the administration of Former President Pérez Molina, the government refused to characterize the incidents of the conflict, with its devastating impact on indigenous communities, as genocide. In the State response of October 6, 2015, it reiterates that what occurred in the internal armed conflict does not fit the definition of genocide as an international crime because it took place in the context of the Cold War and its origin was not inter-ethnic. It also finds offensive and unacceptable to state that there was genocide in Guatemala because no court or tribunal has ruled it in a firm.\textsuperscript{727}

The genocide denial in Guatemala was the subject of a pronouncement by the Guatemalan Congress. On May 13, 2014, the Congress of the Republic adopted a declaration by which some recommendations were made regarding the scope of the Law on National Reconciliation and the Peace Accords. According to Operative Point 3-2014, the Congress stated that “notwithstanding that the legislation in force indicates that it is not viable for the elements that make up the criminal definitions indicated to occur in Guatemala, mainly as regards the existence of a genocide on Guatemalan soil during the internal armed conflict,” and it noted that investigating and punishing the serious human rights violations committed during that conflict would foster “conditions contrary to peace” and “would impede definitive national reconciliation.”\textsuperscript{728} At the same time, it makes explicit reference, in the first line of its text, to the trial begun one year earlier against retired military officers Efraín Ríos Montt and Mauricio Rodríguez Sánchez, and it directly urges the judicial branch to administer justice “such that said justice may produce peace.” It is important to note that this Operative Point was approved the same week as the succession in the Attorney General’s Office.

In response to this situation, the IACHR issued Press Release No. 58, in which it observed with concern that the Operative Point makes specific reference to a criminal proceeding on charges of genocide with respect to which it notes that the terms of the respective statutory language are not met, and seeks to offer guidance as to how the judicial branch should decide such cases. In this respect, the Commission urged the State to preserve the principle of separation of powers as an essential condition for judicial independence.\textsuperscript{729} The IACHR stated as follows:

The Inter-American Commission considers that a declaration of this nature, in the current context does not constitute a constructive step, in contrast


with the efforts made by various State institutions to investigate and punish grave human rights violations and to fight against impunity.

The Inter-American Commission also notes with concern that this Resolution makes specific reference to the Ríos Montt genocide trial, and indicates that the required elements of that crime have not been met in Guatemala. Further, it provides indications as to how the judiciary should rule in such cases. In this regard, the Commission urges the State to respect the principle of separation of powers, an essential condition of judicial independence. It recalls that the Constitution of Guatemala itself establishes, in Article 46, the general principle according to which human rights treaties and conventions that have been accepted and ratified by Guatemala take precedence over domestic law.

440. In the same press release, the IACHR referred to the lack of compliance of various sentences ordered by the Inter-American Court:

The IACHR recalls that Article 68 of the American Convention establishes the obligation to comply with the judgments of the Inter-American Court. In this regard, the Inter-American Court holds today, May 16th, during its 103rd Regular Session, a hearing to monitor compliance by Guatemala with eleven judgments (Blake, “Street Children” (Villagrán Morales), Bámaca Velásquez, Mack Chang, Maritza Urrutia, Plan de Sánchez Massacre, Molina Thiessen, Carpio Nicolle et al., Tiu Tojín, “Las Dos Erres” Massacre and Chitay cases). The purpose of this hearing, as the Court has announced, is to receive updated and detailed information on reparations and the obligation to investigate, establish the facts, prosecute, and, if necessary, punish those responsible. Despite the emblematic nature of these cases and the time passed since the various judgments, the obligation to investigate, prosecute, and punish those responsible has not been fulfilled. It is imperative that the State take the concrete and critical measures necessary to comply with its fundamental obligations under international law.

441. Faced with the State's position to challenge the mandatory compliance, the Inter-American Court, by order of August 21, 2014, regarding the supervision of the implementation of the judgments in 11 cases against Guatemala with respect to the obligation to investigate, prosecute, and, if necessary punish those responsible for human rights violations, ruled as follows:

That the position assumed by Guatemala during the private hearing on supervision of compliance with judgments held May 16, 2014, before the plenary of this Court constitutes a clear act of contempt by the State with respect to the binding nature of the judgments handed down by this Court, contrary to the international principle of carrying out treaty obligations in good faith and a breach of the duty to inform the Court, in the terms set forth in considering paragraphs 5 to 18 of this order.

Call on the State to adopt, finally and as soon as possible, all measures necessary to effectively and promptly carry out the judgments of the cases addressed by this Order, in keeping with the considerations set forth
therein and with what is stipulated in Article 68(1) of the American
Convention on Human Rights.  

442. In addition, in its press release upon the culmination of the 153rd period of
sessions, issued on November 7, 2014, the Commission expressed its profound
concern over the denial of the genocide by the authorities, and the position
adopted by the delegation of the State in the hearings, which defended the
application of amnesties to serious human rights violations. The IACHR, in the
said hearing, also rejected the statements by the delegation of the State on access
to justice and the legacy of the internal armed conflict. The Commission urged the
State of Guatemala to abide by the judgments of the Inter-American Court and all
the decisions of the inter-American system, and to adopt the measures required to
identify, prosecute, and punish of perpetrators and masterminds of the genocide
and for other serious human rights violations committed during the armed
conflict.

443. In response to that press release, the State of Guatemala sent a communication to
the IACHR in which it “expressed its total repudiation of and disagreement with
the enunciated by that international body against the State, and categorically
affirming the inexistence of the crime of genocide in Guatemala. In the words of the
State, “the pronouncement was made [...] since in reality the State of Guatemala is
the only entity that takes cognizance of the causes of the armed confrontation in
the country.” In its response of October 2015 the State referred to that relevant
“Historical Clarification Commission of Guatemala indicating that such Commission
” distinguish between a policy of genocide and acts of genocide. [ In view of this
distinction ] The State of Guatemala considers that any event during the internal
armed conflict is a crime of genocide

444. The existence of the armed conflict, with the massive and serious human rights
violations it caused, and the existence of the genocide as one part of it, have been
analyzed extensively by the Commission for Historical Clarification, the IACHR, the
Inter-American Court and multiple mechanism of the UN, among other organs
competent to look into it; what remains is to carry out the obligations of justice
and reparation, in consonance with the international obligations of the State,
which freely assumed as a State party to the American Convention.

730 I/A Court H.R., Resolution of the Inter-American Court of Human Rights of August 21, 2014. Supervision of
compliance with the judgment in 11 cases against Guatemala with respect to the obligation to investigate,
prosecute, and, if appropriate, punish those responsible for the violations of human rights.
131A/14—Report on the 153rd Session of the IACHR.
131A/14—Report on the 153rd Session of the IACHR.
733 State of Guatemala. Response from the State of Guatemala on the Communiqué released by the Inter-
American Commission on Human Rights at the 153rd Regular Session on November 7, 2014, November 25,
2014, Ref. P-829-2014/AFAF/RVS.
734 Response of the State of Guatemala regarding the “Draft General Report on the Situation of Human Rights in
4. Reparations for violations committed during the armed conflict

445. As regards reparations for the violations committed during the armed conflict, the IACHR received information on the policy of the administration of Otto Pérez Molina in the hearing held during the 150th period of sessions. In particular, it was informed once again of the scarce, limited coverage and delays of the Guatemalan State to make reparation to victims of the internal armed conflict. As a result of the Peace Accords, in 2003 the full legislature approved Executive Decree 258-2003, creating the National Reparations Program (PNR, for its acronym in Spanish) as an agency responsible for providing redress to the victims of the armed conflict.

446. More than 10 years after the PNR was established, the State has reported that it has invested approximately 720 million quetzals (approximately 94,200 million of dollars), the largest share focused on economic compensation.735 The State added that 54,756 applications have been submitted that sum a total of 75,674 victims, of whom nearly 33,000 individuals have received economic compensation and approximately 20,000 have been the beneficiaries of projects for material reparation (productive projects). It affirms that in 10 years the State, albeit with limited resources for reparation, has made efforts for reparation to reach the population affected. Then, it details the cases recorded in the data base of the PNR.736 Nonetheless, in 2014 the IACHR was informed of the minimal gains in terms of services for the victims. Civil society organizations stated that there is no political will on the part of the State, that there is a lack of capacity to carry out the plan of the PNR, and that there were drastic budget cuts. They indicated that in carrying out pilot plans as part of the project agreements are reached with the victims, projects are started up, and they tend to stagnate without being completed. In particular, the communities that were assigned for pilot plans are communities where most of the victims are dying as they wait for some reparation. In the case of the women victims of the conflict, they indicated that they have not received psychosocial assistance, and that despite the years that have elapsed, they continue to be invisible as regards their legitimate claims.

447. At an IACHR hearing held on the subject in March 2014, the requesters indicated that on the new executive decree was published on December 30, 2013; it extends the life of the PNR for 10 years through the governmental agreement 539-2013.737 They added that the new regulation of the PNR had several modifications, including the aim of the program is to compensate victims of human rights violations committed during the internal conflict, eliminating the specific reference to certain violations as massacres, sexual violence, crimes against humanity, among other, as well as eliminating the category of civilian victims. According to


737 IACHR, Hearing No. 23, National Reparations Program, March 25, 2014. Available at: www.cidh.org
the civil society which participated in the hearing, with this, the PNR has lost its *raison d’être* because its main purpose is to make reparation to the civilian victims who suffered serious human rights violations during the internal armed conflict.

448. At that hearing the State indicated that the reparations policy is a necessary commitment that cannot be ignored to guarantee a firm and lasting peace and national reconciliation. It affirmed the political will to strengthen the institutional framework of the PNR, to give impetus to measures of reparation in keeping with the financial possibilities of the State to guarantee the objectives of restoring dignity, historic truth, construction of citizenship and productivity for the victims individually and as communities affected by the internal armed conflict and with that make development and well-being feasible, and ensure that the past of confrontation never be repeated.

449. With respect to the reform of the PNR, the State indicated before the IACHR that the conduct that leads to human rights violations is not being done away with:

> “the thing is that such conduct is situated in its real dimension. We know that there were massacres, we know that there were a series of elements, events that produced those violations. The right to life, the right to liberty, all the human rights that were violated, involved that conduct. What use is it to have reformed it? To be able to identify priorities and areas of attention.”

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450. More than ten years after the establishment of the PNR, it is still noted a lack of certainty regarding the selection criteria, delays of up to seven years in processing applications for reparation, as well as the lack of measures to guarantee that victims receive full reparation.

451. The Commission is concerned about the long time elapsed since the signing of the Peace Accords and the absence of effective reparation to the victims of the armed conflict, individually and collectively, especially to the members of the indigenous peoples; and that in the past year the State has taken measures to limit the scope of the PNR and to distort the characterization of the violations that occurred in the context of genocide. The IACHR will continue monitoring the PNR.

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CHAPTER 6
RIGHT TO PROPERTY AND CONSULTATION OF INDIGENOUS PEOPLES
RIGHT TO PROPERTY AND CONSULTATION OF INDIGENOUS PEOPLES

A. Right to property

452. With respect to the right and enjoyment of property is one of the challenges that indigenous peoples and communities face in Guatemala. In general terms, the situation of indigenous property rights is characterized by the lack of legal recognition of the lands and territories historically occupied; the extreme inequality in land distribution; juridical insecurity over their tenure; the lack of a cadastral system that recognizes ancestral territory and makes it possible to protect the lands belonging to the indigenous peoples; and the titling and registration of community lands by third persons anomalously and illegally, and the fact that the State considers that it is the owner of natural resources, among other considerations. In its response to the draft report, the State of Guatemala asserted that, according to the Constitution, natural resources belong to the State and not to any individual, specific person or community. The IACHR observes that this situation responds to various historical factors, for from colonial times and throughout its republican life the history of Guatemala has been marked by decades of inequitable distribution and dispossession of the territories of the indigenous peoples and communities, exacerbated during the armed conflict by the displacements and scorched earth operations. The land issue also stems from many causes, as it reflects structural problems and short-term situations that affect the availability and distribution of land, poverty, and economic access to means of subsistence.

453. In addition to long-standing cases of territorial dispossession (conquest, colony, and independence) was added the dispossession on occasion of the armed conflict. When the communities were displaced inside or outside the country or in communities of resistance, their lands were nationalized and recorded in the name of the State by mechanisms ranging from measures legal in appearance to direct violence, harassment, and threats directed against authorities competent to assign community lands. As of 1982, through an interpretation of the Law of the INTA, the Government declared the lands of the displaced families to be in a "state of abandonment" and justified the conveyance to new occupants, affirming that the communities had voluntarily abandoned their lands. During the military

740 OHCHR-Central America. Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central, 2011. Volume I.
regimes of the 1980s the main beneficiaries of the land programs were landowners, owners of large estates (latifundistas), and military officers.\footnote{Barrios, Mayra (coordinator). Rupturas, reconstrucción y continuidad en cinco comunidades q’eqchi’: Las mujeres y el acceso a la tierra [Breakups, Rebuilding, and Continuity in Five Q’eqchi’ Communities: Women and Access to Land]. Universidad Rafael Landívar, 2007. p. 15.}

454. There were numerous irregular appropriations by the Army of ejidos municipales that were in the name of the municipal government and the residents, as well as registrations of unregistered lands in favor of third persons, even though there were communities that occupied them historically. In certain cases these actions were associated with the interest of landowners in ending the occupation of their farms by members of peasant and indigenous communities.\footnote{OHCHR-Central America. Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central, 2011. Volume I.} One illustrative case identified by the Commission for Historical Clarification is the Panzós massacre, committed in 1978 by the Army against Maya Q’eqchi communities in the Polochic Valley, department of Alta Verapaz. It was not until the mid-1990s, with the signing of the Peace Accords, that the indigenous peoples of Guatemala were recognized to have rights to the land, in both the Agreement on Identity and Rights of Indigenous Peoples and the Agreement on Socioeconomic Aspects and Agrarian Situation of May 6, 1996. In this last-mention agreement Guatemala recognized that the legal framework for agriculture and for institutional development in the rural area was in need of reform so as to put an end to the lack of protection and dispossession that have affected the peasants, especially the indigenous peoples; to make possible the full integration of the peasant population to the national economy; and to regulate the efficient and ecologically sustainable use of the land in keeping with the needs of development. In addition, it undertook to take a series of measures to attain that goal.\footnote{Agreement on socioeconomic aspects and agrarian situation. III. Agrarian situation and rural development. E. Legal Framework and juridical security. Point 37. May 6, 1996.}

455. One of Guatemala’s main problems continues to be the major inequality in land distribution. According to the Gini index, Guatemala has the second highest concentration of land ownership in Latin America.\footnote{Information received at meeting with indigenous leaders, communities, and organizations, August 21, 2013 in Guatemala City.} As the OHCHR notes, the 2003 agricultural census found that 92% of small producers occupied 22% of the available land, while a small group of large producers controlled the remaining 78%.\footnote{OHCHR-Central America. Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central, 2011. Volume I.} Land concentration has increased, mainly as the result of the purchase of vast areas in the zone planted in single-crop agriculture. The inequality in land tenure preserves characteristics similar to those that gave rise to social and political conflicts in the past.\footnote{Centro para la Acción Legal en Derechos Humanos and Coordinadora Nacional Indígena y Campesina [Center for Legal Action in Human Rights and National Indigenous and Campesino Coordination]. Conflictividad de la Tierra. Evidencias de violaciones a los Derechos Humanos en Guatemala [Land Conflicts: Evidence of Human Rights Violations in Guatemala]. 2009, p. 15. Cited by: OHCHR- Central America. Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central, 2011. Volume I.}
456. The situation of indigenous property rights in Guatemala is marked by the failure to recognize historic rights to the land; the lack of legal certainty and guarantees such as titling, delimitation, and demarcation; the failure to resolve long-standing legal actions relating to the land; inconclusive and inefficient adjudication procedures that have resulted in debts for the communities; involuntary losses of lands due to causes associated with the armed conflict; evictions and forced displacements associated with development projects; and the impact on the enjoyment of their rights due to the creation of protected natural areas.

1. Legal and institutional framework relevant to indigenous property rights in Guatemala

457. The section referring to “Indigenous Communities” in the 1985 Constitution of Guatemala has two provisions\textsuperscript{747} that are relevant to indigenous property rights and that set forth obligations related to the state duty to provide “special protection” to “the lands of the cooperatives, indigenous communities, or any other form of communal or collective tenure over agrarian property”; to the State duty to maintain as the property of the indigenous communities the lands they have historically occupied, as well as their administration; and the obligation to provide “state lands” (“tierras estatales”) to those indigenous communities that need them for their development. In its response of 6 October 2015, the State indicated that

“the agreement (Peace) on Identity and Rights of Indigenous Peoples of 31 March 1995, reaffirms the rights of indigenous peoples referred to in the Constitution of the Republic of Guatemala and international instruments on human rights. Consequently, says the participation of indigenous peoples in the process decision making in various areas of national life”\textsuperscript{748}

458. As regards the domestic legislation, the Commission notes that legal mechanisms have not been established to enforce Article 67 of the Constitution on the collective or community nature of indigenous lands and territories, and the special protection they require. Beyond the constitutional provision, only some legal provisions recognize communal indigenous lands, and the translation of “special protection” into domestic provisions is very limited. It is also notes the failure to adopt specific legislation that allows for effectively ensure respect for and the guarantee of the right to collective property, even though Article 70 of the Constitution provides: “A statute shall regulate the matters addressed in this

\textsuperscript{747} Article 67. Protection of the Indigenous Agricultural Lands and Cooperatives. The lands of the cooperatives, the indigenous communities, and any other forms of communal or collective possession of agrarian ownership, as well as the family patrimony and low-cost housing shall enjoy special protection by the State, and preferential credit and technical assistance that guarantee their possession and development, in order to assure an improved quality of life for all inhabitants.

The indigenous communities and others who hold lands that historically belong to them and which they have traditionally administered in special form, shall maintain that system.

Article 68. Lands for Indigenous Communities. Through special programs and adequate legislation, the State shall provide state lands to the indigenous communities that need them for their development.

“Nor were other legal mandates carried out, such as the one directed to the Supreme Court to create “agrarian courts” and present to the Congress of the Republic “in the shortest time possible, [...] a legislative initiative with the substantive and procedural legislation for its implementation.” And so Guatemala does not have legal instruments that put the indigenous peoples and communities in a position to be able to channel their demands for rights to ancestral lands and territories based on their ancestral occupation. To the contrary, one finds numerous provisions contrary to the constitutional duties in the domestic law in such key legal texts as the Civil Code, which does not include any article that refers to this form of property, and also bodies of law that contain provisions incompatible with that obligation such as the Mining Code or the Law on Hydrocarbons, which the Commission will refer to later.

In the institutional realm, the entity entrusted with access to the land is the FONTIERRAS, created in 1999 by Decree 24-99 of the Congress of the Republic, pursuant to the Peace Accords for they recognize that “large sectors of the Guatemalan population, particularly the indigenous peoples, are made up of landless peasants or peasants with insufficient lands.” Its work is focused on reducing the lack of legal certainty, which is associated with regularizing the inconclusive proceedings for the adjudication of state lands; ensuring access to the land by purchasing and leasing from communities who have demanded it for years; and, agrarian debt as a result of loans to communities not in a position to pay them. It is estimated that FONTIERRAS inherited 89,000 cases from the former INTA that had not been concluded.

Another relevant institution is the Secretariat for Agrarian Affairs of the Presidency of the Republic (SAA, for its acronym in Spanish), responsible for carrying out commitments of the Executive on agrarian matters and rural development, contained in the Peace Accords, government policies, and the Constitution. It has an Office of the Undersecretary for Conflict Resolution that engages in mediation and conflict resolution to facilitate the peace process on issues of access to land. In cases of ejidos municipales, the municipal governments perform important functions, regulated by the Municipal Code. The Registry of Cadastral Information (RIC, for its acronym in Spanish) and the General Property Registry (RGP, for its acronym in Spanish) are also key institutions in charge of technical, administrative, and legal activities for the purpose of establishing, maintaining, and updating the property registry and the cadastre at the national level.

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749 Law on Registration of Cadastral Information. Article 91.
750 Considering paragraph three of the FONTIERRAS Law, Decree 24-99.
751 Considering paragraph two of the FONTIERRAS Law, Decree 24-99.
752 Information received in meeting with FONTIERRAS, SAA, RGP, and RIC, August 21, 2013 in Guatemala City.
753 OHCHR-Central America. Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central, 2011. Volume I.
754 Executive Decree No. 136-2002.
755 Information received in meeting with FONTIERRAS, SAA, RGP, and RIC, August 21, 2013 in Guatemala City.
2. Failure to recognize historical rights

461. The main obstacle to respecting and ensuring indigenous property rights in Guatemala is the failure to recognize historical use and occupation as the basis of indigenous peoples’ and communities’ collective rights to the land, territory, and natural resources.

462. The IACHR does not observe, in the FONTIERRAS Law, clear mechanisms for recognizing the historical occupation by the communities that do not have title or whose ancestral lands are registered to third persons, including the State. The IACHR takes note that according to the FONTIERRAS Law, the beneficiaries of the adjudication of lands by *regularization* are communities and individuals who were beneficiaries of the "policy of agrarian transformation" directed by the former INTA, which adjudicated them lands but did not grant them a title in the General Property Registry. Accordingly, lands are adjudicated based on certain normative regimes, but not based on historical occupation by the communities. In addition, it notes that the institution has promoted titling through loans for its purchase or access to land through lease arrangements.

463. As regards the SAA, when faced with disputes over property rights, its process is to hold meetings with the indigenous communities and the record owners or possessors of the lands, in which the SAA acts as mediator and, if an agreement is reached, the communities can get an option to buy the lands. In this mechanism, ancestral use or occupation by the community does not appear to determine ownership of the property.

464. Given the noted non-existence of any legal instrument upholding the recognition of or protecting indigenous property rights, the different claims are being resolved on a case-by-case basis in the judicial branch and the Constitutional Court, leaving it to the discretion and knowledge of the judicial officer to resolve such a fundamental issue. In the judicial procedures for recovery and recognition of indigenous lands, it is noted the formalist application of the principle of “first in time first in right” according to which one who holds title is the owner and the title is proven if it is recorded. Accordingly, judicial decisions tend to be based on the existence of a title recorded to the one who claims the property, applying a civil law and formalist logic. Accordingly, if an indigenous community lacks a title recognizing its property rights, then despite having occupied the land historically—which is common in Guatemala—it will not have its right recognized, which is contrary to international law on the matter.

465. The IACHR is pleased to learn that judicial decisions have been handed down which, incorporating international standards, protect indigenous property rights. Specifically, one encouraging gain was in the case of the Maya Kaqchikel.

757 According to Article 42 of the FONTIERRAS Law, *regularization* includes those “conveyed or in the process of being conveyed by the State to determine compliance with Decrees 1551 [Law on Agrarian Transformation], 60-70 [Declaration of public interest and national urgency for establishing agrarian development zones as indicated], and 38-71 [Law on Adjudication, Tenure, and Use of the Land in Petén], all of the Congress of the Republic, and their amendments.” Article 42 of the FONTIERRAS Law.
community of Chuatutuy or Chuarrancho, which in 2012 filed a writ of amparo requesting recognition of their ancestral lands, of which they were dispossessed in 2001 by the RGP through its entry in the name of the municipality, even though the community had a title granted in 1897. The same Chamber granted protection in response to a writ of amparo filed by eight Q’eqchi’ communities of Sierra Santa Cruz in El Estor, Izabal, against the RGP in response to an anomalous entry that blocked the granting of title.758

466. The inter-American case-law has determined that indigenous property rights are based on the historical use and possession of the lands and resources, and not on the official recognition of the State. In the words of the Inter-American Court: “As a result of customary practices, possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration.”759 In addition, the Commission wishes to emphasize that in Guatemala one finds different collective systems of tenure over the land and territory that have resulted from the differentiated impacts and particular histories over the centuries, giving rise to distinct structures. For example, communal lands belong directly to the indigenous communities; they are used by the communities but recorded as ejido municipal760; there are those that are held undivided by some communities, having been formed through family ties, known as parcialidades; and those that have formed as a condition for gaining access to the land and management of the natural resources, such as cooperatives, community forestry concessions, collective agrarian properties, and associative peasant enterprises, among others.761 In each region, the forms of social organization and government also vary around collective land tenure. All these systems require special protection, taking into consideration their specific particularities, such that the State should guarantee recognition of the land and rights of the indigenous peoples through their different forms of tenure and organization.

467. The IACHR notes that in general, the State of Guatemala has not implemented the obligation to develop laws and institutions which, in keeping with international standards, ensure respect for and guarantees of the rights of indigenous peoples and communities to their ancestral lands and territories in all the state agencies involved. The IACHR also notes that Guatemala has voluminous historical documentation that can serve as the foundation for the communities’ claims to

758 Gamazo, Carolina. La batalla por la tierra. La registradora de la propiedad y la certeza de que nadie pueda reclamar Tikal. Plaza Pública. December 2, 2013.
760 For example, according to the information received, in the Ixil area, made up of Nebaj, Chajul, and Cotzal, very few communities have collective titles; rather, most of the lands are ejidos municipales. Information received in meeting with FONTIERRAS and SAA, August 25, 2013 in Nebaj, Quiché.
territorial rights. Nonetheless, national initiatives have not been established that make it possible, on the one hand, to protect and compile this information, and on the other hand to identify the connections between those historical documents and the current situation in terms of property rights.

468. Regarding this, the IACHR appreciates that, in a recent judgment, the Constitutional Court ruled null and void the titling of three farms that were being claimed by the Q’eqchi’ indigenous communities of Sierra Santa Cruz. For more than 20 years, the communities had been claiming ancestral ownership of their community land, which had been anomalously and illegally registered for the benefit of third parties. As a result of the decision of the Constitutional Court, the farms were transferred back to State ownership, and now communities can continue to process regularizing land titles with the Land Fund (Fondo de Tierras).762

3. Lack of legal certainty, titling, delimitation, and demarcation of indigenous lands and territories

469. The various sources available to the IACHR indicate that in Guatemala the high degree of juridical insecurity is one of the main problems related to property rights in general and indigenous property rights in particular. Guatemala also has a high rate of unregistered lands, and in general the spaces are not demarcated or delimited, nor is there a cadastral registry of the national territories. According to the FONTIERRAS, there were 86,000 families demanding legal certainty763 and there are as many as 800,000 landless families, based on the 285,000 requests to access and lease land.764 According to the SAA, from 1997 to 2010, there were 5,243 cases of land disputes nationally, 1,379 of which have yet to be resolved.765 As of August 2013, there were 1,293 cases on record that involve 1,059,873 persons (81% of them indigenous), 66% of which are in the departments of Alta Verapaz, Huehuetenango, Petén, and Quiché.766 This overall situation has created situations of considerable unrest among indigenous peoples and communities, owners of landed estates, and peasant farmers.

470. There is no census of all the communal lands so as to determine their status with respect to legal certainty, titling, delimitation, and demarcation. Nor is it possible to find official and comprehensive sources on all the communities in possession of lands who do not enjoy legal certainty or those that are claiming the right to

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762 El Periódico, CC ampara a comunidades q’eqchi’s, December 8, 2015.
763 Information received at meeting with FONTIERRAS, SAA, RGP, and RIC, August 21, 2013 in Guatemala City.
766 Information received in meeting with FONTIERRAS, SAA, RGP, and RIC, August 21, 2013 in Guatemala City.
restitution of communal lands, having lost possession of them due to causes beyond their control. Some specific research studies provide valuable information, such as that carried out by the Promoters Groups for Communal Lands (Grupo Promotor de Tierras Comunales) in October 2006. According to that research, there are 1,213 cases of communal lands – without indicating whether they have legal certainty – that extend in all to 15,771 km², equivalent to 14.48% of the national territory, and in all the departments and socio-linguistic communities.767

The IACHR considers that the Government has not brought significant changes about in the situation of property rights in Guatemala, nor in recognizing and granting legal certainty to the historical rights of the indigenous peoples and communities to their lands and territories. The IACHR observes that this situation reflects multiple factors, among which special mention should be made of the lack of an adequate budget, which expresses the absence of political will despite the crucial work that has been entrusted. The lack of an adequate response to the demands for recognition and protection of property rights explains the degree of conflict around project approval and implementation, and the worsening violence affecting numerous indigenous communities throughout the country. In addition, the lack of juridical security and legal certainty over the land poses more difficulties to the indigenous communities threatened by extractive projects.768

One of the relevant processes unfolding is the survey of cadastral information by the RIC for the purpose of determining possessors of land and those who are entered in the RGP. The cadastral process is under way in more than 60 prioritized zones in 41 municipalities situated in eight departments; it is estimated that the national cadastre will be completed in 2025. As of 2013, of the 275,080 properties measured, 85,719 had record titleholders. The IACHR considers it positive that the Law of the RIC establishes the obligation of that institution to identify and declare the lands in possession or the property of indigenous communities, contains a broad definition of “communal lands,” and guarantees that the rights can be supported with historical documents. In addition, that law indicates: “In any event, the RIC shall be subject to the regulations in the Constitution … and [ILO] Convention 169.”769 There is also a Specific Regulation for Recognition and Declaration of Communal Lands in the Registry of Cadastral Information.770

The IACHR considers that the survey is an opportunity to reduce juridical insecurity in Guatemala and may be crucial for moving forward in recognizing the historic rights of indigenous communities and peoples, and calls on the competent

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768 It was reported, for example, that the 32 communities of the municipality of Ixcán threatened by the Xalalá hydroelectric project have recently had to register and obtain juridical personality as “indigenous communities” so as to begin a legal action to have the State recognize their right to historic possession of the land, which has delayed their ability to put forward their legal case. Information received at meeting with indigenous communities and organizations in Cobán, Alta Verapaz, August 23, 2013.

769 Law of the RIC, Articles 23(y) and 65.

Institutions to overcome the shortcomings identified, correct the mistakes made, and avoid their repetition. This should be done abiding by the relevant standards and mindful that the obligation to delimit, demarcate, title, and register the territorial property rights of the indigenous peoples should be discharged through special procedures in which full and effective participation must be guaranteed.\textsuperscript{771} In addition, the State has the obligation to refrain from performing acts contrary to indigenous property rights, such as dividing collective property into individual holdings, or titling it to third persons.

474. One matter of special concern refers to the spiritual relationship of indigenous peoples and communities with the territory and access to sacred sites, the Commission has been informed of the impediment to access and even the destruction of sacred sites. One example is the destruction of the sacred place called Tulam Tzu or El Rosario-Naranjo to build a housing project. The IACHR issued a statement on the impairment of this site, which is sacred for the spirituality of the Maya people, by granting a precautionary measure, on July 14, 2006, in favor of the Maya Sitio Community of El Rosario/Naranjo. Even though the Commission asked the State to adopt the measures necessary for its protection, that site was destroyed.\textsuperscript{772} As observed by the IDMC, years later it was discovered that many of the victims of forced displacement were not included in the report of the Commission for Historical Clarification thus their real number may be much greater than estimated: “The number of people displaced in the conflict, and the number of IDPs remaining ... are far from clear.”\textsuperscript{773}

475. Carrying out the obligations associated with the right to restitution of their ancestral lands is crucial for the internally displaced communities in Guatemala. As the IACHR has indicated, so long as the fundamental relationship with their ancestral territory subsists, indigenous peoples have a right to restitution of their ancestral lands, and when it is not materially possible due to objective and well-founded causes, they have a right to be given alternative lands of at least the same size and quality and/or to receive payment of fair and prompt compensation. It is also an important provision of the Agreement for the Resettlement of the Populations Uprooted by the Armed Confrontation, in which Guatemala undertook to “promote ... the return of the lands to the original possessors and/or seek ... adequate compensatory solutions.”\textsuperscript{774} Nonetheless, the information available suggests that years after the conclusion of the conflict there are still displaced communities who have not been able to return to their ancestral lands; as well as communities that have not had their property rights legally restored. The IACHR does not note any public policy aimed at carrying out those obligations and making restitution of the ancestral lands that were dispossessed. It was not until 2012 that the PNR and the FONTIERRAS signed an Agreement “to facilitate and expedite the

\textsuperscript{771} IACHR, Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources, 2009, Chapter VI.
\textsuperscript{772} IACHR, Maya-Sitio Community of El Rosario-Naranjo.
purchase and granting of land to the victims and survivors who lost it due to the internal armed confrontation”; nonetheless, the Commission has not been informed of specific gains in this regard.

476. The Commission considers that in order to overcome the lack of recognition and lack of protection for indigenous peoples’ property rights a specific, clear, and comprehensive public policy is needed aimed at conferring legal certainty on indigenous lands and territories through their recognition, titling, demarcation, delimitation, and warranty of title. In addition, the IACHR considers that the public institutions need to coordinate among themselves and improve their capacity to implement the policies and legal provisions effectively and efficiently. This can be attained, among other measures, by establishing a center for handling complaints and consultations for the population that is culturally appropriate, holding social audits with the accompaniment of civil society, and creating integrated information systems in the different institutions, including the registry and the cadastre. Sufficient financing and political will are also needed to carry out these changes.

4. Forced evictions of indigenous peoples and communities

477. One especially worrisome aspect for the IACHR refers to forced evictions of indigenous communities in several zones of the country. According to the information available, from 2004 to 2007 there were 72 violent evictions; 44 are on record from 2007 alone. In the following years these have continued to be a key concern of indigenous organizations and communities. Although the Commission does not have information on the total number of forced evictions, it is known to be a practice that has continued to affect hundreds of persons and communities in Guatemala. Other international human rights bodies, such as the UN Special Rapporteur on the right to food, have also observed this phenomenon with concern. The information received suggests that many times such evictions are related to the expansion of extensive single-crop agriculture, taking control of areas for pasture, or implementing development and infrastructure projects.

777 The OHCHR in Guatemala observed evictions carried out in the Polochic Valley (Alta Verapaz), which affected 732 Q’eqchi’ families (March 15); the one in Retalhuleu, which affected 139 peasants (July 28); and the one in the Sierra “El Lacandón” Park, in Petén, which affected 69 families (August 24). OHCHR-Guatemala. Report on the activities of the office in Guatemala, 2011, January 30, 2012, para. 76. In 2012, the OHCHR observed the violent eviction of 325 persons in Cahabón, Alta Verapaz, OHCHR-Guatemala. Report on the activities of the office in Guatemala, 2012, January 12, 2013, para. 80.
478. According it was informed, one situation that has drawn the special attention of the IACHR refers to 14 Maya Q’eqchi communities in the Polochic Valley, forcibly evicted in March 2011 and beneficiaries of precautionary measures issued by the IACHR since June 2011. The eviction was ordered pursuant to a criminal proceeding for allegations of usurpation and aggravated usurpation brought by the company Chabil Utzaj. In the criminal proceeding, shortcomings were identified, such as the lack of investigative steps by the Attorney General’s Office to show ownership of the farms, holding a hearing in which there is no record of the participation of the communities or organizations that work with them; failure to give notice to the community members or the opportunity to put on a defense or present evidence, who did not find out about the eviction until the security forces appeared in the Polochic Valley. Simultaneously, there was a dialogue with the SAA, the FONTIERRAS, and the National System of Permanent Dialogue, which held its last meeting one day before the evictions, and that several years prior to the arrival of the company Chabil Utzaj, thousands of Q’eqchi families spent years applying to the FONTIERRAS for adjudication of lands. In 2011, the Attorney General’s Office, to avoid similar events, put out a general instruction indicating the criteria for investigating a report of the crime of usurpation because “such conflicts [often] occur between a person who has a right recorded over the lands, and indigenous communities who have historically occupied the lands but do not have recorded title.”

479. It should be noted that, in the framework of the precautionary measure for the 14 Q’eqchi’ communities of the municipality of Panzós del Valle del Polochic, the State has informed the IACHR of a series of measures implemented to address the alleged situation of risk for beneficiaries, among which: (i) settlement plan where the Secretariat for Agrarian Affairs had relocated 31 families to the San Valentín farm, which is now called the Comunidad Los Luchadores, San Esteban; (ii) provision of building materials for provisional housing; (iii) supply of food by the Ministry of Agriculture, Livestock, and Food; (iv) provision of public security and first aid; (v) supplies for sleeping, such as sheets, bed planks, and mattresses; (vi) tanks for storing safe drinking water; (vii) nixtamal mills; among other actions.

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782 Information received at a meeting with the Attorney General’s Office on August 22, 2013 in Guatemala City.
aimed at addressing the situation and enforcing the IACHR’s precautionary measures.\textsuperscript{783}

The IACHR considers that legal and inter-institutional instruments should be reframed in accordance to international legal provisions and standards, and States should refrain from carrying out forced evictions and are obligated to adopt measures to protect against the evictions of persons and communities under its jurisdiction.\textsuperscript{784} In this respect, the Committee on Economic, Social and Cultural Rights has said that “instances of forced eviction are prima facie incompatible with the requirements of the [International] Covenant [on Economic, Social and Cultural Rights] and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”\textsuperscript{785} As noted in the \textit{United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement} (Basic Principles and Guidelines on Evictions and Displacement), such acts constitute “gross violations of a range of internationally recognized human rights,” such as the right to property, the right to security in the home, and the right to adequate housing, among others.\textsuperscript{786}

In light of the international legal provisions and standards, an order for the forced eviction of indigenous communities or peoples requires of the Attorney General’s Office and judicial branch their determination, through a strict and exhaustive scrutiny that takes into account, as fundamental aspects, not only the existence of a registered title, but also the broadest and most complete registry and cadastral information possible, the determination of the existence of a proceeding on the land currently before a judicial or administrative authority, and historical and anthropological considerations regarding occupation of the land, among others. In the event that it is determined that the lands in question may be lands traditionally used and occupied by indigenous communities that were acquired unlawfully, no eviction should be ordered without the communities’ prior consent. In addition, the IACHR considers it fundamental that all the institutions involved, including the Ministry of Interior and the PNC, act decisively to implement the obligation to refrain from carrying out forced evictions, and provide protection against them.


\textsuperscript{784} These obligations are based on various international instruments that protect the right to property, the right to protection from arbitrary or illegal intrusions in the home, and the right to adequate housing, among other related rights. These include the American Convention (Articles 21 and 17.2), the American Declaration (Articles IX and XXIII), and the International Covenant on Economic, Social and Cultural Rights (Article 11). There are several pronouncements and instruments along these lines, such as General Comments No. 4 (1991) and No. 7 (1997) of the Committee on Economic, Social and Cultural Rights, the Guiding Principles on Forced Displacement, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, approved by the General Assembly in its resolution 60/147, the Principles on Housing and Property Restitution for Refugees and Displaced Persons, and the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.

\textsuperscript{785} United Nations. Committee on ESC Rights. General Comment No. 4 (1991), para. 18.

\textsuperscript{786} United Nations. \textit{Basic Principles and Guidelines on Development-based Evictions and Displacement}. Annex I of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, para. 6.
which in the case of the indigenous peoples and communities is bound up with the obligation of special protection under both the Constitution of Guatemala and international law.

482. The Commission also has a series of concerns regarding the execution of eviction orders. According to the information received, the authorities in charge, both the PNC and the Attorney General’s Office, would have carried out evictions without respecting protocols on the use of force, leading in some cases to the deaths of indigenous persons. There have been unlawful and arbitrary arrests of authorities, leaders, and members of indigenous communities, and the destruction and burning of their goods, crops, and housing, without the communities being allowed them to recover them. In addition, soldiers have participated in these actions, along with agents of private security companies, in violation of international standards.\(^{787}\) The Ministry of Interior has a Protocol for Police Action for evictions.\(^{788}\) It is observed that said instrument does not translate into clear guidelines the requirements that must be respected in any procedure, such as those contained in the Basic Principles and Guidelines on Evictions and Displacement\(^{789}\) and it observes that the Protocol for Police Action considers the possibility of “the participation of members of the National Army through the Liaison Office,”\(^{790}\) and it is also possible to apply Decree 40-2000, the Law in Support of the Civilian Security Forces, which authorizes the Army to provide support to the police if asked to do so.

483. The IACHR reiterates the appeal made to the State to effectively and fully comply with its international duties, mindful that according to the international standards on forced evictions, in cases of lands and territories that do not belong or are not claimed by indigenous peoples and communities, States should provide sufficient alternative shelter that meets certain minimum requirements such as essential food, drinking water, basic shelter and housing; fair and impartial compensation for any harm caused; and restitution and return, when feasible, immediately after the eviction, except in cases of force majeure.\(^{791}\) The Commission notes that in the case of the ancestral lands of indigenous peoples or communities, States should adopt all measures necessary to allow for the return of indigenous peoples to their traditional territories safely and with dignity, which in the case of the forced displacements provoked by contexts of violence includes the duty of the State to

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\(^{787}\) Complaint by the Q’eqchi’, Poqomchi’, and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received on August 23, 2013, in Cobán, Alta Verapaz.


take measures to fight the impunity enjoyed by those who are responsible for that violence.\textsuperscript{792}

5. Establishment and management of protected natural areas

Several indigenous peoples and communities have historically conserved territories with natural ecosystems as part of their way of life. Since the 1990s, some of these lands have been declared to be protected areas and at present make up the Guatemalan System of Protected Areas (SIGAP, for its acronym in Spanish). By the Law on Protected Areas of 1989, adopted by Legislative Decree 4-89, the National Council of Protected Areas (CONAP, for its acronym in Spanish) was established as the highest-level management and coordination body of the SIGAP, directly under the Presidency of the Republic. According to the information available, as of December 2013 the SIGAP included 322 areas declared as protected areas, corresponding to 31.06% of the surface area of Guatemala.\textsuperscript{793}

The information received by the Commission indicates that since this system was established, numerous protected areas have been created on lands and territories historically occupied by indigenous communities without respect for or recognition of their rights.

The IACHR takes note that according to the legal framework of the SIGAP, constituted by that statute and its regulation, the executive decree of 1990, within the protected areas there may be state and private property. Regarding private property it provides that private owners “fully maintain their rights to it and shall manage it in keeping with the applicable laws and regulations.”\textsuperscript{794} Although no specific provisions are established aimed at recognizing and protecting indigenous property that coincides with a protected natural area, in some cases the excerpt cited has been applied so that the communities who were in the zone prior to the declaration of protected areas can remain and regularize their occupation. In addition, the CONAP adopted the “Policy on Human Settlements in Protected Areas of the Petén,” which contemplates the possibility of regularization of the property of communities existing prior to the moment of the creation of the protected area and at the same time establishes, among its objectives, “to promote the relocation, with accompaniment, of former settlements” and “to promote the voluntary departure and eventual eviction of recent settlements.”\textsuperscript{795} One additional problem is that the FONTIERRAS Law is interpreted to mean that once an area has been declared protected, the FONTIERRAS would not have jurisdiction to regularize


\textsuperscript{793} SIGAP. \textit{List of protected areas as of January 2015}

\textsuperscript{794} Article 10 of Decree 4-89, Law on Protected Areas.

\textsuperscript{795} Bufete Jurídico de Derechos Humanos of Guatemala. Situation of communities in Petén. Information received by the IACHR in August 2013 visit.
land tenure or to grant titles to indigenous communities. Nonetheless, a rectification was observed when in February 2013 the FONTIERRAS Law conveyed legal title to 14 communities in the Sierra de Chinajá, given that the institution found that they had occupied ancestrally lands that had been declared a protected area. In addition, there are cases of communities which, as a result of the declaration of protected areas, were being forcibly evicted from the lands they had occupied historically, even by violent acts such as the destruction of their crops and physical assaults. At the same time, extractive and hydroelectric projects were authorized in protected areas.

487. One of the communities’ demands in cases of overlap with protected areas is that the management categories do not reflect their own systems for collective management of natural goods. In this regard, there is a National Strategy for the Management and Conservation of Natural Resources on Communal Lands, under the responsibility of the CONAP, whose objectives include strengthening the “full recognition by the State and civil society of historical rights to communal lands.” The Commission welcomes this initiative and makes an appeal to guarantee the right to consultation of the indigenous peoples and communities throughout the process.

B. Consultation

1. Situation of the exploration and exploitation of natural resources that affect indigenous lands and territories, and main concerns in connection with the activity of the Guatemalan State

488. The IACHR observes that the main concern of the communities, organizations, authorities, and leaders refers to the implementation of plans and projects on their ancestral lands and territories and the natural resources located there. The information available to the IACHR suggests that since the late 1990s and more intensely since 2000, the dispute began to grow more acute around mining, infrastructure, hydroelectric, and single-crop agricultural projects, among others, as they were being implemented in violation of the rights of indigenous peoples and communities. The lack of procedures for consultation with the communities, the repudiation of the results of the community consultations convened by the

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796 Information received at a meeting with the MARN, MEM, and CONAP, August 21, 2013 in Guatemala City.
797 FONTIERRAS Law, Article 45. Exceptions, protected areas, and territorial reserves. This law does not apply to the following lands: in private possession of any type, of the Indigenous Communities, protected areas, and territorial reserves, in keeping with what is established by the Constitution of the Republic and the specific laws of each subject matter. The protected areas are subject to their own regime. In no case may there be availability in core zones or their multiple use zones designated by the Law on Protected Areas.
798 Information received in meeting with FONTIERRAS, SAA, RGP, and RIC, August 21, 2013, in Guatemala City.
communities, the lack of respect for the communities’ positions, the lack of attention to reports of assaults or threats, and the lack of attention or presence of public authorities who the communities have asked to guarantee protection for their members, have all been identified as factors that contribute to bringing about, feeding, or sharpening social conflicts. In its response of October 6, 2015 the State indicated that "effectively, the right to prior consultation for indigenous peoples is a pending issue to be resolve by the State and therefore, as the Constitutional Court held, it is unquestionable the right of indigenous peoples to be consulted.”

Guatemala, as a state party to human rights treaties, is obligated by the duties that stem from those instruments in relation to indigenous peoples’ right to consultation. On June 5, 1996, Guatemala ratified ILO Convention 169, it also voted in favor of adopting the UN Declaration on the Rights of Indigenous Peoples on September 13, 2007. While the state duty to consult does not appear to be regulated in the Constitution, Article 46 provides that “the treaties and conventions accepted and ratified by Guatemala prevail over domestic law.” On the basis of this provision, the Constitutional Court has found that consultation is “a fundamental right collective in nature,” and part of the core content of the Constitution.

Domestically, the Agreement on Identity and Rights of Indigenous Peoples, elevated to a state commitment by Decree 52-2005, stipulates the need “to obtain the favorable opinion of the indigenous communities prior to exploiting the natural resources that may affect the subsistence and way of life of the communities.” It also incorporated as an objective “to promote legal and institutional reforms that facilitate, regulate, and guarantee said participation,” “with the participation of representatives of the indigenous organizations,” including the establishment of “compulsory mechanisms of consultation with the indigenous peoples every time that legislative and administrative measures” are being considered that may affect them.

ILO Convention 169 and the Peace Accords were the basis for the decentralization laws. In particular, Article 65 of the Municipal Code, entitled “consultations with the indigenous communities or authorities of the municipality,” establishes:

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801 In addition to the American Convention, it has ratified the International Covenant on Civil and Political Rights (May 5, 1992), the International Covenant on Economic, Social and Cultural Rights (May 19, 1988); and the International Convention on the Elimination of All Forms of Racial Discrimination (January 18, 1983).
802 Pursuant to Decree 9-96, it became a provision of domestic law.
“When the nature of a matter affects in particular the rights and interests of the indigenous communities of the municipality or of their own authorities, the Municipal Council shall engage in consultations at the request of the indigenous communities or authorities, even applying criteria particular to the customs and traditions of the indigenous communities.”

In addition, the Law on Urban and Rural Development Council provides: “Until the law is issued that regulates consultation with the indigenous peoples, the consultations of the Maya, Xinka, and Garifuna peoples on the development measures promoted by the Executive branch and that directly affect these peoples may be done through their representatives on the development councils.”

In addition, Article 18 of the General Law on Decentralization provides: “The community organizations recognized in keeping with the law may also participate in the works, programs, and public services of their community, in coordination with the municipal authorities.”

In the sphere of the constitutional jurisdiction, in 1995 the Constitutional Court, by advisory opinion, determined the constitutionality of the provisions contained in ILO Convention 169 and recognized the consultation as a fundamental right that must be respected. The Court has also held that "the right of the interested peoples to be consulted is unquestionable" and it has recognized that this right is part of the core principles in the Constitution. These provisions and pronouncements evidence the domestic recognition of this state obligation and provide mechanisms for the exercise of the right to consultation, even though there is not an adequate legal and institutional framework, since provisions are maintained that are openly contrary to this right. In effect, the Law on Mining of 1997, Decree 48-97, does not contain provisions for the indigenous peoples to be consulted before the approval of licenses for the exploration or exploitation of mining projects. In addition, the Regulation on Evaluation, Control, and Environmental Monitoring, approved by Executive Decree 431-2007 of September 17, 2007, contains a procedure for "public participation" prior to the approval of the social and environmental impact studies for granting licenses. Nonetheless, these are "interviews, surveys, etc."
workshops, assemblies, and/or working meetings” that the proposing company must carry out, with nothing that could guarantee the participation of the indigenous peoples in decisions that affect their ancestral territories, as the Constitutional Court has recognized.813

493. There are many human rights bodies that have urged Guatemala to establish a legal and institutional framework in keeping with this right, such as the UN Special Rapporteur for the rights of indigenous peoples, the ILO Committee of Experts on the Application of Conventions and Recommendations, the Committee on the Elimination of Racial Discrimination, and the UN Human Rights Council. In addition, on numerous occasions the Constitutional Court has urged Congress to implement the domestic provisions on the right to consult and to adapt the Municipal Code and the Law on Urban and Rural Development Councils along the same lines.814 In 2004 the IACHR noted that the indigenous peoples were suffering the consequences of development and infrastructure projects.815 It regrets to note that 10 years later no specific steps forward can be identified, and it is worrisome that one argument cited by state authorities and officials for eluding the duty to consult is precisely the lack of any specific body of law.

494. The Guatemalan State has authorized many plans and projects for exploration and exploitation, development, or infrastructure without their technical, administrative, and legal mechanisms respecting or guaranteeing the right to consultation, or the requirement to secure the prior consent of the indigenous peoples. In recent years, nearly 200 mining licenses have been issued for exploration and exploitation without prior consultation, and a similar number of permits for implementing hydroelectric projects in different parts of the country.816 In addition, one of the main concerns is the accelerated implementation of single-crop agriculture, such as sugar cane and African palm, on lands and territories claimed by indigenous communities. There are many cases in which projects implemented have impacted areas on which there were legal actions or requests for recognition of indigenous property rights. The Commission observes that in certain cases processes have been carried out for the “socialization” or “participation” of the communities; such processes have been delegated to the companies responsible for carrying out the projects, without proper state supervision. The Commission would like to emphasize that

“the obligation to consult is the responsibility of the State; therefore the planning and executing of the consultation process is not an obligation that

816 Information received at a meeting with the MARN, MEM, and CONAP, August 21, 2013 in Guatemala City; at a meeting with the Governor of Huehuetenango and the Inter-institutional Commission, August 26, 2013 in Huehuetenango; at a meeting with indigenous leaders and organizations, August 25, 2013 in Nebaj, Quiché; and on August 26, 2013 in Huehuetenango.
can be avoided by delegating it to a private company or to third parties, much less delegating it to the very company that is interested in exploiting the resources in the territory of the community that must be consulted.”

495. The IACHR recalls that as the Inter-American Court has stated, “the requirement of prior consultation means that this must take place before taking the measure or implementing the project that may affect the communities, including legislative measures...” In this last case, it has said: “In the case of consultation prior to the adoption of a legislative measure, the indigenous peoples must be consulted in advance during all stages of the process of the producing the legislation, and these consultations must not be restricted to proposals.” The IACHR considers that identifying the measure that is to be the subject of consultation is fundamental in the process of consultation and consent, thus it should be endowed with the greatest possible guarantees, reducing discretion in the decision and applying, in non-restrictive terms, the concept of impairment or negative impact ("afectación").

496. Moreover, States have a duty to ensure that the restrictions on the use and enjoyment of the lands and natural resources of the indigenous peoples do not imply a denial of their physical and cultural survival as peoples in keeping with the ancestral ways of life, the IACHR observes with concern that various kinds of projects are being implemented even though they entail the denial of the physical and cultural existence of indigenous communities. Among these situations is that of dozens of Q’eqchi communities threatened by the implementation of the Xalalá hydroelectric plant on the Chixoy and Copón rivers, in the departments of Quiché and Alta Verapaz. According to the information received, this project would entail relocation of the communities and the flooding of their ancestral lands without consultation and without addressing the results of the community consultations organized at the communities’ initiative in which their rejection of the project was expressed.

2. Specific guarantees of the consultation

497. According to the case-law of the Inter-American Commission and the Inter-American Court, to be consistent with inter-American human rights law a consultation of indigenous peoples must provide for certain guarantees. It must be prior, informed, free, and conducted for the purpose of obtaining consent. In certain cases consent is required. One of the most important specific guarantees refers to the moment when the consultation is held, and assumes that it could be carried out “from the first stages of the planning or preparation of the proposed measure, so that the indigenous peoples can truly participate in and influence the decision-making process.” As the Inter-American Court has said:

communities “must be consulted, in accordance with their own traditions, at the early stages of a development or investment plan, not only when the need arises to obtain approval from the community, if such is the case. Early notice provides time for internal discussion within communities and for proper feedback to the State.”

498. In Guatemala the current legislation and institutional framework authorize the granting of licenses without the communities even learning of the possible approval of a measure that may affect them. In effect, according to the current environmental laws, once the environmental impact study is prepared by the proposing company, that instrument must be published “through the means of communication that the proponent and the Ministry of Environment and Natural Resources (MARN, for its acronym in Spanish) agree upon.” One has 20 days to file an opposition “that is technical, scientifically, or legally founded,” which is included in the record for MARN’s analysis. The legislation considers the possibility of publication in a language other than Spanish if there is an indigenous language “predominant among the majority in the region.” The copy of the environmental impact study may found in a hard copy, in Spanish, at the MARN or in the municipalities where the project is located. In the case of mining licenses, according to the Law on Mining, the public information consists of “the publication of edicts, one time only, in the official gazette and in another major circulation daily newspaper in the country,” and third persons may file an opposition within a 30-day window, before the Ministry rules on the application.

499. Such mechanisms of information are insufficient and inadequate in light of international standards and constitute clear obstacles for the communities to

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823 I/A Court H.R., Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs, para. 134.


826 Articles 45 and 46 of the Law on Mining.
become fully informed. Moreover, the IACHR notes that they present impediments related to the relevant project information not being available in indigenous languages, the insufficient time for preparing and filing motions, as well as problems filing them due to geographic distances, and the lack of economic resources and technical assistance.  

In general the communities do not get information about the implementation of a project in their ancestral lands and territories until the moment at which actual construction begins, and even then the information is insufficient, scarce, and culturally inappropriate. At the same time, the Commission observes that constant requests for information by the communities or indigenous authorities put to state authorities generally go unanswered. Neither the communities affected nor in some cases the local authorities receive complete and formal information from the central government on the most elemental aspects of the project, such as an indication of the communities within the zone of influence of the project, or how that has been determined.  

Guaranteeing that the consultation is informed requires that from the first moment of the process full and precise information be provided on the nature and consequences of the measure in the communities consulted. In the words of the Inter-American Court, “the consultation must be informed, in the sense that the indigenous peoples must be aware of the potential risks of the proposed development or investment plan, including the environmental and health risks. Thus, prior consultation requires that the State receive and provide information, and involves constant communication between the parties.”

With respect to the requirement of free consultation, the information indicates that the implementation of projects and processes of dialogue, if they take place, unfold many times, in the context of threats, militarization of communities, intimidating presence of private security guards, criminalization of community members, and strong pressures on and intimidation of the communities and their leaders.

In the words of ancestral authorities of the Ixil people in: “The people found out two months after it was published in the official gazette, because they find out in the capital and the gazette does not reach here. In addition, it is only in Spanish and not in Ixil. By the time it gets here the 30 days have already gone by, and it can no longer be challenged.” Information received in meeting with municipal authorities, August 25, 2013 in Nebaj, Quiché.

“On repeated occasions since 2006 we have asked the MEM [Ministry of Energy and Mines] and INDE [National Electrification Institute] for precise and specific information on the plans to build the dam and they have refused to give it to us or they refer us to information published in media outlets.” CIFCA. Informe de investigación sobre Guatemala. Proyecto Xalala ¿Desarrollo para todos? [Investigation Report on Guatemala: Xalala Project on Development for All?], December 2008. Information received during visit to Guatemala in Cobán, Alta Verapaz. August 23, 2013.


Indigenous Mayors’ Offices of the Ixil Region. Planteamiento de las Comunidades indígenas y autoridades ancestrales de Cotzal a la empresa italiana ENEL [Proposal made by the Indigenous Communities and...
According to the testimony received from authorities of the Ixil people, they had to begin the dialogue with the company and state authorities on implementation of the Palo Viejo hydroelectric project, “under the pressure of 700 police and soldiers from all departments of the country stationed in the municipality of Nebaj.”

502. As regards the objective of obtaining consent, the IACHR observes that in Guatemala under the current legislation, in the various processes for approving projects that may have negative impacts on indigenous communities and peoples, the decisions are made at the central level, between the ministries involved and the proposing company. When “socialization” processes take place, the communities perceive that “they don’t consult us, they tell us” about the projects to be implemented, which coincides with the statements by the authorities, whose understand that their duty is “to go to the communities to tell them what projects are going to be implemented.”

503. As for the good-faith requirement, the information available indicates that the mechanisms of participation or dialogue, when they have been implemented, have used practices totally at odds with the guarantee of good faith. “The leaders and communities have constantly received visits from persons who speak in the name of the company, frightening and intimidating them, making death threats, and offering them money in exchange for convincing the communities to allow them in.”

Many reports have been received on “intimidation through anonymous phone calls, the presence of armed persons in the communities …, trailing of and threats against the leaders.” In addition, the lack of prior consultation with the indigenous peoples and communities, as well as the strong pressures from the community leaders promoted by outside actors, has produced divisions and fragmentation within the communities, tearing the social fabric and eroding ancestral authority. The mechanisms used include paying off leaders and co-opting the positions of representation in the community. In addition, in the schools the indigenous children are influenced by practices aimed at harassing the children of
families that are not in favor of the company, or families who oppose the project find that their water supply has been cut off.\textsuperscript{836}

504. The Commission also observes that the scant mechanisms of participation and information that exist in Guatemalan domestic law do not answer to the criteria of cultural appropriateness, among others, as the publication of key instruments for the issuance of a given license is in written media to which the communities have no access, that are not distributed in the zone of impact of the project, in Spanish in a highly technical language, and not in the language of the communities affected or by mechanisms that correspond to their own cultural identity.\textsuperscript{837}

505. The preliminary social and environmental impact studies are done by the proponent companies, along with the environmental consultants and without state supervision; these are processes in which the communities do not participate and at times they do not even know that they are being drawn up.\textsuperscript{838} Nor does one observe the existence of mechanisms that guarantee the participation of indigenous peoples in the benefits of the exploitation of natural resources or the implementation of development or investment plans in their traditional territories. In this respect, the Commission emphasizes that the indigenous peoples have the right to participate in the benefits that derive from the projects for the exploration and exploitation of natural resources or from development or investment plans in their territories, as well as the commercial application of their traditional knowledge as to the use of those resources.\textsuperscript{839}

506. In this context, one fundamental aspect is the adoption of measures to mitigate and make reparation for the negative impacts of the projects currently approved or in the implementation phase in indigenous communities or peoples. In this respect, according to available information, for high-impact projects the Regulation on Evaluation, Control, and Environmental Monitoring establishes a “performance bond” ("fianza de cumplimiento") such that if the proponent does not meet the “environmental commitments assumed” the MARN may execute that bond to implement mitigation measures. Nonetheless, it is not compulsory and there are no specific mechanisms for implementing mitigation plans, establishing

\textsuperscript{836} Complaint of the Q’eqchi’, Poqomchi’, and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received August 23, 2013, in Cobán, Alta Verapaz.

\textsuperscript{837} “That is not the mechanism of the elders of these communities for doing the consultation. The consultation is that they go there in the language, that they share what they are going to do, respecting the customs and traditions of the community members. They come offering a project, they leave a draft, and then have them sign some paper, they don’t even know what it says because there’s a lot of illiteracy. Afterwards they say ‘but you already signed a document.’” Information received in meeting with municipal authorities, August 25, 2013 in Nebaj, Quiché.

\textsuperscript{838} “Unknown persons would constantly come to the communities, they would come without the communities’ permission and begin to collect data on the properties without the consent of the owners. Their presence struck fear in women because they molested them, they laughed at them, they harassed them.” Assembly of the Peoples of Huehuetenango. Informe Q’an B’alum Cataratas de Encuentros y Discordia: Santa Cruz Barillas. Information received by the IACHR during its visit in 2013, Huehuetenango, August 26

remediation measures for closing projects, or implementing protocols or terms of reference that establish procedures and institutions responsible for carrying them out.\textsuperscript{840} As the MEM indicated, the technical closing of a mine is a major concern, since the current legislation lacks important technical considerations.\textsuperscript{841}

507. In summary, there is a pressing need to bring the domestic legal order into line with international standards in relation to the right to consultation and prior, free, and informed consent through the adoption of specific provisions. At the same time, the laws in force need to be brought into line with international standards. And those provisions must then be translated into institutional protocols and guidelines that guarantee their effective application. To this end, the Commission considers that it is essential that the consultation be carried out on a priority basis with the utmost guarantees of participation by the indigenous peoples.

508. It should be noted that on September 10, 2015, the Constitutional Court granted amparo protection to the Consejos de Principales (Councils of Principals) of Trapichitos, Sumal Chiquito, and Nuevo Amanecer, all three in the municipality of Nebaj, of Quiché, and to the indigenous mayor of the Office of Indigenous Mayor of the same municipality, in case file 1149-2012, for the failure to consult the indigenous communities when a hydroelectric project was established in that municipality. While the Constitutional Court did not suspend the ministerial decree challenged, it is encouraging progress that it ordered the Ministry of Energy and Mines to “take the measures necessary to carry out the consultation of the indigenous communities interested and affected, in keeping with the applicable international standards, with respect to the installation of the La Vega I hydroelectric power plant.”\textsuperscript{842}

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\textsuperscript{841} Information received at meeting with MARN, MEM, and CONAP, August 21, 2013 in Guatemala City.

\textsuperscript{842} The judgment indicated that the consultation should conclude within six months and should be designed as an intercultural dialogue in good faith in which one seeks consensus and a mutual accommodation of the parties’ legitimate interests. Constitutional Court, CC ordena realizar consultas a comunidades indígenas por proyecto hidroeléctrico, September 14, 2015.
\end{flushright}
3. Community and municipal consultations

509. The lack of mechanisms for consulting the indigenous peoples and communities has led them to carry out, at their own initiative, what are known as “good-faith community consultations,” i.e. self-managed processes in which they have expressed their positions with respect to projects in their ancestral lands and territories. The legal basis has been the rules of the Municipal Code that establish the ability to perform queries, either at the request of the Municipal Council or at the request of indigenous communities or authorities on a matter affecting the rights or interests. Specifically, Article 65 of the Code provides that:

Article 65.— Consultations with indigenous communities or municipal authorities. When the nature of a particular matter affects the rights and interests of indigenous communities of the municipality or its own authorities, the Municipal Council will hold consultations at the request of indigenous communities or authorities, including applying criteria of customs and traditions indigenous communities.\textsuperscript{843}

510. The first “community consultation” was carried out more than ten years ago, promoted by the Sipakapense Maya communities, in the municipality of Sipacapa, department of San Marcos, in relation to the Marlin Mine project. Since then, more than 110 similar processes have been carried out in approximately 70 different municipalities around the country that has included the participation of communities of the different peoples in Guatemala, who in the vast majority of cases have expressed their rejection of projects.\textsuperscript{844} Mining accounts for 88.59 % of all community consultations in Guatemala, which have resulted in a rejection of that activity.\textsuperscript{845}

511. The Constitutional Court has issued several rulings on the matter. In a decision issued on January 21, 2015 on file 5229-2013 on a municipal consultation in the municipality of Jalapa following a mining project, the Constitutional Court determined that according to domestic law, the results of the consultations were binding on the municipal authority and that its results should be submitted to the authorities responsible for granting mining licenses, so based on these and to ensure social peace “are indicative at the time of issue resolutions (Licensing)”. The Court also said that

"popular consultations are important mechanisms by which fundamental rights are guaranteed and are the clear expression of a democratic regime and that residents of municipalities have the right to express regarding the use and enjoyment of natural resources found within the territory of the municipality."

\textsuperscript{843} Municipal Code, Decree 12-2002 of the Congress of the Republic, Articles 64 to 66.  
\textsuperscript{844} Coordinadora Nacional de Organizaciones Campesinas [National Coordination for Campesino Organizations], Letter to the President of the Board of Officers of the Congress of the Republic of Guatemala, August 21, 2013. Information received by the IACHR during its August 2013 visit.  
\textsuperscript{845} AYSSA, Consultas comunitarias realizadas en Guatemala durante el 2014, February 6, 2015.
It indicated that the State should ensure the effective participation and benefit of the residents of the municipality corresponding to defend collective interests compatible with the development and welfare of the country. Circumstance that has also been considered by the Inter-American Court of Human Rights in its judgment of 28 November two thousand and seven in the Saramaka v. Suriname.\textsuperscript{846}

512. The Commission notes the efforts of the indigenous people and communities to find ways that allow them to exercise their rights, using peaceful mechanisms, making it possible to prevent greater or more serious expressions of the social unrest created by implementing projects without consultation. Also, the IACHR considers consultation, as an expression of the indigenous peoples and communities of the exercise of their right and to that extent, reiterates the need to harmonize the domestic laws with international standards on the right to consultation and free, prior and informed consent.
CHAPTER 7

CONCLUSIONS AND RECOMMENDATIONS
CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

513. The serious human rights situation in Guatemala affects all its inhabitants and permeates all spheres of society. The situation of citizen security, the administration of justice, and inequality and exclusion of the indigenous peoples, analyzed in this report, corroborate that assertion. Thousands of Guatemalans die every year because the State has failed to guarantee them a place free of violence. The system for the administration of justice, despite the efforts made, maintains an index of impunity that only reinforces violence and insecurity. And the indigenous peoples continue suffering levels of racism and discrimination of such magnitude that they represent the poorest of the poor, the most excluded of the excluded.

514. The development of a culture of tolerance, of respect for the law and rejection of impunity, requires an effort on the part of all Guatemalans, an endeavor in which they have been and will be accompanied in solidarity by the international community.

515. The IACHR reiterates the importance of the Peace Accords as instruments for advancing in the task of building a more democratic, fair, tolerant country respectful of human rights.

516. Furthermore, the Commission expresses its willingness to contribute and collaborate with the State of Guatemala to implement a human rights agenda, which should be focused on the protection of its inhabitants.

B. General Recommendations

517. Based on the foregoing analysis and conclusions, the Commission offers the following general recommendations:

1. Restart the agenda of the Peace Accords.

2. Comply with and implement the recommendations, decisions, and judgments of the inter-American human rights bodies.

3. Continue to make efforts to eradicate extreme poverty and hunger; particularly, and adopt the necessary measures to eliminate the grave problem of infant malnutrition.
C. **Recommendations with respect to the situation of violence and insecurity**

4. Design preventive public policies based on the causes of violence and high levels of crime for the purpose of reducing crime substantially and ensure that Guatemalans can live in peace in a country free of violence.

5. Protect the life and integrity of those who, because of their role in society or their special vulnerability, due to historic discrimination and exclusion, suffer a differential impact, especially those persons who defend human rights, including indigenous authorities and leaders, environmentalists, trade unionists, and judicial officers, as well as women, children and adolescents, migrants and refugees, the LGBTI population, persons with disabilities, and persons deprived of liberty. Massively promote the importance of the work of human rights defenders.


7. Refrain from stigmatizing the work of human rights defenders, journalists and indigenous leaders.

8. Strengthen the legislative norm and give adequate resources for the Analysis of Attacks against Human Rights Defenders in Guatemala. Regarding the protection program for journalists, it reiterates that it is constituted in accordance with international standards and in consultation with civil society organizations, journalists and media workers.

9. Adopt all measures that are needed to prevent future acts of human trafficking. For this purpose, the measures adopted by the Guatemalan State must be aimed at tackling the causes that favor and promote human trafficking. To this end, the measures adopted by the Guatemalan State must be aimed at addressing the causes that favor and promote human trafficking, such as situations of special vulnerability for victims and potential victims, the steady demand for goods and services produced on the basis of the work carried out by victims of human trafficking, and the existence of a context where human trafficking actions go unpunished. Likewise, to implement measures aimed at promoting the identification of the victims of human trafficking, especially groups in situations of vulnerability, such as indigenous communities, working children, migrants returnees, persons working in sexual commerce, and children involved in gangs. Also develop measures aimed at training civil servants and the population in general against human trafficking.

10. Strengthen mechanisms for the search of the disappeared persons.

11. Guarantee that the PNC is the agency in charge of internal security in the country. To that end, allocate the material and human resources it needs to do its job and develop training programs in keeping with human rights standards. Guarantee that the police forces are prepared in the face of disturbances of public order by applying measure respectful of human rights.
12. **Intensify efforts to investigate and punish human rights violations committed by state agents.**

13. **Ensure that legislative and administrative initiative and practices are compatible with the prohibition of participation of the armed forces in public security tasks and in particular the control of violence in social protests. Limit budgetary matters relating to national defense allocations.**

14. **Improve the training of the members of the Armed Forces and the Police Force in human rights.**

15. **Establish an integrated policy aimed at eradicating the phenomenon of lynching through a comprehensive policy that considers its causes.**

16. **Limit the states of emergency to the situations that represent a threat to the Nation and; implement the specific guarantees that govern states of emergency under international law.**

17. **Ensure supervision and effective control of the private security companies and their agents, the registration and punishment of those who do not comply with the rules and regulations; and keep strict tabs on arms and any future process of disarmament.**

### D. **Recommendations with respect to the administration of justice**

18. **Adopt measures to ensure that judicial officers perform their work impartially and independently, respecting the principle of separation of powers and free from any threat or pressure from powerful groups.**

19. **Ensure that those who are elected judges or members of the high courts are chosen for their merits, capacity, suitability, and honesty, and that they meet the minimum standards established by international human rights law to ensure judicial independence.**

20. **Adopt effective measures that allow for better and more access to justice for all. With respect to the indigenous peoples, respect their own institutions of representation and decision-making and ensure that they can be heard in their own languages.**

21. **Adopt effective measures that make it possible for the Public Prosecution Service to continue coordinating actions and collaborating with the CICIG and allocating, for this purpose, the resources that are needed.**

22. **Bolster the actions to fight impunity in the case of human rights violations through exhaustive and independent investigations, punish the direct perpetrators and masterminds, and make reparation to the victims.**
23. Effectively discharge the duty to investigate, prosecute, and punish those responsible for violations of the right to life, humane treatment, and other human rights committed during the armed conflict. In the event that the victims are indigenous peoples, make reparation for the consequences, both individual and collective, in a manner that is integral and culturally appropriate.

24. Ensure that the writ of *amparo* and its application in Guatemala meets the relevant inter-American standards.

25. Respect, and guarantee, the indigenous legal systems without limiting their areas of competence recognized by international law, and establish a procedure for coordination between the regular justice system and the indigenous one, with the participation of the indigenous peoples. Adopt measures to respect, and recover the indigenous legal system, including the traditional indigenous methods of conflict resolution, so that the indigenous peoples can recover the authority that has been weakened by the internal armed conflict and by the lack of state recognition.

26. Implement the measures necessary for the PNR to be an effective and culturally appropriate mechanism to make reparation to the victims of the armed conflict that includes actions to take into due consideration the special situation of indigenous women and children, as well as the participation of the indigenous peoples in the Program's decisions.

E. **Recommendations with respect to the situation of inequality and exclusion of the indigenous peoples**

27. Implement the commitments acquired in the Peace Accords in favor of the indigenous peoples and their members, especially those set forth in the Agreements on Identity and Rights of the Indigenous Peoples, on Socioeconomic Aspects and Agrarian Situation; and on Financing of the Civilian Authority and Function of the Army. Give impetus to and adopt legislative or other initiatives to implement ILO Convention 169 on indigenous and tribal peoples in independent countries.

28. Recognize the indigenous peoples and communities as collective subjects with their own authorities and representatives, determined by their customary law.

29. Establish an integral public policy that addresses the situation of discrimination that affects the indigenous peoples and that represents an assault on their ways of life; it should be drafted and implemented with the participation of and in consultation with the indigenous peoples of Guatemala, and respecting their ways of life and development projects in keeping with applicable international law. One should also bear in mind the participation of indigenous women and children throughout the process.
30. Strengthen the State’s institutional framework for indigenous peoples, guaranteeing, through affirmative measures, that the indigenous peoples participate in the different levels of government of the State of Guatemala on equal footing with the rest of society; and recognize, respect, and protect their own forms of organization, representation, and decision-making, all with participation of and in consultation with the indigenous peoples.

31. Promote a rural development policy or review the existing one to make sure it is culturally appropriate, sustainable, and inclusive, incorporating integral solutions that enable the indigenous communities to guarantee their food sufficiency and security in keeping with their traditional standards with a view to protecting the ancestral territory and the natural resources. Design, in consultation with the communities affected an integral and culturally appropriate strategy to reduce mortality, morbidity, and malnutrition in indigenous children.

32. Promote respect for the labor rights of the indigenous peoples mindful of the relevant provisions of ILO Convention 169, oversee the implementation of labor legislation, and punish, as provided by law, those employers who violate the established rules. In particular, adopt decisive and immediate measures to put an end to any form of servitude or forced labor; and investigate, prosecute, and punish all those persons or groups of persons who continue keeping persons in such conditions.

33. Ensure the inclusion of ethnicity in all official statistics, censuses, surveys, and administrative and judicial records as a way to strengthen efforts to give visibility to indigenous peoples and ensure ethnicity is considered as a determinant element in defining public policies, plans, and government programs.

34. Establish a public policy in conjunction with the indigenous peoples to ensure effective enjoyment of indigenous peoples’ right to collective property, to ensure the effective enjoyment of the right to collective property of indigenous peoples and related rights in their various components, mindful of the relevant inter-American standards. Guarantee that the indigenous peoples can use and enjoy their ancestral lands and territories, which imply that they must be delimited, demarcated, titled, and registered by special procedures and with the participation of and in consultation with the indigenous peoples. Identify and create indicators and systems for inter-institutional monitoring implementation of the legislation and policies aimed at resolving the situation of the indigenous communities and peoples in relation to their rights to their traditional lands and territories.

35. Refrain from authorizing or carrying out measures that have a detrimental impact on the lands and territories of indigenous peoples, and do not allow third persons to carry out such measures. This includes but is not limited to refraining from performing acts such as the declaration of unoccupied lands (tierras baldías), individual titling, and pursuing remedies that challenge the juridical personality or historical possession of the communities.

36. Adopt the legislative, administrative, or other measures necessary to fully implement and enforce the right to prior consultation of the indigenous peoples and communities, pursuant to international human rights standards and with the
full participation of the indigenous peoples. Modify the legislative, administrative, or other measures that impede the full and free exercise of the right to prior consultation, for which one should ensure the full participation of the indigenous peoples. Consult the peoples and communities in a manner that is prior, adequate, effective, and fully in keeping with the applicable international standards in the event that any activity or project for the extraction of natural resources in their lands or territories is planned, or an investment or development plan of any other type that implies potential impacts on their territory.

37. With respect to the concessions granted or being implemented, establish a mechanism that makes it possible to evaluate the need for a modification to the terms thereof to preserve the physical and cultural survival of the indigenous communities and peoples. Adopt the measures necessary to ensure that the indigenous peoples and communities that have been suffering the effects of projects with no consultation have access to mechanisms that enable them to mitigate those effects and make adequate reparation for them in a culturally appropriate manner.

38. Prevent and protect the indigenous communities from forced displacement, and seek the return of displaced indigenous communities and families in conditions of safety as soon as possible.
Tab 7
Guatemala

Guatemala’s progress in prosecuting corruption and abuse in recent years is at risk after the government decided not to extend the mandate of the United Nations-backed International Commission against Impunity in Guatemala (CICIG). CICIG ceased operation in September 2019. At time of writing, the attorney general had not taken steps to safeguard the prosecution of more than 60 ongoing corruption cases, including those against more than a dozen current and former Congress members, former ministers, former President Otto Pérez Molina, and former Vice-President Roxana Baldetti.

In July, the Guatemalan and US governments signed an agreement that would establish Guatemala as a “safe third country.” At time of writing, it was unclear how the agreement would be implemented.

Public Security, Corruption, and Criminal Justice

Violence and extortion by powerful criminal organizations remain serious problems in Guatemala. Gang-related violence is an important factor prompting people, including unaccompanied children and young adults, to leave the country.

In recent years, investigations by CICIG and the Attorney General’s Office have exposed more than 60 corruption schemes, implicating officials in all three branches of government, and prompting the resignation and arrest of the country’s then-president and vice-president in 2015.

However, Guatemala suffers from high levels of impunity, partly because criminal proceedings against powerful actors often suffer unreasonably long delays due to excessive use of motions by criminal defendants. Those delays are compounded by courts often failing to respect legally mandated timeframes and sometimes taking months to reschedule suspended hearings. Intimidation against judges and prosecutors and corruption within the justice system continue to be problems. As a result, trials have not yet started for most major corruption cases brought since 2015.
Aceituno was killed, and in March 2015, journalists Danilo López and Federico Salazar were assassinated. In January 2017, investigations by CICIG and the Attorney General’s Office implicated Congressman Julio Juárez from former government party FCN-Nación in the latter crime. In June, a pretrial judge ordered Juárez to stand trial. At time of writing, a trial date had not been set.

Children’s Rights

In March 2017, 41 adolescent girls were killed in a fire in the Hogar Seguro government-run shelter. Fifty-six girls had been locked up for the night in a space that could safely hold only 11, without access to water or a restroom, following a protest against the poor living conditions and treatment received in the shelter—including reports of sexual violence stretching back years. After at least six hours in those conditions, one of the girls set a mattress on fire so police officers on guard would let them out—but the police waited nine minutes before opening the door. Three public officials were due to stand trial in February 2019 for involuntary manslaughter and breach of duty, among other charges, but because of delays, the trial had not yet started at time of writing.

Sexual and Reproductive Health

In August 2018 Guatemalan Congress approved a preliminary version of the “Life and Family Protection” bill. This bill would expand the criminalization of abortion, currently legal only when the life of a pregnant woman or girl is in danger, and could subject women who have miscarriages to prosecution. It would also raise the maximum sentence for abortion from 3 to 10 years and would make it a crime to engage in “the promotion of abortion,” which could mean that the provision of sexual and reproductive information, counseling, or referrals might result in sentences of up to 10 years.

Violence Against Journalists

Journalists are targets of harassment and violence. In February 2018, the bodies of journalist Laurent Castillo and radio worker Luis de León were found bound and with gunshot wounds to the head. In June 2017, TV journalist Carlos Rodríguez survived a gunshot to the head. In June 2016, radio journalist Álvaro
and expression” protect people from being “obliged to accept non-heterosexual conduct or practices as normal.”

This provision could be interpreted to mean that people can be denied services on the basis of sexual orientation or gender identity, in violation of international human rights law. Guatemala does not have legislation specifically protecting the rights of LGBT people.

Incoming President Giammatei stated during the election campaign that he supported the bill. At time of writing, the bill still needed further legislative approvals before the president could sign it into law.

**Key International Actors**

Since its start in 2007, the UN-backed CICIG played a key role in assisting Guatemala’s justice system in prosecuting violent crime. CICIG worked with the Attorney General’s Office, the police, and other government agencies to investigate, prosecute, and dismantle criminal organizations operating in the country. It identified more than 60 criminal structures, presented more than 110 cases—in which over 680 people were involved—and presented 34 proposals for legal reforms to Guatemala’s Congress. According to an April opinion poll, more than 70 percent of the population supported CICIG.

However, after CICIG and the attorney general presented a renewed request in August 2018 to strip President Jimmy Morales of his presidential immunity in order to investigate his role in illicit campaign financing, Morales announced, flanked by military and police officers, that he would not renew CICIG’s mandate. As a result, CICIG ceased operation in September 2019.

At time of writing, Guatemala’s Attorney General had not agreed to a plan to guarantee the permanence of the prosecutor’s office in charge of the prosecution of CICIG’s cases.

In July, after the Trump administration had threatened to apply tariffs on Guatemalan products and fees on remittances from migrants, Guatemalan and U.S. officials signed an agreement that would establish Guatemala as a “safe third country,” requiring citizens of other countries who passed through Guatemala before filing a claim for asylum in the U.S., to apply for asylum in Guatemala instead. At time of writing, it was unclear how the agreement would be implemented.

The US Congress approved US$615 million in assistance for 2018 for the Plan of the Alliance for Prosperity in the Northern Triangle, a five-year initiative announced in 2014 aimed at reducing incentives for people to migrate from Guatemala, El Salvador, and Honduras by curbing violence, strengthening governance, and increasing economic opportunity in those countries. However, in March, President Donald Trump announced that aid to Northern Triangle countries would be cut. This would significantly reduce, or end, programs on local economic development, violence prevention, and anti-corruption efforts.

In 2019, Guatemala endorsed the Safe Schools Declaration, an international commitment to protect education during armed conflict.
Guinea

As opposition and civil society in Guinea raised concerns over a proposed constitutional revision that could permit President Alpha Conde to run for a third term run in 2020, the government cracked down on freedoms of assembly and speech.

The government banned all but a handful of street demonstrators, and security forces arrested dozens of protesters and broke up demonstrations using tear gas and, at times, live ammunition. At least 17 people were allegedly killed by security forces during protests in October and November, and protesters killed at least one gendarme. Six civil society activists leading opposition to a new constitution were also arrested and imprisoned in October. Several journalists were arrested on defamation charges and briefly detained for coverage critical of the government.

The government made little progress in investigating dozens of alleged unlawful killings that have occurred during protests in the last decade, with the February 2019 conviction of a police captain the first time a security forces’ member has been held accountable for the death of a demonstrator since Condé came to power in 2010. In November, the justice minister said the long-delayed trial of those responsible for the 2009 stadium massacre would be held not later than June 2020.

Freedom of Assembly

The government largely continued to enforce a July 2018 ban on street protests, citing threats to public security. Opponents to a new constitution were particularly targeted by protest bans, including three protesters arrested in Coyah in March, a dozen members of the Bloc Liberal party on April 5, seven protesters in Kindia—initially sentenced to three months but released on appeal—and 40 people arrested on June 13 in N’Zérékoré after an effort by security forces to break up an opposition protest led to intercommunal clashes. Those arrested in N’Zérékoré were detained until a June 20 trial, when 22 were convicted of public order offences.

The crackdown on protests intensified in October as the government banned and then violently dispersed three days of anti-constitution protests on October 14-16. Nine civil society leaders were arrested on October 12 and six convicted on October 22 for organizing the protests and sentenced to between 6 and 12 months’ imprisonment. Dozens of demonstrators were also arrested, detained for several days, and then released or fined.

The government finally authorized several anti-constitution protests beginning October 24, although disagreement over the route of a November 14 protest led to clashes between protesters and security forces. Five anti-constitution activists also detained in Kindia on November 14. Pro-government supporters organized a rival protest on October 31.

Security Force Abuses

At least 11 demonstrators were allegedly shot dead by the security forces during protests from October 14-16. Protesters killed a gendarme on October 14. Security forces allegedly shot dead 3 people during a November 4 funeral procession to commemorate October’s protest deaths. Security forces allegedly shot dead 3 more protesters on November 7. A student protester was also reportedly killed by the security forces in Labé on May 31.

Demonstrators arrested during protests in May, June, October, and November accused the police and gendarmerie of stealing money, telephones, and other possessions.

In July, the National Assembly adopted a law on the use of force by the gendarmerie that could shield law enforcement from prosecution in cases of unlawful killing. The law requires that force only be exercised where necessary and proportionate but does not explicitly limit the use of firearms to imminent threats of death or serious injury.

Also in July, the National Assembly adopted an anti-terrorism law with several provisions that could threaten human rights, including prolonged detention in police custody and vague offenses for “apologizing for terrorism.”
WORLD REPORT | 2020

This 30th annual World Report summarizes human rights conditions in 90 countries and territories worldwide in 2019. It reflects extensive investigative work that Human Rights Watch staff conducted during the year, often in close partnership with domestic human rights activists.
Tab 8
The impact of violence on LGBTI people in the North of Central America

Lesbian, gay, bisexual, trans and intersex (LGBTI) people face discrimination, human rights violations and persecution across the world, particularly in societies where their sexual orientations, gender expressions, identities, or bodies do not fit the established cultural norms. This discrimination is particularly severe in the North of Central America (NCA), where LGBTI people are disproportionately impacted by the high levels of generalised violence. A comprehensive overview of the ongoing violations is difficult to obtain, due to the lack of disaggregated data collection and various barriers impeding people from making official reports. However, the available existing evidence shows that LGBTI people face rejection from their families, communities and wider society, and additional barriers in accessing basic services such as health and education, as well as employment. As reported by LGBTI rights organisations, this is exacerbated by the absence of a protective legal framework, the guarantee of basic rights, and persecution from criminal groups and state actors.

For many affected people, the only available coping mechanism is internal or cross-border displacement, and seeking asylum in the United States or Mexico (although not all those who are forcibly displaced seek asylum and many are unaware of their right to do so). International protection mechanisms exist for LGBTI persons, under the 1951 Convention Relating to the Status of Refugees (with most qualifying as ‘a determined social group’) and the principles of Yogyakarta which establish the right to seek and qualify for asylum for people escaping persecution related to sexual orientation or gender identity.

The governments of the three NCA states have been reluctant to design and implement measures guaranteeing protection, assistance and access to justice for LGBTI people. The progress that has been made towards guaranteeing rights has been obtained largely through the advocacy efforts of LGBTI organisations. In contrast, the humanitarian sector has little capacity to provide a differentiated response to the specific needs of LGBTI people, especially those displaced.

This snapshot analyses the main risks for LGBTI people in the NCA, particularly in the context of criminal violence. It highlights: an overview on access to basic rights; the main agents of persecution; the latest available data on human rights violations; the situation of displaced LGBTI people; and the main actions that states and the humanitarian sector must focus on in order to meet the needs.

Key Messages:

- LGBTI people in the NCA face structural, family, community, criminal and state violence, and a lack of legal protection.
- Human rights abuses are underreported in official registries. At least 243 homicides were recorded by civil society organisations in the last 5 years.
- These different forms of violence impede access to education, employment and basic services. In El Salvador, only 50% of displaced LGBTI people studied beyond primary school.
- Displacement is a protection coping mechanism. 88% of LGBTI asylum seekers from the NCA suffered sexual and gender-based violence in their countries of origin.

This is the sixth Snapshot on Violence and Protection in North of Central America, an initiative of the REDLAC Regional Protection Group for the NCA, led by the Norwegian Refugee Council, and supported by AECID and ECHO. The analysis is based on contributions from humanitarian organisations operating in Honduras, Guatemala and El Salvador, through semi-structured interviews carried out in July and August 2019, as well as monitoring of official statistics, press, and academic studies. The document includes inputs from various organisations in the Protection Group, but does not reflect messages approved by each organisation.
A general update on the protection crisis in the NCA
January to August 2019

Honduras

- 2,564 homicides were registered between January and August this year, an average of 11 per day. This represents a 5% increase compared to the same period in 2018.
- 39 massacres (the assassination of three or more persons in the same context and place) were registered between January and June.
- 3 minors were reported to have been killed during political protests in April and June.
- In July, the crops of a community opposing a hydroelectric project in Rio Blanco (between Santa Barbara and Intibucá) were destroyed, affecting 25 families.
- According to a recent study by IOM and the Secretary of Security, 16% of girls and 10% of boys experienced sexual violence before turning 18 years old. Near 30% of all minors surveyed experienced physical violence; this rate was higher (40%) for children living in urban areas.
- According to Casa Alianza, each year approximately 25,000 boys and girls leave Honduras for the United States.
- The National Commission for Human Rights has received 7,446 reports of people displaced by violence between 2016 and June 2019, out of which more than half report having fled from violent threats, 12% due to the murder of a relative, 12% due to extortion, 7% due to threat of murder and 4% due to the recruitment of children.
- Out of the 154 homicides registered in July, 22 were committed by security forces, and 16 were remains of bodies found in clandestine graves.
- 736 cases of violence against women were registered between 2018 until June of this year, out of which 242 were sanctioned.
- The alert for missing children has been activated 23 times this year.

El Salvador

- 1,860 people were murdered between January and August, an average of 8 homicides per day. According to the government, August was the least violent month of the XXI century. However, the Transparency Portal of the National Civilian Police (which publishes disaggregated data of homicides and rapes) stopped functioning at the beginning of 2019.
- Out of the 154 homicides registered in July, 22 were committed by security forces, and 16 were remains of bodies found in clandestine graves.
- 736 cases of violence against women were registered between 2018 until June of this year, out of which 242 were sanctioned.
- The alert for missing children has been activated 23 times this year.
- Out of the 42,000 families affected by the drought in 2018, half are still vulnerable to food insecurity.
- Between January and July, 22,693 people were deported to El Salvador, a 59% increase compared to the same period in 2018.
A general update on the protection crisis in the NCA
January to August 2019

Guatemala

A total of 3,186 necropsies linked to violent events were registered between January and August, an average of 13 people per day²¹.

From January to August the alert for missing children was activated 5,078 times, an average of 21 children per day²².

Due to the extended drought, a lagoon and two rivers have dried up in northern Guatemala. Last year drought affected 354,000 families across the country²³.

During the first 6 months of the year, 327 aggressions and 12 assassinations of human rights advocates have been registered²⁴.

This year 296 deaths of migrants were registered close to the United States-Mexico border and 82 were registered in Central America²⁸ (in comparison to another high-risk journey, 307 migrants died in the Mediterranean this year²⁹).

Mexican authorities rescued 19 victims of human trafficking in Mexico City³⁰.

Human rights defenders report that the government is less receptive to their work, especially after the ending of the mandate of the International Commission against Impunity in Guatemala (due to pressure from the government)³⁰, and budget cuts for the Human Rights Office³¹.

Between January and July, 64,622 people were deported to Guatemala, an 18% increase compared to the same period in 2018²⁷.

Outside the region:

This year 296 deaths of migrants were registered close to the United States-Mexico border and 82 were registered in Central America²⁸ (in comparison to another high-risk journey, 307 migrants died in the Mediterranean this year²⁹).

The latest data from the US fiscal year (October 1, 2018 to August 31, 2019) show that 72,873 unaccompanied Honduran minors were intercepted at the US border³¹. In 2014, when 68,541 children were registered, the US government declared the unaccompanied minors crisis³².

657,404 people have been arrested at the US border from January to August 2019³³.

The Mexican government announced that 30,000 migrants, who had requested asylum in the US and were sent to Mexico under the “Migrant Protection Protocol”, were to be relocated to Chiapas, in the south of Mexico near Guatemala³⁴.
The lack of protection for the LGBTI community in the NCA

A. Social context and dominant narratives

Hetero-normativity

Prejudice, discrimination and its associated violence, are rooted in social contexts and conventions that impose heterosexuality as the norm⁴⁵ (known as ‘heteronormativity’). This discourse is the underlying current of homophobic narratives that are propagated – particularly by media outlets – throughout societies and reinforce prejudice, the normalisation of stigma and violence⁴⁶. Although there are variations in each country, heteronormativity is dominant in the NCA. In Guatemala, 80% of the general population, and 90% of the LGBTI population, consider that LGBTI persons are discriminated against in their country⁴⁷. In the three countries, approximately 88% of the general public opposes equal marriage⁴⁸, and in Honduras, the same proportion of the public considers homosexuality as immoral⁴⁹.

Political trends

This dominant discourse has important political repercussions. In recent years, hate speech, promoted by anti-LGBTI rights, conservative and/or religious groups, have increasingly played a more prominent role, finding support in right-wing parties, and rolling back existing rights of LGBTI people⁵⁰. In Guatemala, for example, the president, who is evangelical, declared that, "our government and Guatemala believe in the family based on the marriage of a man and a woman"⁵¹. His government has supported a draft law – the Law for the Protection of Life and Family - (currently in third debate and yet to be approved⁵²) to prohibit same-sex marriage and abortion, moreover establishing that "no one is obliged to accept non-heterosexual conducts and practices as normal"⁵³. The dissemination of information about LGBTI people in schools and the discussion of other forms of sexuality that do not correspond to heterosexuality would be prohibited. According to OHCHR, this law could lead to increased hate crimes against LGBTI people⁵⁴, and according to the LGBTI organisation Visibles, could lead to the criminalisation of girls, women and LGBTI people⁵⁵. According to an organisation interviewed for this snapshot, during the recent electoral campaign, neither of the candidates referenced the LGBTI population in their campaigns. In fact, both candidates signed a commitment to halt any advancements in LGBTI rights⁵⁶. In El Salvador, expressing support for LGBTI people in political campaigns is considered to be "political suicide"⁵⁷. Before this year, the Sexual Diversity Directorate existed under the Presidency's Social Inclusion Secretariat, operating since 2010 to implement policies addressing discrimination based on sexual orientation and gender identity⁵⁸. This directorate also offered employment opportunities for the LGBTI population⁵⁹ and provided psychological and legal services to victims of violence. However, since the arrival of the new government this year, the Social Inclusion Secretariat has been eliminated and the Sexual Diversity Directorate has been reassigned to the Ministry of Culture. No information has been provided as to how this directorate will operate, and currently services are being directly provided by civil society organisations. In 2017 in Honduras, four trans women ran for public office, but were subject to threats and hate crimes and none were elected⁶⁰.
B. Legal protections: progress and setbacks

Anti-discrimination legislation
None of the NCA states criminalise homosexuality, and all three national legislations include some form of protection against discrimination. However, according to the organisations interviewed, this does not translate into concrete protection, especially in the face of exclusion, discrimination and impunity. In Guatemala, the state has publically acknowledged that there is no official recognition or codification of the rights of LGBTI people, and that the Penal Code does not specify causes of discrimination, nor protect people against discrimination due to sexual orientation or gender identity in areas such as employment, education, housing, healthcare or treatment in public establishments. In 2012, the Guatemalan state committed to elaborating a public policy for LGBTI people, but is yet to fulfil its commitment. In El Salvador, although the Constitution protects everyone equally, there is no specific legislation on antidiscrimination for protecting LGBTI people or other vulnerable groups. The Sexual Diversity Directorate used to promote non-discrimination and certain protection measures within the government. In 2018, LGBTI organisations in Honduras publicly called for an Antidiscrimination Law.

Gender Identity Legislation
LGBTI organisations in Honduras have been pushing for a Gender Identity Law for the legal recognition of the names of trans persons since 2003. This law would allow for trans women and men to have a legal document with the gender indicator and name with which they self-identify. It is expected that the draft law will be presented to the National Congress before the end of 2019. In El Salvador, a similar draft law is under construction. In Guatemala, since 2016, the National Registry of Persons, supported by the United Nations Development Program, has implemented a new protocol for LGBTI persons, through which it is possible to change the person's name and photo in their identity documents according to their gender identity. However, trans people are still unable to change their gender markers in their documents, and the costs of the process are often prohibitive. A draft law on gender identity (initiative 5395) was presented in 2017 by trans organisations, and received an unfavourable opinion in August 2018. According to a Guatemalan organisation interviewed for this snapshot report, legislators from the Congress organised a technical workgroup to discuss the initiative but only invited people from the evangelical and Catholic churches to participate. Correct documentation is fundamental for access to basic rights. Without this modification in identity documents, trans people are subject to harassment in their daily interactions, in banks, health centres and when accessing State services. 42% of trans women in El Salvador claim having experienced problems using their identification document (for example whilst paying bills, claiming inheritance, using their passport).

Hate crime legislation
In Honduras, thanks to advocacy from LGBTI organisations and communities, the Penal Code was reformed in 2012 to sanction discrimination and hate crimes due to sexual orientation and gender identity. However, despite the legislation, organisations interviewed highlight that there is no practical application. Likewise, in El Salvador, in 2015 the Penal Code was reformed to include convictions for hate crimes and threats, but in practice it still lacks application. According to the LGBTI rights advocate and founder of COMCAVIS TRANS, Karla Avelar, “the prosecutor does not have the resources, nor the criminal system the necessary experience and training to investigate and appropriately prosecute hate crimes.” This year in June, for the first time since 2015, a case of a trans woman murdered by police officers was registered as a hate crime and went before the Peace Tribunals.

Equal marriage legislation
None of the NCA countries has legislation permitting equal marriage or civil union. In El Salvador, the definition of the family in the Family Code excludes the possibility. In Honduras, in 2004 political and religious groups managed to push for the reform of articles 112 and 116 of the Constitution to prohibit same-sex marriage and the adoption of minors by homosexual couples, and invalidated the recognition of marriages of same-sex couples celebrated under foreign jurisdictions.

Access to healthcare
In terms of access to healthcare services, El Salvador has an attention protocol in place in hospitals for survivors of sexual violence (prophylaxis, HIV therapies, and in some cases mental health therapy). They also have specialised clinics for the LGBTI community and sex workers. In Guatemala, according to an organisation interviewed, the Ministry of Health provides treatment for people in transit with HIV for a period of two months. However, access is easier if these people have their medical history and documentation with them, which is not always the case. Furthermore, since February 2019, the HIV Attention Units of the Guatemalan hospital network have declared a shortage of antiretroviral drugs. In general, there is no holistic approach to healthcare provision for LGBTI people in the NCA, and is limited to the response to AIDS/HIV and other severe STDs.
2 Violence and its impacts on the LGBTI population

A. A snapshot of recent violence

- **A rise in the use of firearms in homicides** against LGBTI people in the NCA has been observed over the last two years.

- **More crimes are observed during the month of July**, the same month as the celebration of Pride. In Honduras, for example, July was the most violent month of 2019, with 8 violent deaths registered (4 gay people, 1 lesbian person, 3 trans people).

- According to a poll of 50 trans women in Honduras, 60% responded having suffered physical violence.

"In April 2019, two lesbians were murdered in Jalapa, Guatemala, with an homophobic message left on their bodies.”

### Assassinations of trans people in the NCA in the last year

#### Honduras
- Bessy Michelle Ferrera, Age: 40, 8 July 2019, Comayagüela, Central District, Shot
- Santiago Carvajal ("Santi"), 6 July 2019, Puerto Cortes, Shot
- Antonia Lainez Larios, 3 July 2019, El Negrito, Yoro, Shot
- Shakira ("La Moy"), Age: 20, 8 June 2019, Choloma, Cortes, Stoned
- Fabiola, Age: 28-30, 2 June 2019, Quimistan, Santa Barbara, Shot
- Wilmer Adali Hernandez Rapalo, Age: 24, 24 March 2019, Dos Caminos, Villanueva, Cortes, Beaten and burnt
- Laura Gentle Argueta, Age: 31, 2 March 2019 Roatan, Islas de la Bahía, Stabbed

#### Guatemala
- R. Adelso Rodriguez Alonzo, Age: 24, 28 May 2019, Usulután, Zacapa, Shot
- Angela Paola Fajardo, 18 May 2019, Guatemala City, Stabbed
- Unknown name, Age: 25, 7 December 2018, Villa Nueva, Guatemala, Unknown cause
- Jessica Areli Ruedas Gomez, Age: 29, 28 August 2018, Jalapa, Stabbed
- A. Sis, 16 July 2018, Salama, Baja Verapaz, Shot

#### El Salvador
- Lolita, Age: 20, 8 February 2019, Sonsonate, Stabbed
- Camila Diaz Cordova ("Aurora"), Age: 29, 3 February 2019, Soyapango, San Salvador, Unknown cause
- Unknown name, Age: 20, 25 August 2018, Soyapango, San Salvador, Beaten and strangled

Information from the ‘Remembering our Dead’ portal from Trans Lives Matter, from July 2018 to July 2019

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### Homicides of LGBTI Persons

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<td>53</td>
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(from 2014 to June 2019, according to the Sin Fronteras observatory):
B. The lack of data and invisibility of violations

The previous page is a small sample of the latest available numbers of abuses against the LGBTI population, but do not provide a full picture. Although there are important initiatives led by civil society organisations to visibilise the situation, there is a lack of reliable official data managed by states on violent acts committed against LGBTI population based on their sexual orientation or gender identity. This is due to various reasons: first, a lack of disaggregated data in the homicide and abuses registries. Authorities register the sex appearing on the victim’s identity document, but do not gather data regarding sexual orientation or gender identity. Second, due to fear or distrust of authorities, few victims in the NCA dare to file complaints. This is even more common for LGBTI people, who may suffer abuse and discrimination from authorities. High levels of impunity also discourage people from seeking help, and as consequence, it is estimated that in Honduras, for example, 90% of police abuse cases are not investigated. This lack of information regarding violence rates against LGBTI population makes it impossible to establish the real dimension of the problem and the creation of public policies destined to prevent, protect and care for the LGBTI community.

“people are revictimised over and over again, there is no healing process”
Humanitarian organisation in Honduras

C. Differents agents of persecution

In general, organisations working in the NCA speak of a structural violence, where discrimination against LGBTI people affects their access to basic services, including, education, healthcare, justice and employment, exposing them to greater risks and increasing their vulnerability. Moreover, in the context of generalised and criminal violence, discrimination and homophobia exacerbates and aggravates their protection risks.

Three overlapping categories of agents of persecution can be identified:

- **Family and community surroundings:**
  In many cases, violence begins at an early age, in the family and community. According to interviews for this snapshot, in some communities with low educational levels, the lack of knowledge regarding different sexualities and gender identities, as well as the influence of conservative religions, reinforce the rejection toward LGBTI people in their homes and communities. In these cases, people (particularly girls and trans youth) are expelled from their homes at an early age at 12 or 13 years old. In other cases, rejection can lead to abuse and psychological violence, also known as ‘corrective violence’. An organisation interviewed working with LGBTI population in Guatemala, reported several cases of people accused of being ‘sinners’ by their families. In the same country, some trans women are not expelled from their homes, but are subject to double work shifts to comply with both traditional gender roles.

According to several organisations interviewed, churches (Catholic and evangelical) in some communities act as the agents of persecution, particularly in Honduras and Guatemala. In other cases, community groups implement cleansing politics and patrols and provoke the displacement of people they do not consider part of the community. Some schools expel or deny entrance to students who manifest their sexual orientation or gender identity. In Guatemala, conversion therapies persist and there is strong social pressure to participate in these activities. In El Salvador, according to information collected by five civil society organisations on cases of displaced LGBTI persons, 50% of the cases dropped out of school after completing their primary education and only 18% finished high school. The main reasons for dropping out were violence received by students or teachers (34%), sexual harassment of teachers and principals (24%), harassment of teachers (16%) and gang violence (4%).

What with rejection from their families, schools and churches, there are few places left for LGBTI people to find safety and protection. This marginalisation and lack of opportunities results in a high proportion of LGBTI people forced to take on sex work. Many have to survive in the streets, exposed to organised crime, human trafficking for sexual exploitation, as well as physical safety risks and health problems. According to REDLACTRANS, 58% of trans women in Guatemala do not finish elementary school, and 76% work in informal employment, including sex work, in order to survive.

- **Organised crime and gangs**
  Gangs controlling territories of a great number of urban communities in the NCA are visibly machistas (macho), and as a result, LGBTI people are at higher risk of attack and persecution. Attacks and homicides of LGBTI people (or those perceived as being part of the population) often have signs of torture, mutilation of genitalia or homophobic messages written on the victims’ bodies.

Different criminal groups have different ways of abusing LGBTI rights. Some consider that they do not have “total control if LGBTI+ people are present in territories,” and therefore they threaten, displace or murder LGBTI persons. In other cases, gangs extort LGBTI people, particularly sex workers. In other cases, criminal groups manipulate and exploit LGBTI people, recruiting them for drug trafficking. According to some of the organisations interviewed, there is the perception that trans women can go unnoticed before authorities or will not be searched by male police officers. Organisations have attended several cases of trans women that have been recruited into criminal gangs and have trafficked drugs across borders, based on the promise of surgeries (breast augmentation or sex reassignment surgery) upon reaching the other country. In some cases, gangs or narcotraffickers finance breast augmentations, but implants are filled with drugs in order to cross borders. An organisation interviewed recently provided a response to a trans woman left alone in the street bleeding, after gang members cut her breast open to recover their merchandise.
• **State agents:**

Homophobic discourses and social attitudes have harmful effects on state institutions. For example, a study in El Salvador from 2014 of the National Police found that 67% of officers interviewed said that LGBTI people did not have the same rights as other people under national law. According to another study, 57% of interviewed officers thought that LGBTI people had mental illnesses and only a 26% would accept working with them as colleagues. According to the organisations interviewed, LGBTI people in El Salvador do not have confidence in the state institutions, due to the lack of investigation and impunity reported in institutions such as the Office of Human Rights, the National Police, the National Prosecutor’s Office, and the Attorney General’s Office.

These attitudes can lead to violence acts: attacks, abuse of authority and arbitrary detentions. The IACHR has received an important number of reports of human rights violations by security forces including torture, demeaning or inhumane treatment, excessive use of force, and illegal detentions. According to some organisations, these attacks affect people working on the streets the most. Reports have been made of authorities extorting people in exchange for “protection”. In other cases, during arbitrary detentions, people are subject to blackmail and sexual violence. In Honduras, certain legal dispositions, particularly the Law for Police and Social Coexistence, result in discrimination against trans people. Article 99 allows for the detention of “street prostitutes”, and article 142 grants the police the authority to arrest “attempts against modesty, good customs and public morals” allowing the abuse and arbitrary detentions of sex workers, and particularly affecting trans women. According to a poll conducted with 50 Honduran trans women, 39% identified members of the police or armed forces as their main aggressors. In the same country, the LGBTI rights organization, Cattrachas, is litigating a case before the Inter-American Court of Human Rights on the extrajudicial killing of a trans woman, Vicky Hernández, during the 2009 coup. According to the Inter-American Commission on Human Rights, “this case presents the Inter-American Court with the opportunity to develop jurisprudence regarding violence against LGBT persons, with special emphasis on the situation of trans women.”

**Most vulnerable profiles**

According to most of the organisations interviewed, the population group within the LGBTI community facing the highest risks are trans women, followed by gay men. The most common explanation is that because of their high visibility, these profiles are more vulnerable to attacks. However, it is also possible that it is easier to identify attacks on trans women, than for example, lesbian women or bisexual people. Attacks on the latter may be underreported in official records and media outlets. There is no data and there is little information regarding the situation of trans men, and homicides are often registered as femicides. It is reported that in general trans men suffer from invisibility in society, but also sometimes within LGBTI and feminist organisations. LGBTI rights defenders are another high risk profile.

“we are reaching the tip of the iceberg of the needs”

Humanitarian organisation in El Salvador
According to the organisations interviewed, in general, LGBTI people in North of Central America are not subject to a single type of violence, isolated event or agent of persecution, but to a combination of several types of violence. This is in addition to structural violence, which hinders access to education, employment and basic services¹¹. The few survival mechanisms available, such as sex work or displacement, are dangerous options and often place people at greater risk of abuse, trafficking, disease and human rights violations.

Illustration: Milko Delgado, NRC, 2019
Displacement as consequence of violence against LGBTI people

A protection mechanism

Facing expulsion from their homes, discrimination from their communities and social circles, threats and attacks from gangs, in addition to abuses from authorities and general lack of access to basic rights, in many cases, displacement is a coping and protection mechanism for the LGBTI community. According to the UNHCR, 88% of LGBTI asylum seekers from the NCA suffered sexual and gender violence in their country of origin. According to a study in El Salvador on the causes of displacement, one third of the LGBTI population were displaced due to gang threats, 27% due to homicide attempts based on sexual orientation and/or gender identity, 11% due to physical violence, 9% due to sexual violence, 8% due to extortion and authority abuse, and 2% due to domestic violence.

Displacement statistics

In terms of persecuting agents, according to information gathered by 5 civil society organisations in El Salvador, 102 cases of displaced LGBTI people were identified in 2018. In 79% of cases, gangs were perpetrators of the acts of persecution; 17%, the National Civil Police; 2% people from the community; and, 2% their partners. According to the Honduran organisation, Asociación de Derechos Humanos Cozumel Trans, at least 250 people of the LGBTI community in Honduras have obtained asylum in the last eight years, and hundreds more have sought it unsuccessfully. An organisation from Guatemala interviewed for this snapshot stated that in the course of the year they have served 132 LGBTI displaced people in transit through Guatemala.

“Kataleya lived in a dangerous slum in Guatemala City, known as El Gallito. Kataleya says that when a group of men found out she is a transgender woman, they beat her and sexually assaulted her. She woke up in a ditch. “I got up and went to see my mom...all beaten up,” she says. Kataleya and her mom left the city and headed to a northern region of Guatemala, close to the border with México. “I escaped to another part of Guatemala, and they did the same things to me. I escaped to Mexico, and they did the same things to me.”

Maria Inés Taracena, Arizona Public Media, 2017

Rejection from host communities

Displacement is not a guarantee of safety or a durable solution for many people, particularly due to discrimination from host communities or authorities, or rejection when searching for employment or housing. According to several organisations, this rejection worsens the displacement cycle, and LGBTI people are often forcibly displaced several times without finding safety. The migratory route is long and there is a high risk of attacks, human trafficking and smuggling, labour exploitation and sexual abuse.

Shelter as a priority need

Organisations interviewed highlighted shelters as one of the LGBTI community’s most pressing need. The governments of the NCA offer scarce physical protection for displaced people; most of the available shelters are maintained by civil society, and few provide specialised or differentiated care to respond to the LGBTI people’s protection needs. In El Salvador, the organisation CONCAVIS TRANS shelters destitute and homeless trans women, but there is no specialised shelter for displaced LGBTI people. The Salvadoran Institute for Childhood and Adolescence Development manages a shelter for children and adolescents, but there is no specialised attention protocol or services for LGBTI youth. In Guatemala, the National Protection Network is made up of seven civil society organisations working with UNHCR, develops safe spaces for people in the LGBTI community, and trains the authorities on specific protection needs. However, according to an organisation working in Guatemala, greater efforts can still be made to disseminate information to LGBTI people on the services provided by the network. During the mixed migrations of the 2018 caravans, the LAMBDA Association turned its office in a temporary shelter for 125 LGBTI people, providing lodging and food for people in transit. A shelter just after the Guatemalan border in Tenosique, Mexico, has a separate space for hosting LGBTI people at night. However, according to an organisation working in the region, during the day and in the common areas of the shelter, the other migrants...
often discriminate against LGBTI people. Some organisations also mention that there are higher levels of discrimination in shelters run by certain religious groups. A best practice used by several humanitarian organisations is the distribution of cash to enable people to stay in hotels rather than in shelters.

“[They are] lucky if they stay at a shelter or receive services from an organisation, many don’t know that they can seek help”

LGBTI Organisation in Guatemala

Separate or common shelters?

There is no consensus in the literature or among civil society organisations on the best way to offer safe shelter for displaced LGBTI people in transit. For several organisations, providing a space exclusively for LGBTI people is problematic: as the LGBTI population is “a heterogeneous collective that does not necessarily have more affinity to share space among themselves than with heterosexual cisgender people” and creating separate spaces can be considered discriminatory. Other organisations perceive that the existing barriers and risks in current shelters (discrimination, micro aggressions and violence) remain high and are unlikely to change in the recent future, and a temporary and pragmatic solution is to provide separate spaces.

For both solutions, the following considerations are essential:

- The shelter must guarantee freedom from violence and discrimination, both from employees and volunteers working in the space, as well as from other migrants in transit.
- Protocols that preserve LGBTI peoples’ dignity and rights must be employed for admittance and registration. For example: respecting the use of social names and gender self-perceptions. Special attention must be paid to ensuring ‘do no harm’ and not revictimising people during the needs identification process and initial interview.
- Access to health services must be ensured, by training personnel, providing information about services and guaranteeing that sexual and gender violence response programmes are also available to the LGBTI population (and not only heterosexual women).
- The respect for the principle of ‘do no harm’ must ensure that people are not being rejected or forced to take on greater risks by the shelter (for example by securing that opening and access hours are not harmful for sex workers, or any other restrictions that might cause them to abandon the shelter).

LGBTI networks in the migration route

An important self-protection mechanism are networks run by trans women and LGBTI organisations. Through these networks, LGBTI individuals and families open their doors to displaced people, and enable them to avoid having to spend time in shelters where they can be subject to greater risk.

There have been reports of trans people and gay men traveling in groups or caravans as a safety measure for many years now, such as the ‘Caravana Arcoiris 17’.

Asylum applications

According to organisations interviewed, LGBTI people usually seek the United States as their final destination, due to perceiving that they will find protection and greater opportunities. According to a study by the Spanish Agency for International Development Cooperation (AECID), LGBTI people seek asylum in Guatemala only because they lack the economic resources to continue on north, and not because they consider Guatemala as a safe space.

The same often applies to Mexico. Despite having sought protection, asylum seekers face a number of risks. An organisation interviewed received reports of asylum seekers in Mexico and the US who were stripped from their documents, requested ‘proof’ of their sexual orientation, and ‘advised’ by authorities to hide their identities and ‘be discreet’ to order to request asylum. Many LGBTI people do not know their rights and do not know that persecution and violence due to sexual orientation and/or gender identity is a valid reason for requesting for asylum. Furthermore, since equal marriage is not legal in the NCA, LGBTI families do not have the necessary documentation to apply for family reunification.

Migration detention

Whilst requesting asylum and waiting for a response, LGBTI people maintained in detention are subject to multiple violations, particularly trans women detained in men spaces and vice-versa. In the United States, the number of LGBTI people in detention is not public, but civil society organisations are aware of at least 300 trans people who have currently been in detention for months or even years. In the US, trans women represent one out of every five survivors of sexual violence in detention. Reports point to an inadequate access to HIV and hormonal treatment. In the last year, two trans women have died in and after falling ill in detention in the US.

Deportations and returns

For those who abandon the asylum process because of these detention conditions, or have their requests rejected, returning to the NCA can be a death sentence. There is no adequate response or identification of protection needs for those deported, and even less so for LGBTI people. According to an organisation in Honduras, people avoid returning to same area or home that they fled from, and that most of the time, in less than two months they become displaced north again. The severity of this situation was demonstrated recently with the case of Camila Diaz Cordova, a 29-year-old Salvadoran trans woman who travelled in 2018 with the caravan and requested asylum in the United States. After being held in a detention centre for men, she was deported to El Salvador. Finding no employment or safety in her country, she engaged in sex work. A few months later, she was murdered by three police officers, beaten and abandoned on the side of the road.
The response of the humanitarian sector

According to interviews with different grassroots organisations, civil society, international cooperation and the United Nations, the humanitarian sector is still learning how to provide specialised attention to LGBTI people, and more practical elements are still needed to improve the "diversity approach" in the response. However, several humanitarian organisations implement protocols to care for LGBTI people, particularly in Guatemala, where UNHCR and LAMBDA have developed minimum standards for differentiated care and have worked in the training of the partners of the National Protection Network, composed of seven civil society organisations and authorities\textsuperscript{132}. Several organisations work in training and capacity-building authorities. IOM, for example, has worked for several years with the governments of Central America to elaborate non-binding national work-plans on the protection of the LGBTI community, and has trained Foreign Relations Ministries and migration police staff.

There are very few humanitarian organisations implementing programmes specially targeting the LGBTI population, and resources for specialised services are scarce. According to several organisations, the current needs surpass the response capacity. As a result, most organisations do not openly advertise that they offer services to the LGBTI community, due to lacking the capacity to respond to all of the needs.

The following actions must be prioritised:

1. Strengthening grassroots and local LGBTI organisations, with sustainable financial resources and support for advocacy and strategic litigation.
2. Securing that LGBTI people are consulted and involved in the design, implementation, monitoring and evaluation of the programmes affecting them.
3. Improving the communication of the services offered across the migration routes.
4. Developing/implementing practical tools for a differentiated response.
5. Improving interview processes and training for response teams in the NCA countries and on the migratory route.
6. Promoting more joint advocacy actions amongst civil society organisations.
7. Improving and supporting data gathering processes on needs and protection risks in coordination with civil society organisations.
8. Conducting joint periodical civil society reports on the humanitarian needs of the LGBTI population.
### Main recommendations

In the three NCA countries, the following immediate actions are required:

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<th><strong>In protection:</strong></th>
<th><strong>In education and employment:</strong></th>
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<tr>
<td>Recognition from states of the impact of violence on LGBTI people.</td>
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<tr>
<td>Drafting of legislation on anti-discrimination, on civil documentation allowing family reunification and on gender identity documentation.</td>
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<td>Follow up and legal assistance for human rights abuses of LGBTI people, in particular for sexual violence.</td>
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<td>Strengthening of homicide and hate crime registry systems to include subcategories for LGBTI persons, and public documentation of the extent of the problem.</td>
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<td>Disaggregated information that includes sex, gender and sexual orientation, to ensure that LGBTI populations are documented as victims of forced displacement.</td>
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<tr>
<td>Recognition of forced displacement, as a consequence of discrimination and violence due to sexual orientation and gender identity, in the three countries, and the ratification and implementation of the necessary legal frameworks to respond to the situation.</td>
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<tr>
<td>Drafting of protection mechanisms and protocols for deported people with protection needs.</td>
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<td>Awareness raising for state personnel on diversity and the development of processes that prevent re-victimization.</td>
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<td>Access for diverse sex and gender identities in the education system, the elimination of barriers at schools and graduation.</td>
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<td>Employment for LGBTI persons that does not undermine safety and dignity.</td>
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<th><strong>In healthcare:</strong></th>
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<tr>
<td>Integral healthcare for LGBTI people that goes beyond HIV treatment, including ensuring access hormonal treatment for trans people, mental health programmes and responses to sexual and gender-based violence, amongst other treatments¹³³.</td>
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<th><strong>In shelter:</strong></th>
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<tr>
<td>Specialised shelters and safe spaces, free from discrimination, with trained personnel and adequate supplies.</td>
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### Methodology

This report is based on a systematic monitoring of press reports, operational reports of national organisations and international agencies, and academic documents, as well as semi-structured interviews conducted between July and August with 11 humanitarian organisations.

### Acknowledgements

This report has been possible thanks to the following organisations, among others: APUVIMEH, Colectivo Violeta, Cristosal, International Rescue Committee, IOM, LAMBDA, Norwegian Refugee Council, Plan International, Red Lésbica Cattrachas, RET International, UNHCR.

Thanks to the financial support of AECID and ECHO.
Tab 9
STATE-SPONSORED HOMOPHOBIA

2019
13th Edition

LUCAS RAMÓN MENDOS
ilga.org
Introduction to the YP+10

By Mauro Cabral Grinspan¹ and Julia Ehrt.²

The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (YPs) were elaborated in 2006 and released in 2007. The YPs have played a key role in advancing the rights of LGTBI people worldwide through the application of International Human Rights Law.

The YPs support and promote legal reform, policy change, judicial decision, political activism and social awareness and call upon governments to meet their obligations under International Human Rights Law. Throughout the last ten years the body of International Human Rights Law has considerably evolved in relation to sexual orientation and gender identity and new issues have evolved that have not been adequately addressed or solved within the YPs.

By 2016 it was clearly necessary to come back to the YPs to review them, update them and make them ready to support and guide human rights work in the years to come. People from all around the world contributed to the revision and updating through a participatory process. Key challenges, advances, as well as normative and conceptual tools required to address them were identified and a drafting team was appointed to conceptualise and update the YPs. A group of 28 human rights experts was constituted and met for three days in Geneva to discuss, amend and approve the revision. The new YP+10 were presented in 2017.

The YP+10 supplement the original YPs, not replace them. They add 9 new Principles to the previous 29 and add new obligations for States to the existing YPs Principles.

The YPs and the YPs+10 must be read together and, therefore, all their Principles and State Obligations must be considered to refer to sexual orientation, gender identity, gender expression and sex characteristics.

New Principles and State Obligations in the YP+10

Everyone has the Right to State protection (Principle 30). States have the obligation to ensure that everyone is protected from violence, discrimination and other harm. The principle not only calls states to prevent, investigate, punish and eradicate such human rights violations, but also to

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² Julia Ehrt is the Director of Programs at ILGA where she develops ILGA’s programmatic work and manages the programs team. Before joining ILGA she was the Executive Director of Transgender Europe and has been central to TGEU’s growth and development in the last decade. She is a member of the Steering Committee of the International Trans Fund (ITF), a board member of the Association for Women’s Rights in Development (AWID) and a signatory to the Yogyakarta Principles plus 10. Julia holds a PhD in mathematics.
compile statistics about them, their causes and effects, and to identify the attitudes, beliefs, customs and practices that provoke them, to provide training to all professionals involved in addressing them—including law enforcement officers—and to provide support and remedies for victims. In the same spirit, Principle 33 on the Right to freedom from criminalisation and sanction, calls States to repeal all the forms in which people around the world are criminalised and sanctioned, as well as subjected to discriminatory laws, due to our SO, GI, GE and SC.

New communicational developments required to expand protections to include the right to the enjoyment of human rights in relation to information and communication technologies (Principle 36), which calls States to ensure all persons’ right to “receive and impart information and ideas of all kinds”, while protecting privacy and security of digital communications, and holding all sectors accountable for hate speech, harassment and technology related violence.

Principle 34 on the Right to protection from poverty explicitly affirms that “poverty is incompatible with respect for the equal rights and dignity of all persons”, calling States not only to reduce and eliminate poverty but also promote socioeconomic inclusion and to ensure access to remedies.

While the Right to freedom of peaceful assembly and association was already included in the YPs (principle 20), developments in the last decade to infringe on those rights called for a refinement of states obligations under that principle in order to ensure the right of marginalised and vulnerable communities to organise, receive and use funding, even if not officially registered. Further adding state obligations to the right to seek asylum (original YPs Principle 23), the YP+10 now holistically reflect provisions in regard to this right and expand on minimal procedural requirements in the treatment of asylum seekers enshrined in international human rights law.

One of the ground-breaking contributions of the original YPs was to demonstrate that the right to recognition before the law implies a State obligation to recognising the gender identity of a person as self-defined. Laws, policies and rulings developed in the last decade in diverse countries across the globe have upheld this obligation, for example by granting access to legal gender recognition without imposing requirements incompatible with human rights standards.

However, the right to legal recognition (Principle 31) goes further as it shall not hinge on “making reference to or requiring assignment or disclosure of sex, gender, sexual orientation, gender identity, gender expression or sex characteristics of a person”. Therefore, States are obliged to putting an end to “the registration of the sex and gender of the person in identity documents such as birth certificates, identification cards, passports and driver licenses”.

Acknowledging that it will take time for States to implement this obligation, the same Principle provides for a transitional obligation to “ensure access to a quick, transparent and accessible mechanism to change names, including to gender neutral ones” and “to make available a multiplicity of gender marker options”.

The entire Principle reaffirms self-determination as its key normative aspect in International Human Rights Law and explicitly rejects psycho-medical diagnosis and/or interventions, as well as minimum age, among other eligibility criteria. Additional State obligations related to YPs Principle 24 on the right to found a family add the mandate to “issue birth certificates for children upon birth that reflect the self-defined gender identity of the parents”.

Bodily issues were not fully included and developed in the original YPs; therefore, the elaboration of the YP+10 is required to address those issues.

Principle 32 on Bodily and Mental Integrity articulates different State obligations referred to the place of our sexed and sexual bodies in the human rights framework. It includes protection “from all forms of forced, coercive or otherwise involuntary modification of their sex characteristics”, prohibits “the use of anal and genital examinations” for legal, administrative or prosecutorial reasons, and calls States to provide counselling and support to victims. This Principle as well calls upon States to ensure that “the concept of the best interest of the child is not manipulated to justify practices that conflict with the child’s right to bodily integrity”.

Bodily issues were not fully included and developed in the original YPs; therefore, the elaboration of the YP+10 was required to address those issues.

Principle 34 on the Right to sanitation comes to address a sad and pervasive reality: those challenges faced by many people when trying to access public sanitation facilities, including school bathrooms, and to make explicit State obligations in this regard.
The YP+10 also added new State obligations related to YPs Principle 17 on the Right to the Highest Attainable Standard of Health to include issue such as the prevention of sexual and reproductive violence, (such as rape, forced marriage and forced pregnancy), as well as access to gender affirming healthcare, and to safe, affordable and effective contraceptives and abortion services. This same Principle calls States to ensure non-discriminatory access to donation of blood, gametes, embryos, organs, cells or other tissues, and ensuring privacy of HIV statuses.

States are also called to prohibit practices such as forced normalising surgeries, involuntary sterilisation and reparative therapies, among others.

A key normative aspect of this Principle from the call for universal access to healthcare care. Additional State obligations related to YPs Principle 20 on the Right to found a family includes access to methods to preserve fertility, and non-discriminatory access to surrogacy where legal.

Acknowledging key developments on intersex issues and human rights, additional State obligations related to Principle 10 on the right to freedom from torture and cruel, inhuman or degrading treatment or punishment establishes that "the forced, coercive and otherwise involuntary modification of a person's sex characteristics may amount to torture".

States are also called to prohibit practices such as forced normalising surgeries, involuntary sterilisation and reparative therapies, among others.

Principle 37, on the Right to Truth, seeks to ensure that both individuals and societies have access to the truth about their past, including past human rights violations based on SO, GI, GE and SO. This Principle is particularly relevant to ensure intersex people's right to know the truth about medically unnecessary and non-consensual medical procedures to "normalise" their bodies in infancy and childhood, and to access their own medical record, as they are often kept from them even in adulthood.

Finally, the last principle (38) addresses the Right to Practice, Protect, Preserve and Revive Cultural Diversity which states have an obligation to protect and ensure.

Conclusion

The 38 principles of the YPs and the YPs+10 provide an authoritative, expert exposition of international human rights law as it currently applies on the grounds of sexual orientation, gender identity, gender expression and sex characteristic. Their legal and normative weight directly comes from the body of international human rights law, and States should abide to the principles as they should abide to the universal declaration of human rights.
June 2016 represented a landmark in the protection of sexual orientation and gender identity (SOGI) rights in the international arena. It was in this month that the United Nations (UN) Human Rights Council (HRC) appointed an Independent Expert (IE) on "protection against violence and discrimination based on sexual orientation and gender identity." Despite the several attempts to block such advancement through the proposition of "hostile amendments," Resolution 32/2 passed by a close vote of 23 to 18 (and 6 abstentions), establishing a three-year mandate for the IE.

The role of the Independent Expert is crucial in the field of human rights. The mandate holders employ a range of tools, such as communications, country visits, and annual reports.

This article will cover all the activities of the mandate since its inception, providing a brief overview of its work thus far.

Reports

The IE mandate-holders have so far submitted four reports since the mandate was established, two each to the HRC and the General Assembly (GA) in 2017 and 2018.

In his first report, Vitit Munthabhorn set out "underpinnings" for the mandate. The second report, the first to the UN General Assembly, addressed the first two underpinnings: decriminalisation and anti-discrimination.

Regarding criminalisation, the IE took a broad approach, covering laws that criminalised not just same-sex relations but also laws that impact on gender identity and expression (such as so-called

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3 Rafael Carrano Lelis is a lawyer and researcher focused on LGBTI+ issues. He is currently the manager of TODXS Núcleo - Research Centre on LGBTI+ Policy and a master student at the Pontifical Catholic University of Rio de Janeiro (PUC-Rio).

4 Zhan Chiam is ILGA World’s Gender Identity and Gender Expression Programme Coordinator, where he works to strengthen trans movements and organisations through advocacy support, movement building, research, and long-term collaborations such as reform of the International Classification of Diseases.


8 The appointment of the IE also faced fierce opposition in the General Assembly. In this sense, see: OutRight, ISHR, ILGA and ARC, Defending the Independent Expert on Protection Against Violence and Discrimination Based on SOGIE (2017).

9 Such mechanism was initiated by the Commission on Human Rights and later embraced by the HRC. It consists of either a person (i.e. Special Rapporteur or Independent Expert) or a group of persons (i.e. a Working Group) that conduct pro bono work to assess country-specific situations or thematic issues regarding human rights protection. See: Jane Connors and Markus Schimidt, "United Nations" in International Human Rights Law, Daniel Moeckli et al. (eds.) (Oxford: Oxford University Press, 2014), 376-70.

10 Olivier De Schutter, International Human Rights Law: cases, material, commentary (Cambridge: Cambridge University Press, 2010), 891-95.

11 Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/35/36, 19 April 2017. It described the themes that should be addressed during the mandate. They are: 1) decriminalisation of consensual same-sex relations; 2) effective anti-discrimination measures; 3) legal recognition of gender identity; 4) destigmatisation linked with depathologisation; 5) sociocultural inclusion; and 6) promotion of education and empathy.

“cross-dressing” and vagrancy laws), and the intersections between SO and GI. The report identified regressive and progressive moves in decriminalisation worldwide.\(^{13}\) The report also recommended that States should cooperate more with national human rights institutions (NHRIs) to interlink international norms with national settings, and outlined input from the NHRIs of Australia, Malaysia, New Zealand and Cyprus to the IE on criminalisation in their countries. On anti-discrimination measures, whether positive or absent, the report provided input from stakeholders to the mandate in 2017, including where intersectionality enabled protection of SOGI under other laws.\(^ {14}\)

In the third report, the new IE, Victor Madrigal-Borloz, iterated his intention to continue the analytical framework developed by Professor Muntabhorn.\(^ {15}\) He referred back to Resolution 32/2 of the HRC, which requests the mandate-holder to address the multiple, intersecting and aggravated forms of violence and discrimination on the basis of SOGI. He also highlighted the importance of an intersectional approach, while remaining aware of all conditions that create the “substantively distinct life experience of an individual”. This approach was then evident in the discussion of hate crimes and the root causes of violence and discrimination; the report emphasised that broader power structures, deeply entrenched gender inequalities and rigid sexual and gender norms should be considered in the analysis. The report also discussed HIV status and the impact of “negation”\(^ {16}\) against “acknowledgement” on data collection and therefore access to justice.

In the fourth and most recent report, presented in 2018 to the GA, the IE explored the next two underpinnings.\(^ {17}\) The fact that this is the first UN report dedicated to gender identity is not insignificant, and it was welcomed by trans communities. The report welcomes the new category for (adult and adolescent) trans identities in a new chapter created in the revision of the International Classification of Diseases (ICD-11). Given that pathologisation has had a “deep impact on public policy, legislation and jurisprudence, and has been penetrating all realms of State action in all regions of the world”\(^ {18}\), depathologisation becomes a tool to dismantle and abolish harmful legal and policy practices on trans and gender diverse people.\(^ {19}\) Concurrently, the IE takes note and remains seized of the diagnosis of gender incongruence of childhood in ICD-11 because of the potentially significant effects on the enjoyment of human rights by trans and gender diverse children, and that “such classifications have been shown to be obstacles” to such rights.\(^ {20}\)

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The fact that this is the first UN report dedicated to gender identity is not insignificant, and it was welcomed by trans communities.

The report then traverses the global landscape of legal recognition of gender identity, emphasising States’ obligations to do so without prejudice to other rights,\(^ {21}\) something not available to trans persons in most countries. The IE summarises that this legal vacuum could create a climate that tacitly permits, encourages and rewards with impunity, violence and discrimination leading to a situation of “de facto criminalisation”.\(^ {22}\)

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\(^{13}\) For example, while noting that 33 out of 54 African countries criminalised same-sex relations, the IE also discussed a South African Constitutional Court case which declared unconstitutional certain sodomy laws and highlighted advancements in Lesotho, Mozambique and Seychelles to remove such laws from their penal codes since 2012.

\(^{14}\) E.g. a law of violence against women in Colombia encompassing lesbian and bisexual women.


\(^{16}\) Meaning the refusal that violence and discrimination based on SOGI even exists.

\(^{17}\) Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, 12 July 2018. He framed them as (1) the process of abandoning the classification of certain forms of gender as a pathology (“depathologisation”) and (2) the full scope of the State duty to respect and promote respect of gender recognition as a component of identity.


\(^{20}\) Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, 12 July 2018, para. 16.

\(^{21}\) Such as “the rights to freedom from discrimination, equal protection of the law, privacy, identity and freedom of expression” (para. 21).

\(^{22}\) Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, 12 July 2018, para. 25.
In two areas, the report presents a forward-thinking interpretation of human rights. First, in data management, where the mandate-holder questions the necessity of the pervasive exhibition of gender markers in official and non-official documentation and asserts that “States must refrain from gathering and exhibiting data without a legitimate, proportionate and necessary purpose”, in many respects echoing Principle 31 of the Yogyakarta Principles Plus 10.23 The second is the recommendation that States enact hate crimes legislation that establishes transphobia as an aggravating circumstance for criminal convictions, which situates developments in trans rights and their impact on criminal legal thought.24

**Communications**

Individual complaints or communications25 are, arguably, the most useful tool available to SP and are usually followed by a reply from the corresponded State.26 Research conducted in January 201927 indicates that the IE has sent 31 communications so far, including 29 joint letters together with other mandate-holders. They were addressed to countries28 from Africa, Asia-Pacific, Eastern Europe, Latin America and the Caribbean and Western Europe and Others, covering all the UN regional groups.29 This regional spread shows that the IE was careful in adopting a balanced and cross-regional approach. In addition, one other communication, addressed to “other actors”, was sent to the United Nations High Commissioner for Refugees (UNHCR), regarding the situation of LGBT refugees in Kenya. The only countries that received more than one communication from the IE were Honduras (4), Russia Federation (3), Republic of Korea (2) and the United States of America (2).

**The regional spread of communications shows that the IE was careful in adopting a balanced and cross-regional approach.**

It is alarming, however, that only 16 of those communications obtained replies from the concerned entities.30 On the other hand, it must be highlighted that, amidst the States with more than one complaint, the United States was the only one that did not respond.

Although the number of replies may be a good indicator of the engagement and concern of each country regarding SOGI violations, the content of these answers must also be analysed. In that sense, an examination of the available replies can be divided into four different categories.

The first are replies which showed real concern regarding the protection of SOGI rights, including responses from different actors that, at the same, time provided the requested information and took

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24 Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, 12 July 2018, para. 78(c).

25 Only just becoming a concept in criminal law in a small number of jurisdictions, e.g. Argentina in the sentencing of the murderer of Amancay Diana Sacayán which included the adoption of the term “travesticide”, and in Colombia where the murder of a trans woman was recognised as femicide. See, for example: “Colombia impone la primera condena por feminicidio por crimen de una mujer ‘trans’”, CNN Español, 18 December 2018; “Killer of Argentine transgender activist sentenced to life in prison in historic case”, Daily Koss, 19 June 2018.

26 After receiving an individual complaint or sensitive information regarding a current or potential human rights violation, the IE may issue a communication to the relevant government. In this document, that can take form of either a letter of allegation or an urgent appeal, the mandate-holder asks for clarification and/or a call to action to stop the violation.

27 The data was collected from the “Communication Report and Search” website of the Office of the High Commissioner for Human Rights.

28 The countries were: Armenia, Azerbaijan, Brazil, Canada, Chile, Egypt, El Salvador, Guatemala, Haiti, Honduras, Indonesia, Kazakhstan, Kenya, Malaysia, Peru, Republic of Korea, Russian Federation, Romania, Singapore, Tunisia, Turkey, United Republic of Tanzania and United States of America.

29 “United Nations Regional Groups of Member States” UN Website.

30 Among them, only Azerbaijan, Brazil, Chile, El Salvador, Indonesia, Kazakhstan, Republic of Korea, Romania, Singapore, Turkey and the UNHCR answered all the delivered communications.

31 Although the system indicates that Kazakhstan have indeed replied to the received communication, the content is not available yet, because it is waiting to be translated.
concrete measures to solve the situation that lead to the violation.32

The second group includes countries that showed moderate concern towards the perpetrated violations, giving responses that acknowledged that some abuse had been committed and indicated some concrete measures. Nonetheless, the same States emphasised some reservations with respect to issues on SOGI.33

The third category comprises less engaged feedbacks, incorporating responses that completely denied any violations. Those were the replies from Azerbaijan, Turkey, Romania, Singapore, and the first replies from both Brazil and Republic of Korea. Although these countries did reply, they neither recognised the existence of a violation nor showed willingness to improve the protection of rights based on SOGI.

Finally, the last group is composed of only one State, the Russian Federation, with two replies that can only be described as completely hostile, as well as its continued position of not recognising the legitimacy of the mandate. Russia repeatedly refused to answer communications in which the IE is either author or co-author.34

It should be noted that the adoption of this behaviour may take activists to push for the communication to be sent without the IE when Russia is the concerned State, even if it regards sexual orientation and/or gender identity. For instance, a communication to Russia in May 2018 was addressed by three Special Rapporteurs and a Working Group, not including the IE, even though it concerned gender identity rights.35

Moreover, interactions between IE and other mandate-holders may help drawing an analysis of the most recurrent human rights violations suffered by persons based on SOGI. The examination of the communications reveals that the most frequent complaints were issued alongside the mandates regarding freedom of expression36 and human rights defenders,37 with 17 joint communications each.38

The most frequent complaints were issued alongside the mandates regarding freedom of expression and human rights defenders.

Lastly, an analysis of the topics of the communications issued by the IE shows a wide range of themes: education (1); criminalisation (1); hate speech (1); access to information (1); murder (6); physical violence (10); prohibition of public gathering (1); general discriminatory law (5); and other forms of discrimination (5).

It is apparent how diversified are the threats suffered by persons on the basis of SOGI. Consequently, a variety of actions is also required in order to properly protect those persons.

Country visits

Another important part of any SP work is country visits. They do so to assess the institutional, legal, judicial and administrative framework, and investigate the de facto human rights situation under their respective mandates.

Mandate-holders can meet with different branches of government, NHRIs, UN agencies, NGOs, civil society representatives, victims and others. Since the creation of the mandate, three country visits have taken place: Argentina, Georgia and Mozambique. These countries have a range of SOGI

32 This first group contemplates six different answers, those being: the second one from El Salvador (since the first one merely indicates that there will be a response); both from Honduras; the one from Chile; the one from the UNHCR; and the second reply from Brazil regarding the Marielle Franco case.
33 Such category would cover the reply from Indonesia, as well as the second reply from the Republic of Korea.
34 Russia’s replies to both communications UA/RUS/5/2017 and UA/RUS/7/2017 contained the following statement: “The Russian Federation does not intend to respond to individual or joint submissions from the special procedures of the Human Rights Council when the author or co-author is the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. We wish to recall that, at the Council’s thirty-second session, Russia formally stated that it would not recognise the mandate of or cooperate with this Special Procedures mechanism”.
36 The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.
37 The Special Rapporteur on the situation of human rights defenders.
38 From a historical perspective, according to a data collection conducted by ISHR and ILGA, those two mandates were also the most engaged ones in SOGI issues even before the appointment of the IE on SOGI. See: “LGBTI rights | Factsheets on UN Special Procedures” ISHR Website.
rights, as well as strong and engaged civil society, providing a rich field for analysis.

Argentina was one of the States which co-sponsored Resolution 32/2, and also was a world first in creating a gender identity law.\(^{39}\) On the other hand, Mozambique is both an Islamic and African country—both blocs that opposed the Resolution in 2016—that only decriminalised same sex relations in 2015.

It is essential that the IE’s mandate is renewed in order to maintain the advancement of SOGI rights protection worldwide.

Yet, the function of the IE in his country visits remains the same, which is to assess the country situation, as all three country visits have shown.\(^{40}\)

For example, in Argentina the IE pointed out the issues with implementation of the transgender labour quota at the provincial level, as well as the realities of structural violence that still exists, even against prominent trans activists.\(^{41}\)

On the other hand, in Mozambique, the IE noted that flagrant violence against LGBT people was not being reported and recommended that the government should take an awareness-raising role.\(^{42}\)

In Georgia, the IE met with a number of civil society organisations, with one reporting that the country visit had attracted positive government’s attention to “sensitive issues” (i.e. LGBTI).\(^{43}\)

Conclusion

This study illustrates the importance of the IE’s mandate and its work conducted thus far.

It is also a timely reminder of what has been achieved, and how much more work needs be done, not the least through providing nuanced analyses of various aspects of SOGI lives and realities, and how these nuances can be translated into suggestions for the progression of international human rights law in this area.

Therefore, it is essential that the IE’s mandate is renewed in order to maintain the advancement of SOGI rights protection worldwide.

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42 “End of mission - Visit to Mozambique” OHCHR Website.
43 Statement from the Women’s Initiatives Support Group: “His devoted meeting with us and our beneficiaries was highly appreciated, discussing ongoing challenges towards the LGBTI community like intimate partner violence, domestic violence and hate crimes. Our expectations about his visit have been met, as we had the opportunity to emphasise priorities and challenges, share expert knowledge and attract the government’s attention to sensitive issues.”
UNESCO and the 2030 Agenda for Education Inclusive of Young LGBTI People

By the UNESCO Team.

Supporting effective education sector responses to violence and bullying based on SOGIE

School violence and bullying is an obstacle to quality education. Evidence shows that LGBTI learners are particularly vulnerable to school violence and bullying, as well as those learners who are perceived as gender-non conforming. Preventing and addressing homophobic and transphobic violence in educational institutions is essential to ensure that education is more inclusive of LGBTI and gender non-conforming learners.

UNESCO is supporting its Member States to combat school violence and bullying based on sexual orientation and gender identity or expression, in line with its mandate on ensuring the right to quality education for all in learning environments that are safe, non-violent and inclusive (SDG4 – Target 2.a). UNESCO uses a culturally sensitive approach that is adapted to a range of socio-cultural contexts and legal environments.

UNESCO’s work aims at improving the evidence base, documenting and sharing best practice for action, raising awareness and build coalitions, and supporting interventions at country level to prevent and address homophobic and transphobic violence.

UNESCO started to work in this area in 2011 by convening the first-ever UN international consultation to address homophobic bullying in educational institutions.

In 2016, it organised the first international ministerial meeting on education sector responses to homophobic and transphobic violence to catalyse responses by its Member States. A group of countries affirmed a Call for Action by Ministers to express their political commitment to ensuring inclusive and equitable education for all learners in an environment free from discrimination and violence, including discrimination and violence based on sexual orientation and gender identity/expression. This Call for Action has been supported by 56 countries.

56 countries affirmed a Call for Action to ensuring inclusive and equitable education for all, free from discrimination and violence based on SOGIE.

During the meeting, UNESCO also launched the first global report providing an up-to-date analysis of the scope and impact of homophobic and transphobic violence in schools worldwide, as well as examples of

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76 Special thanks to Christophe Cornu, Team Leader of the Section of Health and Education (Division for Peace and Sustainable Development), Education Sector UNESCO.

77 Call for Action by Ministers: Inclusive and equitable Education for All learners in an environment free from discrimination and violence, ED/IPS/MAE/2016/02 REV (2016).

78 These countries include: Albania, Andorra, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Cabo Verde, Canada, Chile, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Fiji, Finland, France, Germany, Greece, Guatemala, Honduras, Iceland, Israel, Italy, Japan, Liechtenstein, Luxembourg, Madagascar, Malta, Mauritius, Mexico, Moldova, Montenegro, Mozambique, The Netherlands, Nicaragua, Norway, Panama, Peru, The Philippines, Portugal, Romania, Serbia, Slovenia, South Africa, Spain, Sweden, Switzerland, United States of America and Uruguay.
UNESCO's work has resulted in successful responses in a number of regions and countries. Early evidence and the conceptual framework from the UNESCO report were used by the Council of Europe to develop, in collaboration with UNESCO, a report to enrich the evidence base for education sector responses to violence based on SOGIE in the European region, published in 2018.

UNESCO has supported concrete follow-up to the ministerial meeting and Call for Action in Ministers in various regions and selected countries.

In Asia-Pacific, in 2017, the regional UNESCO Office organised a consultation with representatives from nine countries from the region to highlight gaps and good practices at country-level and identify strategic opportunities for multi-stakeholder advocacy and action to address school-related SOGIE-based violence.

As a follow-up to the consultation, UNESCO has partnered with Education International (EI), which is the world’s largest teachers’ union, to build capacity of their teachers on the rights of LGBTI people and the role of the education sector to address discrimination on the basis of SOGIE. As part of this partnership, EI has also conducted a survey on the perception of the rights of LGBTI people among teachers who are members of unions from across the region.

In Thailand, a teacher training and curriculum development workshop was organised with the goal of providing national education authorities with a deeper understanding of SOGIE and the impact of bullying and discrimination based on SOGIE, and of identifying entry-points and strategies for the Thai context. A School Climate Assessment tool was piloted in North Thailand to assess aspects that are essential for a whole school approach to creating a safe and inclusive learning environment for LGBTI students.

In Europe, with support of UNESCO, the International Lesbian, Gay, Bisexual, Transgender, Queer & Intersex Youth and Student Organisation (IGLYO) organised a follow-up meeting to the Call for Action for European countries. Participating countries reviewed progress in the implementation of their commitments and planned for further actions.

In Latin America, UNESCO worked with Cenesex (Centro Nacional de Educación Sexual) in Cuba to generate data through two studies: a situation analysis on the response of the education sector to homophobic and transphobic bullying, and a study conducted amongst young LGBT adults about their experiences of violence when they were in school.

Promoting education and health that are fully inclusive of LGBTI learners

Beyond its activities to prevent and address homophobic and transphobic violence in educational institutions, UNESCO is working to ensure that education and health are fully inclusive of LGBTI learners.

In 2018, UNESCO published the International Technical Guidance on Sexuality Education.

In 2017, at the invitation of UNDP and the World Bank, UNESCO chaired the expert working group on education for the development of an international LGBTI Inclusion Index.

Furthermore, in 2018, UNESCO published the International technical guidance on sexuality

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80 Council of Europe, Safe at school: Education sector responses to violence based on sexual orientation, gender identity/expression or sex characteristics in Europe (2018).
The guidance is developed to assist education, health and other relevant authorities in the development and implementation of school-based and out-of-school comprehensive sexuality education programmes and materials. The needs of LGBTI students are extensively referenced.

Last but not least, in 2018, UNESCO also supported a global web-based consultation conducted by the youth organisation MAG Jeunes LGBT on how to make the 2030 Sustainable Development Agenda for education and health more inclusive of young LGBTI people. The inputs of more than 20,000 LGBTI youth were presented during the second conference of the Equal Rights Coalition (ERC) in Canada, giving a voice to young LGBTI people who are often underrepresented in forums where the rights of LGBTI people are discussed.

More UNESCO SOGIESC Resources

- La violencia homofóbica y transfóbica en el ámbito escolar en Latinoamérica: hacia centros educativos inclusivos y seguros, UNESCO, 2015. In Spanish only.
- El bullying homofóbico y transfóbico en centros educativos: taller de sensibilización para su prevención (Guía de facilitación), UNESCO, 2015. In Spanish only.
- Bullying targeting secondary school students who are or are perceived to be transgender or same sex attracted: Types, prevalence, impact, motivation and preventive measures in 5 provinces of Thailand, UNESCO Bangkok, 2014.
- Good Policy and Practice Series, Booklet 8: Education Sector Responses to Homophobic Bullying, UNESCO, 2012. Also available in Chinese, French, Italian, Korean, Polish, Portuguese, Russian, Spanish.
- International Day against Homophobia and Transphobia Lesson Plan, UNESCO, IDAHOT, 2012. Also available in French, German. Locally adapted for Thailand in "Lesson Plans for teaching about sexual and gender diversity".

In Ecuador, after a period of advances, the change of government and the election of President Lenin Moreno in May 2017 caused alarm and uncertainty, in most part by it not continuing with the previous political process. In this context, two emblematic cases stand out: on the one hand, the ruling of the Constitutional Court No. 184/2018 which recognised the enrolment of a girl with two surnames from her two mothers, and on the other, the judicial ruling in which a trans girl was registered on the civil registry record with her gender identity. Finally, in Peru there has been a resistance with the growth of fundamentalist religious groups and from the instability due to the resignation of President Pedro Pablo Kuczynski. There have been no advances in the recognition in the unions of same-sex couples or in terms of gender identity. The organisations of civil society demanded the compliance of the 2018-2021 National Plan of Human Rights (NPHR 2018-2021) and achieved the Inter-American Commission of Human Rights elevating Case 12.982 "Azul Rojas Marin and Other" before the Inter-American Court of Human Rights (ICHRR) for the State to remedy the institutional violence which occurred in 2008.

**Homophobia in Mesoamerica**

By Gloria Careaga Perez.

The Mesoamerican region includes Mexico and the majority of Central America: it covers Mexico, Guatemala, El Salvador, Belize, Honduras, Nicaragua and Costa Rica. Therefore, for this report it is important to refer to the region in this manner, which makes it possible to point out some aspects related to the colonisation of the region.

The condition of LGBT people in Mesoamerica has already eliminated any hint of legal signalling that explicitly criminalises their situation. Even if there have been few steps in the advancement in the protection of their rights – this has been done unevenly across the countries – the main challenge is centred on the problem of needing a cultural change that goes beyond its legal status, achieving...
integration and social recognition. Nevertheless, the economic, political and social conditions of the region do not indicate good expectations. The advance of conservative forces entrenched in the region since colonial times and the increased presence of evangelical churches from the United States represent a grave risk to the defence of human rights.

It is interesting that the two countries in the extremes of the region are where the greatest advances have been made in recent years. In Mexico, resulting from the democratisation process started in 1997 which opened up the possibility of electing officials from the country’s capital and the creation of the local Congress for Mexico City (from where authorities of the centre-left or left were based), the advances in the protection of LGBT people have had an important impact for all the country. From 2009 it legalised same-sex marriage, approved the Anti-discrimination Law that includes sexual orientation (2011) and the Identity Law (2015). Thanks to the active LGBT movement and the demand for the recognition of equal marriage, it has achieved this in 11 of the 32 states of the country, the most recent being Chiapas, Puebla and Baja California, which adopted it in 2017. Now Nueva Leon, Tamaulipas and Sinaloa are waiting for the approval of the resolution from the Supreme Court which mandated it in 2015, but has ordered its compliance before a writ of amparo in the last year.

The process of the approval of the Identity Law has gone through the same process, initially in Mexico City in 2008, and it approved a jurisdictional mechanism that allows a change in legal documentation. In 2015 it achieved simplifying the process to a simple administrative procedure. This advance motivated legal action that has gone to the Supreme Court, although it still has not ruled on a final decision. Nevertheless, the LGBT movement has achieved its approval in Coahuila and Michoacan (2018) and the process is pending in Jalisco.

In Costa Rica, equal marriage propelled by the LGBT movement has made big steps with the ruling of Consultative Opinion No. 24 by the Inter-American Court of Human Rights, which was solicited by the same State. This pronouncement, however, caused a big disturbance in the country, given that it coincided by some months with the start of the presidential electoral process, which was used by conservatives to stoke fears and spectres around its approval. Costa Rica is a state with official recognition of the Catholic Church. However, in recent years the growth of Evangelicals and Pentecostals has come to occupy space in the Legislative Assembly. It is not unusual that one of the presidential candidates of neo-Pentecostal origin has taken advantage of circumstances to raise his chances of success with speeches for “the protection of the family”, as happened in the first electoral round. His speeches were extremely discriminative and threatening, and began to gain popular support, but mostly among traditional religious Christian-Evangelicals, with support from their pastors and leaders. As well as being an elected parliamentarian in the previous period, he had the advantage of being a pastor with regular appearances in the media. It was necessary to agree on a coalition government between two parties in the second round in order to remove the possibility of a Christian government being elected.

This condition is a phenomenon that crosses the region. The presence of distinct Christian voices of this sort in the political space and the presence of conservative forces have inundated daily life of countries in the region with similar strategies. Taking advantage of failed governments that have impoverished large swathes of the population, the evangelical churches have offered support to

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The Legislative Assembly of Mexico City approved the reform of article 146 of the Civil Code of the Federal District in December 2009 and entered into force in March 2010. This provision is currently drafted in gender-neutral terms.


For more information, see the entry on Mexico in the section on same-sex marriage in this report.

For more information on the legal regime for legal gender recognition in Mexico, see: ILGA: Zhan Chiam et. al., Trans Legal Mapping Report 2017: Recognition before the law (2017).

"Buscar reconocer identidad de género de jalisquienes transexuales en documentos oficiales", W Radio, 6 November 2018.

Esta iniciativa ha sido aceptada, pero por fallo de la Corte, se podrá ejercer hasta inicios del 2020.

For more information on the content of Advisory Opinion No. 24, see the article written by Lucía Belén Araque in this report.

"Discurso contra parejas del mismo sexo impulsa campaña presidencial de predicador costarricense", El Mundo, 1 February 2018.


It is not unusual that Mexico, being one of the countries with the oldest tradition of state secularism, today has a distinctly evangelical party (PES) and its new president is publicly assumed as a Christian who has initiated a “moral renewal of the country” in his work program.90

The other countries of the region have gone through period of profound violence, where the presence of Christian forces is not absent.91 The government of Nicaragua has established a strong alliance with the Catholic Church to indefinitely keep itself in power, and at the same time initiated a ferocious persecution against dissidents, among them women and LGBT populations. Honduras and El Salvador are being desolated by gangs which stem from maras, with the defence of a patriarchal model where sexual and gender dissent has no place.92

Guatemala, confronts a condition of mixed violence where police repression and delinquency appear to be united against the population, but where conservative forces propel an initiative on the protection of life and the family. This implies grave setbacks and limitation on the advancement of the rights of women and LGBT persons.93

In this geopolitical panorama, the struggle for human rights – in particular for LGBT people – appears uncertain. Even so, the work of organisations has not stopped, they seem to be stronger, despite many times facing great risks to their lives or the need to migrate for their protection. As it is, the LGBT people of these countries today represent an important challenge for Mexico and Costa Rica in regard to migrants and in response to their requests for asylum.94

The level of acceptancetowards sexualand gender diversity in the Dominican society95 is not reflected in the meagre legal progress achieved in the Dominican Republic.100 Although lobbying by religious and fundamentalist groups has prevented the enactment of inclusive laws,101 the explicit inclusion of the LGBTI population in the non-discrimination chapter of the National Human Rights Plan in December 2018 is one of the achievements resulting from the work of local organisations.102

The authors are especially grateful to human rights activist and defender Deivis Ventura of the Dominican Republic for the information about the context and situation of the country.

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90 “Partido Encuentro Social (PES)”, Animal Político, 9 September 2014.
93 See, in general: IACHR, Situation of human rights in Guatemala (2017) and, in particular: paras. 121 a 124, 210, 30 a 385.
95 The authors would like to thank Sergia Tomás Rodríguez, Argentine activist, and Michaël Cousin, French activist, for their collaboration.
96 Darío Arias is ILGALAC Co-Secretary general. See full mini-bio above.
97 Manuel Vázquez Seijido is Deputy Director of CENESEX and member of the regional board of ILGALAC.
98 Francisco Rodríguez Cruz, journalist and gay activist of the Humanity for Cuban Diversity Network.
two people, heterosexual couples included, regardless of the orifice(s) used.\textsuperscript{113}

In Antigua and Barbuda, Barbados and Trinidad and Tobago there is also the offence of serious indecency, while in Dominica, St. Lucia, St. Vincent and Grenadines the offence is gross indecency. Guyana and Jamaica have the offence of gross indecency, but only when committed between two male persons. The act of “gross indecency” or “serious indecency” is an act other than sexual intercourse by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire. It was also an offence under the laws of Guyana, “being a man, in any public way or public place, for any improper purpose, appears in female attire; or being a woman, in any public way or public place, for any improper purpose, appears in male attire...”\textsuperscript{116}

The 2018 High Court of Trinidad and Tobago ruling in \textit{Jason Jones v AG of Trinidad and Tobago}\textsuperscript{114} established that buggery and serious indecency laws were unconstitutional in Trinidad and Tobago. The High Court of Trinidad and Tobago following a similar case of \textit{Caleb Orozco v The AG of Belize}\textsuperscript{115} from Belize held that buggery law breached the constitutional rights of the gay men to equality, privacy and freedom of thought and expression. These decisions will no doubt have an impact on the law in the wider Caribbean jurisdictions. The Court later ordered that the law be modified so it no longer applies to consensual sexual acts between adults in private.\textsuperscript{116} In 2018, the Caribbean Court of Justice (CCJ)\textsuperscript{117} evaluated the cross-dressing law in \textit{McEwan et al v AG of Guyana},\textsuperscript{118} brought by four trans women who were arrested and convicted. The CCJ concluded that the law was unconstitutionally vague and resulted in transgender and gender non-conforming persons being treated unfavourably because of their gender expression and gender identity.\textsuperscript{119}

Ongoing cases pertaining to SOGIE are currently being litigated in Bermuda and Suriname. In Bermuda, the Court of Appeal upheld the Supreme Court’s ruling that revoked parts of Civil Partnership law that prevented same-sex couples’ marriage,\textsuperscript{120} while in Simson v. Suriname,\textsuperscript{121} the official registry of a trans woman’s sex change, following gender affirmative surgery — a case won at first instance — is being appealed by the Government of Suriname.

In its Advisory Opinion, OC-24/17, the Inter-American Court of Human Rights addressed issues concerning gender identity, same-sex relationships, and the rights of LGBTI persons.\textsuperscript{122} This Advisory Opinion applies to Barbados, Dominican Republic, Suriname and Haiti.\textsuperscript{123} While many welcomed this development, it is still relatively early to outline its impact on Caribbean societies.

\textsuperscript{113} Supreme Court of Belize, \textit{Claim No. 668 of 2010}, 10 August 2016.
\textsuperscript{114} Supreme Court of Trinidad and Tobago, \textit{Jason Jones vs Attorney General of Trinidad & Tobago and others}, H.C.720/2017. CV.2017-00720, 4 April 2018.
\textsuperscript{115} Ibid.
\textsuperscript{116} The British Overseas Territories repealed their anti-sodomy laws in 2000. For more information, see section on legality of same-sex sexual acts in the Global Overview section of this report.
\textsuperscript{117} The CCJ is the highest court of appeal for Guyana, Belize, Barbados and Dominica.
\textsuperscript{118} Caribbean Court of Justice (CCJ), \textit{McEwan et al v AG of Guyana} [2018] CCJ 30(AJ).
\textsuperscript{119} For more information see: Joint Press Statement from GTU, U-RAP and SASOD: “Highest Caribbean Court Strikes Down Guyana’s Crossdressing Law”, 13 November 2018. Video of the delivery of the judgement can be accessed here.
\textsuperscript{120} AG v Ferguson et al; The AG is considering appealing to the Privy Council
\textsuperscript{121} “Transgender wins case for sex change recognition”, \textit{The Daily Herald}, 12 January 2017.
\textsuperscript{122} For more information on the Court’s Advisory opinion see the essay wrote by Lucía Belén Araque in International Law section of this report.
\textsuperscript{123} These are the only countries in the Caribbean that have ratified the American Convention on Human Rights.
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According to Guatemalan historian Manuel Fernandez, consensual same-sex sexual acts were decriminalized as a result of the 1871 Revolution “on the constitutional grounds that private sexual acts between consenting adults were not the concern of the state”. The new Penal Code (updated version) entered into force in 1877.

When Haiti became independent from France in 1804, no law criminalising consensual same-sex sexual acts was introduced, and no such law has come into the Penal Code since. France repealed its sodomy laws in 1791 (see entry below).

Consensual same-sex sexual acts between adults have been legal since the entry into force of the 1899 Penal Code of Honduras.

The first federal Penal Code of Mexico was approved in 1871 and entered into force in 1872. This Code made no reference to consensual same-sex acts between adults.

In 2007, the New Penal Code repealed the 1974 Penal Code that had criminalised “sodomy” under article 204.

Presidential Executive Order No. 332 of 31 July 2008 repealed section 12 of Executive Order No. 149 of 20 May 1949, which criminalised “sodomy”. The Executive Order states that “sodomy was the term by which homosexuality was referred to prior to 1973”.

The first Penal Code of Paraguay of 1880 was adapted from the Penal Code of the Province of Buenos Aires (Argentina), in force there since 1877. This code made no reference to consensual same-sex acts between adults.

However, Article 138 of the Penal Code currently in force specifies that the age of consent for “homosexual acts” is 16, while it is set at 14 for different-sex sexual acts.

Article 272 of the 1863 Penal Code criminalized sodomy. Since the inception in the 1924 Penal Code, consensual same-sex sexual acts have been legal.

However, civil society indicates that Article 183 of the Penal Code on “obscene exhibitions and publications”, provides the legal basis for State discrimination regarding issues such as public display of affection.

When Suriname became fully independent from the Netherlands in 1975, no sodomy law was in force and no such law has been reintroduced since then. Sodomy was repealed in the Netherlands in 1811. However, Section 302 of the Criminal Code stipulates that the age of consent for same-sex acts is 18 (limit established at “minority age”), while it is 16 for different-sex sexual relations.

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**NORTH AMERICA**

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- **United States**: Yes

**ASIA**

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- **Bahrain**: Yes
- **Bangladesh**: No
- **Bhutan**: No

**SAME SEX MARRIAGE**

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**CIVIL UNIONS**

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**JOINT ADOPTION**

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Tab 10
Sexual and Gender-based Violence (SGBV) forces many women, girls, and LGBTI persons to flee El Salvador, Guatemala, and Honduras. Family members, gangs, and drug traffickers most frequently perpetrate SGBV, but violence by police and other authorities is also widespread. Despite pervasive SGBV in the three countries, staggering impunity levels persist, with an average of less than 10 percent of cases resulting in conviction. Many individuals and families fleeing SGBV are potentially eligible for protection under U.S. as well as Mexican refugee law, as the governments of El Salvador, Guatemala, and Honduras fail to protect their citizens from SGBV.

Women and girls endure high rates of domestic and sexual violence in Guatemala, El Salvador, and Honduras

- In Guatemala, more than 100 cases of violence against women are reported each day, and 51,391 cases were reported in 2017, according to the Public Prosecutor’s Office.¹ The actual number of incidents is likely much higher, however, as many continue to go unreported.²
- In the first nine months of 2018 in Guatemala, 7,689 reports of sexual violence were recorded by the Public Prosecutor’s Office, including 4,576 instances of sexual assault of children under 18 years old. Of those reported assaults, 90 percent were committed against women and girls.³
- In Guatemala from January to July of 2018, 2,102 pregnancies in girls aged 10-14 were registered by the Ministry of Health.⁴
- According to a 2017 study, 67.4 percent of women and girls in El Salvador report having experienced gender-based violence at some point in their lifetimes, and 40 percent report having experienced sexual violence.⁵ Actual numbers are probably significantly higher because women and girls are prevented from reporting by fear and shame, threats of retribution, and lack of confidence that they would be believed by authorities.⁶

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- The National Emergency System in Honduras receives approximately 4,000 calls reporting domestic violence each month. This represents a very small portion of the actual incidence of domestic violence, due to widespread underreporting.

**Gangs use sexual violence as a strategy to maintain fear and control**

- Gangs in Northern Triangle countries employ sexual violence as a strategy to maintain control over territories and populations. Rape is widespread and is used by gang members to punish girls, women, and their family members for failure to comply with the gang’s demands and to demonstrate the gang’s dominance over the community.

- Girls, many aged 15 or younger, are forced to become “girlfriends” of gang members, and those who resist are subject to sexual violence, and in some cases killed. Reports have found that recruitment of girls and women, and rape and sexual violence by gangs, is widespread and constitutes a contemporary form of slavery, and that girls involved with gangs are “generally victims of gender and sexually-based violence.”

- Women and girls are frequently kidnapped and subject to repeated rape by multiple gang members. Girls as young as nine years old have been victims of gang rape.

- In some cases, victims of sexual violence by gangs are tortured, killed, and dismembered, and their bodies left in clandestine graves, or in public areas to provoke fear in other women and girls.

- Girls and young women threatened by gangs and subjected to forced recruitment or rape often go into hiding and stop attending school due to fear of leaving their homes.

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Rates of gender-motivated killings have increased dramatically over the past several years

- In Honduras, 388 murders of women were registered in 2017. In the majority of cases the aggressor was an intimate partner.15
- In Guatemala, 772 murders of women were registered in 2017, and 314 murders of women were registered in just the first five months of 2018.16
- In El Salvador, 155 murders of women were registered in the first four months of 2018—a 20% increase from the same period in 2017.17 In 2017, a woman was murdered every 18.7 hours.18
- El Salvador has recently been found to have the highest rate of femicide in Latin America, with a rate of 10.2 women killed for every 100,000 women.19

Members of the LGBTI community are targets of gender-based violence by families, gangs, and authorities

- Civil society organizations in Guatemala, El Salvador, and Honduras report that LGBTI people are at high risk for violence and extortion by gangs and organized criminal groups, hate crimes, and abuse by authorities, leading many LGBTI individuals to migrate in search of safety.20
- According to the UN High Commissioner for Human Rights, in Guatemala “LGBTI people are stigmatized, dehumanized even, by Guatemalan society and media, leaving them particularly vulnerable to violence and ill-treatment. They face discrimination at all levels,” including in access to health care, education, and employment.21 While reliable statistics are not available, hate crimes against LGBTI individuals are widespread, as is discrimination and violence committed by state authorities.22
- In Honduras from 2009 to 2018, more than 300 people were violently killed on account of their sexual orientation or gender identity, including 24 people so far in 2018.23 LGBTI activists have also been targets of violence and assassination.24

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At least 145 LGBTI persons in El Salvador have been murdered since 2015, and many of those victims were subject to torture and mutilation. The number of transgender women murdered annually in El Salvador has increased 400 percent since 2003.

The vast majority of sexual and gender-based crimes go unreported and unpunished

- In Guatemala, intimate partner violence goes unreported in an estimated 90 percent of cases. Causes of underreporting include social stigma toward survivors, fear of reprisal by the abuser, and the unresponsiveness and ineffectiveness of the judicial system.
- In El Salvador, of the 662 violent deaths of women registered by the Public Prosecutor between 2013 and 2016 only 5 percent resulted in a conviction.
- In Honduras, there is a 92 percent impunity rate for femicide and a 94 percent impunity rate for sexual violence.
- In El Salvador, Guatemala, and Honduras, LGBTI victims do not report violent crimes because they fear discrimination and abuse by authorities, and the vast majority of reported crimes against LGBTI people are not investigated.
- In Guatemala, of the 4,973 cases of sexual violence against children registered in 2016, fewer than 5 percent had resulted in sentences by October of 2017.

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Leah Chavla, Policy Advisor, Migrant Rights and Justice, Women’s Refugee Commission (WRC), leahc@wrcommission.org, (202)750-9598
Daniella Burgi-Palomino, Senior Associate, Mexico, Migrant Rights, Border Issues, Latin America Working Group (LAWG), dburgipalomino@lawg.org, (202)546-7010

AUGUST 31, 2018

Guatemala: Reject ‘Life and Family Protection’ Law

Dangerous Attack on Rights of Women and LGBT People
Published in

(New York) – Guatemalan legislators should reject an extraordinarily dangerous “Life and Family Protection” bill that would seriously undermine the rights of women and LGBT people in the country, Human Rights Watch said today. The proposed legislation has been approved twice by Congress and needs a third approval, in addition to a final approval of each individual article, before being sent to the president and signed into law.

The bill expands the criminalization of abortion and could subject women who have miscarriages to prosecution – or at least to questioning by law enforcement authorities. It also includes definitions of “family” and “sexual diversity” that are openly discriminatory and run counter to basic rights of lesbian, gay, bisexual, and transgender (LGBT) people.

“If Congress passes this bill, it will send the message that women and LGBT people are second-class citizens in Guatemala,” said José Miguel Vivanco, Americas director at Human Rights Watch. “The proposal lacks basic common sense and humanity and could even turn women and girls who miscarry into criminals.”

Under current law, abortion is legal in Guatemala only when the life of a pregnant woman or girl is in danger. The new proposal defines abortion as the “natural or provoked death” of an embryo or fetus and establishes prison sentences of up to four years for women who have an “abortion by negligence.”

If Congress passes this bill, it will send the message that women and LGBT people are second-class citizens in Guatemala.

José Miguel Vivanco
Executive Director, Americas Division

Studies suggest as many as 30 percent of pregnancies end in miscarriage early in gestation, and at least 10 percent of clinically recognized pregnancies end in spontaneous abortion. Pregnancy loss can occur because of fetal chromosomal abnormalities, advanced maternal age, or prior miscarriage, all beyond the control of the pregnant woman or her healthcare provider. Spontaneous abortions occur for many reasons, and studies show that caffeine intake, legal and non-legal drugs, and smoking may contribute to risks of miscarriage.

“This bill could lead to absurd and discriminatory outcomes,” Vivanco said. “A woman recovering from a miscarriage could find herself interrogated by law enforcement about the loss of her pregnancy.”

The bill would also heavily restrict access to legal abortion for pregnant women whose lives are in danger, by requiring additional medical approvals for providers to perform life-saving, or therapeutic, abortions. Requiring additional medical authorization could render therapeutic abortion inaccessible for many women and girls in poor or rural areas with limited access to health services.
The bill criminalizes “the promotion of abortion” in broad terms, stating that anyone who “directly or indirectly” “promotes or facilitates means” for women to have abortions could be sentenced to 10 years in prison. This provision could be invoked to sanction and silence organizations or individuals that provide sexual and reproductive information, counseling, or referrals to help reduce sickness and death from clandestine and unsafe abortion, Human Rights Watch said.

The bill also contains provisions that discriminate against LGBT people. For example, it “expressly prohibits” same-sex marriage and defines “family” as being limited to a “father, mother, and children.” The bill defines marriage as a union between people who were a man and a woman “by birth,” excluding transgender people. While same-sex marriage is currently not recognized in Guatemala, the bill would entrench and reinforce that unacceptable reality, Human Rights Watch said.

Moreover, the proposal establishes that “freedom of conscience and expression” protect people from being “obliged to accept non-heterosexual conduct or practices as normal.” This seems intended to expressly permit discrimination on the basis of sexual orientation, in clear violation of Guatemala’s international obligations.

“Freedom of conscience and expression are not a blank check to discriminate against LGBT people,” Vivanco said. “The ‘family protection’ provisions in this bill amount to nothing more than the promotion of homophobia.”

Region / Country

- Americas
- Guatemala

Topic

- LGBT Rights
- Women's Rights
- Reproductive Rights and Abortion

Tab 12
NO SAFE PLACE

SALVADORANS, GUATEMALANS AND HONDURANS SEEKING ASYLUM IN MEXICO BASED ON THEIR SEXUAL ORIENTATION AND/OR GENDER IDENTITY

AMNESTY INTERNATIONAL
Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.
NO SAFE PLACE

WIDESPREAD GENDER-BASED VIOLENCE

NO PROTECTION FROM THE AUTHORITIES

RE-VICTIMIZATION AND STIGMA

NO EFFECTIVE ACCESS TO JUSTICE

INVISIBILITY

THE PATH: VIOLENCE INSTEAD OF PROTECTION

MEXICO: A DANGEROUS PATH

DETENTIONS

DEPORTATION: SENT BACK TO HELL

RECOMMENDATIONS
The countries of the Northern Triangle of Central America (El Salvador, Guatemala and Honduras) are among the most violent in the world. In addition to alarming levels of general insecurity, their respective murder rates are well above what the World Health Organization considers to be epidemic levels, and more than 75 percent of these are classified as deaths by firearm.

This situation of violence, added to the institutional weakness in these countries, has resulted in increasing numbers of people fleeing their countries of origin in fear of their life. The investigation entitled “Home Sweet Home?” conducted by Amnesty International in 2016 concluded that violence has become a key push factor for migration, particularly in El Salvador and Honduras where high levels of violence and increasing territorial control on the part of gangs or “maras” is seriously affecting people’s ability to exercise their human rights.

Despite the difficulty in obtaining accurate figures from the countries’ governments, there is evidence that Lesbian, Gay, Bisexual, Transgender and Intersex people (LGBTI) are particularly exposed to violence in the Northern Triangle countries, and that this is related intrinsically to the multiple forms of discrimination that LGBTI people face in the different spheres of their family and working life, as part of society more widely and institutionally, on the basis of their gender identity and/or sexual orientation.

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2. The World Health Organization (WHO) considers a murder rate of more than 10 per 100,000 inhabitants to be an epidemic level. However, in 2016, the murder rate in El Salvador was recorded as 81.2 per 100,000 inhabitants (National Civil Police), in Honduras 58.9 per 100,000 (SEPOL) and in Guatemala 27.3 per 100,000 (National Civil Police).

3. Instituto Igarapé. Homicide Monitor, 2016, available at homicide.igarape.br

4. Terms used to indicate certain groups characterized by certain violent criminal activities and generally associated with territorial control throughout the Northern Triangle of Central America, particularly El Salvador and Honduras.


6. The capacity of each person to feel a deep emotional, affective and sexual attraction to people of the same gender and the capacity to maintain intimate and sexual relations with these people. The term lesbian is generally used to refer to female homosexuality and gay to male homosexuality.
Amnesty International has documented how, given the lack of options for protecting their lives and physical integrity in their own countries, gay men and trans women choose to flee and seek protection in other countries such as Mexico or the United States. For many of them, however, this path is paved with new acts of violence and discrimination at the hands of criminal gangs and the authorities in the transit and/or destination countries. When detained, they also find themselves in a highly vulnerable situation and may even be deported back to their countries of origin; i.e. to the hell from which they have escaped, and where they will again be attacked. In other words, gay men and trans women are exposed to gender-based violence at every point on their journey in search of protection.

The stories of Carlos, Camila, Marbella and Cristel, whose names have been changed to protect their safety, are representative of the primary human rights abuses and violations that gay men and trans women suffer due to their sexual orientation and/or gender identity, both in their countries of origin and when they seek international protection in other countries such as Mexico. When using pseudonyms to ensure the anonymity and safety of these people, some details of their personal life and geographical or temporal references have also purposefully been omitted from their stories. These measures demonstrate the fear they live in for their lives.

This document is the result of a series of interviews conducted between 2016 and 2017 with 20 asylum seekers and refugees primarily from El Salvador and Honduras, aged between 16 and 34 years old, identifying as gay men or trans women, and with human rights organizations and international organizations. Amnesty International conducted in-depth interviews with people in the given cases and, as far as possible, cross-referenced this information with other available sources, including official documentation; however, it was sometimes impossible to obtain such documentation given the transitory nature of the lives of those seeking asylum, and the lack of complaints made to the authorities for fear of reprisals.

Amnesty International would like to thank those who shared their stories, as well as the activists and human rights defenders who provided the information with which to produce this document.

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7 Transgender is a term used to describe different variants of gender identity, the common denominator being a lack of conformity between a person’s biological sex and the gender identity traditionally assigned them. A trans person may construct their gender identity regardless of surgical interventions or medical treatment.

8 Gender identity is the deep, internal and individual way in which gender is experienced by a person, and it may or may not correspond to the sex ascribed to them at the time of their birth.

9 Sexual orientation refers to the capacity each person has to feel a deep emotion, affective and sexual attraction to people of a different gender, to people of the same gender or to more than one gender, as well as the capacity to maintain intimate and sexual relations with those people.
Carlos, Marbella, Cristel and Camila suffered acts of discrimination, exclusion and physical violence from an early age in their respective countries of the Northern Triangle due to the simple fact that their sexual orientation and/or gender identity was different from the traditionally accepted heterosexual and patriarchal social norms.

Carlos, a young Honduran of 25 years of age recalls that, on various occasions during his childhood and adolescence, he experienced humiliation, rejection as well as beatings from family members “for being gay”. Members of the gang that controlled his neighbourhood also attacked and threatened him for the same reason, and so he was forced to flee his country. For her part, Cristel, a 25-year-old Salvadoran trans woman, also saw leaving her country as a way of avoiding the threats and attacks she received from gang members in her neighbourhood “for not being a biological woman”.

In the case of Camila, another trans woman from El Salvador aged 34, it was the police from her neighbourhood who persecuted her and issued death threats “for being trans” on numerous occasions, until she had no other option but to leave the country. Marbella, a 20-year-old Guatemalan trans woman, was the victim of a trafficking ring that recruited LGBTI people, and was subjected to further threats and intimidation following her rescue.
According to the UN High Commissioner for Refugees (UNHCR), LGBTI people are one of the “risk profiles” for asylum seekers from El Salvador and Honduras, and it is therefore acknowledged that these people may need international protection in accordance with the 1951 Refugee Convention and its 1967 Protocol.

Although it is difficult to obtain official and accurate figures on attacks against LGBTI people in El Salvador, Guatemala and Honduras, different non-governmental organizations (NGOs) and international organizations have documented that they are particularly affected by the widespread climate of violence and insecurity in the Northern Triangle of Central America. LGBTI people are frequently the target of different forms of violence due to their real or perceived sexual orientation and/or gender identity, such as, for example, intimidation, threats, physical aggression, sexual violence and even murder.

Amnesty International received a number of statements from gay men and trans women testifying to having been raped in their countries. According to UNHCR, 88 percent of LGBTI asylum seekers and refugees from the Northern Triangle interviewed in the context of a study reported having suffered sexual and gender-based violence in their countries of origin.

“...They hit me, they tried to kill me, they were looking for me, for the same reason, just because I was gay, and there was nowhere to hide”

Carlos (Honduran) interviewed in 2017.

Neighbourhood in El Salvador © Pablo Allison for Amnesty International

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11 The 1951 Refugee Convention is the fundamental binding international treaty that serves as the basis of international law on refugees. The 1967 Protocol to the Refugee Convention picks up all the content of the 1951 Convention and simply adds an extension of its application to all refugees, not only those fleeing their country due to specific time-constrained conflicts during the 1940s and 50s. Mexico has ratified both the Convention and the Protocol, while the United States has ratified the Protocol, thus acquiring identical obligations.


In terms of murders of LGBTI people, NGOs that are gathering and systematizing information on the situation have reported high numbers of murders in recent years (see table).

A study conducted in 2016 indicates that the Northern Triangle region is one of the most dangerous regions for trans women. These same NGOs warn that the real figures could be higher given that not all cases are systematically denounced or adequately reported.

Violence towards LGBTI people is rooted in the environment of discrimination and stigma that is prevalent in society generally towards these people, who differ from the traditionally established patriarchal social norms and gender roles. This situation is reflected in the testimonies received by Amnesty International, which bear witness to multiple acts of verbal and physical violence and exclusion in different arenas of daily life; from within their own family, community and society more generally, including at school and, later, in the workplace. Nor are the “maras” or gangs in the Northern Triangle of Central America, characterized by their violent criminal behaviour and generally associated with territorial control, excluded from this reality. It has been documented that they are governed by highly sexist codes of conduct, and they often attack LGBTI people for real or perceived their gender identity or sexual orientation, subjecting them to acts of physical and sexual violence, as well as blackmail.

“I was forced to leave my country, I didn’t ask to, just because I was transsexual, just because I was not a biological woman”

Cristel (Salvadoran) interviewed in 2016.

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Attacks on LGBTI People in the Northern Triangle of Central America

HONDURAS

According to the NGO Cattrachas Lesbian Network —which monitors violent deaths of LGBTI people on the basis of information appearing in the media— 264 murders of LGBTI people were reported in Honduras between 2009 and July 2017, of which 152 (or 58 percent) were gay men and 86 (or 32.5 percent) were trans people. Among those were a number of activists and defenders of LGBTI rights, such as René Martínez Izaguirre, President of the Sampedrana Gay Community, who was disappeared and killed in June 2016.

EL SALVADOR

The Association for Communicating and Training Trans Women in El Salvador (COMCAVIS TRANS) reported a total of 28 serious attacks, most of them murders, perpetrated against LGBTI people between January and September 2017. During February 2017, three trans women were brutally murdered within a 72-hour period. A fourth was brutally attacked just days later.

Guatemala

The serious violence and discrimination suffered by LGBTI people has been highlighted on a number of occasions by international human rights bodies.

For example, at the end of 2016, five trans women were reported murdered within a six-week period. For its part, the NGO Transgender Europe indicated that 40 trans people were murdered in Guatemala during 2016.


In 2016, when she was 19 years old, Marbella, a Guatemalan trans woman, replied to an invitation to participate in a beauty contest in Guatemala City, which turned out to be a recruitment front for a trafficking ring. Marbella states that she was held in a house for several months during which time she was subjected to sexual exploitation along with other trans women from Central America, until she was rescued by a police operation. A number of those responsible were subsequently arrested and a criminal investigation opened.

On her release, Marbella wanted to return home and resume her life and studies. She relates, however, that shortly after her return, she began to receive warnings that those responsible for her previous ordeal were looking for her and she was even threatened. Terrified, Marbella stopped going to school, no longer went out and shut herself in the house for fear that the threats would be carried out.

The threats did not stop, and she felt unprotected in her own country and so, at the end of 2016, she decided to leave for Mexico to protect her life and integrity.

When Amnesty International interviewed her in a border town in southern Mexico at the end of March 2016, she did not know what stage the legal proceedings in Guatemala had reached. She stated that she was, however, afraid of being so close to the situation from which she was escaping. Some weeks later, the Mexican state granted her international protection.
Carlos decided not to report the attacks and threats he received in Honduras, having seen how many of his friends, also gay, were attacked and persecuted specifically for having made complaints.

Like Carlos, most of the trans women and gay men commented in their interviews with Amnesty International that to go to the Police or Prosecution Service would mean or has meant an additional and direct risk to their safety, their life or their integrity; rarely was such an act perceived as synonymous with obtaining protection from the violence they faced.

For fear of suffering reprisals at the hands of their attackers, and given the lack of trust in the authorities responsible for law enforcement, who are regarded as being involved in corruption, complicity and cover-ups with organized criminal gangs, many people prefer not to report the attacks they suffer.

“I never tried to make a complaint because of what happened previously to some friends. My friend (...) went to report a crime and he hadn’t even finished making the complaint when they were already at his front door, which is why he went to Mexico; another friend went to make a complaint and was killed on the way home, after doing so”

Carlos (Honduran) interviewed in 2017.
More serious still, in Camila’s case, from El Salvador, the insults, death threats and persecution she experienced came from a police officer, who even turned up at her house with a firearm. Camila’s story is unfortunately not a one-off but part of a backdrop of reported attacks on LGBTI people, perpetrated directly by members of the security forces and fostered by the context of discrimination and stigma prevalent in society.

For her part, Cristel related how she was subjected to unjustified controls in the street and searches of her belongings by members of the Salvadoran police, apparently due to her gender identity and expression. Local activists indicated in this regard that trans women are particularly exposed to harassment, unjustified searches and arbitrary detentions from the police because of the stigma they bear.

FEAR OF REPORTING

A study conducted in El Salvador in 2015 concluded that 72 percent of trans women who had been attacked had chosen not to report the incident.

The reasons given were: “Firstly for fear of reprisals from the attackers and, secondly, due to a lack of credibility in the justice system, as they felt they would be ignored, discriminated against and mocked by the Civil National Police.”

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RE-VICTIMIZATION AND STIGMA

When Camila went to the police in El Salvador to report the attacks she had suffered, rather than taking her complaint seriously and offering her protection, the officers mocked her gender identity.

Camila insisted on exercising her rights like any other person but, but the officers threatened to lock her up so, in the end, she gave up and went away.

“I told them I knew my rights and that I could make a complaint. The response was that they were going to lock me and my partner up.”

Camila (Salvadoran) interviewed in 2017.
A study conducted in 2014 in this regard revealed the extent of prejudice due to sexual orientation and/or gender identity within the Salvadoran National Police. It concluded that 66.8 percent of the 413 police officers interviewed believed that, in accordance with national law, LGBTI people did not have the same rights as others.\textsuperscript{22}

Despite some progress within certain institutions responsible for law enforcement, the testimonies gathered bear witness to the fact that a lack of sensitivity continues to form a barrier to protecting the rights of LGBTI people.

The few people who dare go to the authorities to report a crime are frequently re-victimized or treated with disdain, indifference and discrimination due to their gender identity and/or expression, and so they rarely follow their case up and even, sometimes, withdraw it. The above is in violation of the right of all people to enjoy equal protection before the law without discrimination.

\textsuperscript{22} ESMULES and CIPAC. Actitudes hacia las personas LGBTI por parte de las fuerzas policiales. (Police Attitudes Towards LGBTI People). El Salvador, September 2014. Available at: www.cipacdh.org/pdf/Informe_El_Salvador_FINAL.pdf [in Spanish only]
Camila is a 34-year-old Salvadoran trans woman. She recounts that, at the start of 2016, a police officer who lived in the same neighbourhood as her began to harass her for being trans; he hounded her and insulted her whenever their paths crossed, even in front of her partner or family.

To begin with, Camila ignored her neighbour’s violent and transphobic behaviour but his aggressive attitude increased as the months went by. The officer even threatened Camila and her partner with death on a number of occasions while carrying a firearm, and even in her own home. For fear that these threats would come to pass, Camila left her home and went to live with relatives. She also went to the Civil National Police (PNC) with the aim of reporting the matter.

As a trans woman, however, she was mocked and insulted by some of the officers present. When she insisted on making a complaint, knowing that she had every right to do so, the police officers threatened to lock her up, following which she gave up and left.

Camila recounts that she continued receiving telephone death threats over the ensuing weeks, even in her new home, from the same individual, who told her he knew she had gone to the police. Fearing for her life, and faced with this level of persecution and surveillance, Camila saw no other option but to flee to Mexico with her partner.

After crossing the Mexican border, Camila and her partner caught a minibus for their journey onward but were forced to get off shortly before entering Tapachula due to an impending migration control. Camila says that a short distance after having got off the minibus, she and her partner were stopped by uniformed individuals who she says insulted their gender identity, threatened them and took their money. Camila made a complaint to the Special Prosecution Service for Crimes against Immigrants. When she was interviewed two months later, she was unaware of what stage the investigation was at.

Camila was recognized as a refugee at the end of April 2017. She subsequently went to live in another town in Mexico.

23 Tapachula is a town in Chiapas State, on the south-eastern border with Mexico, adjoining Guatemala.
In accordance with international human rights law, any discrimination based on the sexual orientation and/or gender identity of a person is prohibited:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” (Article 26 of the International Covenant on Civil and Political Rights)

It follows from the above that although the political constitutions of countries of the Northern Triangle do not expressly include this prohibition nor make explicit reference to LGBTI people, these countries do have a duty to ensure that all people enjoy equal protection before the law without discrimination.

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26 Cattrachas Lesbian Network, Informe sobre muertes violentas de la comunidad LGBTI. Énfasis en impunidad (Report into violent deaths in the LGBTI Community. Emphasis on Impunity), 2016. Available at: www.cattrachas.org/gestionciu.php (in Spanish only)
We do not know the exact number of trans women and gay men who, like Camila, Carlos, Marbella and Cristel, flee the violence of the Northern Triangle of Central America each year. This is because the attacks that LGBTI people suffer in their countries of origin are rarely reported to the national authorities or classified as such, for the reasons described above, and because many of the destination countries do not compile statistical information by sexual orientation and/or gender identity for the asylum seekers and refugees they take in.

For example, it was only in 2015 that US Immigration and Customs Enforcement, known as the ICE, stated that it would gather information on the gender identity of those detained. This lack of accurate data not only contributes to the dissimulation of a real phenomenon but hinders the design and implementation of adequate measures to guarantee the rights of LGBTI people.

Most of the information available in this regard comes from monitoring conducted by a number of NGOs and from information gathered by UNHCR and its partners in the context of their activities with LGBTI people.

For example, the NGO Immigration Equality which provides guidance to LGBTI asylum seekers in the United States indicated that of all the requests they have received over the last years, Guatemala, Honduras, and El Salvador are among the 10 countries with the highest numbers of requests. In March 2017, the Salvadoran NGO COMCAVIS Trans indicated that at least 136 LGBTI people had left the country since 2012. In practice, however, the figures are likely to be higher.

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27 Immigration and Customs Enforcement (ICE), Transgender Care Memorandum, June 2015. Available at: www.ice.gov/news/releases/ice-issues-new-guidance-care-transgender-individuals-custody

UNHCR informed us that, during 2016 in Mexico, 109 LGBTI people were provided with humanitarian assistance by UNHCR and its partners. Again, however, it is possible that the figures are higher given that not all people register with UNHCR or its partners.
The testimonies gathered by Amnesty International demonstrate that, faced with the urgent need to protect their life and integrity, trans women and gay men generally flee without knowing where they are going, that they have a right to request asylum or what risks await them on the journey. These risks are particularly serious given their sexual orientation and/or gender identity, and often mean they face the same abuses and violations of their rights that they are trying to escape from at home.

For example, Camila remembers that after getting off the minibus that had taken her and her partner to Tapachula in southern Mexico, she was threatened and had her money stolen by uniformed individuals, who also insulted her due to her gender identity. For her part, Cristel, a Salvadoran trans woman, recounts how she was kidnapped by a supposed taxi driver on her arrival in Mexico and subjected to several days of rape and sexual exploitation by different people who also stigmatized her and insulted her because of her gender identity.

In the south of Mexico, Amnesty International also interviewed a Honduran trans woman asylum seeker who stated the reasons that had forced her to flee her country firstly to Guatemala, and then recounted the abuses she had suffered on reaching Guatemala City, where she was captured by a trafficking and prostitution ring.

**Mexico: A Dangerous Path**

LGBTI people who are forced to flee are particularly vulnerable to violations of their human rights. In addition to the serious situation they experience in their own countries, they suffer further acts of violence on the journey and/or in their destination countries.

In Mexico, high levels of crime and human rights violations are reported against migrants generally, including attacks, robberies and kidnappings perpetrated by organized criminal gangs, sometimes in collusion with different government authorities, as well as different kinds of abuse of authority by the security forces and other Mexican migration services, which go unpunished in 99 percent of the cases reported. Faced not only with these kinds of attack, LGBTI people also find themselves exposed to acts of violence due to their real or perceived gender identity and/or sexual orientation.

According to UNHCR, two-thirds of LGBTI asylum seekers and refugees coming from the Northern Triangle and interviewed in 2016 as part of a study reported suffering sexual and gender-based violence in Mexico after crossing the border at blind spots.

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31 WOLA et al., El acceso a la justicia para personas migrantes en México: un derecho que sólo existe en papel (Access to Justice for Migrants in Mexico: a right that exists only on paper), July 2017. See also Hogar Refugio La 72. En los límites de la frontera, quebrando los límites (On the limits of the border, breaking the limits), April 2017, p. 21. Available at www.la72.org/?p=1719 (only in Spanish)

In addition, the testimonies received by Amnesty International highlight the fact that, the whole way along their escape route, they are subjected to stigma and discrimination from the authorities, and also sometimes in the shelters that receive them, due to the injurious prejudice surrounding their sexual orientation and/or gender identity that is also prevalent in this country.

It is important to note, in this regard, the high numbers of Mexican LGBTI victims of violence each year and the fact that many of them, including transgender people, in turn seek protection in other countries.

LGBTI people also suffer violence, both verbal and physical, from other migrants. This can be seen, for example, in insults or contemptuous words that refer to their sexual orientation and/or gender identity, or in more serious aggression. When we interviewed Carlos for the first time in the shelter where he was staying in the South of Mexico, he told us that he was afraid to go outside, and tried to avoid doing so.

Despite this, Carlos commented that, a short while ago, while walking along a path, he was brutally attacked by other migrants. His aggressors knew he was gay and so they insulted him for his sexual orientation. He states that he was also raped.

Finally, the information gathered by Amnesty International—in its interviews with asylum seekers in various border towns in southern Mexico, and with workers from shelters and other organizations—bears witness to the presence of gang or “mara” members in these areas. For asylum seekers, the presence of individuals linked to the same gangs that were persecuting them, threatening them and/or attacking them in their home countries increases their perception of insecurity and can even form a real and imminent risk. Cristel recounted, for example, that on returning from sorting out some paperwork with the Mexican migration office one day, she recognized an individual in the street linked to the same gang that had blackmailed and threatened her in El Salvador. Because of this she stopped going out of the house unless absolutely necessary, for fear of being attacked or located.

“They took my money, my clothes (...), they gave me nothing to eat, no water, they mistreated me, they told me, ‘Ignorant asshole, why were you born this way? Fucking asshole.’

Cristel (Salvadoran) interviewed in 2016.
Migration detention is another situation in which LGBTI asylum seekers are particularly exposed to abuses and violations of their human rights, including lack of effective access to their right to seek asylum and acts of gender-based violence and discrimination on the part of other detainees and the guards.

UNHCR has acknowledged that LGBTI people are often at risk during the time they spend in migration detention centres. This risk is greater for transgender women when they are held in cells reserved for men because there are no adequate policies or measures that take their individual and gender identity needs into account.

To this must be added the impact of the detention itself on asylum seekers, which only exacerbates their symptoms of depression, anxiety and the effects of post-traumatic stress. These symptoms are present in LGBTI asylum seekers due to the serious acts of violence they have suffered.

In Mexico, there are documented migrant detention centres that fail to meet the specific protection needs of LGBTI people; trans women in particular are mixed with others, or crowded into provisional cells that are temporarily allocated to them. In a report published in July 2017, the Citizens’ Council of the National Migration Institute (INM) of Mexico highlighted the fact that the different LGBTI people met and interviewed in the different centres “stated that they had suffered discrimination, sexual harassment and even aggression from other detainees or the centre staff.”

“Did you know you could claim asylum?”

‘No,’ I said. ‘What’s that?’

Carlos (hondureño), entrevistado en 2017.

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34 UNHCR. Protecting Persons with Diverse Sexual Orientations and Gender Identities, 2015. p. 28.


This report indicates that detainees are generally subjected to pressure and intimidation to accept so-called “voluntary return”, which denies them effective access to the right to seek asylum.\(^{38}\)

Amnesty International finds this situation concerning in that it may contribute to the increased vulnerability of LGBTI people detained for migration reasons, who are often unaware of their right to seek asylum. By subjecting them to pressure during their detention, in a context in which their rights as LGBTI people are not systematically guaranteed, they are exposed to deportation to their countries without the possibility of receiving the international protection they deserve.\(^{39}\) and despite the fact that gender persecution is one of the causes established in Mexican legislation for recognizing refugee status.\(^{40}\)

Carlos indicates that he only found out about his right to seek asylum after being detained and taken to a holding centre in the south of Mexico. Once he became aware of this possibility, he said he wanted to begin the process as soon as possible, as it would enable him to escape the violence he had experienced in Honduras; however, in an attempt to demotivate him, the person dealing with his case warned him that it would mean remaining in detention for around three months. Two days later, Carlos was finally able to begin the process.

After several weeks, however, he became severely depressed and felt he would be unable to bear such difficult detention conditions. He was released after around a month’s detention due to being offered alternative methods to migration detention and so he was moved to a shelter.

\(^{38}\) Ibid. See also Animal Político, Hoy no comes, así amenazan a migrantes en México para que acepten la deportación voluntaria (No food today: how migrants in Mexico are threatened to accept voluntary deportation), 3 August 2017. Available at: www.animalpolitico.com/2017/08/amenazas-migrantes-mexico/?utm_source=Hoy+en+Animal&utm_campaign=cdf495dd10-g&utm_medium=email&utm_term=0_ae638a5d34-cdf495dd10-392971985 (in Spanish only).

\(^{39}\) Observatorio de Migración, Derribando Muros (Breaking down Walls), Boletín no. 7 April 2017, pg. 2. (in Spanish only).

\(^{40}\) Article 13 of the Law on Refugees, Additional Protection and Political Asylum.
Carlos is a 25-year-old gay man. Until March 2016 he was working in the patterns and prints department of a clothing manufacturer in his home country. Carlos had by this time already experienced humiliation, insults and rejection by his family for being gay from an early age.

He sometimes also received death threats from the gangs in the area in which he lived. But in March 2016 it was different. He was beaten by a group of gang members who insulted him and repeated their threats: if you don’t leave town immediately, you’ll end up dead. For fear of reprisals, Carlos decided not to report this attack but left his community and fled to San Pedro Sula—the second largest city in Honduras and one of the most dangerous places in the world.\(^\text{41}\)

Nonetheless, within a few weeks, the gangs had located him through their networks of informants. Carlos says they attacked him as he was leaving the job he had found in this new city. His fear was such that he initially decided simply not to leave the house; he even gave up work. But the gangs found out where he lived and went there to threaten him further.

Without a safe place to stay, Carlos had no option but to flee once more. This time he decided to leave the country. On 13 September 2016, without really knowing the route, he took several buses through Guatemala to the Mexican border.

Carlos recounts how he was detained by the INM in Mexico a few hours after crossing the border. He was taken to a holding centre where he was locked up day and night with others in a very small cell. He was only let out to collect his food, and then immediately returned to the cell to eat it. This same space included toilets and washing space, clothes had to be washed and hung out there, and they had to sleep on mats on the floor. In his words, “It was a truly horrible place.”

Carlos found out about his right to seek asylum for the first time while in detention, when he stated his reasons for not wanting to be deported back to Honduras. He wanted to begin asylum proceedings immediately but the person dealing with his case told him, in an attempt to put him off, that he would be held in these detention conditions for at least three months if he requested asylum. Determined, Carlos repeated his desire to start the process as soon as possible but says he was only allowed to do so two days later.

He states that after two weeks he felt desperate at the conditions in which he was being held, spending almost the whole day locked up and sleeping on a mat. However, he was informed that he could benefit from alternative measures to detention, implemented by the Mexican government with the support of UNHCR, and so he was finally able to leave and was moved to a migrant shelter.

Carlos says he tried to avoid leaving the shelter for fear of meeting gang members and other groups in the border town in which he was living. However, one day as he was walking along a path he was attacked by migrants who were aware of his sexual orientation. On this occasion, Carlos was also raped.

Carlos is still waiting for his asylum claim to be considered. The process has taken several months because the first decision he received - which refused him asylum - was declared null and void due to a number of irregularities.

“If there were more information about what an LGBTI community is, what it is to be gay, lesbian, what we suffer, if there were campaigns, more information for people, I believe there would be less ignorance towards us.”

Carlos (Honduran), interviewed in 2017.
For her part, Cristel recounts her painful experience in a US migration detention centre. Feeling unsafe in Mexico after the abuse she had suffered, Cristel decided to travel to the United States, where she hoped to live according to her gender identity and without fear. She says that, on arriving at the US border, she was detained and subsequently taken to a detention centre where she was held for around three months.

She was detained all this time alongside men given that, in her words, the authorities did not take her gender identity into account, nor the vulnerability that this situation created for her. Cristel says she could not bear these terrible conditions and ended up accepting so-called “voluntary return” to El Salvador.

The situation described by Cristel concurs with the results of a report published in March 2016 by Human Rights Watch, which documents the multiple abuses and violations of human rights, including sexual aggression and harassment, suffered by trans women when detained in male units of US detention centres. Although the US ICE had issued guidelines intended to improve the detention conditions of trans women some months previously, these are reportedly suffering from implementation problems.

Trans women’s vulnerability is now being intensified by the prolonged periods asylum seekers are forced to spend in detention following the drastic reduction in alternative methods, exacerbated by the migration policies implemented by President Donald Trump.

“I was held in a US cell and it was horrible, so tense; you are discriminated against as well, they discriminate against you, they marginalize you (...) they put me in with all men, three and a half months, they never took account of my sexuality or that I was trans.”

Cristel (Salvadoran) interviewed in 2017.

All people, including asylum seekers and migrants, have the right to freedom, to move freely and to be protected from arbitrary detention regardless of their legal status. Amnesty International is therefore opposed to the routine use of detention as an instrument for exercising migration control, given the negative impact it has on the rights of those detained and the fact that states often use detention as a way of dissuading or punishing illegal migration instead of tackling its real causes.

According to current international standards, migration detention is an exceptional measure to be used as a last resort when it is not possible to use other less restrictive means. States must therefore ensure that alternative measures to detention are effectively available for all migrants, without discrimination. When envisaging the use of these alternative measures, states must conduct individual assessments that take into account the specific circumstances and vulnerability of each case, such as for example, pregnant women, trafficking victims, LGBTI people, the elderly or those with a serious medical or psychological condition.
For those unaware of their right to request asylum, or who are deprived of effective access to it, detention by the migration authorities is the start of a deportation process that will culminate in their return to their country of origin, directly back to the serious risks they were trying to escape.\textsuperscript{49}

The evidence gathered by Amnesty International in this regard shows that Mexico and the United States are returning people who are fleeing violence to their countries of origin without being able to request asylum,\textsuperscript{50} which is in violation of the principle of non-refoulement (non-return)\textsuperscript{51} and places people in serious danger.

Amnesty International has furthermore documented that, despite the above, thousands of people are being deported to the countries of the Northern Triangle each year,\textsuperscript{52} where there are no comprehensive mechanisms that would enable those at risk to be identified or provided with the protection and care they need, and nor from an adequate gender perspective in the case of LGBTI people.\textsuperscript{53}

Given the multiple dangers facing them on their return to their country, many people have no option but to flee for their life yet again, seeking safety either elsewhere within the country or going abroad once more. Some of the people interviewed by Amnesty International who had been deported to their country or had accepted so-called voluntary return indicated that their fear was so great on arriving back in their country of origin that, the very same day of their deportation, they had again taken a bus to cross the border.

Other people stayed several weeks or months in a different area or city of the country, seeking their own ways of surviving, until they were faced with further danger and fled once again, as was the case of Cristel. Because of the networks of informants gang members have around the country, they quickly found out that Cristel had returned and so she once more became the target of blackmail and threats, until she was forced to flee El Salvador again in search of protection.
Cristel is 25 years old. This Salvadoran trans woman describes how her life changed in just a few hours one day in August 2014 when she received death threats from a gang in the area where she lived with her mother in El Salvador. She had been identified as trans, and they gave her 24 hours to get out, or they would kill her.

Cristel had suffered stigma and discrimination in her country for her gender identity in the past. She had also been blackmailed by gangs, but at no time had there been actual attacks on her life. Faced with this new threat, Cristel feared for her life and so grabbed two changes of clothing and took “the road North”, knowing nothing about the journey that awaited her. Cristel travelled by bus to the Mexican border and, like so many other undocumented migrants, crossed the Suchiate River in a raft.

Once across the border, Cristel recounts that she got a taxi to take her into Tapachula where she could rest before continuing her journey on to Mexico City. However, instead of taking her there, the supposed taxi driver took her to an unknown house where her belongings were taken from her and she was raped on several occasions by different people, and sexually exploited. Cristel recalls that she remained in captivity for several days in this house, along with K, another trans woman from El Salvador, until one night they managed to escape while their abductors were distracted.

The two women walked and walked until a car driver offered to help them and took them to the Specialist Prosecution Service for Crimes against Immigrants in Tapachula, where they were able to make a complaint. They were taken to a shelter for migrants, where Cristel was able to commence her recovery. Some weeks later, the INM granted her a humanitarian visa because she had been the victim of a serious crime in Mexico. Cristel indicated that she had not been informed of the progress made in the investigation that was opened after she reported the crime in Mexico.

The humanitarian visa she received allowed her to remain in Mexico for one year. She says she felt very unsafe in the country, however, and so she travelled to the United States with K. At the border, the two women handed themselves over to the US authorities and were taken to a migration detention centre. Cristel recounts that she was detained in the US for more than three months, in the men’s unit. She says that at no time did the authorities take her gender identity into account. This prolonged detention was extremely difficult for Cristel, who had been greatly affected by the abuse suffered in Mexico, and so she finally withdrew her asylum request and agreed to her “voluntary return” to El Salvador. Her friend K now lives in the United States.

On her return to El Salvador, Cristel set up home in a different area of the country. However, she had no option but to live in a neighbourhood that was also controlled by gangs. Through their information networks, the gang member that had threatened her previously became aware of her presence and began to blackmail her: she had to pay a tax plus so-called “rent” or they would kill her. Cristel says she was only able to pay the sums demanded for a few weeks, after which her family tried to obtain a loan to help her and avoid the threats being carried out.
But she again received death threats by phone and, at the start of 2017, was assaulted in the street by the same gang member. Cristel went to the Civil National Police to report the incident. Shortly afterwards, however, she says she saw police officers chatting with the gang member. More threats came over the following days: Cristel was given two weeks to quit the neighbourhood and not return to any area controlled by this gang. She says her boyfriend also received death threats and was murdered several weeks later as he was going to visit his family in an area controlled by a rival gang.

Cristel had no option but to flee to Mexico once more. Around the same time that Cristel travelled to Mexico, three trans women were murdered in El Salvador within a one-week period.54

Cristel requested international protection in a border town in southern Mexico, living in constant fear of being attacked or abused once more, and restricting her movements to the strictly essential. Cristel recounts that, one day, on returning home, she recognized someone in the street linked to the gang that had blackmailed and threatened her in El Salvador, and this only resulted in yet further terror and anxiety on her part.

The stories of Camila, Carlos, Marbella and Cristel, along with other testimonies gathered by Amnesty International, bear witness to the multiple and repeated abuses and violations of human rights experienced by trans women and gay men both in their countries of origin and in their transit and/or destination countries, often motivated by their real or perceived sexual orientation and/or gender identity.

When forced to flee to another country to escape the violence, instead of obtaining the immediate protection they require, LGBTI people often again experience abuses and violations of their rights similar to those suffered in their home countries. In other words, their vulnerability as migrant persons and asylum seeker is exacerbated by their Sexual orientation and/or gender identity.

This circle of constant violence and lack of protection is the result of the deep discrimination and stigma LGBTI people experience at different levels of society in these countries, linked to a lack of adequate and effective measures to guarantee their rights and a lack of knowledge of their particular protection needs.

Recommendations

States need to act to fully guarantee the rights of LGBTI people from the Northern Triangle of Central America. Amnesty International therefore recommends:

1. Adopt and implement prevention and awareness-raising policies aimed at promoting respect for the rights of LGBTI people and preventing all forms of violence against them, both in the domestic sphere and within public institutions.

2. Conduct exhaustive investigations into all crimes and human rights violations committed against LGBTI people with the aim of identifying, prosecuting and punishing those responsible. The different possible lines of investigation should include those aimed at determining whether the crimes were committed on the basis of the victim’s sexual orientation and/or gender identity.

3. Provide adequate medical and psychological care for LGBTI victims of violence.
4. Ensure that the official records of the different institutions responsible for providing care to LGBTI victims of violence have data collection systems that enable the gender identity and/or sexual orientation of individuals to be taken into consideration in order to quantify and analyse the violence to which they are subjected.

5. Improve coordination between consular services abroad and the reception centres in the countries to identify people with protection needs and guarantee that all reception, reintegration and protection programmes for deported migrants take into account the rights and specific needs of LGBTI people.

6. Assess the risk of deported or returning LGBTI people so that, in the face of high risk, a fast-track system can be activated in third countries to support asylum requests from those LGBTI people involved, as a protection measure.

1. Ensure that people receive information on their right to claim asylum and that they have effective access to this process, and refrain from deporting people at risk back to their country of origin.

2. Collect, systematize and produce data and records on violence against LGBTI asylum seekers or refugees persecuted on the basis of their real or perceived sexual orientation and/or gender identity.

3. Conduct exhaustive investigations with all due diligence for crimes and human rights violations committed against LGBTI people considering, among the possible lines of investigation, those aimed at determining whether the crimes were committed on the basis of the sexual orientation and/or gender identity of the victims.

4. Adopt or, where appropriate, continue to develop good practices related to the use of alternatives to migration detention for LGBTI people, based on an individualized assessment of the specific protection needs of each person that takes into account their sexual orientation and/or gender identity.

5. Put special mechanisms in place for vulnerable asylum seekers who may need to be urgently moved from border areas to other parts of the country while they await the results of their asylum procedure, with special emphasis on LGBTI communities.
Salvadorans, Guatemalans and Hondurans seeking asylum in Mexico based on their sexual orientation and/or gender identity.
| Tab 13 |
Neither Security nor Justice:
Sexual and Gender-based Violence and Gang Violence in El Salvador, Honduras, and Guatemala
Acknowledgements

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Methodology

This report draws on interviews conducted with Central American migrant children, case documentation from KIND’s child clients, and interviews with government and civil society representatives to demonstrate the ways in which sexual and gender-based violence (SGBV) and gang violence intersect to threaten the lives of thousands of children and families in El Salvador, Honduras, and Guatemala.

KIND and the Human Rights Center Fray Matías de Cordova (Centro de Derechos Humanos Fray Matías de Cordova, or CDH Fray Matías) conducted 60 interviews with migrant children in Tapachula, Mexico, and Mexico City between March and July 2016. Documentation was collected from an additional 36 KIND client cases of child SGBV survivors. Every child provided informed consent to participate in the study. The research also draws on 58 interviews conducted by KIND with key government and civil society actors in El Salvador, Guatemala, and Honduras, including judges, police, and prosecutors as well as representatives from organizations focused on migration and women’s, children’s and LGBTI rights.

This report forms part of a broader ongoing study focused on sexual and gender-based violence and child migration in Central America and Mexico. KIND, in collaboration with CDH Fray Matías and with generous support from the Oak Foundation, documented forms of SGBV against migrant children in their places of origin and transit, as well as the responses of Central American and Mexican governments to these forms of violence. KIND and CDH Fray Matías will publish findings and recommendations from the broader study in summer 2017.

Glossary

**Gender-based violence** is any form of violence, including physical, sexual, and emotional harm or threats of such harm, against a person based on their actual or assumed sex, gender, or sexual orientation. It includes violence perpetrated in any site including in the home and in public, as well as violence perpetuated or condoned by the state. Gender-based violence typically manifests against women and girls, but victims can also be men and boys, especially in the context of violence against LGBTI people.

**Sexual violence** is a form of gender-based violence and includes any sexual act or attempted sexual act that is carried out in the absence of freely given consent, regardless of the perpetrator’s relationship to the victim. Sexual violence can also include coerced sexual acts in exchange for food, shelter, protection, or resources. While women and girls suffer the highest rates of sexual violence, boys and men are also victims. LGBTI people are also frequently victims of SGBV.

**Sexual and gender-based violence (SGBV)** refers to sexual and other forms of gender-based violence. Although these forms of violence can be perpetuated against men and boys, they most commonly take the form of violence against women and girls, which is “a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.”


“When a gang says, ‘This is my territory,’ they are talking about everything, the houses, the businesses, the people, and specifically the women and girls.”

Claudia Hernández Cruz, Director, Survivor’s Foundation (Fundación Sobrevivientes), Guatemala

“Women in Honduras live in constant fear. They have no confidence that the government will provide either security or justice.”

Carolina Sierra, Director, Forum of Women for Life (Foro de Mujeres por la Vida), San Pedro Sula, Honduras

“I can tell a woman that she should report domestic violence, but she will ask me, ‘Who will support me, who will protect me?’ and I can’t answer those questions.”

Judge, Tegucigalpa, Honduras

“One of my [police] officers was talking to a 15-year-old girl who was thinking of leaving the country because she was receiving attention from gang members in her neighborhood. I said that we can’t tell her not to go, because we know the government can’t offer her protection.”

Police officer, San Salvador, El Salvador

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Introduction

The Northern Triangle of Central America, which includes El Salvador, Honduras, and Guatemala, is one of the most violent regions in the world. Along with staggering homicide rates, all three countries have extremely high rates of sexual and gender-based violence (SGBV), including rape and sexual assault, domestic violence, human trafficking, sexual exploitation, and sexual abuse of children. The three countries also have some of the highest rates of femicide, or the gender-motivated killing of women and girls, in the world, and rates have risen dramatically over the past several years. In El Salvador, a woman was murdered every 16 hours in 2015. In Honduras, gender-based violence is the second leading cause of death for women of reproductive age. On average, two women are murdered each day in Guatemala, and the number of women murdered each year has more than tripled since 2000.

The rise of violence in El Salvador, Honduras, and Guatemala is in large part attributable to gangs that have grown increasingly powerful in all three countries. These gangs employ brutal forms of violence to maintain control over the territories where they operate. Gangs dominate urban areas of El Salvador, Honduras, and Guatemala and have increased their presence in rural and semi-urban areas in recent years, leaving children and youth in these areas vulnerable to gang violence. This intensified gang violence has a particularly severe impact on women and children, who are vulnerable to sexual and gender-based violence within their homes and neighborhoods, and find little hope of receiving protection or justice from the state.

Rates of SGBV in El Salvador, Honduras, and Guatemala are extremely high, and in the vast majority of cases, violence goes unreported and unpunished. When victims of SGBV live in gang-controlled areas or when perpetrators have gang affiliations, crimes are even more likely to result in impunity. Many victims do not report violence because they do not trust authorities or because they know that doing so will put them, and their families, at greater risk of retaliation by gangs. Those few who do report violence confront the unwillingness or inability of the state to provide either protection or justice. With no place to turn, many of these women and children are forced to flee their country to save their lives. Whether they ultimately reach Mexico, the United States, or any other country, they need—and in many cases should qualify for—refugee protection.
This report examines the relationship between gang violence and SGBV in El Salvador, Honduras, and Guatemala. It describes common forms of SGBV in the gang context and the ways in which gangs use SGBV to exert and maintain control over populations and territories in the areas where they operate. It also explains the factors that prevent reporting and prosecution of SGBV, both when the perpetrator is a gang member and when the victim lives in a gang-dominated area. The report briefly outlines government efforts to address violence and impunity. It provides recommendations on how the governments of El Salvador, Honduras, and Guatemala can work to reduce gang-related SGBV and increase assistance and justice for survivors, which in turn will provide affected individuals and families with alternatives to forced migration. The report also makes recommendations to the U.S. government on how to direct and prioritize aid to Central American countries to effectively bolster efforts to prevent and address SGBV.

### Compounded Vulnerabilities: Sexual and Gender-based Violence in the Gang Context

**SGBV is widespread in El Salvador, Guatemala, and Honduras**

Sexual and gender-based violence, including sexual violence, domestic violence, human trafficking, femicide, and violence against LGBTI people, permeates the lives of women and children in El Salvador, Honduras, and Guatemala, disproportionately affecting girls and young women. These forms of violence have deep roots in “patriarchal attitudes and a machista culture,” as well as structural forms of inequality that marginalize women, girls, and LGBTI people, and justify discrimination and violence against them. Afro-descendant and indigenous girls suffer doubly, in addition to gender-based violence and discrimination, they endure widespread discrimination and social, political, and economic exclusion based on race and ethnicity.

While SGBV affects women, children, and LGBTI people throughout El Salvador, Honduras, and Guatemala, those who live in gang-controlled areas experience widespread and extremely brutal forms of gender-based violence. Gang presence also limits access to justice for those affected by violence by creating additional barriers to reporting, investigation, and prosecution, and further entrenching impunity—heightening the need for refugee protection for its victims.

### Gangs use SGBV as a strategy of control

**Lydia is a study participant who grew up in a gang-dominated area of a small city in Honduras. When she was 14 years old, gang members abducted her, took her to an abandoned property, and raped her. Lydia escaped and told her mother; she called the police. Lydia identified the men, and they were briefly sent to jail. Lydia became pregnant as a result of the rape, and while she was pregnant the men who raped her were released from jail and threatened to kill her. Lydia and her mother relocated within Honduras, but the gang members followed them and continued to threaten Lydia. Lydia was forced to flee to the U.S. to save her life.**

**Lorena is a study participant from Guatemala City. When she was 8 years old her family relocated to a small rural town in Guatemala to escape gang violence, only to confront it again in their new town. When Lorena was in middle school, a neighbor who was a gang member began to express interest in her. When she refused to become his girlfriend he began stalking and threatening her. During her walk home from school one day, the same gang member and his friend took 14-year-old Lorena by force to an isolated area and raped her. Lorena changed schools to avoid the gang member, but he continued to follow her and repeatedly threatened to rape her again. She eventually fled to the U.S. to escape further sexual violence.**

As gangs have increased their control in El Salvador, Honduras, and Guatemala over the past several years,
they have systematically used sexual violence as a principal tactic for establishing and maintaining dominance over the communities and territories in which they operate, similar to violent tactics used in other contexts of armed conflict. Girls living in gang-controlled neighborhoods receive clear messages that they and their bodies belong to the gang, and that gang members have power to exercise sexual violence with complete impunity. Gang members have raped and tortured girls and left their mutilated and dismembered bodies in public places to demonstrate their dominance of the area and instill fear in the community.

Girls who participated in this study reported suffering myriad forms of SGBV by gang members, as well as ongoing threats and harassment. Their reports are consistent with the growing body of research cited throughout this report that documents the prevalence of SGBV by gangs in El Salvador, Honduras, and Guatemala. Gangs kidnap, rape, or otherwise sexually assault, harass, and traffic girls, and force them into situations of sexual and domestic slavery.

Teenage girls are the most frequent targets of kidnapping and rape by gangs, but girls as young as eight and nine have been victims of sexual violence. In some cases, boys have been targeted for sexual violence and torture by gang members.

Maria is a 16-year-old study participant from El Salvador. Gang members began to threaten Maria with sexual violence when her family refused to pay an extortion fee to the gang. Maria attempted to flee the country, but was stopped at the border by gang members who kidnapped her and took her to an abandoned house. There, Maria was drugged and continuously raped by gang members. She witnessed gang members bring other women and girls into the house and rape them. After three months in captivity, Maria managed to escape and flee to Mexico for safety.

The territorial dominance of gangs in many parts of El Salvador, Honduras, and Guatemala has also given rise to a specific form of violence, whose victims are referred to as “novias de pandillas” or “jainas” (gang members).
Gang members force or coerce these girls and young women into a sexual relationship. In many cases a gang member approaches a girl and tells her that she will become his girlfriend, and if the girl refuses, the gang member threatens to sexually assault her or to harm or kill members of her family. In other cases girls feel compelled to enter into a relationship with a gang member to gain protection from sexual violence by other gang members, or to escape sexual or physical violence in the home. 29

A report by the Salvadoran nongovernmental organization (NGO) Organization of Salvadoran Women for Peace (ORMUSA) cites a statement from a Salvadoran police officer explaining the dynamics of violence and coercion that women and girls experience:

“They consider that it is the gang members, the men, who decide which woman will be their partner or one of their partners. As men advance in the criminal structure [of the gang], they have the right to have more and more women... And this woman, who is the partner of a gang member, it’s not her who decides if she wants to be or not, the male gang members even have the right to decide that they no longer like a woman and they are no longer interested in her and she has to be passed to another gang member, or she has to go to a prison for an ‘intimate visit’ to have sexual relations with a certain gang member who she doesn’t even know. If she refuses, we have had many cases in which women have been killed for not agreeing, for example, to go to a prison [to have forced sexual relations with a gang member].” 30

As the “novia” or “jaina” of a gang member, girls often endure physical and sexual violence and may be obligated to perform work for the gang. 31 These girls are considered the property of that gang member, and if they are seen interacting with other men they can be killed by the gang for treason. 32 Regardless of how a girl ends up in such a relationship, once in it she is generally not permitted to leave, and any presumed lack of loyalty to the boyfriend or the gang can be punished with violence or death. 33 Even when a gang member is in prison, other gang members monitor the movements of his girlfriend or wife, and any behavior considered inappropriate can be punished with violence. 34 In some cases, gangs target girls to become the “girlfriend” of an incarcerated gang member. Gang members take these girls to the jail regularly, where they are expected to have sexual relations with the imprisoned gang member and to smuggle in contraband such as cell phones. 35

Families of girls chosen to be girlfriends of gang members often feel powerless to protect them because gangs threaten violence against the entire family if they resist. In one case a gang leader ordered the father of a young girl to send his daughter to be the gang member’s “woman.” The father initially refused, but then acceded when the gang leader threatened to begin killing members of his family. 36 In some cases parents have sold their daughters into relationships with gang members in exchange for financial compensation by the gang. 37

Forced recruitment of girls into sexual relationships with gang members that they are not able to leave constitutes sexual servitude and a contemporary form of slavery. The United Nations Special Rapporteur on Contemporary Forms of Slavery in a 2016 report on El Salvador reported on slavery-like practices in the context of gang violence, including “forcing young women and girls to become gang members’ sexual partners.” And that, “Failure to comply is met with severe reprisals, including homicides of the girl or woman’s entire family or threats of such violence,” as well as incidents in which gang members had “physically invaded the homes of women, evicted or killed male members of the household, and forced the women to work in domestic and sexual servitude.” 38

Gangs also traffic and sexually exploit girls. Government and civil society groups report cases in which gangs kidnap girls and take them to jails or brothels and force them to have sex with individuals in exchange for payment to the gang. 39 Gangs sometimes recruit these victims from secondary schools under their control. 40

Gangs are also involved in international human trafficking operations. Refuge for Children (El Refugio de la Niñez), a leading Guatemalan children’s rights organization, provided assistance to two Salvadoran girls, ages 14 and 15, who were brought to Guatemala
by a human trafficker who promised them work in a restaurant. When they arrived in Guatemala, the girls were taken to a high security prison, where they were raped by imprisoned gang members in exchange for payment to the gang.41 The full extent of involvement of gangs in human trafficking and commercial sexual exploitation of children and adolescents is unknown and requires further investigation.

Gangs often target LGBTI people based on their actual or perceived gender identity or sexual orientation, subjecting them to physical and sexual violence as well as extortion and forced labor.42 Some gangs in El Salvador have reportedly required members to attack LGBTI people as part of their initiation.43 These cases are extremely difficult to document. LGBTI people in El Salvador, Honduras, and Guatemala rarely report abuse or exploitation to authorities, due to abuse and discrimination by government authorities directed at LGBTI communities, as well as widespread discrimination and stigma against them.44

These forms of SGBV, and the reasons gangs employ them—to control, exploit, and subjugate girls and women; to control territory, gain power, and suppress resistance; to target or harm families; to harm LGBTI individuals; to extract free labor and services from vulnerable groups—can form the basis of claims for refugee protection for victims whose states fail to protect them under the internationally (and nearly universally) accepted refugee definition set out in the United Nations Convention relating to the Status of Refugees.45

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**Devastating Impact of SGBV on Migrant Children**

Migrant children who are survivors of SGBV can experience:

- Pregnancy as a result of sexual violence
- Sexually transmitted infections
- Post-traumatic stress disorder, depression, and anxiety
- Self harm and suicidal thoughts
- Significant educational losses due to withdrawal from school

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**Nowhere to Turn: How Gang Violence Further Deepens Impunity for SGBV**

**Generalized impunity for SGBV**

Despite the existence of laws and specialized judicial institutions dedicated to addressing SGBV in El Salvador, Honduras, and Guatemala, impunity continues to be the norm. The vast majority of SGBV-related crimes, including domestic and sexual violence, go unreported. Those victims who do report face a judicial system that lacks both the capacity and the will to investigate and prosecute their cases effectively and to guarantee due process. According to the most recent available statistics, impunity rates for violence against women and girls in El Salvador, Honduras, and Guatemala are at, or over 95 percent.46 In all three countries, violence against LGBTI people is rarely investigated or prosecuted, and the vast majority of cases end in impunity.

High impunity rates result from multiple factors. Very few victims report SGBV-related crimes, due to the normalization of violence against women and girls, widespread lack of trust in authorities, and fear of retribution by the abuser. When SGBV is reported, state institutions often fail to effectively investigate and prosecute cases, due to lack of training, insufficient
resources to carry out an investigation or prosecution, and sometimes the intentional mishandling of cases by police, prosecutors, and judges.\textsuperscript{47} In all three countries, judicial processes tend to be slow, burdensome, and traumatic, and victims generally do not have access to adequate information and support services.

Additionally, governments typically do not effectively protect victims from further violence and retaliation by their abusers during the judicial process, leading many survivors in all three countries to abandon or withdraw their cases before resolution.\textsuperscript{48}

Within this context of general impunity for SGBV, victims of violence perpetrated by gang members and victims who live in gang-dominated areas face additional obstacles to reporting violence and seeking protection and justice.

\textit{Fear of retribution by gangs creates an additional barrier to reporting SGBV}

\textbf{Nancy} is a study participant from El Salvador. When she was 12 years old, gang members raped and murdered her sister Angela as punishment for her refusal to carry drugs and collect extortion money for the gang. Angela’s boyfriend, a gang member who was in jail at the time, ordered her murder. Although Nancy’s family knew who was responsible for Angela’s death, they did not tell the police because they feared being killed by the gang, often the consequence for people who report gang crimes. An elderly neighbor had recently witnessed a murder by gang members and reported it to police; her body was found a few days later. A few years after this, Nancy and her boyfriend were both shot by gang members after her boyfriend refused to pay extortion fees. Nancy was injured, and her boyfriend was killed. Nancy was too afraid to inform the police, fearing retaliation by the gang. Even so, the gang believed Nancy had “snitched” on them to the police and began threatening her, forcing her to flee to the U.S for safety.

Gangs exercise strict control and constant surveillance over the communities in which they operate, and in many cases impose punishing “rules of conduct” that prohibit residents from talking to the police or other authorities, and violently harm those who do not comply.\textsuperscript{49} Vigilant gang surveillance and these rules of conduct prevent victims from reporting SGBV, whether the violence is committed by gang members or by non-gang-affiliated husbands, partners, boyfriends, or other family members.

Silvia Juárez, of the Salvadoran Women’s Rights NGO ORMUSA and an expert on SGBV, explains how gang presence prevents women and girls from reporting violence: “There are new police units to assist victims of gender-based violence, but what happens? Women tell us that these services may appear to be very important, very helpful, but if a man is violent to his partner, that woman cannot call the police because gangs in their communities will see her as a traitor, as an informant. They [victims of gender-based violence] are made even more vulnerable by reporting, and may even be killed.”\textsuperscript{50}

In Honduras, young women murdered by gangs have been found with stones in their mouths, indicating that they were killed for talking to the police or for talking to family or friends about gang activity. These acts of violence send a clear message to other women and girls in the community—reporting any crime to the police will place them in grave danger.\textsuperscript{51} Even when women or girls are killed by gang members, in some cases their families do not report the crime for fear of retaliation. Rather, the entire family flees their neighborhood or the country, sometimes leaving in the middle of the night to avoid attention.\textsuperscript{52}

Police corruption and involvement in gang activities creates an additional layer of risk in reporting violence and other criminal activity. In some cases, police, prosecutors, and other authorities are involved in, or complicit with, gang activity and share information with gangs when a crime is reported, making the victim vulnerable to retaliation.\textsuperscript{53} Police have been suspected of colluding with gangs in perpetrating violence against LGBTI people, further eroding the confidence of LGBTI communities that authorities will protect them.\textsuperscript{54}
Marta, a 16-year-old girl from El Salvador, was targeted by a gang member who wanted her to become his “woman,” and told her that if she refused she would, “suffer the consequences.” Marta explained why she and her family did not report the threats: “We did not call the police to report what happened to me because you cannot trust the police. Sometimes the same police officers are part of or have an agreement with the gang members.”

Police corruption also prevented Patricia, a study participant from El Salvador, from reporting gang violence.

At age 12, Patricia moved in with a man 20 years her senior to escape abuse in her home. By the time Patricia realized that her boyfriend was the leader of a local gang, she was trapped in an abusive relationship. While the physical and sexual abuse that Patricia suffered became increasingly severe, she knew she could not report it to the police because she had seen local police officers at her boyfriend’s house, selling guns to her boyfriend and other gang members. Without options for protection, Patricia fled to the U.S. with her young child.

Police often use repressive and violent tactics in gang-controlled urban neighborhoods, which further discourage victims from reporting SGBV to police. According to Juárez of ORMUSA, “If a woman sees the police come into her neighborhood and carry out raids, kick in the doors, and violently round up all the teenage boys in the community, what perception will she have of the police? Will she go to the police to report?”

Fear of retaliation by gang members combined with lack of trust in the police mean that women and girls in gang-controlled territories rarely seek state protection from SGBV. Government agencies interviewed for this report confirmed the challenges that victims encounter in reporting SGBV by gangs or in gang-controlled areas, citing that while they know these forms of violence are extremely common, their agencies receive few—if any—reports.

Widespread underreporting of gang-related SGBV results in a lack of reliable statistics on these forms of violence. Additionally, the governments of El Salvador, Honduras, and Guatemala do not have effective systems for tracking cases of SGBV or other forms of violence in which the perpetrator is involved in a gang or organized crime. These factors contribute to challenges in determining the extent and impact of gang-related SGBV.

Barriers to investigation and prosecution of SGBV cases involving gangs

Survivors of SGBV who report these crimes encounter a barrage of obstacles within the judicial system—from lack of training of government officials on SGBV, to insufficient resources, burdensome processes, and lack of protection after making a report. In addition to these obstacles, survivors of SGBV perpetrated by gangs or who live in a gang-controlled area are often deprived of justice specifically because of the involvement of a gang in these cases.

The direct and indirect involvement of government authorities in the activities of gangs and other criminal groups undermines effective investigation and prosecution of SGBV. While corruption exists throughout El Salvador, Honduras, and Guatemala, it is especially prevalent in rural areas where police and judicial officials have close contact with gangs and narco-trafficking groups, increasing the likelihood of impunity for violence by these groups. Leaders of gangs and other organized criminal groups, as well as church and local government leaders, use their influence to ensure that they will not be held responsible for their crimes, and in many cases continue to commit violence. There is often an “unofficial agreement” that crimes committed by members of these groups will not be investigated or prosecuted.

Government officials, including police, prosecutors, and judges in El Salvador, Honduras, and Guatemala frequently assume that women and girls targeted by gangs or from gang-controlled areas have connections with gangs and discriminate against them, refusing to accept their reports, or publicly questioning the credibility of their accounts. In one case a woman in El Salvador attempted to report a rape by a perpetrator.
affiliated with organized crime. The police intimidated and threatened her to discourage her from making the report.\textsuperscript{58} When young women from marginal urban areas are killed, state officials and the media often criminalize the victim, claiming that she was gang-involved. This discredits the victim, is used to justify a cursory investigation, and in many cases results in a gender-motivated murder being classified as “gang conflict” rather than femicide.\textsuperscript{59}

Lack of protection and services for victims of gang-related SGBV

"There are no viable options in this country for victims of gang violence. If you report, the gang will come after you, and the state can’t protect you. Even if the gang member goes to jail, there is a network in place to harm you." – Police officer, El Salvador\textsuperscript{60}

Judges, prosecutors, and other officials often fail to recognize or take seriously the danger victims and witnesses of SGBV face during the judicial process, and do not put in place adequate protection measures. When judges issue protection orders, including restraining orders, they lack capacity to monitor and enforce compliance.\textsuperscript{61} For example, a prosecutor in the Public Prosecutor’s Office in Honduras expressed concern that police were unable to enter certain gang-controlled neighborhoods to deliver restraining orders or orders to appear in court to perpetrators of domestic violence, forcing victims to either drop their case or deliver the documents to the abuser themselves.\textsuperscript{62} Lack of protection leaves SGBV survivors who seek justice and their families vulnerable to intimidation and violent retaliation by gang members.\textsuperscript{63}

While witness protection programs exist in all three countries, they are underfunded and lack capacity to provide protection in cases involving gangs or organized crime.\textsuperscript{64} Programs provide protection to only the victim/witness in most cases, leaving the victim’s family members vulnerable to retribution by gangs.\textsuperscript{65} Women and girls receiving state “protection” may suffer further abuse by authorities. For example, in El Salvador, women and girls who have entered the state witness protection program have reported that security guards charged with protecting them have sexually harassed them, offering them improved living conditions in exchange for sexual favors, and in at least one case attempted to sexually assault a woman under their protection.\textsuperscript{66} State-imposed protection mechanisms generally remain in force only during the course of an active judicial procedure, although protection needs persist, and may even be greater after resolution.\textsuperscript{67} Our interviews with girls who were targets of gang-related SGBV indicate that incarcerated gang members continue to monitor and control victims,\textsuperscript{68} meaning that victims and witnesses need ongoing protection after a case has been closed, regardless of the outcome.

Women and children fleeing gang-related SGBV also face a lack of options for safe shelter. El Salvador has just one government-run domestic violence shelter, and it can accommodate only 35 women and children.\textsuperscript{69} Tegucigalpa, the capital city of Honduras, has no government-run domestic violence shelters, and only one NGO-run shelter.\textsuperscript{70} Guatemala has no government-administered shelters for women fleeing domestic violence, and the civil society shelters that provide this service have very limited capacity.\textsuperscript{71}

Many of the government and civil society-run shelters that exist have sub-standard living and safety conditions, and most impose criteria related to age, gender, and family size that make it impossible for families to stay together when seeking safety (for example, some shelters do not accept women with several children).\textsuperscript{72} Shelters also lack the capacity to ensure the safety of victims in cases in which the perpetrator has ties to gangs or organized crime, and in some cases explicitly ban victims of abuse by gang members.\textsuperscript{73} In Honduras, for example, some civil society-run shelters have regulations that prohibit women or families who have ties to gangs. According to a prosecutor in the Public Prosecutor’s Office in Honduras, these policies reflect the inability of most organizations to provide security to the victim and other shelter residents in cases where a threat is posed by a gang member, as well as the widespread stigma and discrimination against women from gang-controlled areas, who in many cases are criminalized and blamed for the violence perpetuated against them.\textsuperscript{74}
The Guatemalan NGO Refuge for Children (El Refugio de la Niñez) is one of the few organizations that provide shelter and other services to children fleeing gang violence. El Refugio reports that in cases in which they have sheltered girls who are victims of gang-related sexual violence, gang members have discovered their whereabouts and attempted to force them to leave the shelter by threatening shelter staff, and in one case firing a gun at the doors of a shelter.75

The Link between Gang-related SGBV and Forced Migration

“When gangs are involved, victims of domestic violence don’t report, they leave.” –Police officer, El Salvador76

The above quote rings true not only for domestic violence, but for all forms of SGBV. Survivors of SGBV by gangs endure a network of gang surveillance and control that they cannot escape within the borders of their country, and from which their states do not protect them. Survivors of SGBV often have no choice but to flee their countries, seeking safety in Mexico or the United States. They often have legitimate claims for refugee protection under international, Mexican, and U.S. refugee law.

Many girls and young women migrate after being threatened with sexual violence by a gang member. Several of the girls interviewed for this study had been sexually harassed by gangs in their neighborhoods, or approached by gang members who expressed interest in them and asked them to become their “girlfriends.” They reported having friends, cousins, classmates, and siblings who had been victims of sexual violence perpetuated by gangs, including kidnapping, rape, and in some cases gender-motivated killings, and they all understood the violent consequences for refusing the advances of a gang member. When a girl receives attention from a gang member, she and her family often decide that it is not safe for her to leave the house, and she stops attending school, church, and other activities. Recognizing that even these forms of isolation cannot fully protect girls from violence, many families feel they have no choice but to send their daughters out of the country to save their lives.

In some cases gang members threaten sexual violence against girls as a reprisal for a family member having rebuffed or crossed the gang in some way, such as by refusing to pay extortion. In these cases, the threat of violence is directed at the entire family, and if the girl flees, another family member becomes the target. Therefore, it is increasingly common for entire families to migrate or relocate internally in the face of the threat of sexual and gender-based violence.77

Existing Efforts to Prevent and Address Gang-related SGBV

El Salvador, Honduras, and Guatemala have laws in place that criminalize SGBV and impose penalties for perpetrators, and also define and sanction the crime of femicide, or the gender-motivated killing of a woman or girl. All three countries have also created specialized entities, including special police units, prosecutors, and courts to handle SGBV cases and provide support to survivors. El Salvador and Honduras have enacted legislation that mandates harsher penalties for hate-based crimes motivated by gender identity, and sexual orientation, among other characteristics.78 The Honduran penal code also criminalizes discrimination and inciting discrimination based on gender, gender identity, and sexual orientation, among other characteristics.79 Honduras created a specialized unit to prosecute hate-based crimes.80 While these efforts represent important first steps toward addressing SGBV, much work remains to be done. Laws are far from fully implemented and special units and programs lack funding and often limit coverage to urban centers.81 In addition to these shortcomings, existing laws and specialized services do not effectively address the particular vulnerabilities of survivors of SGBV who live in gang-controlled areas or in cases where perpetrators have gang affiliations.

The governments of El Salvador, Honduras, and Guatemala have recently shown some progress in implementing gang-violence prevention strategies in partnership with civil society and international partners.
El Salvador’s “Plan El Salvador Seguro,” initiated in 2015, includes violence prevention components aimed at creating educational and work opportunities for youth, reclaiming public space, and providing support services to families in areas affected by gang violence, in addition to security and attention to victims of crime.82 As part of the national plan, the Salvadoran government is working with UNICEF and the international development organization Plan International to implement the program “Hagamos Nuestra la Escuela/This School is Ours.” The program aims to address the high level of gang violence in El Salvador’s schools, and provides psychological support to students within schools, as well as vocational training and flexible programming to reintegrate students who have left school due to violence.83 Guatemala’s “Escuelas Seguras/Secure Schools” program also seeks to address violence in schools,84 and a recent campaign by the Guatemalan Education Ministry and UNICEF provides students with an app that allows them to report violence and harassment in schools to authorities.85 In Honduras, the recently launched “Regional Project for the Prevention of Violence Against Children, Adolescents, and Youth” includes a focus on violence prevention through the reinsertion of at-risk children and youth into the educational system.86

This increased focus by Central American governments on the prevention of violence against children and youth, including gang-based violence, marks progress. Nonetheless, civil society representatives have expressed concern that government responses to violence continue to be primarily reactive rather than preventative, and that prevention programming has not received adequate funding to produce intended results.87 According to Judith Erazo of the Guatemalan organization Community Research and Psychosocial Action and an expert on violence against women, “There has been a focus on the judicial system as the only response to violence against women and children. There isn’t a real public policy for violence prevention to combat the widespread sexism and racism that are at the roots of these forms of violence.”88 With little prevention focus, responses to SGBV serve as a Band-Aid rather than a solution. Additionally, Central American governments have pursued hardline security strategies to fight gang violence and crime that have been accompanied by abuses and in some cases extrajudicial killings by police.89 This approach has undermined violence prevention efforts by deepening mistrust in government institutions and discouraging citizens from communicating or cooperating with police.90

In support of efforts by Central American governments to address root causes of migration, in Fiscal Year (FY) 2016, the U.S. government allocated nearly $750 million in aid for Central America, a significant increase from the $295 million in aid allocated in FY 2015. The FY 2016 funding aims to decrease child migration from the region through investment in economic development, good governance, and security, and signals an increased commitment on the part of the United States to address the root causes of migration from Central America.91 However, SGBV prevention, response, and reduction have not been explicitly included as benchmarks for U.S. assistance.

One example of violence-prevention efforts supported by U.S. foreign assistance is community-based violence prevention programming (or “place based” programming) funded by the United States Agency for International Development (USAID) in select communities in El Salvador, Guatemala, and Honduras with high levels of violent crime. International organizations and local civil society and religious organizations have implemented violence prevention programming, including community policing initiatives and mentorship and job training for youth. These programs have shown positive results in some communities.92 An independent evaluation reported significantly lower rates of violent crime and high perceptions of security by residents in communities with place-based programming as compared to residents of communities where only a traditional “iron first” approach to law enforcement was used.93 While such programs currently exist in a limited number of communities, they provide a valuable model for community-based approaches to violence prevention in the context of gang violence.
The U.S. government through USAID has also supported promising initiatives to address SGBV in Central America and provide assistance to victims. These include the creation of comprehensive victim service centers for survivors in El Salvador that provide legal assistance and medical and psychological services, as well as the creation of 24-hour courts in Guatemala to hear cases of violence against women. These courts also contain forensic labs equipped to carry out specialized analysis of evidence in such cases. There is an urgent need to scale up these efforts and increase their geographical coverage and capacity to ensure that all victims have access to these essential services.

Laws criminalizing SGBV and femicide, along with violence prevention efforts, indicate significant advances by the governments of El Salvador, Honduras, and Guatemala in addressing and preventing SGBV. However, meaningful progress can only be made through further investment by these Central American governments and long-term targeted aid from the U.S. government to prevent and respond to sexual and gender-based violence, including gang-related SGBV, and its role in driving forced displacement from the region.

Recommendations

Governments of El Salvador, Honduras, and Guatemala

- Establish and strengthen internal government entities charged with investigating and prosecuting local-level corruption and police involvement with gangs and organized crime. Create, expand, and strengthen international monitoring entities, such as the International Commission Against Corruption in Guatemala (CICIG) and the Support Mission Against Corruption and Impunity in Honduras (MACCIH), to ensure accountability for corruption at all levels. Prosecute government authorities found guilty of colluding with gangs or organized crime.

- Increase by 50 percent the budget for investigation of sexual and gender-based violence crimes, including funds to purchase equipment required for gathering and preserving forensic evidence. Hire and train experts in the collection and analysis of forensic evidence and ensure that this evidence is handled according to protocols in place.

- Increase funding, personnel, and equipment dedicated to specialized units focused on gender-based violence within police, public prosecutor’s offices, and courts, to provide protection, adjudicate cases, and reduce the burden on victims to follow up on their cases. Expand these specialized units beyond capital cities. Provide regular training for personnel in these units to increase awareness of laws related to SGBV, increase sensitivity and build technical capacity for identifying and assisting a variety of SGBV victims, including children, LGBTI people, and indigenous people, as well as victims of SGBV in the gang context.

- Expand and institutionalize training and oversight for regular police, prosecutors, and judges to ensure sensitivity and the application of proper procedures and due process in cases of gender-based violence. Training should be ongoing and mandatory and should build capacity to work with survivors of trauma, as
well as increase awareness of protection needs related to SGBV in the gang context.

- Strengthen civil police forces and train them in community policing strategies to build trust between police and communities and eliminate the use of repressive, violent tactics by police.

- Devote funding to the monitoring and enforcement of legal protection mechanisms (such as restraining orders) for women and girls who are victims of domestic violence and other gender-based crimes. Train judges in identifying risk factors for sexual and gender-based violence and issuing appropriate protective orders. Develop capacity and procedures to ensure that individuals granted protection orders are provided with pro-active forms of protection, not only assistance in response to re-victimization/violation of the orders. Do this by:
  - ensuring coordination between judges issuing orders and local police
  - creating a specialized unit within the public prosecutor’s office to monitor and enforce protective orders
  - dedicating staff to develop mechanisms to monitor enforcement of protective orders in the context of gang violence and control.

- Strengthen victim and witness protection programs by expanding them to protect family members, and offering victims protection beyond the sentencing phase if there is a continued threat. Create witness protection programs and shelters that have capacity to provide security to victims and families in cases involving gangs, including mechanisms to provide protection outside of the country if necessary.

- Invest funding in the creation and expansion of government programs and services for comprehensive support for women, children, LGBTI people, and indigenous people who are victims of violence. Attention should include legal, psychological, and health care services, as well as basic needs such as shelter. Create additional sites and ambulatory services to make services accessible to women and children living outside major cities. Governments, in collaboration with civil society, should create a network of shelters in each country and throughout the region for victims of sexual and gender-based violence. Ensure at least some specialized shelters have the capacity to safely transport and house victims in cases where perpetrators have affiliations with gangs or other organized criminal groups.

- Implement comprehensive public education efforts to de-normalize violence against women, girls, and LGBTI people, with a focus on structural inequalities underlying these forms of violence. These efforts should include on-going education in primary and secondary schools, as well as public and community-based campaigns. Ensure that these programs and initiatives are adequately and sustainably funded.

- Invest funding in community-based violence prevention programming, including sexual and gender-based violence prevention programming and gang violence prevention and intervention programming, that is tailored to the needs and dynamics of specific communities and developed with substantive input from community members. Gang violence prevention and intervention strategies should be modeled after successful evidence-based programming and should include school-based prevention programs, programs
to strengthen families, and community policing. Programming should provide meaningful alternatives to gang involvement—such as vocational training and employment opportunities—and should support (former) gang member reinsertion into communities, families, and the workforce. Community members and youth should be involved in a substantive way in devising solutions.

- Create and implement a system for the collection of statistics on SGBV-related crime, disaggregated by age and gender of victims, to be used consistently across government agencies. This system should be used to provide more accurate and current information about the extent and forms of violence, to guide policy decisions, and to monitor progress. Make statistics available to the public while protecting the confidentiality of survivors.

**Government of the United States**

- U.S. funding to the region must address the root causes of migration and include support to governments to combat the epidemic of violence generated by gangs, narco-trafficking, and other criminal elements, and to fight corruption.

- To meaningfully address the root causes of migration from Central America, the United States must commit to substantial and long term funding for El Salvador, Honduras, and Guatemala. Funding should be higher than the FY 2016 funding level of nearly $750 million, and at a minimum must be equal to this funding level.

- SGBV prevention and response should be a priority for foreign assistance from all U.S. agencies to El Salvador, Guatemala, and Honduras. Funding should support SGBV prevention efforts, increase capacity within the police and judicial systems to investigate and prosecute SGBV-related crimes, and increase services for SGBV survivors.

- Gang violence prevention and intervention should be a priority for foreign assistance and should support successful evidence-based models that include school-based prevention, strengthening of families, involvement of community members in devising solutions, development of community policing, providing meaningful alternatives to gang involvement, and support to (former) gang members seeking reintegration into families, communities, and the workforce.

- Scale up community-based programming focused on reduction of gang violence (including SGBV) through creation of meaningful educational and employment alternatives for youth who are at risk of violence and gang involvement, as well as for youth seeking to leave gangs, while providing a range of services, such as counseling, for participating youth. Programming should include a community education component on gender norms, discrimination, and SGBV.

- U.S. funding should require as a condition a process of meaningful consultation by civil society organizations with expertise in gender, SGBV, gangs, and at-risk youth in designing programming and in ensuring appropriate monitoring, transparency, and accountability mechanisms. In consultation with these organizations, the United States should set benchmarks for the progressive reduction of SGBV and should
condition release of foreign aid on reaching these benchmarks.

- Civil society organizations that receive U.S. funding directly or indirectly should be required to train staff on SGBV and LGBTI issues, and to develop policies of inclusion and non-discrimination for programs and services.

- All U.S. funding to Central America should include human rights conditions that require countries to end the use of violent and repressive policing techniques, as well as the involvement of the military in law enforcement. All assistance to police forces should be conditioned on demonstrated respect for human rights, including non-discrimination in policing, and respect for human rights defenders (including women’s rights).

- The United States should develop clear metrics to evaluate the impact of all programs funded with U.S. assistance, to ensure that funding is used in the most effective and efficient way possible. The results of all evaluations should be made available to the public.
Endnotes

1 A total of 48 interviews were conducted by KIND staff between the 2nd and 6th of November, 2015 in El Salvador; between the 8th and 19th of February, 2016 in Honduras; and between the 3rd and the 28th of May, and 19th and 24th of September, 2016. An additional ten interviews were conducted by phone or Skype.


11 The term victims and survivor are used interchangeably in this report to refer to a person who has experienced sexual and gender-based violence, in recognition of the different ways in which people who have experienced sexual and gender-based violence identify.


18 KIND interview, Claudia Hernández, Executive Director, Foundation for Survivors (Fundación Sobrevivientes), Guatemala City, September 20, 2016 [Hereafter “C. Hernández Interview”]; Boerman Interview.

19 Boerman Interview; Arce, 2014.

20 Arce, 2014.

21 Delgado and Vargas Méndez, 2016, p.35.

22 Boerman Interview.

23 Delgado and Vargas Méndez, 2016, p.22.


26 KIND Interview, Silvia Juárez, Program Director, Organization of Salvadoran Women for Peace (ORMUSA), Skype, June 1 2016 [Hereafter “Juárez Interview”]; C. Hernández Interview.

27 Arce, 2014.

28 The civil society representative asked that the organization remain anonymous to protect the child and his family.

29 KIND interview, Noah Bullock, Executive Director, Foundation Cristosal, Washington, D.C., October 15, 2016 [Hereafter “Bullock Interview”].

30 Quote from an interview with Harold Soto, Subdirector General of the National Civil Police (PNC), in El Salvador, cited in Delgado and Vargas Méndez, 2016, p. 32.


33 Bullock Interview.


36 Delgado and Vargas Méndez, 2016, p.33.

37 Delgado and Vargas Méndez, 2016, p.34.


39 KIND interview, Representative of the Secretary-General Against Sexual Violence, Exploitation, and Human Trafficking in Guatemala (SVET), Guatemala City, September 23, 2016 [Hereafter “SVET Interview”]; Boerman and Knapp, 2017, p. 10, 11.

40 Delgado and Vargas Méndez, 2016, p.31.

41 Written communication, Leonel Dubón, Executive Director, Refuge for Children (El Refugio de la Niñez), Guatemala, February 17, 2017 [Hereafter “Dubón Written Communication”].


27 KIND Interview, staff members and board of directors, Association of Women for Dignity and Life (Las Dignas), San Salvador, November 6, 2015 [Hereafter “Las Dignas Interview”]; KIND Interview, Regina Fonseca, Program Coordinator, Center for Women’s Rights (CDM), February 18, 2016 [Hereafter “Fonseca Interview”]; KIND Interview, Miriam Domínguez Sebastian, Ombudsperson for Women, Office of the Ombudsperson for Human Rights (PDH) Guatemala City, September 22, 2016 [Hereafter “Domínguez Interview”].

28 KIND Interview, Judge with expertise in violence against women, Tegucigalpa, Honduras, February 15, 2016 [Hereafter “Judge Honduras Interview”]; KIND Interview, Prosecutor in the Public Prosecutor’s Office, Tegucigalpa, Honduras, February 18, 2016, [Hereafter “Prosecutor Honduras Interview”]; Elisa Portillo, Feminist Attorney, Latin American and Caribbean Committee for the Defense of Women’s Rights (CLADEM) and Women’s Movement, Guatemala City, Guatemala, May 24, 2016. [Hereafter “Portillo Interview”]. In Guatemala, since the creation of the 2009 Law Against Femicide, the Public Prosecutor has a responsibility to prosecute all cases of violence against women, regardless of whether the victim chooses to continue with the legal process. However, without the active participation of the victim in the investigation and prosecution it is very unlikely that a case will reach a sentence.

29 Juárez Interview; Bullock Interview.

30 Juárez Interview.

31 Fonseca Interview.

32 KIND interview, Carolina Sierra, Director, Forum of Women for Life (Foro de Mujeres por la Vida), San Pedro Sula, February 11, 2016.

33 Boerman Interview; The Advocates, 2016, p. 4.


35 Juárez Interview.

36 KIND Interview, Police Officer, National Civil Police (PNC), Guatemala City, May 24, 2016; KIND interview, Police Officer, National Civil Police (PNC), San Salvador, El Salvador, November 5, 2016 [Hereafter “PNC El Salvador Interview”]; SVET Interview.

37 Las Dignas Interview; C. Hernández Interview.


39 Portillo Interview.

40 PNC El Salvador Interview.


42 Prosecutor Honduras Interview.


44 Bullock Interview; Prosecutor Honduras Interview; C. Hernández Interview.

45 PNC El Salvador Interview; Prosecutor Honduras Interview; Bullock Interview.


47 PNC El Salvador Interview; Prosecutor Honduras Interview; Bullock Interview.

48 Imprisoned gang members monitor, control, and harm their targets through assistance from non-imprisoned gang members.


50 Center for Women’s Rights, 2013, p.32.

51 Dubón Written Communication.
The Salvadoran penal code mandates harsher sentences for hate-motivated murder, as well as the threat or attempt of murder, based on sexual orientation and gender identity and expression, among other factors. Salvadoran Penal Code, Chapter I, Article 129, Chapter II, Article 155. The Special Law for a Life Free of Violence for women (LEIV) defines the crime of femicide, or the hate-motivated murder of a woman, and establishes penalties for that crime. The Honduran penal code includes the crime of “femicide” in Article 118A and classifies as “aggravated” any crime motivated by hate based on sex, gender, race, ethnicity, sexual orientation, disability, and other factors in Title III, Chapter II, Article 32. The Honduran Congress is currently considering a revised penal code that includes femicide, or the gender-motivated killing of a woman, as an aggravated crime, but omits other aggravating factors. LGBTI rights groups in Honduras are urging Congress to revise the proposed code to maintain the existing categorization of hate-motivated crimes (Mendoza Interview).

Honduran Penal Code Articles 321, 321A.


Dominguez Interview; C. Hernández interview; Fonseca Interview; Las Dignas Interview


88 Erazo Interview.


90 Juárez Interview; Bullock Interview.


96 The International Commission Against Impunity in Guatemala (CICIG) and the Support Mission against Corruption and Impunity in Honduras (MACCIH) are national-levels bodies charged with investigating cases of corruption and strengthening government institutions to prevent and corruption.
Tab 14
HOME SWEET HOME?
HONDURAS, GUATEMALA AND EL SALVADOR’S ROLE IN A DEEPENING REFUGEE CRISIS
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HONDURAS, GUATEMALA AND EL SALVADOR’S ROLE IN A DEEPENING REFUGEE CRISIS
Amnesty International

As violence has worsened and poverty and inequality remain prevalent, the Central American governments of Honduras, Guatemala and El Salvador, also known as the Northern Triangle, are doubly failing to protect their citizens: socioeconomic conditions remain poor and an increasingly violent environment permeates every corner of their countries, which causes people to flee in record numbers, but governments are failing to provide protection to those who are deported back to the same dangerous climates from which they ran.

Amnesty International is undertaking a multi-year, transnational investigation into the various components of this regional crisis, including future research which will examine the dangers of asylum-seekers’, refugees’ and migrants’ journeys through Mexico and the failings of the regional response to the surge in refugee protection needs. Future investigation will particularly highlight how practices in Mexico and the US violate the principle of non-refoulement, which under international law forbids a State from returning a refugee to a country where they will face persecution or danger.

The United Nations High Commissioner for Refugees (UNHCR) has established that asylum-seekers from the Northern Triangle countries fall within a certain risk profile: those persecuted by a gang due to the gang’s perception that they do not comply with the gang’s authority; persons working or involved in activities susceptible to extortion; victims and witnesses of crimes committed by gangs or members of the security forces; children and youth from areas where gangs operate; women and girls in areas where gangs operate; and LGBTI people. UNHCR advises that all these groups may be in need of international protection under the 1951 Refugee Convention. Regional instruments such as the Cartagena Declaration clearly calls for refugee status for those persons fleeing generalized violence in their countries, such as those from Central America’s Northern Triangle.

To truly understand the regional dynamics of human mobility, Amnesty International chose to first investigate the conditions in which these people begin and often end their perilous journey - their countries of origin - and found that the governments of these countries are failing their citizens every step of the way.

The migration flow from Northern Triangle countries through Mexico to the United States is a decades-long phenomenon. But the last several years have seen the development of a new reality that pushes people to leave their homes; soaring violence has caused rising numbers of people to run north to save their lives. Despite this situation, impunity remains the norm for most crimes and access to justice is mere wishful thinking. Moreover, people in the Northern Triangle have also reason to fear that the authorities who are supposed to protect them are complicit in organized crime or are the perpetrators of abuses themselves. Citizens of Guatemala, El Salvador and Honduras fight a daily battle to survive amidst ubiquitous violence and fleeing their countries is often the only choice they have.

1. EXECUTIVE SUMMARY

As violence has worsened and poverty and inequality remain prevalent, the Central American governments of Honduras, Guatemala and El Salvador, also known as the Northern Triangle, are doubly failing to protect their citizens: socioeconomic conditions remain poor and an increasingly violent environment permeates every corner of their countries, which causes people to flee in record numbers, but governments are failing to provide protection to those who are deported back to the same dangerous climates from which they ran.

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The migration flow from Northern Triangle countries through Mexico to the United States is a decades-long phenomenon. But the last several years have seen the development of a new reality that pushes people to leave their homes; soaring violence has caused rising numbers of people to run north to save their lives. Despite this situation, impunity remains the norm for most crimes and access to justice is mere wishful thinking. Moreover, people in the Northern Triangle have also reason to fear that the authorities who are supposed to protect them are complicit in organized crime or are the perpetrators of abuses themselves. Citizens of Guatemala, El Salvador and Honduras fight a daily battle to survive amidst ubiquitous violence and fleeing their countries is often the only choice they have.
Amnesty International found that violence is a key expulsion factor in El Salvador and Honduras, where levels of violence and an increase in the amount of territory controlled by gangs affect people’s right to life, physical integrity, education and free movement. In both countries, women are increasingly suffering the impact of violence. In El Salvador, the female murder rate increased by 60% between 2008 and 2015, while in Honduras it rose by 37% in the same period. In the case of Guatemala, Amnesty International found that migration occurs due to multiple push factors often linked to historic high levels of inequality. Further research is necessary to analyse migration factors in Guatemala.

The total number of asylum applications, of deportees, and of apprehensions of unaccompanied children from the Northern Triangle countries, plus the lack of public policies to respond to the needs, result in large-scale gaps in protection and highlight the magnitude of the protection crisis. Deportations from Mexico to El Salvador, Guatemala and Honduras increased by 231%, 188% and 145% respectively between 2010 and 2015, representing an average increase of 179%. Heightened immigration enforcement on both Mexico's northern and southern borders means these numbers are not likely to drop anytime soon. In this context, Amnesty International found that no Northern Triangle government has a comprehensive, clearly articulated mechanism or protocol in place to address the protection needs of deportees, leaving many of those deported exposed to great danger. The governments of the Northern Triangle have invested resources in improving the reception centres for deportees. Despite this improvement, our research found that states’ efforts to protect their returned citizens appeared to end the moment they walked out the doors of the reception centres. In some of these countries, authorities relied on civil society organizations to fill the void and provide the most crucial services to follow up with deportees with protection needs.

National and local authorities responsible for migrants and deportees in Guatemala, Honduras and El Salvador interviewed by Amnesty International were unwilling to acknowledge the extent to which violence has changed migration and has become a push factor. Many of them made reference to the Plan of the Alliance for Prosperity, a development initiative financed by the US Government, as the main strategy to address root causes of migration. However, none of them could explain how this strategy would respond to the needs of at-risk deportees.

The Northern Triangle states have often sought to minimize the link between violence and forced migration, focusing instead on historic factors such as economic opportunities and family reunification. But skyrocketing asylum applications throughout the region indicate a very real shift in reasons to migrate. For instance, the number of asylum applications made around the world by applicants from El Salvador, Honduras and Guatemala increased by 597% between 2010 and 2015, according to UNHCR statistics. The desperate situation has been reflected in the new demographics of the people making the journey, who increasingly come from society’s most vulnerable groups and whose basic rights states have repeatedly failed to protect: women, young people, children (both traveling alone and in family units), and lesbian, gay, bisexual, transgender and intersex (LGBTI) people.

When tragedies befall many refugees, migrants and asylum seekers on their journeys the respective consulates and foreign relations ministries have been sluggish and indifferent in demanding justice and assistance for their families at home. Amnesty International found that the Northern Triangle States have no clear policy to assist or attend to the needs of relatives of migrants who have been subjected to grave human rights violations while making the journey through Mexico.

While the countries of transit and destination take steps to stem the migrant flow, the region’s crisis will not be solved until Northern Triangle country leaders take concrete action and confront the protection crisis at home.

KEY RECOMMENDATIONS

Northern Triangle States must acknowledge their responsibility in the protection crisis in the region and design and implement public policies and legal frameworks to provide protection for deportees, with particular attention to vulnerable groups such as children, indigenous people, women and LGBTI individuals.

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Honduras, Guatemala and El Salvador need to lend improved and continued assistance to the relatives of people who have been the victims of crimes or human rights violations during transit abroad. This includes more active advocacy on their behalf with foreign authorities, the development and strengthening of transnational justice mechanisms, keeping families informed of ongoing investigations and providing psychological assistance when necessary.

International cooperation, especially related to the Plan of the Alliance for Prosperity, should earmark part of these resources for programmes that respond to the needs of at-risk deportees. Economic aid for the countries of origin should be channelled to support the design and implementation of protection mechanisms for populations at risk before and after migration occurs.

Additional recommendations are set forth at the end of this report.

**METHODOLOGY**

In this report, Amnesty International documents the context of violence that has changed the face of regional migration and the situation for deportees in the Northern Triangle countries. The organization conducted five research trips to the three countries and Southern Mexico between March and July 2016, during which it visited reception centres for deportees, interviewed around 50 people who had been affected by violence and/or had migrated and been deported, met people working for civil society and religious organizations working on issues related to violence and migration, and spoke with government officials.

Amnesty International conducted more in-depth interviews with the people of the cases highlighted in this report and substantiated their accounts to the fullest extent possible with official documentation from government and intergovernmental agencies, including birth and death certificates, hospital records, photographs of victims and crime scenes, reports filed to the police and human rights commissions, asylum applications and notifications from national government and international refugee agencies, as well as news reports and additional documentation by civil society organizations. In some cases, it was impossible to obtain such documents, both because of the transitory lifestyles of people who migrate and people’s reluctance to file reports with authorities out of fear of reprisals. Similarly, many of the people whose stories feature in the report requested anonymity due to the great risk they and their families face in their home countries. The fluid nature of their migration plans and risk levels also mean that their living situations and locations can change rapidly, thus the status of each case is susceptible to change after the publication of this report, which represents the most current information available at the time of going to press.

Amnesty International sought and held meetings with various officials from the agencies working on migration in all three countries. In Honduras, the Undersecretary for Justice and Human Rights and the Office for Children, Adolescents and Families (DINAF) did not grant meetings despite several requests. Amnesty International met local officers of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) and several civil society organizations in each country as well as consular officials in Mexico. In addition, extensive desk research was carried out on statistics, studies and reports related to violence, migration, asylum and deportation.

**ACKNOWLEDGEMENTS**

Amnesty International would like to thank the following civil society organizations for their invaluable help: Casa Alianza; Comité de Familiares de Migrantes Desaparecidos del Centro de Honduras (COFAMICENH) and Comité de Familiares de Migrantes Desaparecidos del Progreso (COFAMIPRO) in Honduras; Comunicación y Capacitación a Mujeres Trans (COMCAVIS TRANS); Asociación Salvadoreña por los Derechos Humanos (ASDEHU); Grupo de Monitoreo Independiente (GMIES); Comité de Familiares de Migrantes Fallecidos y Desaparecidos in El Salvador; Pop No’j and Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP) in Guatemala; Centro de Derechos Humanos Fray Matías de Córdova; and Fundación para la Justicia y el Estado Democrático de Derecho in Mexico.

Amnesty International would also like to dedicate this work to all of the people whose personal experiences appear in the report and thank them for their incredible bravery and graciousness in the face of great danger and often great tragedy.
2.3 THE GENDER DIMENSION OF THE VIOLENCE

The pervasiveness of the violence in the Northern Triangle countries affects all of society, but it affects people differently according to their gender identity and/or their sexual orientation. While the vast majority of murder victims are young men, women and lesbian, gay, bisexual, transgender and intersex (LGBTI) people are also subjected to differentiated forms of violence.

VIOLENCE AGAINST WOMEN AND GIRLS

Though most of the countries of Central America have enacted specific legislation to protect the rights of women as instructed by the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, and by the Convention on the Elimination of Discrimination against Women, Amnesty International research shows that in practice, women in the Northern Triangle countries are routinely subjected to violence and the duty to investigate is routinely flouted.

In Honduras, the female murder rate jumped by 37% between 2008 and 2015, while in El Salvador it rose by 60% during the same period.\(^\text{18}\) According to one global study, a minority of these killings were committed by intimate partners in the private sphere.\(^\text{19}\) It is important to highlight that targeted violence against women and gender-based violence whether by an intimate partner or by gangs is potential grounds for international protection.

Sexual assault and aggression against women and girls by gang members in El Salvador has been reported by the press and civil society organizations, and there is great need for comprehensive studies on this alarming social problem.\(^\text{25}\) One of the issues faced in relation to data is that none of the Northern Triangle governments have specific mechanisms to collect data during criminal investigations to disaggregate statistics related to the killing of women and LGBTI people as a result of their gender identity and/or their sexual orientation. The information provided by local NGOs is also often not explicitly clear on whether the motive of the killings was based on gender and/or sexual orientation. The Committee on the Elimination of Discrimination against Women has not issued concluding remarks on any of the 3 countries in recent years.

Yet women and girls themselves have reported being targeted with gender-specific violence. According to UNHCR’s report Women on the Run, 64% of the 160 women from El Salvador, Guatemala Honduras and Mexico interviewed and seeking asylum in the United States described:

*Being targets of direct threats and attacks by members of criminal armed groups as at least one of the primary reasons for their flight... the women consistently stated that police and other state law enforcement authorities were not able to provide sufficient protection from the violence. More than*\(^\text{26}\)
two-thirds tried to find safety by fleeing elsewhere in their own country, but said this did not ultimately help. Sixty per cent of the women interviewed reported attacks, sexual assaults, rapes, or threats to the police or other authorities. All of those women said that they received inadequate protection or no protection at all. Forty per cent of the women interviewed for this study did not report harm to the police; they viewed the process of reporting to the authorities as futile.26

VIOLENCE AGAINST LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX (LGBTI) PEOPLE

LGBTI people are frequently targeted for abuse, intimidation and violence because of their sexual orientation and/or their gender identity. They not only rarely see justice but are often ignored, belittled or victimized by law enforcement officers. This violates their right to equal protection of the law without discrimination and to equal exercise and protection of all human rights.27

While government statistics of murders of LGBTI people are hard to come by, the Inter-American Commission on Human Rights (IACHR) has found that in this climate of extreme violence, marginalized groups like LGBTI people are often targeted for abuse.28 Transgender women, who because of patriarchal social norms are particularly stigmatized, are especially subjected to violence and extortion by gangs because they often face greater obstacles to access justice, due to discrimination. Local activists told Amnesty International that employment discrimination means transgender people often turn to sex work, which requires them to work late at night in environments and conditions that can expose them to higher risks of crime and violence. They also face harassment and intimidation by the police and authorities because of their gender identity and/or their sexual orientation and, when crimes occur, they face serious obstacles to access justice from law enforcement officials who discriminate against them.

The Salvadoran organization ASTRANS, which works to promote human rights for transgender people, said that of 42 LGBTI people murdered in 2015, 32 were transgender women, according to news reports.29 The Salvadoran Human Rights Ombudsman, David Morales, said that his office had investigated at least 14 murders of LGBTI people between 2009 and 2015 and five cases in the first two weeks alone of 2016. He said there had been little or no justice in any of the cases.30

For many LGBTI people who have experienced violence, the only option is to flee. Salvadoran transgender activist and director of the organization COMCAVIS TRANS, Karla Avelar, wrote in a blog published on Amnesty International’s website in July 2015 that her organization had documented the cases of 60 transgender women who had fled El Salvador after receiving direct threats and abuse in the 12 months prior.31 In the previous six months, she said COMCAVIS reported 13 murders and 13 attempted murders of transgender women in the country, none of which received justice. She said that law enforcement and security forces officers are often the worst offenders in terms of harassment against the transgender community. In June 2015, for example, Aldo Alexander Peña, a transgender man, was brutally beaten by the police.32 In early December 2015, UNHCR said that in 2015, 13% of the cases of refugees and asylum-seekers processed by the agency’s office in the city of Tapachula in southern Mexico were of LGBTI people.33
Patricia is a 32-year-old transgender woman from El Salvador, who was proud to have her own small business selling soda in her neighbourhood. Patricia’s business became endangered by the “rent” she was obliged to pay to local gangs, who wanted to charge her US$50 or US$100 a month, a sum she could almost never afford. Patricia began to receive threats from the gangs but never considered going to the authorities since police officers themselves had harassed her in the past, both because of her gender identity and issues in her home. She had twice filed reports about harassment by the police with the Human Rights Ombudsman’s office (PDDH) but never saw any results. In the first case, in June 2015, she reported to the PDDH that police officers with their faces covered had come to the home one morning at 3am. They asked for another brother who had not lived there for over three years, and then hit her with their guns and told her she had a month to leave the house. In the second report, in September 2015, she said a neighbour had alerted her that police officers had come looking for her at the same house twice in the previous week and they also looked for her at her work. Days after these incidents, she decided to leave for Mexico.

After being assaulted and robbed on the journey, Patricia said her asylum application in Mexico was denied on the grounds that 12 years earlier she had served a jail sentence on drug offences. She was deported back to El Salvador in April 2016 and said that she told the Salvadoran immigration officer that she had fled out of fear for her safety but that he had offered no response. A little over two weeks later, when she spoke with Amnesty International, she was planning to leave for Mexico again imminently. “I’m afraid that something will happen to me again and they will hurt me again... it’s impossible to live in this country anymore” Patricia said.
5. CONCLUSIONS AND RECOMMENDATIONS

North and Central America are facing the most acute crisis of people on the move that the region has seen in decades. Future research by Amnesty International will examine the dangers of the migrant journey through Mexico and the failings of the regional response to the surge in refugee protection needs. But an inherent part of the dilemma resides with the countries of origin, where the governments of the Northern Triangle (Guatemala, Honduras and El Salvador) are routinely failing in their obligations to protect the people under their jurisdiction when they flee to other countries due to violence and when they are then returned as deportees to the same unsafe conditions.

The gangs’ control of broad swaths of territory affects all of society and has different impacts on different groups, such as sexual violence against women and girls, specific targeting of LGBTI people and forced recruitment of children, especially boys. Unable to seek protection or justice from law enforcement and criminal justice systems that are both ineffective and often corrupt, citizens of these countries are fleeing their homes as the only way to escape violence.

As a new regional paradigm of immigration enforcement has taken shape, these countries now face an influx of returned deportees, many of whom are being sent back from other countries – mainly from Mexico and the United States – in violation of international law that protects them as refugees. UNHCR has indicated that asylum-seekers from the Northern Triangle countries fall within a certain risk profile: individuals or groups persecuted by a gang due to the gang’s perception that they do not comply with the gang’s authority; persons dedicated to specific economic activities highly susceptible to extortion; victims and witnesses of crimes committed by gangs or members of the security forces; children and youth from areas where gangs operate and control territory; women and girls in areas where gangs operate; and LGBTI people. Members of all these groups may be in need of international protection under the 1951 Refugee Convention. In addition, regional instruments such as the Cartagena Declaration clearly calls for refugee status for those persons fleeing generalized violence in their countries, such as those from Central America’s Northern Triangle.

While the immediate reception and needs of those who have been forcibly returned have improved and social and economic reintegration programmes are taking shape, the governments of the three countries have no comprehensive protection protocols or mechanisms in place for the thousands of people who are being deported back to the same conditions of violence from which they fled. The Plan of the Alliance for Prosperity is considered by most government officials interviewed by Amnesty International as the main strategy to address root causes of migration with the aim of increasing economic growth and reducing organized crime. However, it is unclear how the needs of people deported who are returned to dangerous situations are taken into consideration or that this will help offer any real protection to those facing violence.
The remittances that migrants living abroad send back to their home countries are important contributions to the economies of Northern Triangle countries. Yet the states appear largely indifferent to the suffering of the families of migrants who have gone missing during their journeys or have been the victims of grave human rights violations in Mexico in their efforts to reach the United States, including enforced disappearances and gruesome massacres. Northern Triangle states have provided minimal assistance in their search for truth, justice and reparations.

The states of the Northern Triangle must take immediate measures to ensure the safety of thousands of people whose lives are in great danger and must be prepared to contend with deportation numbers that are unlikely to drop substantially anytime soon. As funds from major new development plans such as the Plan of the Alliance for Prosperity arrive that seek to stem the revolving door of the migrant flow, concrete measures to address the protection needs of this population, particularly those of deportees, must be made a priority.

**RECOMMENDATIONS TO GOVERNMENTS**

**To the Governments of El Salvador, Honduras and Guatemala:**

- Design interview questions for consular services and reception centres to be able to identify if deportees are in danger in their communities of origin.
- Improve coordination between consular services abroad and national reception centres to identify cases of deported people in need of protection.
- Identify and design, together with host countries, mechanisms for re-admission of deportees who were victims of a violation of the principle of non-refoulement.
- Provide psychological support to deportees when needed.
- If needed, relocate deportees in danger to different communities and provide them with housing, education and work possibilities in the new communities.
- Assume central responsibility for the protection of deportees using the resources required given the demand caused by the increase in numbers of deportees.
- Ensure that all reception, reintegration and protection programmes for deported migrants take into consideration the rights and specific protection issues relating to groups such as women, indigenous people, LGBTI people and unaccompanied children.
- Streamline co-ordination of services as well as compilation of statistics between various ministries, agencies and task forces working on migration issues for both adults and children.
- Create protocols to lend improved and continued assistance to the relatives of migrants who have been the victims of crime or human rights violations abroad. This includes more active advocacy on their behalf with foreign authorities, the development and strengthening of transnational justice mechanisms, keeping families informed of ongoing investigations and providing psychological assistance when necessary.

**To the Government of the United States:**

- Guarantee the US-backed Plan of the Alliance for Prosperity be earmarked for protection measures for at-risk deportees. Economic aid for the countries of origin should be channelled to support the design and implementation of protection mechanisms for at risk population before and after migration occurs.
AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.
Gangs (known as maras) and organized crime have made the so-called Northern Triangle (El Salvador, Honduras and Guatemala) one of the most dangerous regions in the world in the past decade. This “new reality” has created an important shift in the push factors affecting migration flows in the Central America-Mexico-US migration corridor: soaring violence has caused rising numbers of people to run north to save their lives.

The Northern Triangle governments are often unwilling to acknowledge how significantly the increasing violence has changed migration. This has a serious impact on what has increasingly become part of the migrant’s journey: the forced return.

In its research in all three countries, Amnesty International found that Northern Triangle governments have not fully recognized the scale of the problem and are doubly failing to protect their citizens: socioeconomic conditions remain poor and an increasingly violent environment permeates every corner of their countries, which causes people to flee in record numbers, but governments are failing to provide protection to those who are deported back to the same dangerous climates from which they ran.
Tab 15
Human Rights Situation of *Travesti*, Transgender and Transsexual Persons in Guatemala


This Report is submitted by:

- OTRANS – Organización Trans Reinas de la Noche
- Heartland Alliance for Human Needs & Human Rights
- Akahatá – equipo de trabajo en sexualidades y géneros

August 2015

Organización Trans Reinas de la Noche; Heartland Alliance for Human Needs & Human Rights and Akahatá – equipo de trabajo en sexualidades y géneros, are honoured to submit the following issues to the Human Rights Committee with an aim to assist its drafting of the
List of Issues for the review of the implementation of the International Covenant on Civil and Political Rights by the State of Guatemala.

Suggested issues

Gender-identity based violence. Violations of the right to life. Hate crimes, forced disappearances, torture and cruel treatment against trans persons.
Right to life; Right to live free from torture; Right to non-discrimination (Articles 2, 6 and 7)

1. One way in which gender-based violence, resulting from a social, economic and political context in which power relationships between and among genders are established, affects trans women is transphobia, whose most extreme expression is hate crimes1.

2. In Guatemala, safety and justice systems are inefficient to address gender-based violence and gender identity or sexual orientation based hate crimes. No structural changes to dismantle those cultural, social and economic factors that create and perpetuate violence, particularly male-chauvinistic violence, have been implemented to address these issues in Guatemala.

3. These situations affect trans women but because they are not acknowledged as such, this violence in its multiple forms is rendered invisible: for instance, health and justice systems do not record these incidents, and they are not included in the security forces' statistics.

4. Between 2009 and 2010, at least 30 trans persons were murdered. A few examples are the three trans women murdered between late October and early November 2009, two in Guatemala City and one in the North of the country. One of them was repeatedly run over by a car, while another one was lapidated2. These figures do not

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1 With regard to acts of discrimination and violence against the trans population, in 2011 OTRANS-RN published the report called Informe Guatemala: Transfobia, Agresiones y Crímenes de Odio 2007.2011 compiling 35 cases, most of them already reported to the relevant authorities, that shows the hostile environment faced by trans women in Guatemala. Informe Guatemala: Trasfobia, Agresiones y Crímenes de Odio 2007.2011
https://www.dropbox.com/home/Informaci%C3%B3n%20de%20soporte%20OTRANS-RN?preview=InformeTransfobia+crimienes+de+odio.pdf

include those persons whose gender identity was not correctly recorded at the time of their murder being reported.

5. Attacks and murders of trans people have increased in an alarming manner in recent years. Security forces do not protect trans people and have often perpetrated those attacks themselves.

6. Attacks against trans activists follows a pattern of growing attacks against human rights defenders in Guatemala that, in these cases, is expressed in conjunction with transphobia. Johana Esmeralda Ramírez, Organización Trans Reinas de la Noche's Executive Director, was arbitrarily arrested in Quetzaltenango (Western Guatemala) on March 17, 2012, and taken to a male detention facility where she was abused. The Court intervening in this case acknowledged that the authorities have committed abuses against this human rights defender and is taking legal measures against the police personnel at Police Station 41.

7. The prohibition of torture — held by the State of Guatemala — is not related only to physical abuses but also to actions causing emotional pain, including intimidation. In Guatemala, the trans community lives under the constant threat of being physically attacked. In 2010, Johana Ramírez suffered an attempted murder by a group of men, in a public place. After realizing that one of the attackers had a gun and was about to shoot her, Johana managed to flee.

8. In 2010, trans women sex workers in Zona Uno (Guatemala City) were intimidated by men driving an unidentified vehicle, with their faces covered with balaclavas, who urged them to abandon the streets to avoid being murdered. Some of the women were hurt by rubber bullets, but one of them was hit by gunfire.

9. In Coatepeque, trans women sex workers received death threats from unknown persons, and in Retalhuleu, the local Focal Point for trans organization Reinas de la Noche was beaten up because of her gender identity and for engaging in sex work.

10. Trans women have been subjected to forced disappearances that constitute torture. For instance: on February 23, 2010, a witness saw how a young man traveling in a

\[\text{\footnotesize\textsuperscript{1}}\text{Guatemala’s Judicial System, File No. 09034-2012-00172.}\]
\[\text{\footnotesize\textsuperscript{2}}\text{File MP001/2010/3169 Agence 1, Crimes Against Activists Unit, General Attorney Office.}\]
\[\text{\footnotesize\textsuperscript{3}}\text{Ordinary File Gua 395-2010/US Guatemala Ombudsman Office.}\]
\[\text{\footnotesize\textsuperscript{4}}\text{Orientation File ORD GUA 76-2010/A}\]
\[\text{\footnotesize\textsuperscript{5}}\text{Procedure No. 6965-2010, reference CEHM BC. Sub-station No. 34-11, National Civilian Police.}\]
blue jeep kidnapped a trans woman called Catherine Mitchell Barrios in Guatemala City’s Historical Downtown. Five years later, Catherine has not appeared.\(^8\) The State has taken no steps to find Catherine or to investigate what happened to her.

**Suggested questions**

11. How will the Guatemalan State strengthen its judicial system to be able to advance investigations on hate crimes against trans women in the country?

12. What laws and policies does the State have to fight against trans persons’ forced disappearances?

13. Which mechanisms is the State willing to implement to investigate forced disappearances of trans persons and to guarantee that the disappeared will be found alive?

**Violations to trans (transsexual, travesti and transgender) persons’ civil rights**

The right to enjoy all civil and political rights without discrimination: to not be subjected to abuse, degrading treatment and/or violence; equality before the law without any discrimination; right to freedom of expression (Articles 2, 3, 19 and 26)

14. Article 4\(^9\) of the Guatemalan Constitution forbids discrimination on different grounds but gender identity and gender expression are not specifically mentioned in any national laws or jurisprudence.

15. At the First Meeting of the Regional Conference on Population and Development for Latin America and the Caribbean (December 2013), Guatemala justified its discriminatory policies introducing a reservation to the references to "sexual diversity groups", "sexual orientation", "sexual diversity" and "gender identity" in the outcome

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\(^8\) File ORD GUA 1275-2010/DCP Guatemala Human Rights Ombudsman Office.

\(^9\) Constitution of the Republic of Guatemala, 1985 amended in 1993. Article 4 - Freedom and equality. In Guatemala, all human beings are free and equal in dignity and rights. Men and women, regardless of their civil status, have equal opportunities and responsibilities. Nobody can be subjected to servitude or to any other status that undermines their dignity. Human beings must treat each other as brothers. (Artículo 4.- Libertad e igualdad. En Guatemala todos los seres humanos son libres e iguales en dignidad y derechos. El hombre y la mujer, cualquiera que sea su estado civil, tienen iguales oportunidades y responsabilidades. Ninguna persona puede ser sometida a servidumbre ni a otra condición que menoscele su dignidad. Los seres humanos deben guardar conducta fraternal entre sí.)
document\textsuperscript{10} invoking the argument that in Guatemala "gender" is only used in reference to men and women.

16. According to existing laws in Guatemala, a person’s legal personhood is determined by her/his gender as assigned at the time of birth, that in consistent with her/his biological sex\textsuperscript{11} and it remains set for the rest of his/her life.

17. The gender with which trans persons identify and perceive themselves is not recognized. This poses not only significant legal and administrative challenges for them, as they have identity papers that do not represent their identities, but also leads to violence, discrimination and marginalization in their daily lives, causing serious damage to their personal integrity and health.

18. By not being able to obtain identity papers that reflect their self-perceived gender, trans persons are completely deprived of protection for exercising their rights when they have been subjected to violence or need to access healthcare, among other situations.

**Suggested questions**

19. What policies and practices will Guatemala implement to avoid impunity in cases of gender identity or gender expression-based human rights violations, to properly investigate those cases and duly sanction those found responsible for them?

20. What legislative measures will Guatemala undertake to allow trans persons to change the sex and gender noted in their identity papers without resorting to practices that involve stigma and discrimination?

Lack of adequate services guaranteeing trans women’s right to health. Exclusionary and arbitrary actions by the health system that jeopardize trans persons' health.


\textsuperscript{11} Civil Code, Guatemala Republic, Decree 106, First Book: "On persons and family", Title 1 "On persons", Chapter 1 "On individuals, personality". Article 1: Civil personhood starts at birth and ends with death. However, the unborn is considered as born for everything favourable to her/him, provided he/she is born in a condition of viability. (De las personas individuales, personalidad. Artículo 1. La personalidad civil comienza con el nacimiento y termina con la muerte; sin embargo, al que está por nacer se le considera nacido para todo lo que le favorece, siempre que nazca en condiciones de viabilidad.)
Right to non-discrimination; to life; to integrity; to not be subjected to cruel, inhuman or degrading treatment (Articles 3, 6 and 7)

21. An epidemiological study\textsuperscript{12} has defined trans (travesti, transgender and transsexual) women as a population with high levels of exclusion and limited human development, even when compared to other population groups that are equally excluded in society and whose human rights are being violated. Their life expectancy is approximately 35 years.

22. In the same study, 35\% of the sample said they had been forced to have sex at least once in their lifetime, and 11\% reported that their first sexual relationship was forced. 43\% of those surveyed started having transactional sex (sexual relationships in exchange for favours) when they were between 15 and 17 years old.

23. Most trans women surveyed had been engaged in street sex work for 5 years or more, which places them at a higher risk of and makes them more vulnerable to contracting HIV and this is consistent with theirs being the highest HIV prevalence reported in the country. The Central American Behavioural Surveillance Survey\textsuperscript{13} shows that 23.8\% of trans women are living with HIV and 13.5\% of them have syphilis.

24. In Guatemala, trans women suffer from lack of proper access to health services as they are usually subjected to rejection and arbitrary treatment from health facilities of all levels making up the national health system. This is why they use a clinic based at the OTRANS-RN premises: 80\% of consultations at that clinic are for common illnesses.

25. Since 2008, trans women have promoted the adoption of a Comprehensive and Differentiated Health Care Strategy for Trans Persons in Guatemala, through a technical health roundtable bringing together representatives from the State, civil society and the UN system\textsuperscript{14}. The Guatemalan government has deliberately delayed


\textsuperscript{13} Encuesta Centroamericana de Vigilancia de Comportamiento Sexual y Prevalencia del VIH e ITS en poblaciones vulnerables y en poblaciones clave (ECVC) Capítulo Guatemala, Page 143. (in Spanish) \url{http://hivos.org.gt/wp-content/uploads/2015/03/Informe-de-LM-y-ECVC.pdf}

\textsuperscript{14} The Strategy (updated up to December 17, 2013) can be found (in Spanish) at: \url{https://www.dropbox.com/s/ne1hf0mrfvefo5/Estrategia%20de%20Salud%20Final.pdf?dl=0}
the adoption of this document, placing obstacles for effective care of trans women by the health system, even though it had committed to implement it.\textsuperscript{15}

26. \textbf{Suggested questions}

27. What concrete measures will the Guatemalan State take to increase access to comprehensive health care services and rights for all, paying particular attention to trans women given their vulnerable situation?

28. When will the Guatemalan State own and make effective its expressed commitment to implement the Comprehensive and Differentiated Health Care Strategy for Trans persons as a core public policy for trans people to access adequate health care?

\textbf{Discrimination and inequality against trans persons in enjoying the rights to education and work.}

\textbf{The right to live free from discrimination, and equality in the enjoyment of rights (Articles 2, 3 and 26)}

29. The Guatemalan State guarantees access to education by making primary education free and compulsory. However, 23\% of the trans population is illiterate and only 33\% of trans women have achieved at least a certain level of formal education.

30. Discrimination against trans students is not limited to primary or secondary education but is present throughout the education system. In 2009, Lisbeth López Juárez\textsuperscript{16} passed the entry test for Guatemala's key technical training institution (Instituto Técnico de Capacitación y Productividad INTECAP), but when the principal identified her gender identity, Lisbeth’s application was rejected on the grounds of internal norms of the Institute.

31. According to data provided by an OTRANS\textsuperscript{17} survey, access to employment is one of trans women’s main concerns and is also perceived as the way to achieve greater

\textsuperscript{15} Guatemala also ratified this commitment before the Inter-American Commission on Human Rights at the thematic hearing on "Information about discrimination based on sexual orientation and gender identity in Guatemala", 146th session, November 4, 2012.


\textsuperscript{17} Informe Guatemala: Trasfobia, Agresiones y Crímenes de Odio 2007-2011 Page 10. 
https://www.dropbox.com/home/Informaci%C3%B3n%20de%20soporte%20OTRANS-RN?preview=InformeTrasfobia+crimenes+de+odio.pdf
social inclusion. It is worth mentioning that 15% of this population is currently unemployed. The average monthly income for this group is lower than the Guatemalan minimum wage for 2012.

32. According to the survey results, 23% of trans women refer to have been subjected to stigma and discrimination when attempting to find employment. 21% of them had no doubt that the denial of employment they faced was due exclusively to their gender identity.

33. This lack of access to employment, added to their exclusion from the educational system, to their lack of legal protection and to the fact that the State neither recognizes their gender identity nor provides them with adequate identity papers, force a large number of trans women to engage in sex work as their only means of survival.

Suggested questions

34. What actions will the State undertake to guarantee access to formal education and to vocational training for trans persons in a manner that avoids stigma and discrimination?

35. What policies will the State implement to guarantee trans persons' social inclusion and their access to the formal labour sector without any kind of discrimination?
Tab 16
Human Rights Violations of Trans Women in Costa Rica, El Salvador, Guatemala, Honduras and Panama

Survey of complaints received by REDLACTRANS together with local organizations TRANSVIDA, ASPIDH, OTRANS-RN, Colectivo Unidad Color Rosa and APPT between March and October 2015
4. SITUATION IN GUATEMALA

A. The right to equality and non-discrimination

117. The Political Constitution of Guatemala enshrines the principle of non-discrimination in article 4 without explicitly mentioning gender identity as a prohibited ground for discrimination. For its part, the Penal Code of Guatemala criminalizes “discrimination” without expressly providing for gender identity. In general terms, there is no legal framework in Guatemala that offers protection to trans persons against the discrimination and the violence they are subjected to.

118. It must be particularly taken into account that the IACHR has emphasized that the States “must expressly include ‘gender identity’ as grounds for protection in legislation and in public policies.” In this regard, the Commission has given consideration to the arguments of some of the States in the sense that the protection to trans persons may derive from the terms “sex” or “gender” included in the text of some legal regulations. Even so, the IACHR has expressed that “while a progressive interpretation by analogy and the use of open clauses may be useful tools for the interpretation of laws and regulations, the IACHR recommends the term ‘gender identity’ be expressly included for greater legal certainty and visibility.”

119. Further, in the international level, Guatemala has always been reluctant to join regional instruments by general agreement that address the rights of LGBT persons. In this sense, REDLACTRANS and OTRANS-RN regret that Guatemala made the only reservation to “Montevideo consensus on population and development”, in which Guatemala states that “the concept of ‘gender’, which is interpreted as meaning only the female gender and male gender in reference to women and men”, and reservations are expressed as regards “the interpretation of the expression ‘sexually diverse groups’, ‘sexual orientation’ and ‘sexual diversity and gender identity.’” This reservation is without doubt an obstacle to the implementation at the domestic level of the commitments that arise from this instrument and an opportunity that Guatemala lost to ensure equality before the law of every person without discrimination. Accordingly, it is concerning that Guatemala has not neither signed nor ratified the Inter-American Convention against all Forms of Discrimination and Intolerance.

81 Inter-American Commission on Human Rights (IACHR), Violence against LGBTI Persons, OAS/Ser.L/V/II.rev.1 Doc. 36, 12 November 2015, para. 413.
82 Inter-American Commission on Human Rights (IACHR), Violence against LGBTI Persons, OAS/Ser.L/V/II.rev.1 Doc. 36, 12 November 2015, para. 413.
which is open to signature and ratification by all member States of the Organization of American States (hereinafter, “OAS”) which expressly includes “gender identity” and “gender expression” as prohibited grounds for discrimination.\textsuperscript{84}

120. In 2012, the United Nations Human Rights Committee expressed its concern “at the discrimination and violence suffered by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons” in Guatemala, pointing out that the State “should state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transexuality, or harassment of or discrimination or violence against persons because of their sexual orientation or gender identity.”\textsuperscript{85} Such unequivocal statement by the State is still pending.

121. As regards the inequalities that trans women face from an early age, REDLACTRANS was able to see that 85\% of the victims from the cases surveyed are under 35 years old, and that 33\% of the total of the victims are in the age range between 18 and 24 (chart 1). These figures are consistent with a reality that has been documented previously by REDLACTRANS\textsuperscript{86} and the IACHR\textsuperscript{87} as regards the young age trans women are victims of violations of their rights.

\textsuperscript{84} See, Inter-American Convention against all Forms of Discrimination and Intolerance, adopted on 5 June 2013, article 1 [at the time of writing this report this convention has not come into force yet].

\textsuperscript{85} Concluding observations of the Human Rights Committee: Guatemala, CCPR/C/GTM/CO/3, 19 April 2012, para. 11.

\textsuperscript{86} REDLACTRANS, The night is another country: Impunity and violence against transgender women human rights defenders in Latin America. 2012, p. 26; REDLACTRANS, La transfobia en America Latina y el Caribe: un estudio en el marco de REDLACTRANS, [Transphobia in Latin America and the Caribbean: a study in the framework of REDLACTRANS.] 2009, p. 54.

B. The right to gender identity

122. REDLACTRANS and OTRANS-RN express their concern about the absence to this day of a gender identity law that ensures the right of every trans person to modify their name (first name) rectifying it in the registration documents (birth certificate, identity card) through a simple procedure that does not involve elements of stigmatization and discrimination.

123. The member organizations of the network REDLACTRANS claim that the lack of legal recognition that trans persons have suffered for years is one of the main reasons that explain why our basic needs are not met and we have also suffered constant situations of exclusion, marginalization and discrimination.

124. REDLACTRANS has already stated that the lack of recognition of the right to gender identity and the impossibility of accessing identification documents that reflect their gender identity “keep trans women invisible in the official records and systems.”88 For this reason, despite its high rate of frequency, it is difficult to define precisely the scope of human rights violations against trans women in Latin America due to the lack of specific information about this population.89 Likewise, the recognition of the right to freely exercise gender identity is fundamental to access economic, social and cultural rights.90 In effect, the fact of bearing documentation that does not reflect their gender identity puts trans women in a serious vulnerable situation preventing the access to basic human rights such as the right to education, work, health, and housing, among others. In this sense, a gender identity law is

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88 REDLACTRANS, The night is another country: Impunity and violence against transgender women human rights defenders in Latin America. 2012, p. 12.
89 REDLACTRANS, The night is another country: Impunity and violence against transgender women human rights defenders in Latin America. 2012, p. 12.
90 REDLACTRANS, Report on the economic, social and cultural rights of the Transgender population of Latin America and the Caribbean. 2014, p.11.
perceived by trans persons themselves as a way of countering this historic lack of the full exercise of citizenship.

125. National organizations in other countries of America have documented local experiences after the enactment of a gender identity law, showing that while a law does not automatically eliminate all the factors that contribute to the situation of vulnerability of trans persons, its adoption and implementation caused a noticeably positive impact on the access to rights, life conditions and quality of life of trans persons.  

126. Finally, it is important to highlight in this regard that the Inter-American Commission congratulated enthusiastically for the adoption of decrees that ensure the right to gender identity in Mexico City and Colombia, pointing out that in these jurisdictions, the amendment in the registration can be made through “simple administrative procedures”, without requirements that pathologize trans persons.

C. The right to life and personal integrity

127. The fundamental rule of the legal structure of Guatemala sets forth the obligations the State has towards its inhabitants as regards ensuring the right to life, liberty, justice, security, peace, and the integral development of the person. It also sets forth the rights to life, liberty and equality and freedom of action. Likewise, Guatemala has undertaken the obligation to respect and ensure these rights by means of the ratification of different treaties and international covenants in the area of human rights.

128. It is worth mentioning that in 2008, Guatemala accepted two recommendations in the framework of the Universal Periodic Review, whereby the State undertook the commitment to put an end to impunity for reported attacks against members of marginalized communities, including on the grounds of sexual orientation and gender identity, as well as to put in

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95 Political Constitution of the Republic of Guatemala, Article 3.
97 As an example, it is worth mentioning the American Convention on Human Rights, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights "Protocol of San Salvador ", the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, among others.
operation awareness-raising efforts in that respect, targeted particularly at law enforcement officials and the judiciary.^[98]

129. While said commitment was undertaken more than 8 years ago, we cannot see significant changes in the reality that trans persons must live in Guatemala.

130. Among the received complaints during the project of documentation carried out by REDLACTRANS and OTRANS-RN, we have received a considerable number of cases that involve high levels of violence. In effect, 44% of the cases were murders and beatings (chart 2).

![Chart 2. Kind of abuse.](chart2.png)

131. Firstly, we have received different complaints of murders as a result of firearms from moving cars. One of them is the case of S., a trans sexual worker. According to the witnesses, a car approached S. and fired with a gun. However, instead of escaping, the driver sped up to her in order to run her over and make sure that she was dead.

132. In addition, homicides and assaults by gangs and criminal bands are frequent among the received cases. For instance, G. a trans sexual worker was attacked by a gang, who approached, hit her and stoned her until they confirmed she was dead. Another case is that of J., a trans woman who also did sex work. According to what her colleagues informed, J. was constantly bullied and harassed in her working area by a cisgender gang of women that frequently hit her and stole her belongings. Tired of these aggressions, she decided to make a complaint to the police. Despite this, one night while she was working, she was stabbed five times which caused her death.

133. According to the information we have received, it is frequent that trans women who are sexual workers appear murdered after getting on cars of clients. This was the case of D. who

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one night got on a van in which there were four men. No one knew anything about her until her body appeared mutilated and with serious signs of torture the following day.

134. It is worth mentioning that in 2012 the Inter-American Commission on Human Rights expressed its concern over the crimes committed and the violence against the trans community in Guatemala, as well as the lack of investigation and the absence of methodologies to keep records on these types of crimes. In this sense, during the collection of the complaints we received information about physical aggressions that while they do not mean the death of the victim, they are still concerning due to their brutality and savagery.

135. In 2012, the Human Rights Committee urged the State of Guatemala that its security forces ensure the investigation, prosecution and punishment of any act of discrimination or violence motivated by the victim’s sexual orientation or gender identity. Nevertheless, this recommendation still remains as an ideal that has not been put into concrete changes in the Guatemalan reality. In effect, while there are a big number of filed complaints, only 26% have had any kind of answer by the authorities (charts 4 and 5). State agents, and particularly those who belong to the security forces have a considerable ignorance on sexual diversity and human rights due to the lack of training and the absence of public policies that integrate in a comprehensive way the discrimination and the stigma motivated by gender identity and expression.

136. This impunity allows the occurrence and repetition of cases such as the one of F., who informed that one day while she was on the public road walking with other trans women was suddenly physically assaulted by a man who was driving a motorcycle. This man hit her head with his helmet and in her breast implants, spat at her and verbally assaulted her making reference to her gender identity and expression. Her friends asked for help to some agents of

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100 Concluding observations of the Human Rights Committee: Guatemala, CCPR/C/GTM/CO/3, 19 April 2012, para. 11.
the National Civil Police that were nearby. Inexplicably, the officers arrested the trans women and told the aggressor to make a complaint against them.

137. Similarly, I. a trans sexual worker complained about another abuse of power by a police officer. I. informed that one night she provided sexual services to a client who eventually identified himself as a “police officer wearing civilian clothes” and refused to pay for her services. After that, I. demanded for payment and as a consequence she was arrested and taken to a local police station of the capital. I. was not only a victim of an arbitrary detention but received a severe beating by police officers that destroyed her nose as well. As a consequence of the beating, she could not do sex work so; she lost the only source of income that she had been able to find.

138. Trans women that advocate for human rights have also been victims of violence, threats and harassment due to their work. In this regard, the IACHR has established that the members of the organizations that promote and advocate for the rights of LGBTI persons “have a fundamental role in the region (...) to ensure the compliance of the obligations of the State and in general, in the process of promoting equality for LGBTI persons.” An example of this kind of cases is that of O., a trans Human Rights advocate who was assaulted by a neighbor of the offices of the organization she works for. In her complaint she said that a man approached her on a motorcycle and started to verbally assault her and then tried to run her over with the vehicle. As he failed to do so, he got down of the motorcycle and started to hit her until O. managed to escape. The aggressor never stopped insulting her and verbally assaulting her on her gender identity and expression.

139. M.L. complained that she received daily threats for being a trans woman who advocates for human rights. She mentioned that her work became visible in the neighborhood and that exposed her to be the target of threats and physical aggressions. The biggest aggression she received was one night while she was driving her car around the city and stopped at the traffic lights. Suddenly, a man wearing a hood got on her car and started to insult her, hit her hard and to threaten to kill her. The trans activist defended herself as she could until she finally managed to push him out of her car. While she could not identify the aggressor, she fears for her life as she affirms that there is no legal framework to protect her.

140. Further, the offices of OTRANS-RN had been broken into by unknown people. On another occasion, a man entered the offices, inspected and disorganized the documentation that was there and then left without stealing anything.

D. Institutional violence

141. One of the factors that cause deep concern among the organizations that belong to the network REDLACTRANS is the validity of dispositions that make reference to “public morals”, “decency” or “public scandal” which are used discretionally and arbitrarily by police officers

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as a persecution tool against trans women, particularly those who are in the sex work. These regulations, which are formulated in vague and ambiguous terms, are used as the basis for arbitrary detentions, expulsion from public areas and the imposition of fines, at the same time generating scenarios where other violations and abuses take place such as, physical, sexual and psychological aggressions. These kinds of regulations have also been a cause for concern among different international human rights protection organizations such as the Human Rights Committee, the Committee against Torture, and the IACHR.

142. In the particular case of Guatemala, the Penal Code sets forth in section 489 the “offences against morals.” In fact, there is a pattern that appears in the complaints for intimidation or threats perpetrated by security agents. There are many cases in which trans women are threatened by police officers to arrest them due to their gender identity, because they are “men dressed as women.” This was the case of Y. who was a victim of abuse and police harassment on a daily basis. On one occasion the National Civil Police arbitrarily deprived of her liberty on her gender expression and identity when she was in a shopping center.

143. M.R. submitted her complaint before the registry of REDLACTRANS explaining that she was assaulted due to her gender identity and expression in the public road in broad daylight. She said that she was walking along the street with her mother and her brother when she met a Catholic procession. As they identified her, the participants of the procession started to insult her and spit at her. The number of aggressors increased, so she had to run away immediately. The violence did not stop there, many of the aggressors identified her and continued to harass her by means of threatening telephone calls and cyber bullying in the social networks.

E. The right to education

144. In Guatemala, the right to education is enshrined in article 71 of the Political Constitution. The Constitution sets forth that it is obligation of the State to provide and facilitate education to its inhabitants without any discrimination. In addition, article 74 sets forth that the inhabitants have the right and obligation to receive early, pre-primary, primary and basic education within the age limits set by the law.

145. While the articles of the Constitution enshrine the complete access to education “without any discrimination”, there are no regulations that take into consideration explicitly the discrimination based on gender identity in the educational area. In effect, the law of educational promotion against discrimination, enacted in Guatemala in 2002, establishes

103 Conclusions of the Committee against Torture: Costa Rica, CAT/C/CRI/CO/2, 7 July 2008, para. 11.
104 Inter-American Commission on Human Rights (IACHR), Violence against LGBTI Persons, OAS/Ser.L/V/II.rev.1 Doc. 36, 12 November 2015, para.86.
expressly only ethnic or racial and gender discrimination without including gender identity as a prohibited ground for discrimination. As regards the Ministerial Agreement 01/2011 issued by the Ministry of Education, the situation is the same, this agreement prohibits discrimination in the educational area on grounds of sex, race, age, state of pregnancy or disability.

146. Likewise, UNESCO has given relevance that the material devised by the Ministry of Education of Guatemala to combat school bullying does not mention nor address the problem of discrimination due to gender identity, which “constitutes a form of exclusion.” In addition, as it was documented in that report sexual diversity is not discussed at Guatemalan schools given that this topic has been excluded from the school curriculum.

147. In this restrictive framework, there have been many cases of restrictions to the access to educational services motivated by the gender identity of the victims. This was the case of U., a trans woman who had taken the decision to leave sex work. As she did not have the opportunity to complete her secondary education, she tried to take a course on technical-industrial design of clothing at the Technical Institute of Professional Training (INTECAP). When she went to register, she was told that she could not take it because the “course was for men and women” and that she “did not apply.”

148. The collected information also shows concerning data: 58% of the complainants have not finished primary education and only 27% could finish secondary school (chart 7). The organizations that take part in this project consider a matter of utmost urgency that the authorities of Guatemala take measures to ensure the right to education to the trans community, allowing them to have access to the opportunities that such right generates.

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F. Persons deprived of their liberty

149. The Political Constitution of Guatemala expresses that the objectives of detention facilities are to “rehabilitate socially” and to “re-educate the prisoners.” To this effect, as regards the treatment and the current system, the following safeguards every person who is deprived of his/her liberty are highlighted:

   a. They must be treated as human beings; they must not be discriminated for any reason whatsoever nor have cruel treatment, physical, moral, psychic torture, duress or harassment, be inflicted on them, nor can they be made to perform work incompatible with their physical condition, actions undermining their dignity, or be subjected to extortion or scientific experimentation;
   b. They must serve their sentence in places designated for that purpose. The penal centers must be civilian and have specialized personnel; and
   c. They are entitled to communicate, when they so request, with their kin, defense lawyer, religious counselor or physician, and where applicable, with the diplomatic or consular representative of their own nationality.\textsuperscript{112}

150. However, the situation of trans persons in Guatemala has been a reason for concern by the IACHR,\textsuperscript{113} a situation that is verified in the collected information by the organizations that take part in this project. In fact, in contrast to the legal framework described, a particularity arises from the information gathered about the violations of rights that trans women who are

\textsuperscript{112} Political Constitution of the Republic of Guatemala, Article 19.
\textsuperscript{113} Inter-American Commission on Human Rights (IACHR), Violence against LGBTI Persons, OAS/Ser.L/V/II.rev.1 Doc. 36, 12 November 2015, para. 145.
deprived of their liberty, these violations are systematical and committed, principally, by public officials.

151. As informed by the complainants, there are many cases in which they are forced to cut their hair and to use clothing associated to the male gender to assume their “natural gender.” They are also forced to perform degrading actions such as exercises unclothed and out in the open as humiliation methods.

152. Further, we have received complaints from advocates of the rights of trans women who are deprived of their liberty about facts that have an impact on the possibilities to ensure their rights. In effect, P.R. a trans woman who worked as an advisor at the General Directorate of the Prisons System was dismissed as a consequence of having denounced a series of violations suffered by trans persons in prison. Her complaints included physical aggressions, sexual abuses, tortures, cruel, inhuman or degrading treatment. That is why R. affirms that her dismissal sought hiding the serious situation that the trans persons deprived of their liberty are facing in Guatemala, strengthening their lack of protection and vulnerability.

G. The right to work

153. The Guatemalan constitutional framework includes the right to work as a right of every person and a “social obligation of the State.”

154. To address the employment situation of trans persons in Guatemala it must be borne that 73% of the trans women who complained have not completed their secondary education. This shows that trans persons are excluded from the educational system and therefore, lack the experience and development of the necessary skills to enter the labor market. In addition, many trans women informed they could not access employment exclusively based on their gender identity.

155. The difficulty to access work has forced many trans women to do sex work. In fact, almost 80% of the complainants pointed out they did sex work in order to survive. Sex work provides them with an income and a means of subsistence but exposes them to contexts of lack of legal and police protection. In fact, all the cases of murders that were informed during this project were of trans sexual workers. Besides, none of the homicides have an arrested or convicted responsible, even when in all cases there were formal complaints.

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*Chart 2. Occupation of the victim.*

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156. Another factor that clearly worsens the vulnerability of trans women to incorporate them to the system of formal employment is the discrimination and the stigma they suffer in many other social areas. For example, M. described how the National Civil Police prevented her from joining a job due to the ignorance and ingrained prejudices in the security forces. M. was a sexual worker and she worked as a contributor at a non-governmental organization. In fact, she had the opportunity to be formally hired which would allow her to abandon sex work. One of the requirements was a police clearance. When she went to the police station to ask for such clearance, the officers told her, among laughter and mockery, her file was missing and they could not issue the clearance. As a result, she could not work for the organization and had to do sex work in order to survive.

157. The case of U. shows the delicate situation of trans women to keep their sources of income. U. works as a hairstylist. She had a lot of difficulties to open her business because a lot of clients prejudged her services since she was a trans woman. In addition to this, due to a rent debt she had, she received the debt collector. U. told him that she had an agreement with the owner of the premises. However, the debt collector, violently and without taking into account what U. had told him, started to wallpaper the premises with notices that said “debtor” while she was insulted on her gender identity and expression. This brought economic losses as it worsened the prejudice the neighborhood had against her.

158. Another complaint about social exclusion and the vulnerability of economic, social and cultural rights of trans persons was made by X. who lives on the streets. She is daily discriminated and stigmatized by the community in general. One day, after she got some money, she went to a fast food restaurant and ordered a burger. Suddenly and without warning, she was violently taken out of the premises while she was shouted at that it was not a place for “huecos” (a derogatory expression used in Guatemala to refer to homosexuals.)
159. Thus, Guatemala has great difficulties to comply with the commitments undertaken to ensure that everyone has the opportunity to gain his/her living by work which s/he freely chooses or accepts,\textsuperscript{115} without discrimination of any other social condition.\textsuperscript{116}

\textsuperscript{115} International Covenant on Economic, Social and Cultural Rights. Art. 6. Available at: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx

\textsuperscript{116} Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights. Art. 3. Available at: http://www.oas.org/juridico/english/treaties/a-52.html
Tab 17
LGBT Travellers

Few places in Latin America are outwardly gay-friendly and Guatemala is no different. Technically, homosexuality is legal for persons over 18 years, but the reality can be another story, with harassment and violence against gays too often poisoning the plot. Don’t even consider testing the tolerance for homosexual public displays of affection here.

Though Antigua and Guatemala City have palatable – if subdued – scenes, affection and action are still kept largely behind closed doors. Keep your eye out for Pride events in these cities, as well as Quetzaltenango. Mostly, though, LGBT travelers in Guatemala will find themselves keeping it low-key and pushing the twin beds together.

The best information site, GayGuatemala (www.gayguatemala.com), is in Spanish.
Tab 18
August 17, 2020 at 1:08 pm EDT | by Ernesto Valle

Transgender Salvadoran woman who fled to Guatemala murdered


Editor's note: The Washington Blade published a Spanish version of this story on Saturday.

A 29-year-old transgender woman from El Salvador who fled to Guatemala was murdered on Aug. 1.

The woman, who the Blade will call Jazmin in order to protect her family's security, had sought refugee status because of violence and persecution from gangs that she suffered because of her gender identity. The Guatemalan Migration Institute had not responded to Jazmin's request before her death.

She was found with several wounds on her body and her face was disfigured.

Bianca Rodríguez, director of COMCAVIS Trans, a trans advocacy group in El Salvador, in a video posted to social media highlighted the urgent need to protect LGBTQ people in Central America's Northern Triangle that includes Guatemala, El Salvador and Honduras.
9/28/2020

Transgender Salvadoran woman who fled to Guatemala murdered

“LGBTI people in the region are often targeted for harassment and violence by gangs,” said Rodriguez. “Many of them are eventually forced to cross an international border in search of protection.”

“I call upon governments to do what they can to protect LGBTI people, especially those who feel they have no other choice but to flee their countries to safeguard their right to life,” she concluded in her press release.

Several Guatemalan human rights organizations expressed their outrage over Jazmín’s murder.

“This murder underscores how national justice mechanisms in Central America are not responding to the need to preserve the life of trans people in the region,” said Organización Trans Reina de la Noche, a Guatemalan trans advocacy group, in a press release.

The Guatemalan Migration Institute in a press release said it is saddened by Jazmín’s death and condemns it.

The press release confirmed Jazmín applied for asylum status in Guatemala. The Guatemalan Migration Institute also said it will cooperate with authorities who are investigating her murder.

“We are saddened by Jazmín’s death, given the situation in which the government of Guatemala had yet recognized the status of her request after two years,” Carlos Valdés of Lambda Guatemala, a Guatemalan LGBTQ advocacy group, told the Blade. “We hope and demand that the appropriate authorities complete their investigation and those responsible (for Jazmín’s death) don’t go unpunished as they did in similar deaths of other LGBTI community members.”

“The Guatemalan state has the constitutional mandate to protect people’s lives, and unfortunately it is doing the opposite,” added Valdés, who cited initiative 5272, a measure conservative groups promoted in 2017 that he said sought to limit LGBTQ people’s rights.

Lambda Guatemala statistics indicate there were 20 reported hate crimes against LGBTQ Guatemalans in 2019. The group said there have been 11 anti-LGBTQ attacks so far in 2020.

The U.N. Refugee Agency (UNHCR) in a statement to the Blade condemned Jazmín’s murder.

“We extend our deepest sympathies to the family and loved ones of Jazmín, who sought to rebuild her life in Guatemala after she felt forced to flee El Salvador due to violence and persecution,” said Giovanni Bassu, UNHCR’s regional representative for Central America and Cuba. “We reiterate the need to thoroughly investigate the case and take measures to prevent future crimes against LGBTI people. In addition, we also call upon governments to guarantee that LGBTI people who are forced to flee have unrestricted access to asylum procedures.

Bassu said UNHCR has sought to develop a comprehensive approach towards members of the LGBTQ community who have been forcibly displaced from their countries of origin and destination.

“We have worked with partners in all of the countries of northern Central America to develop direct interventions in communities and to bolster leadership among LGBTI people, and also identify ways that allow for the coordination of protective actions,” he told the Blade. “The strengthening of leadership includes training components that focus on issues related to forced displacement and the exercise of human rights in order to build community protection mechanisms that allow for the identification of needs and a coordinated response to at-risk cases.”

The lack of rights and violence against the LGBTQ community and especially against trans women has increased during the coronavirus pandemic.

“This entire situation demonstrates the risks and the need for protection are constant and are going to increase for the LGBTQ community,” said Bassu. “It is urgent that States create mechanisms that ensure protection and access to justice.”

BIANCA RODRIGUEZ CARLOS VALDES CONCAVI TRANS EL SALVADOR GUATEMALA JAZMIN
LAMDA GUATEMALA ORGANIZACIÓN TRANS REINAS DE LA NOCHE U.N. REFUGEE AGENCY

Transgender Salvadoran woman who fled to Guatemala murdered

Ernesto Valle

Ernesto Valle is a journalist and activist in San Salvador, El Salvador, who covers LGBT issues.

He Died 15 Years Ago, Now His Family Confirms The Rumors
News

Man Who Predicted 2020 Crash Says "Now Is The Time"
The Legacy Report

Teenagers Notice Girl With 'Dad' Acting Strange, They Follow Her Because They Knew Something Is Wrong
Horizontimes

One Thing All Liers Have in Common, Brace Yourself
TruthFinder

Search For Walk In Tubs. They're Simply Astonishing!
Yahoo! Search

Trump selects Amy Coney Barrett as pick for Supreme Court
Biden rallies LGBTQ supporters, denounces Trump at HRC event
Grenell defends progress in global initiative to decriminalize homosexuality
Ruth Bader Ginsburg, champion of LGBTQ rights on the bench, dies at age 87
Exclusive: New $1.5 million HRC ad buys praises Trump for empty queer bars
Survey finding 45 percent of gay men back Trump is 'clickbait, sloppy journalism'

Ruby Corado announces she's COVID positive
MLK Library in D.C. reopens after $211 million renovation project
Comings & Goings
Sig Ma DC to suspend operations on Sept. 30
D.C. lacks funds to implement LGBTQ seniors bill
D.C. will not bid to host 2026 Gay Games

Judge orders Trump administration to turn over concealed docs on trans military ban
NQAPA executive director steps down
Ginsburg’s death leaves LGBTQ rights on Supreme Court vulnerable to religious claims
Rea Carey to step down as National LGBTQ Task Force executive director
Puerto Ricans with HIV/AIDS vulnerable 3 years after Hurricane Maria
‘Skin milk’ marriages not enough: Ginsburg remembered as LGBTQ ally

Tijuana authorities criticized over handling of transgender woman’s murder
Cuban authorities threaten to arrest LGBTQ activist, journalist
Bachelet highlights LGBTQ rights abuses in U.N. Human Rights Council speech
Botswana group works to improve health care for trans, intersex people
Philippines president pardons U.S. Marine convicted of killing transgender woman
Gay Games announces 2022 ‘contingency planning committee’

‘All About Eve’ at 70
For Joe Biden, push relentlessly until Nov. 3
A hero passes; may RBG rest in peace
The Notorious RBG
A Welcome Lifeline
Tribute to my American heroes

Blind and queer and finding community
Non-binary actor wins Helen Hayes Award
Joshua Johnson named SMYAL Fall Brunch featured speaker
‘I Have Something to Tell You’ not typical, political puff piece
DeGeneres returns to daytime TV with apologies
Emmy’s big night was virtually a first

Tab 19
Guatemala to Swear in Conservative Giammattei as President

Guatemala will swear in Alejandro Giammattei, a conservative physician opposed to gay marriage and abortion, as its new president Tuesday while the country’s outgoing leader exits amid swirling corruption accusations.

By Associated Press, Wire Service Content  Jan. 14, 2020
BY SONIA PÉREZ D., Associated Press

GUATEMALA CITY (AP) — Guatemala swears in Alejandro Giammattei, a conservative physician opposed to gay marriage and abortion, as its new president Tuesday while the country's outgoing leader exits amid swirling corruption accusations.

The 63-year-old Giammattei won the presidency on his fourth attempt in August for Vamos, a party founded in 2017 by politicians, businessmen and military officers on promises of battling poverty and providing better opportunities.

Giammattei was scheduled to be sworn in before several Latin American leaders, among them Juan Orlando Hernández of Honduras, El Salvador President Nayib Bukele, Iván Duque of Colombia and Lenin Moreno of Ecuador. Washington was represented by Homeland Security acting Secretary Chad Wolf and Commerce Secretary Wilbur Ross. Giammattei met privately with Ross before the inauguration.

The U.S. Embassy announced via Twitter that the two countries would sign a memorandum of understanding Wednesday on $1 billion in investment in the private sector to stimulate job creation in Guatemala.

One of the early challenges facing Giammattei will be an Asylum Cooperation Agreement signed by his predecessor with the United States government. There was significant opposition to the deal inside Guatemala. The U.S. began sending Honduran and Salvadoran asylum seekers to Guatemala under the agreement in November and recently said it would expand it to Mexicans. A similar deal signed with Honduras could send Guatemalan asylum seekers there.

Giammattei inherits a country in which 59% of Guatemalans live below the poverty line, according to official figures, while nearly 1 million children below age 5 are estimated to live with chronic malnutrition.
He has proposed to build what he calls a "Mayan Train," high-speed rail with a line for cargo and another for passengers. The name mirrors a planned train project for neighboring Mexico that will travel between coastal resorts, cities and Mayan ruins in that country's southeast.

Giammattei will be working without a majority in Congress. His party captured 17 seats.

The surgeon suffers from multiple sclerosis, a disease of the nervous system, and uses crutches to walk. He has also worked as a business consultant in the private sector.

In 2006, Giammattei was the head of the country's prison system when the interior ministry carried out a raid on the Pavon penal farm to regain control from the inmates. Thousands of police, soldiers and armed civilians raided the prison overnight and several inmates died in the operation.

Authorities, bureaucrats and private citizens were arrested, tried and imprisoned for the raid, including Giammattei. After several months in jail awaiting trial he was acquitted and released.

He takes over from President Jimmy Morales who spent much of his four-year term dodging corruption charges.

The former television comedian who campaigned on a promise of "not corrupt, not a thief" will possibly be most remembered for kicking out a U.N. supported anti-corruption mission that was closing in on him and members of his family.

Juan Francisco Sandoval, head of the special prosecutor against impunity office, said he hopes the future will be better without Morales. "He was the roadblock for the fight against corruption and impunity," Sandoval said.

In a farewell speech heavy on nationalist and religious themes, Álvaro Arzú, the outgoing president of Congress, said Morales had "defended the sovereignty of Guatemala."
Tab 20
After a surge in hate speech, and police raids, Guatemala’s LGBTIQ+ community fears the worst is yet to come

Both candidates in presidential elections this weekend have embraced homophobic campaigns. “It’s the Bolsonaro strategy”, said one activist. [Español](https://www.opendemocracy.net/en/5050/after-a-surge-in-hate-speech-and-police-raids-guatames-lgbtiq-community-fears-the-worst-is-yet-to-come/)

Aisling Walsh

8 August 2019
On 20 July, a still-unidentified person released pepper spray in the men’s bathrooms at a historical trade union hall in Guatemala City. The venue was hosting an anniversary party for a group of transgender rights activists after the city’s 19th annual LGBTIQ+ Pride parade. Two activists, who were in the bathroom at the time, were directly hit by the gas. A number of other people abandoned the party amidst irritation to their eyes and throats.

Three hours later, at 1:15 am, eight armed police officers forced their way into another post-Pride event at the offices of a group that advocates for access to essential medicines for people living with HIV. Without a warrant, they entered the building on the premise that licensing hours for alcohol sales (which don’t apply to private events) end at 1 am. Once inside, witnesses told me, the officers intimidated attendees and pressured organisers to end the party.

“What they were doing was illegal, they were violent and armed with high calibre weapons”, said Aldo Dávila, Guatemala’s second openly LGBTIQ+ member of Congress, who was elected in June and will assume office in January. Also a member of the Pride organisational committee, and a former director of the group hosting this party, Dávila was among the crowd that night.

He told me the police said they were specifically looking for “El Diputado” (the congressman). But even after he came forward, and identified himself, they remained inside for half an hour, seeking to close down the event. Then: more pepper spray. The police released it into the air, people fled the building, ambulances were called, and several people were taken to a nearby hospital.

“They need an enemy...
and our community is an easy target”

Aldo Dávila, congressman

Homosexuality is not illegal in Guatemala, and since the 1990s, toward the end of the country’s 36-year-long civil war, the LGBTIQ+ community has become more visible within society. But same-sex marriage and civil unions are not legal; LGBTIQ+ people aren’t specifically included in most anti-discrimination laws; ultra-conservative religious movements are politically influential; and hate crimes continue to take a violent toll on the community.

On the night of 20 July, a group of people were also harassed by police on the street in front of a bar that is locally-known to be friendly to LGBTIQ+ people. Together these incidents were seen by rights activists that I spoke to as an extreme acceleration in already growing aggression towards the community, amidst mainstream hate speech and homophobic elections campaigns.

They said the police’s role in the night’s events was particularly concerning. And they warned that the worst is likely yet to come, as this weekend Guatemalans vote in the second round of presidential elections where both candidates, Sandra Torres and Alejandro Giammattei, of the UNE and Vamos parties respectively, have taken public positions against LGBTIQ+ rights.

In their campaigns, each of these candidates committed to passing a so-called ‘Protection of the Family Law’ to prohibit the possibility of marriage equality, criminalise “sodomy” and all education on questions of sexual diversity, and ban abortions under all circumstances. This bill, drafted by religious conservative groups, is waiting for its third and final vote in Congress.

Over the last year, this proposed legislation has become a “political football”, said Sandra Morán, Guatemala’s first openly lesbian congresswoman who is leaving office at the end of 2019 after she was not chosen for re-election by her party. She told me this bill had been placed on Congress’s agenda, several times, during key political moments to distract people from other issues such as the fight against corruption, or to garner conservative support for the current government.

Dávila, the second openly LGBTIQ+ politician elected to Congress, in June, also described how hate speech against the community was being used to sow divisions and drive voters to the most hardline political factions. “They need an internal enemy, to maintain the population divided and now that we are not at war any more our community is an easy target”, he told me.
“I call it the Bolsonaro strategy”

Jorge López Sologaistoa, Pride organiser

“We are organised and articulate, they want to silence us and they are using the police to do so”, added Lola Vásquez, deputy director of the OTRANS activists group, whose 15th anniversary party last month was interrupted by the anonymous pepper spray attack. “They persecute our community for political gain,” they told me, but stressed: “there are real lives being affected”.

“I call it the Bolsonaro strategy”, said jorge López Sologaistoa, another Pride organisational committee member and director of OASIS, a local LGBTQ+ community support group - the first of its kind - founded in the early 1990s. By this, he meant “a continental strategy from the North to the South”, starting with Trump’s election in the US followed by the rise of hardline conservative and populist leaders in Brazil as well as El Salvador and Costa Rica.

“They all had strong religious and anti-abortion and anti-gay marriage platforms, and used a conservative and hateful discourse against the LGBTQI+ community to foment support”, López explained, responding to economic instability with “hard handed security policies”. He emphasised: “So this is not just about Guatemala, it is happening across the region”.

Ahead of the Pride celebrations this year, LGBTIQ+ people had been attacked publicly by almost all political parties, and influential religious lobby groups. Their discourse was amplified through social media, said Vásquez, describing “ever more violent comments, including threats to attack or murder people from our communities.” There were also reports of extreme, physical violence.

In March, José Roberto Díaz, an 18-year-old volunteer with an LGBTIQ+ rights group called Working Together, was murdered in Huehuetenango, a city in the country’s western highlands. The next month, Betzi Esmeralda Có Sagastume (also 18) and Kelli Maritza Villagrán (26), a lesbian couple, were found murdered in El Progreso, about an hour’s drive from Guatemala City. In each case, their bodies were found with homophobic slurs cut into their skin.

According to Morán, the congresswoman, the fact that hate crimes against LGBTIQ+ people are not specifically recognised under Guatemalan law means that there is no official registry of such crimes -
and little political support for initiatives to prevent them. Though we know from civil society monitoring that last year between 24 and 33 members of the LGBTQ+ community were murdered in Guatemala alone.

Dávila also cited cases of surveillance, break-ins and harassment at the offices of rights groups including Gente Positiva, which hosted the 20 July party that was raided by police trying to shut it down - despite the fact that the Human Rights Ombudsman’s Office had specifically issued a protection order instructing the police to protect this group and guarantee its security.

By the time Pride came around, people were nervous. Activists I spoke to were worried that conservative pressure groups and evangelical churches would try to obstruct or cancel the march. Rumours spread that religious activists planned to provoke confrontations during the event - and that the police could respond with pepper spray to disburse the march.

In Guatemala, the right to protest is protected by the constitution and civil society groups
need permits to hold public assemblies or marches, but they must inform the interior ministry of planned dates, times and routes.

They can also request support with security from the National Civil Police (PNC), as the Pride organisers did. It typically takes 24 to 72 hours for the ministry to approve such requests, according to the activists I spoke with. But, this year, two weeks passed and they received no response.

The Human Rights Ombudsman, Jordán Rodas, appealed to the Constitutional Court to issue a resolution explicitly supporting the march’s free movement through the capital city - which it did, just a few days before 20 July.

Ultimately, the march went ahead as planned and with little disruption and confrontation, amidst public support and participation of UN agencies and the UK, US and Canadian embassies. Unlike what happened after, that evening.

After the police raided the office party, they remained outside the building for an hour - dispersing just before representatives of the Human Rights Ombudsman arrived. Activists told me that three days later, numerous LGBTIQ+ rights groups formally denounced what happened that night to the Ombudsman as well as the public prosecutor’s human rights attorney.

This year’s Pride celebrations in Guatemala will be remembered, not for its usual expressions of joy - but for the attacks against LGBTIQ+ people and organisations that took place across the capital’s historical centre.

The activists I spoke with said they expect threats to rights and equality to only increase over the coming months - including via the imminent possibility that the ‘Protection of the Family’ law could be passed by Congress, or by the incoming government, reversing many of the human rights gains that have been made in the country since the signing of peace accords in 1996.

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**Computer says no: can algorithms be fair?**

Governments are increasingly using algorithms to make decisions that affect us all.

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**Lina Dencik** Co-director of the Data Justice Lab at the University of Cardiff, specialising in digital surveillance and the politics of data.

**Gurumurthy Kasinathan** Co-director of IT for Change, an international NGO looking at the relationship between digital technology and social justice.

**Chair: Caroline Molloy** Editor of openDemocracyUK and ourNHS.

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Tab 21
El odio homófobo que siega vidas en Guatemala

DIÁгар MUNDIAL PARA LA ELIMINACIÓN DE LA VIOLENCIA CONTRA LA MUJER: FALTA MUCHO

la atención sobre la homofobia y la transfobia en el país centroamericano a pocas semanas de las elecciones generales.

Por lesbianas las mataron. La madrugada del pasado 23 de abril, los cuerpos de dos mujeres fueron encontrados cerca de Jalapa, al este de la capital, con señales de tortura y violencia. Junto a los cadáveres se encontró la fotografía de una de ellas con un mensaje de naturaleza incontestable: “por panochas las matamos”.

El doble asesinato, que fue condenado inmediatamente entre otros por la Oficina de la Alta Comisionada de la ONU en el país –la cual puso de relevancia el mensaje “lesbofóbico”–, es solo el último macabro capítulo de la preocupante situación de las personas lesbianas, gais, bisexualas, trans e intersexuales (LGBTI) en Guatemala.

Un mes antes, el 24 de marzo, un joven de 18 años desapareció en Huehuetenango. Apareció muerto un día después, también con signos de tortura. Sobre su piel habían escrito a navajas “hueco y morro”, insultos homófobos locales.
Carlos Romero, secretario ejecutivo de la Red Nacional de Diversidad Sexual y VIH, no duda en hablar de una "oleada" de violencia. "Siempre habíamos visto muertes con saña, pero no a esta escala", dice a DW. Pero es que la simple tarea de contar las vidas que se cobran la homofobia y la transfobia es ya una empresa ardua en un país ya de por sí acostumbrado a una cotidianeidad violenta.

Uno de los principales problemas es que no existe un registro fiable de crímenes de odio contra las minorías sexuales. Según las organizaciones activistas, la mayoría de las víctimas tiene miedo a denunciar, o bien las familias renuncian a hacerlo para evitar dar visibilidad a su orientación sexual o identidad de género, dado el estigma social que aún pesa sobre la cuestión. Por otro lado, añaden estos grupos, a menudo son las propias autoridades quienes no consideran delitos comunes o asumen que la víctima es la culpable.

De acuerdo con un informe de Naciones Unidas, el año pasado fueron asesinadas 24 personas LGBTI en Guatemala. La Asociación Somos, por su parte, eleva esta cifra a 33. Las mujeres trans son las principales víctimas de esta violencia mortal, según este dato.

El procurador guatemalteco de Derechos Humanos, Augusto Jordán Rodas, se ha solidarizado con las familias de las víctimas y con las organizaciones de la comunidad LGBTI del país. "No podemos permitir que este tipo de crímenes con evidente tinte homófobo se den en nuestro país y sobre todo pido que no quede en la impunidad. Tenemos que mandar el mensaje que en Guatemala no se van a tolerar ese tipo de asesinatos", dijo en un comunicado.

**Auge del discurso homófobo de carácter ultrarreligioso**

Todo apunta, sin embargo, a que el clima político y social guatemalteco se escora cada vez más en contra de los derechos humanos de las minorías sexuales. Como en otras latitudes de América Latina, el país centroamericano está asistiendo al auge de un conservadurismo religioso que abandera la oposición contra las demandas feministas y de los colectivos LGBTI.

"De un año y media para acá se ha politizado mucho el tema y la población tiene acceso al discurso negativo, pero no a recursos informativos y educativos sobre el sexo, el género, etc.", dice a DW Luis Barrueto, presidente de la ONG Visibles. La inminencia de la importante cita electoral de este año ha motivado a las fuerzas políticas a posicionarse en busca de apoyos.

![Luis Barrueto](https://www.dw.com/es/el-odio-homofobo-que-siega-vidas-en-guatemala/a-48627126)
"Que sea el propio Estado el que esté generando buena parte del discurso negativo es bastante preocupante, porque son quienes precisamente deberían estar defendiendo los derechos mínimos de la población", subraya el joven activista Barrueto. Los activistas temen que la polarización política en contra de los derechos humanos de una minoría particularmente vulnerable alimente una "dinámica de violencia" ya existente. Que el odio siga segando vidas.

Deutsche Welle es la emisora internacional de Alemania y produce periodismo independiente en 30 idiomas. Síganos en Facebook | Twitter | YouTube |

**LOS DERECHOS LGBTI EN AMÉRICA LATINA Y EL MUNDO**

**Una lucha por la igualdad**

La movilización de la ciudadanía y las organizaciones de derechos humanos ha logrado avances en la situación del colectivo LGBTI en diferentes lugares del mundo. Las estadísticas dan fe de ello.

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**DW RECOMIENDA**

Marielle Franco: ¿quién la mandó a matar?
Tras el arresto en Brasil de dos sospechosos de haber participado en la ejecución de la popular concejala carioca y de su chofer, Anderson Gomes, crece la presión para que se determine la autoría intelectual del crimen. (13.03.2019)

Vuelve la “purga gay” a Chechenia: dos asesinados, decenas de detenidos
Activistas locales han denunciado una intensificación de la represión contra las personas LGBTI en la región rusa. (14.01.2019)

La difícil batalla del periodismo feminista en América Latina
Para las mujeres periodistas, luchar por la libertad de prensa también implica combatir el machismo en los medios de comunicación. (03.05.2019)

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**Fecha** 07.05.2019

**Autor** Enrique Anarte

**Temas** Feminismo, LGBTI, Homofobia, Wolfgang Kaleck, Centro Europeo por los Derechos Constitucionales y Humanos, Guatemala, Impunidad, ONU, Derechos Humanos

**Palabras clave** Centroamérica, América Central, Guatemala, derechos LGBTI, LGBTI, homosexualidad, transexualidad, transgénero, trans, intersexualidad, derechos humanos, diversidad sexual y de género, feminismo, mujeres, igualdad de género, ONU, Naciones Unidas, homofobia, transfobia, crímenes de odio, impunidad, justicia
Homophobic Hatred Reaps Lives in Guatemala

Several especially violent assassinations of LGBTI individuals have called attention to homophobia and transphobia in the Central American country [Guatemala] within weeks of the general elections.

They were killed for being lesbians. In the early morning of this past April 23, the bodies of two women were found near Jalapa, east of the capital, with signs of torture and violence. Along with the corpses, a photograph of one of them was found with a message of an incontestable nature: "we killed them for being lesbians."

The double assassination, which was immediately condemned by, among others, the country’s Office of the UN High Commissioner - which highlighted the ‘lesbian-phobic’ message - is only the latest macabre chapter in the worrisome situation of lesbian, gay, bisexual, trans and intersex (LGBTI) people in Guatemala.

On March 24, a month earlier, an 18-year-old boy disappeared in Huehuetenango. He was found dead a day later, also with signs of torture. On his skin they had used a knife to write “hollow and snout,” local homophobic insults, on his skin.

Carlos Romero, executive secretary of the National Network of Sexual Diversity and HIV, does not hesitate when he speaks of a “wave” of violence. “We had always violent seen deaths, but not at this level,” he tells DW. But the simple task of counting the lives taken due to homophobia and transphobia is already an arduous undertaking in a country that itself is accustomed to living with violence on a daily basis.

One of the main problems is that there is no reliable record of hate crimes against sexual minorities. According to activist organizations, most victims are afraid to report, or families give up doing so to avoid giving visibility to their sexual orientation or gender identity, given the social stigma that still hangs over the issue. On the other hand, these groups add, often the authorities themselves consider them ordinary crimes or assume that the victim is the guilty party.

According to a United Nations report, 24 LGBTI people were killed in Guatemala last year. The association “Somos,” meanwhile, raises this figure to 33. Trans women are the main victims of this deadly violence, according to this data.

The Attorney General for Human Rights, Augusto Jordán Rodas, has expressed solidarity with victims’ families and with LGBTI community’s organizations in the country. “We cannot allow this type of crime, with obvious homophobic undertones to occur in our country and above all I ask that it not remain in impunity. We have to send a message that in Guatemala we will not tolerate these types of murders,” he said in a statement.

Rise of ultra-religious homophobic discourse
Everything, however, points to the fact that the Guatemalan political and social climate is increasingly heading against the human rights of sexual minorities. As in other parts of Latin America, the Central American country is witnessing the rise of a religious conservatism that is championing the opposition against the collective demands of feminists and LGBTI collectives.

“From a year and a half ago until now, the issue has become highly politicized and the population has access to the negative discourse, but not to information and educational resources regarding sex, gender, etc.,” Luis Barrueto, president of the NGO Visibles, tells DW. The imminence of this year's important electoral appointment has motivated the political forces to position themselves in search of support.

Since March, Guatemala finds itself immersed in a polarized electoral campaign which will culminate in the electoral elections of next June, in which it will elect the next president – although it could require a second round in August – as well as the congressional deputies.

Barrueto believes that the principal political forces, and especially Jimmy Morales’s ruling party, are taking advantage of the debate over LGBTI equality and women’s rights to “reduce the pressure over political management.” This activist points out that the political climate has come with a resurgence of discriminatory language.

Within weeks of the elections, a group of conservative deputies are promoting the approval of Law 5272. Among other things, the bill aims to prohibit sexual education, the promotion of sexual and gender diversity and the legalization of same-sex marriage. It also aims to establish prison sentences for women who have abortions.

"That the State itself is generating a good part of the negative discourse is quite concerning, because they are precisely the ones who should be defending the minimum rights of the population,” stresses the young activist Barrueto. The activists fear that the political polarization against the human rights of a particularly vulnerable minority add fuel to a "dynamic of violence" which is already in existence. That this hatred will continue to take lives.
CERTIFICATE OF TRANSLATION

I, Athenais Alcibar Zucker, am competent to translate from Spanish into English, and certify that the translation of *El odio homófobo que siega vidas en Guatemala/ Homophobic Hatred Reaps Lives in Guatemala* is true and accurate to the best of my abilities.

________________________
(signature of translator)

Athenais Alcibar-Zucker
(typed/printed name of translator)

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Tab 22
Threat of violence at home spurs LGBT migrants on to the border

A group of LGBT people arrived in Tijuana and said they will seek asylum.

By Kaela Force
November 17, 2018, 2:53 PM • 16 min read

Less than 1 percent of migrant caravan may reach border near San Diego in 5 days

Approximately 100 of an estimated 1,000 migrants, less than 1 percent those U.S. officials are tracking across four groups, may reach the U.S. border south of San Diego on Sunday.

A group of LGBT migrants was among the first members of the so-called caravan to arrive in Tijuana this week, seeking asylum from some of the most violent countries in the world where gay and trans people are particularly targeted, according to Amnesty International.

"We came with the caravan, and the caravan continues," Cesar Mejia told reporters in Tijuana earlier this week.

MORE: Migrant caravan groups arrive by hundreds at US border
Many migrants have said that what spurs them on are the terrible conditions at home: Central America is wracked with violence and poverty, corruption and impunity.

But for LGBT migrants, the threat of violence is, in many cases, even greater, a 2017 Amnesty International report found, and "gay men and trans women are exposed to gender-based violence at every point on their journey in search of protection." Amnesty listed Mexico and Honduras among seven countries it finds as being deadly and discriminatory for LGBT people.

+ (MORE: Reporter’s Notebook: Poverty, not politics, spurs migrants on)

Mejía, 23, told reporters in Tijuana that the LGBT members of the caravan gravitated toward one another in search of support. For his part, Mejía was easy to find in the crowd. When ABC News spoke to him last month in the tiny town of Huixtla, Mexico, he was wearing a rainbow flag around his shoulders.

"At first I was afraid to wear the flag. I didn’t know how people would react," Mejía told ABC News in Spanish. "In Guatemala, people were asking me what country the flag was and I told them it was the flag of the world."

+ (MORE: ‘God will have the last say’: Migrants explain their decision to flee in their own words)

But in his hometown of San Pedro Sula, Honduras, it was not viewed that way, he said.

"I was discriminated and beat up so it was time to go," Mejía explained.

He chose to join the caravan of thousands of other people, the majority of whom were also from Honduras, making their way to the U.S. border in the hopes of a better life.

Mejía said if he is able to make it to the border, he could make the case for political asylum.

"If I had the opportunity to make it to the border, I could show my representation of the community and ask for asylum, because [in the U.S.],"
Mejía said their group included about 80 people, including children, from Honduras, Nicaragua, El Salvador and Guatemala. As the week continued, hundreds of more migrants arrived in Tijuana, the Associated Press reported, although the majority of the caravan still appears to be more than 1,000 miles away.

**A greater threat of violence**

From the outside, many don’t understand why people -- including families with small children -- would risk their lives to get to a country that has explicitly said it will not let them in. Secretary of State Mike Pompeo has said that people in the caravan will not be able to enter the U.S. illegally "no matter what," and many members of the Trump administration, including the president himself, have accused members of the caravan of being terrorists or gang members.

+ (MORE: Central American migrants in caravan respond to President Trump calling them criminals: 'This is all propaganda')
there is a lot less discrimination than Honduras," he said.

**Unable to speak out**

Raul Valdivia, a gay man and human rights activist who still lives in Honduras, said he understands that discrimination firsthand.

"I've suffered many instances of discrimination based on my sexual orientation, but I remember the most violent came from state forces," Valdivia told ABC News. "I was abused by police while on one of my very first dates. They took me and the other guy to a dark secluded area in a park and forced us to simulate sex. They also beat us with a belt. These are police who patrol downtown Tegucigalpa and I have seen them after, but I'm unable to speak out for fear of repercussions."

Valdivia said LGBT people in his country face "assassinations, political attacks, legal discrimination and targeted street violence."

+ (MORE: Humanitarian concerns grow over exodus of Central Americans)

The country also has one of the highest homicide rates in the world outside of a war zone, according to the Overseas Security Advisory Council (OSAC). Authorities sometimes use gang violence as a cover for political and gender-based violence.

Nearly two thirds of Hondurans live in poverty, according to the World Bank. Corruption is a major issue, prompting the government to establish the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIF) in 2016 through an agreement with the Organization of American States, but much remains to be done.

"Marred by corruption and abuse, the judiciary and police remain largely ineffective. Impunity for crime and human rights abuses is the norm," a 2018 Human Rights Watch report found.

Those who choose to speak out face harsh reprisals. In 2016, U.N. experts called it "one of the most hostile and dangerous countries for human rights defenders." Human rights defenders routinely "suffer threats, attacks, and killings," Human Rights Watch found.

+ (MORE: 3 days after election, 2 men declare themselves Honduran president amid rising tensions)

**No change at the ballot box**

In November 2017, the country held a presidential election with widespread reports of fraud and violence. Thousands took to the streets to protest the re-election of Juan Orlando Hernandez, who changed the constitution to allow himself to run again.
The government’s “response to the post-electoral protests led to serious human rights violations,” according to the U.N., and dozens were killed and more than 1,000 were arrested.

Unable to change their country at the ballot box, many Hondurans chose to flee. And experts say that although the size of this caravan has grabbed headlines, many more Hondurans quietly flee the country every year, leaving conditions that have dramatically worsened since the 2009 military coup, especially for LGBTQ people, journalists and human rights activists.

In 2009, gay human rights activist Walter Trochez, 25, was killed in Tegucigalpa after trying to draw attention to anti-LGBT violence by security forces.

In July 2017, David Valle, project coordinator of the Center for LGBTI Cooperation and Development, was stabbed in his home after receiving threats, Human Rights Watch reported. He survived the attack, but it highlighted the deadly violence LGBT people face in the country.
It is this environment that has prompted Hondurans to risk their lives on the journey north, both in caravans and on their own, experts say.

"As impressive in size as this caravan may be, it still represents a minute proportion of Central Americans -- today primarily Hondurans -- that are fleeing their communities," Alex Main, the director of international policy at the Center for Economic and Policy Research, told ABC News.

**Policies spurring an exodus north**

But LGBT migrants and asylum seekers face dangers along the way, the Amnesty International report found, and often face discrimination and neglect in detention facilities as well. In May, Roxana Hernandez, a 33-year-old trans woman from Honduras, died while in ICE custody in New Mexico, the Associated Press reported.

Activists said she had traveled in a migrant caravan to the U.S. border. Hernandez had been admitted to the hospital after showing symptoms of pneumonia, dehydration and complications associated with HIV, the AP reported.

But even facing extreme dangers along the way and an uncertain future in a country whose president says it does not want them, people have continued to flee Honduras. That will continue until there are real policy changes, Main said.

"This mass exodus will only abate when the rampant violence in Honduras abates, and when real economic development begins to take hold. This will require a profound revision of current economic models promoted by the U.S. and multilateral financial institutions and the displacement of a corrupt economic elite that retains power through repression and electoral shenanigans," Main added.
Until then, migrants, including those in the LGBT community, will continue to trek to the U.S., as this recent caravan has.

More than 2,600 migrants made it Tijuana Saturday, according to the Associated Press.

Mejia said he hopes his group's early arrival will give them an advantage with border officials.

"We wanted to avoid what always happens, which is that if we arrive last, the LGBT community is always the last to be taken into account in everything," he said at a press conference Sunday. "So what we wanted to do is change that, and to be among the first, God willing, and request asylum."
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The "Biggest Discovery" of This Investor's Career?

If You Have More Than $1,000 in Your Checking Account, Make These 4 Moves
Tab 23
'For people like you, there is no law'

The World
July 02, 2018 · 5:45 PM EDT
By Sarah Barrett

A few months ago Baner Morales went to the bank. He saw a couple acquaintances, said hi, made small talk and cashed his check. Later he learned that rumors were spreading about him.

One of the employees at the bank who knew Morales had gossiped to a colleague, revealing that Morales is a transgender man. The two employees went through his file and found his identification that still indicates female despite Morales’ male appearance — the gender he identifies with.
Morales would like to have his name, sex on his identification, and appearance match so that he isn’t vulnerable to this kind of discrimination. But legally he can’t do anything about it. Guatemala does not allow transgender people to change their sex on their legal documents.

In fact, Guatemala is a dangerous country to even identify as trans. According to a study by the Ministry of Public Health 71 percent of transgender women in Guatemala report being victim to discrimination, 60 percent have reported physical abuse and 61 percent earn less than minimum wage. Another study by the organization noted that as many as 70 percent of transgender people say they were kicked out of their family homes.

Despite the prevalence of violence and discrimination of transgender people in Guatemala, there are few legal protections for the LGBTQ community. However, there is currently a proposed bill that would allow trans people to change their sex on their identification in accordance with their gender identity.

While the LGBTQ community waits for Congress to enact laws and protections, some advocates are working to improve the lives of the LGBTQ community without going through the legislature.

One organization, Asociación Lambda, is working toward improving the situation through LGBTQ sensitivity training. The federal prosecutor's office contacted the organization to train government employees and police about human rights for the LGBTQ community. For many government employees, this is the first time they’ll encounter these issues. So far, Lambda has trained a little more than 800 people all over the country in four years.

'It was my job to explain'

Morales was shocked when he heard that people from the bank were gossiping about him.

"I was so angry," Morales said. "I want them to respect my integrity. If they can do this to me, what’s to stop them from doing this to other people?"

Morales decided to file a criminal complaint for invasion of privacy. He went first to the office of human rights and then was sent to the federal prosecutor’s office.

“They [the federal prosecutors] don’t know what a trans man is so it was my job to explain it to them,” says Morales. “And they asked me if a trans man is the same as a lesbian, or if I’m a man that wants to become a woman.”

Humiliated but undeterred, Morales explained what gender identity is and asked to file the report against the bank. But the employee at the prosecutor's office told him he didn’t think a crime had been committed.

“I told him that they went through my personal information. That’s a crime” Morales said.

The government employee asked if the bank was blackmailing him. Morales explained that no, the bank was not blackmailing him but they were revealing his personal information to strangers.

“And he told me, 'I’m sorry, but for people like you there is no law.'”

Morales left the bank dejected and victimized twofold.
Teaching gender

In a conference room in Guatemala’s capital, Carlos Romero Prieto, a Lambda instructor, asked a class of 21 adult government employees to introduce themselves one at a time — their name, where they’re from and something about their sexuality.

The class instantly dissolved into awkward laughs and uncomfortable silences as they each took turns. Everyone laughed as one woman admitted she wasn’t sure what sexuality means. When one participant proclaimed himself as a man who likes men, the whole class loudly applauded.

The training session attendees are split up into two groups; aliens and earthlings. The extraterrestrials wear light-up headbands and know nothing about humans and must ask the earthlings to explain human beings — sexuality and all.

Credit: Carmen Graterol/PRI

The students took a preliminary test on gender identity and sexual orientation to get a base level of the class's understanding of LGBTQ issues. Turns out, they didn’t know much.

Sofía Crosta works for the attorney general’s office investigating child abuse. She also participated in the Lambda class. When asked what she understood about gender, she wrote “it is the difference between men and women.” And under the question asking what she understands about sex, she wrote: “human attributes that differentiate men and women.”

Crosta had never learned about LGBTQ issues before — not at school nor at training for her job. But this classroom was a safe space for questions.

One person asked if it is possible for a transgender man to get pregnant. Another struggled with the difference between gender and sex. And another trainee raised her hand to ask what “queer” means.
Romero, the instructor, projected the music video for Queen’s “I Want to Break Free” onto the wall. People danced along in their seats as he talked about how the music video celebrates queer identities.

It wasn’t all fun and games, though. To drive home a point about LGBTQ lives being in danger in this country, Romero played a grainy surveillance video that shows two men sitting in a bar in Guatemala holding hands. A man walks in, pulls out a gun and shoots them both point blank. Romero explained that this is the type of violence that LGBTQ people face all the time in Guatemala and much of it goes unreported because people often feel stigmatized at police stations and in government offices.

Romero declared that queer people shouldn’t be in danger just for holding hands, being themselves and walking down the street.

But one student pushed back. He’s the one who proclaimed he’s a man who likes men in the beginning of the class. But he disagreed. He said he’s gay but he keeps his sex life behind closed doors. He blamed queer people for inviting attacks by acting "ridiculous" in public.

“Sorry for the interruption but that’s where society doesn’t see things correctly. For example, I’ve shared with many people and everybody has respected my life and my sexual orientation. How am I supposed to succeed? By behaving myself,” the student said.

This is the kind of mentality Romero is working to correct, especially from government employees. Romero explained to the class that this kind of sentiment is unfortunately common in Guatemala among the queer community.

Carlos Romero, a gay man, talks to the attendees about different sexual orientations.

Credit: Carmen Graterol/PRI
"I think it's a defense mechanism, trying to be the correct gay, the white, middle-class gay that behaves himself. But we have to legitimize that any kind of expression is good, that all forms of expression also come with the guarantee of human rights," Romero said.

He said it’s an uphill battle and things won’t change overnight but hopefully, little by little, these lessons will stick and it’ll get easier for the LGBT community.

“Whoever wants to put on a costume and walk down the street with cymbals and a big bass drum screaming that I’m a queer, I’m a queen, I’m a fag, I’m a nancy, they should do it,” said Romero.

Baner Morales, the transgender man who felt wronged by the bank, isn’t looking for a parade — but, with the help of Asociación Lambda, he is pushing for the right to file a criminal complaint against the bank.

*Sarah Barrett reported from Guatemala on a fellowship from the* International Reporting Project (IRP).

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Categories: *Lifestyle & Belief, Lifestyle, Sexuality* and *Across Women’s Lives*

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Tab 24
Researchers gathered files from 1960 to 1996 and found that 156 people were targeted for their sexual preferences by the National Police.

Over the course of 30 years, more than 150 members of Guatemala's LGBTI community were persecuted for their sexual orientation, according to a new investigation by the Historical Archive of the National Police (AHPN) – despite the fact homosexuality wasn't considered a crime.

**Related:**

Genderqueer Student Murdered and Burnt in Rio Favela

'The Criminalization of the LGBTI Population in the Police Records 1960-1990' was released as part of the United Nations' Free and Equal campaign just 24 hours after International Day Against Homophobia on May 17.

Researchers gathered files from 1960 to 1996 and found that 156 people were targeted for their sexual preferences by the National Police (1881-1997), citing incidents of "police aggravation" going back as far as 1950.

"Thousands of photographs pictured people accused of crimes of homosexuality, although (police) were aware that in Guatemala there has never been legislation to criminalize it," said AHPN coordinator Gustavo Meño, the report's director.

In one of the official police reports, a transsexual woman, described as a “homosexual man,” was arrested for allegedly “usurping an identity and using a false name.”

According to AHPN researcher Katia Orantes, the National Police referred to the LGBTI community as the "internal enemy."
The investigative report was created to "honor the victims and in this case LGBTI people" and shed light on past impunity while providing answers for those searching for truth, justice, reparation, and an end to discrimination.

"Discrimination against LGBTI people fuels the spiral of violence to which they are subjected daily and creates an environment conducive to their exclusion from opportunities in all facets of life," said Liliana Valiña, representative of the UN Human Rights Commission.

The digitized report includes 57 million documents from the now defunct National Police Office, which closed in 1997.

Tags

United Nations LGBT equality & sexual diversity Equality & human rights Homosexuality Discrimination Historical Archive of the National Police

People


EFE

by teleSUR/mrs-LJS

Comment

0

Post with no comments.
Tab 25
BOGOTA (Thomson Reuters Foundation) - Killings and violence against LGBT people in Central America are driving hundreds to flee their homes each year, but they have no safe sanctuary to run to, Amnesty International said on Monday.

Lesbian, gay, bisexual and transgender people are being forced to leave El Salvador, Honduras and Guatemala to escape “epidemic levels of violence” and threats by criminal gangs and security forces, the rights group said in a report.

“People are facing vicious discrimination in Central America due to their gender identities, and have absolutely nowhere to run for safety,” Erika Guevara-Rosas, Americas director at Amnesty International said in a statement.

“Terrorized at home, and abused while trying to seek sanctuary abroad, they are now some of the most vulnerable refugees in the Americas.”
El Salvador and Honduras have some of the world’s highest murder rates, and LGBT people are particularly vulnerable to macho, powerful gangs who control entire city neighborhoods.

At least 136 LGBT people in El Salvador have fled the country since 2012 and most crimes go unpunished, according to local rights group COMCAVIS.

Cristel, a transgender woman, said she was forced to flee El Salvador in 2014 after receiving death threats from a gang. They told her to leave within 24 hours or they would kill her.

“I was forced to leave my country .. just because I was transsexual, just because I wasn’t a biological woman,” 25-year-old Cristel is quoted as saying in the Amnesty report.

In Honduras, at least 264 LGBT people have been killed since 2009, of whom more than half were gay men, according to local rights group, Catrachas.

Last week the Inter-American Commission of Human Rights (IACHR) stressed its concern about the “high levels of violence against transgender people” and their low life expectancy.

Under the U.N. 1951 refugee convention, LGBT people who have experienced persecution and hate crimes because of their sexual orientation and or gender identity are eligible to claim asylum.
According to a study by the U.N.’s refugee agency, UNHCR, nearly 90 percent of LGBT asylum seekers and refugees from Central America it interviewed in 2016 said they had suffered sexual and gender-based violence in their countries of origin.

Most LGBT people from Central America seek refuge in Mexico and the United States, having made dangerous overland journeys north during which they are often attacked by gangs.

But few claim asylum because authorities in Central America and Mexico fail to inform them about their rights, Amnesty said.

Reporting by Anastasia Moloney @anastasiabogota, Editing by Ros Russell; Please credit the Thomson Reuters Foundation, the charitable arm of Thomson Reuters, that covers humanitarian news, women’s rights, trafficking, property rights, climate change and resilience. Visit http://news.trust.org

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MORE FROM REUTERS
Tab 26
UN launches Guatemala version of global LGBT campaign

Editor's note: Visibles, a Guatemalan LGBTI website and advocacy group, originally published a Spanish version of this article.

GUATEMALA CITY — U.N. High Commissioner for Human Rights Zeid Ra'ad al-Hussein on Nov. 17 announced his office in Guatemala has launched a version of the Free and Equal campaign that will run through June 2018.

Al-Hussein described the efforts of human rights defenders in the country as an essential force for peace and democracy. He also argued one of his priorities is to eliminate discrimination in its multiple forms; whether it is based on race or gender, disability, sexual orientation or gender identity.

“LGBTI people are stigmatized, dehumanized even, by Guatemalan society and media, leaving them particularly vulnerable to violence and ill-treatment,” said al-Hussein. “They face discrimination at all levels, discrimination that prevents them from accessing education and justice, getting decent jobs and receiving adequate health care.”
In his speech, he highlighted the fact that the Office of the U.N. High Commissioner for Human Rights (OHCHR) in the country documented the murders of 11 trans women over the past year, but the Guatemalan government continues to document their cases as the deaths of men.

“They are denied their identity even in death,” said al-Hussein.

The Free and Equal campaign, which the OHCHR launched in 2013, will be supported in its Guatemalan version by the country’s human rights ombudsman. The message of the campaign is simple, al-Hussein explained.

“We are all equal and we should all be free,” he said. “Free from fear, free from violence and from discrimination.”

An installation called igualómetro will travel around Guatemala, confronting intolerance not only against LGBTI people, but also against indigenous people, women, people with disabilities, and other targets of societal prejudice. The goal is to sensitize people to the adverse impacts of discrimination.

Before Guatemala, al-Hussein visited El Salvador, where he underscored the importance of ending impunity for hate crimes against LGBTI people, especially trans women.

La ONU lanza campaña LGBT en Guatemala

Nota del editor: Esta nota fue publicada originalmente por Visibles, un sitio web y grupo LGBTI guatemalteco


En su visita, celebró los esfuerzos históricos y actuales de los defensores de derechos humanos en el país, señalando que “han estado a la vanguardia de los movimientos transformadores por ampliar los espacios democráticos y construir la paz.” Una de las prioridades de su oficina, explicó, es abordar la persistente necesidad de combatir la discriminación en sus múltiples formas alrededor del mundo: discriminación racial, contra personas con discapacidades, por motivos de género, y contra personas lesbianas, gays, bisexuales, trans e intersexuales (LGBTI).

Al-Hussein destacó que “las personas LGBTI son estigmatizadas, incluso deshumanizadas, por la sociedad guatemalteca y los medios, haciéndolos particularmente vulnerables a la violencia y el maltrato. Enfrentan discriminación a todos los niveles, que impide que tengan acceso a la educación, a la justicia, a trabajos decentes y a la salud.” Llamó su atención particularmente, que en el último año la oficina del OACNUDH (Oficina del Alto Comisionado para los Derechos Humanos) en Guatemala ha registrado 11 asesinatos de mujeres transgénero, pero el estado continúa documentando estos casos como las muertes de hombres.

“Se les niega su identidad incluso tras su muerte,” sentenció.

En este contexto, el lanzamiento de la campaña Libres e iguales en Guatemala es oportuno porque busca comunicar un mensaje muy sencillo.

“Todos somos iguales y todos deberíamos ser libres, del miedo de la violencia y de la discriminación,” explicó el alto comisionado.

La campaña cuenta con el apoyo de la Procuraduría de Derechos Humanos (PDH) del país, a la que la institución se adhirió por convicción y compromiso con los derechos de todos los guatemaltecos, explicó el Procurador Jordán Rodas Andrade.

Antes de llegar a Guatemala, al-Hussein visitó El Salvador, donde también destacó la necesidad de reducir la impunidad de los crímenes de odio contra personas LGBTI, especialmente mujeres trans.

Libres e iguales recorrerá Guatemala
La campaña Libres e Igualares es una iniciativa de información pública de las Naciones Unidas a nivel mundial, cuyo objetivo es promover la igualdad de derechos y el trato equitativo de las personas LGBTI. Fue lanzada en julio de 2013 y en Guatemala fue adaptada al contexto local con colaboración de las distintas agrupaciones locales que trabajan por los derechos de la población LGBTI y con el acompañamiento de la agencia Leo Burnett.

En Guatemala, se realizará una instalación itinerante conocida como el “Igalómetro,” un espacio cerrado donde los participantes pueden ingresar para escuchar una variedad de mensajes discriminatorios, con la opción de frenarlos cuando éstos sobrepasen su umbral de tolerancia. Con esto, se busca concientizar sobre las múltiples formas en que se manifiesta la discriminación y que para erradicarlas, es necesario enfatizar la igualdad de derechos y libertades de todos los seres humanos.

Un restaurante en la Ciudad de Guatemala indica que no se disocia por motivo de orientación sexual y otras características. Discriminación contra la comunidad LGBT sigue siendo común en el país centroamericano. (FOTO del Washington Blade por Michael K. Lavers)

Visibles

Visibles es un sitio de web y grupo de apoyo LGBT guatemalteco. Su sitio web es visibles.gt

Comments are closed
Tab 27
October 4, 2017 at 7:03 pm EDT | by Michael K. Lewis

Transgender woman from Guatemala granted asylum in U.S.

A transgender woman from Guatemala has received asylum in the U.S. (Washington Blade file photo by Michael Key)

A judge on Tuesday granted asylum to a transgender woman who fled persecution in Guatemala.

The trans woman — who the Southern Poverty Law Center represents — in a court filing said she moved to Guatemala City, the country’s capital and largest city, when she was 17-years-old to “avoid further bullying, harassment and discrimination” she said she experienced in her hometown.

The trans woman — who the Southern Poverty Law Center has not identified by name — said the laboratory for which she worked after moving to Guatemala City fired her because of her sexual orientation.

She started working with a Guatemalan trans advocacy group and said she “experimented with dressing as a woman” a year after moving to Guatemala City. The trans woman said she began injecting herself with hormones and took birth control pills in order to begin her transition, but she stopped because of the side effects.

The trans woman said two men who she believed were with “associated with a drug cartel” beat her on Aug. 5, 2015, after she refused to “perform sexual favors for their customers.” She said another drug dealer on Sept. 14, 2016, threatened to kill her outside of a restaurant after she refused to extort money from local businesses.
The trans woman on Oct. 15, 2016, took a bus from Guatemala to neighboring Mexico. She then rode on trains towards the U.S., noting she did “not dress as a woman and tried not to look effeminate” for her safety.

She crossed from Mexico into the U.S. last December and turned herself in to U.S. Border Patrol. The trans woman has been at the Stewart Detention Center, a male detention center in Lumpkin, Ga., the Corrections Corporation of America operates under contract with U.S. Immigration and Customs Enforcement.

“Although I am currently in detention, I already feel safer in the United States of America because I am far away from the threat in Guatemala,” she said in her court filing. “I fear that they would kill me if I returned to Guatemala.”

Southern Poverty Law Center Deputy Legal Director David Dinielli on Tuesday in a statement described Guatemala as a “country widely recognized as hostile to LGBT people.”

“We’re glad the judge saw that our client’s life was at serious risk if she were to return,” he added.

Activists with whom the Washington Blade spoke in Guatemala City in January said violence and discrimination based on gender identity remains commonplace in the Central American country that borders Mexico, El Salvador, Honduras and Belize. They also said police officers either do not investigate allegations of anti-trans violence or are among those who carry it out.

The trans woman in a separate court filing said Guatemalan police “targeted” her because she was a sex worker. She also said police officers forced her to have oral and anal sex with them at least five times.

“Sometimes I was forced to have sex with more than one officer at a time,” she said. “They used me without warmth and without mercy.”

Michael K. Lavers
Michael K. Lavers is the international news editor of the Washington Blade. Follow Michael

1 Comment

adal October 5, 2017 at 4:33 pm EDT at 4:33 pm

Creo que querían decir “hombre trans porque es una chava que se volvió hombre
Transgender woman from Guatemala granted asylum in U.S.
Tab 28
Displaced LGBT People from Central America, Mexico Head North for Survival

17 migrants seek asylum in U.S. by Maria Inés Taracena 🚨 TWEET 🚨 SHARE
HONDURAS

NO MÁS FRENTE

TODO TIENEN DERECHOS
Joseling, left, and Estefany stand in front of the border fence, before walking to the DeConcini Port of Entry in Nogales, on August 10, 2017.

Maria Inés Taracena

Listen
-8:31

Arcoiris 17, Rainbow 17

Estefany has many scars—some are visible on her face—lifelong reminders of the death threats and abuse she survived in Honduras. She has short, curly black hair. Her brown eyes are round and wide. She wears bright pink lipstick, and her lashes stretch all the way up to her eyebrows.

“We’re made of flesh and bone. We have a heart, we have feelings. We want to be supported,” she says. Estefany is a 22-year-old transgender woman. She’s alive, nearly 2,000 miles away from her home country, after escaping violence that nearly killed her. “We are brave women. We made it here to México. There are things that happened to us in our home countries that we want to forget. The only thing that’s left is to move forward and become stronger. What we saw was brutal, but something good will come out of it.”

Estefany, along with 15 transgender women and gay men from Guatemala, El Salvador, Honduras, Nicaragua and México, arrived to Nogales, Sonora on July 25. One person joined the caravan days later. The Rainbow 17 — that’s what supports have nicknamed the first trans-gay migrant caravan — crossed many borders, exposing the violence inflicted on LGBTQ people in Latin America, and the abuse and exploitation of Central American migrants in México.

On Aug. 10, they turned themselves in to immigration officials at the Dennis DeConcini Port of Entry near downtown Nogales, Sonora, to request asylum in the U.S. They were sent to immigration detention centers in New Mexico.

But before they requested asylum at the border, they stopped at the Home of Hope and Peace, or HEPAC, a shelter in Nogales, Sonora.

On one Sunday morning, they rest and cook breakfast there.

Kevelin Nahomi, also a transgender woman from Honduras, and her partner José sit across the table from Estefany. They have been together for five years, and wanted to get married in México so that they wouldn’t be separated once on U.S. soil. They were unable to wed and as a result are currently in separate detention centers in New Mexico.

“I have lived through a nightmare this past year. I want to wake up,” Nahomi says, as she tries to eat some breakfast at the shelter. She talks about her two children, who are back in Honduras. She also misses her mother. “It’s so hard to hear them through a phone and not be able to see them.” She begins to cry.
Maria Inés Taracena

Nahomi and José were granted political asylum in México in December. However, the violence and discrimination—not only for being transgender and gay but also Central American migrants—made México unlivable. They say the violence was constant. One day, they were beaten so badly that one of Nahomi’s breast implants punctured. While Nahomi was in Nogales, she had health problems because the implant was leaking oil inside her body. It’s unclear whether she received medical treatment in detention.

Jerson, a young gay man from Honduras, also eats breakfast.

“When you leave your country, you expect to be protected and want to feel like nothing bad will happen to you again,” he says. Jerson fled to México, but he says it was just as bad as Honduras. “I would get a job and be exploited for hours, knowing sometimes I would only get a plate of food.”

Many members of the Rainbow 17 met in migrant shelters in southern México. Others met when they reached Nogales, Sonora. Throughout the trip, they connected with Nakay Flotte and Irving Mondragón, co-founders of Diversidad Sin Fronteras, diversity without borders—a collective of LGBTQI activists, researchers and documentary makers who collect and expose human rights abuses against refugees and migrant people in North and Central America. Flotte and Mondragón helped organize the caravan. For the most part, they traveled together until they reached Nogales, Sonora on July 25.

“I have been fleeing for almost two years…I could have become an architect, I could have become someone who did something positive for my country,” Jerson says. “My father was killed, my brother was killed. I have suffered torture…abuse. Even though I love my country, I don’t have anything there.”

The Fight Back Home: Guatemala

“I ran away without direction. I just wanted to go to a place where I thought I would feel safe,” says Kataleya, a transgender woman from Guatemala. As Kataleya shares her experiences and the reasons she fled, she makes fruit smoothies in HEPAC’s kitchen, and pours a glass to everyone in the room. “I never wanted to leave my mother or my siblings. I was forced to leave my country, because if I didn’t, I would have been killed.”

Kataleya lived in a dangerous slum in Guatemala City, known as El Gallito. Kataleya says that when a group of men found out she is a transgender woman, they beat her and sexually assaulted her. She woke up in a ditch. “I got up and went to see my mom…all beaten up,” she says.

Kataleya and her mom left the city and headed to a northern region of Guatemala, close to the border with México. “I escaped to another part of Guatemala, and they did the same things to me. I escaped to Mexico, and they did the same things to me.”

She escaped to México, where she eventually joined the caravan.

Maria Inés Taracena

In June, LAMBDA Guatemala, an LGBTQI human rights organization based in Guatemala City, in partnership with the Guatemalan chapter of the United Nations High Commissioner for Refugees, published the first report looking into the violent displacement of LGBTQI people in the Central American country. The report, titled Sin Raíz, or, without roots, also shared testimonies of LGBTQI people from Honduras, El Salvador, and other neighboring countries, who have fled to Guatemala or are passing by as they head north. Activists in Guatemala say that when people are violently persecuted, forced to leave their home countries, it shouldn’t be referred to as migration—it is a refugee crisis, and they say LGBTQI people should be granted asylum.

“Healthcare, employment, education and justice for transgender communities are still Utopian ideas in Guatemala. There is so much work to do, and that’s my fight,” says Alex Castillo, a transgender man and activist in Guatemala City. He’s the treasurer at LAMBDA and the founder of the first Central American transgender men collective, Colectivo Hombres en Trans-Formación.

“Central American countries function the same way: they are religiously conservative, heteronormative, and they are patriarchal,” Castillo says.

The Sin Raíz report says violence against LGBTQI people begins at home and in school. “When I was 10 years old, my father, with a gun in hand, said: ‘I’d rather have my son die than for him to be a homosexual,’” a gay man from Guatemala said in the report. There’s also lack of job opportunities, because employers won’t hire openly gay and lesbian people, or transgender men and women. Guatemala does not have a law that protects LGBTQI people from discrimination at the workplace, or any public realm. For years, activists have fought for an anti-discrimination statute, as well as a gender identity law.

Also, most of those interviewed in the report said they had suffered physical assault, and about one-third said they had survived sexual violence, and mentioned this as the reason they fled.

There have been some political wins through the years. For instance, transgender people can now change their legal name to a name that matches their gender identity. And, in June, during LGBT Pride Month, Guatemala’s Attorney General Thelma Aldana placed the LGBT pride flag next to the Guatemalan flag outside her office, as a sign of support for the community. Some say these signs of solidarity, however, are merely on the surface of a society that is violently homophobic and transphobic in ways the Rainbow 17 have experienced.

“We want to build a country and a society that respects diversity,” says Guatemala Congresswoman Sandra Morán, the first openly lesbian woman elected to public office. “We have taken a few steps forward. There is still a lot to be done, but we are building that future.”

La Entrega/the Surrender

On the morning of Aug. 10, more than 50 people marched in solidarity with the Rainbow 17. It was sunny and humid in Nogales, Sonora, as the group walked on Calle Internacional, a street that runs next to the border wall. The caravan could see the homes in Nogales, Arizona through the slats of the fence. They were only a few meters away from the United States, yet still so far from calling this country their refuge.
Maria Inés Taracena

By early afternoon on that day, as they held their thick asylum applications, the Rainbow 17 walked to the Denis DeConcini Port of Entry near downtown Nogales and turned themselves in to immigration officials.

Their tears were uncontrollable. They hugged and said good bye to those who took care of them through their journey. As the group entered through the metal revolving doors of the port of entry, supporters screamed words of encouragement.
One member of the caravan was released from detention earlier this week. She is now in New York City with her sponsors, waiting for her asylum case to be resolved. The rest of the Rainbow 17 are split between two detention centers in New Mexico, expect for the only minor in the group, a 17-year-old transgender girl from Guatemala.

The caravan’s pro bono legal team—which includes the Oakland-based Transgender Law Center—continue to work with Immigration and Customs Enforcement to release the rest of the caravan on humanitarian parole, as LGBT asylum seekers in detention centers are often physically and sexually abused, according to the Transgender Law Center and other LGBT rights and human rights organizations. Transgender women account for one in five survivors of sexual assault in detention, according to a years-long investigation by FUSION. ICE has said in the past that the agency is committed to "providing for the safety and welfare" of all detainees, including LGBT, and that it takes allegations of abuse seriously.

“What we want is to be protected. We are humans, and we have rights just like everyone else,” Nahomi says. “If one of us falls, we help pick each other up, we give each other strength to keep going. We want to be together so we can continue supporting each other.”

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Tab 29
LATINO

Sexual, Gender Violence Driving Central American Youths to Flee Their Countries

— In this June 19, 2014 photo, a 14-year-old Guatemalan girl traveling alone to the U.S. waits for a northbound freight train along with other Central American migrants, in Mexico. Rebecca Blackwell / AP


By Suzanne Gamboa

Sexual and gender-based violence by gangs, particularly against girls, has been a major driver of Central American youths from the region, a group that protects immigrant children reported Thursday.
Gang members are using rape, kidnapping, torture, sexual violence and other crimes, predominantly against women and girls and people who are lesbian, gay, bisexual or transgender, as a main tactic to expand their control of territory in Central America, according to Kids In Need of Defense (KIND).

“Our research found that sexual and gender-based violence by gangs causes many children, especially girls and LGBT children and youth, to flee Central America and seek safety in the U.S.,” said Rachel Dotson, director of gender and child migration initiatives.

Much of the violence is being seen in Honduras, Guatemala and El Salvador. The violence is worsened by the impunity of gang members. Many don’t report the crimes or when they do they or their families are subject to gang violence, the report states.

“Representatives of government agencies in all three countries acknowledge that there is little their governments can do to protect their children,” Dotson said.

In this June 19, 2014 photo, a 14-year-old Guatemalan girl traveling alone to the U.S. waits for a northbound freight train along with other Central American migrants, in Mexico.  

Rebecca Blackwell / AP

The region's problems and the migration, asylum and border issues it raises for the country will be the topic of a mid-June conference the administration plans in Miami, Department of Homeland Security Secretary John Kelly said separately Thursday.

“There's corruption there, there's terrible intimidation. They're afraid for their parents. These cartels ... are horrifically violent and they hold neighborhoods, cities in a grip of fear and that includes police in many cases,” Kelly said at a forum held by the Atlantic Council, which released its own report on Central America.

Related: Border Agents Blocking, Turning Away People Seeking Asylum: Report

The release of the reports came the same day the Senate approved a sweeping $1.1 trillion spending bill that included $655 million for Central America. The money is aimed at bolstering the region’s security and economy and stemming migration from the region to the U.S. The House approved the bill Tuesday.
The amount is $95 million less than what was provided in 2016. It also falls short of the $1 billion the Obama administration requested from Congress in 2015 after a wave of Central Americans, including many unaccompanied youth, hit the southern border.

“It is heartening to see USAID and the Department of State will continue to focus on addressing root causes (of the violence and migration), but it is a disappointment it is a reduction in funding,” said Lisa Frydman, director of regional policy and initiatives.

For its research, KIND interviewed 60 Central American children in Mexican custody and reviewed documents from 36 KIND client cases. Researchers also did 58 interviews with judges, police, prosecutors and representatives of advocacy groups in the region.

— Detainees sleep in a holding cell at a U.S. Customs and Border Protection processing facility in Brownsville, Texas on June 18, 2014. Eric Gay / AP

The Atlantic Council report was the result of a year of work on the region's issues by a task force. It also raises issues of gangs and violence against women and girls as well as the building of
security and justice systems, but also focuses on economic and other issues.

“El Salvador, Guatemala and Honduras are too often relegated to the back burners of U.S. foreign policy-making. Their fate directly impacts millions of Americans,” said John Marczak, a director at the Adrienne Arsht Latin American Center and task force director, in a statement. “It is time for a new call to action based on long-term investment and partnership.”

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Kelly, a retired Marine Corps general, had worked on Central America’s issues - once accompanying then-Vice President Joe Biden to the region - as the head U.S. Southern Command.

In his remarks, Kelly tied the region’s problems in Central America to the drug trade that people turn to for lack of economic opportunity.

The drug flow in the region “is entirely due to the drug demand in the United States - heroin, methamphetamine and cocaine,” he said.


“The reason for the drug flow is our drug demand and we do nothing about it,” said the DHS Secretary. “Yes we try to rehabilitate drug addicts, yes we try to arrest our way out of this but we do little in our country, my country, the United States of America, to try to get at this incredible
drug demand of the three hard drugs that as a direct result, is what is happening in Central America - a breakdown of societies, lack of police effectiveness and a lot of other things.”

Kelly said the mid-June conference is “a direct result of President Trump telling me to fix the problems on the southwest border.”

The first day will deal with economic development and the region's countries opening themselves to investment, he said.

He said “the Mexicans are co-sponsoring with us. We’ve got Canada, Panama, Costa Rica, Colombia ... as well as we think some European countries, the EU coming in.”

Kelly also said Vice President Mike Pence will attend one day, and potentially the secretaries of Commerce and Treasury and others administration officials. The presidents of Guatemala, Honduras and El Salvador and Luis Alberto Moreno, the president of the Inter-American Development Bank, will also be in attendance.

Kelly said the second day would focus on security - better police, better border protection and an improvement in their police.

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Suzanne Gamboa is a national reporter for NBC Latino and NBCNews.com

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Tab 30
Guatemala’s First Gay Lawmaker Targeted with Homophobic Abuse

Sandra Moran is among the most influential feminist leaders in Guatemala and pioneered women’s and LGBTI movements before becoming a politician.

Guatemala’s first openly gay member of Congress has filed a formal discrimination complaint, saying that she has endured discrimination as a result of her sexual orientation and progressive political agenda in the Central American country’s conservative-dominated parliament.

| INTERVIEW: Social Movements Have a Voice in Guatemala's Congress |

Sandra Moran, a longtime feminist activists and artist who has pioneered women’s and LGBTI movements in Guatemala, was elected as a member of Congress last September along with two other candidates from her left-wing Convergence party—not to be confused with President Jimmy Morales’ conservative National Convergence Front or FCN party.

Moran filed a complaint with Guatemala’s Office of Human Rights Monday over a petition hosted on the conservative portal CitizenGo that attacks her based on her sexual orientation. The petition, launched Sept. 1 by a user named Alejandro Berganza, argues that Moran
should not be appointed as the president of the Parliamentary Forum of Women in Congress because she is a lesbian, saying the appointee “must be a woman in the full sense.”

Feminist and human rights organization expressed support for Moran in the face of the attack.

“We reject the language and the sentiment of the petition,” wrote the regional Latin American and Caribbean LGBTI association Ilagalac in a statement. “The arguments are untenable, intolerant, abusive, and they trample the dignity of the lawmaker and that of millions of women in our country along with it.”

| INTERVIEW: Resource Extraction Destroys Guatemala Social Fabric |

Meanwhile, the youth branch of Moran’s Convergence party also rejected the offensive petition as a “homophobic, discriminatory, sexist, and exclusionary” act that serves to “keep the people enslaved and ignorant.”

Moran is among the most influential feminist leaders in Guatemala. She is a champion for the rights of women and Indigenous people. At the beginning of her term in office, the history-making lawmaker told teleSUR that her decades of experience in Guatemalan social movements had shaped her approach to politics with a focus on giving voice to the grassroots through participative and collective processes.

But the process has not been without challenges as Moran’s Convergence party and its allies represent the vast majority in Guatemala’s Congress.

What’s more, conservative attacks have been on the rise against Moran for her sexuality, past involvement with an armed guerrilla movement, and feminist, socialist, anti-imperialist political agenda.

According to local media, her work to promote a bill to protect young women and girls who are victims of sexual violence—including measures to provide access to abortion in cases of rape—has garnered particular criticism from right-wing and anti-choice groups. Abortion is illegal in Guatemala except in cases of pregnancy endangering a woman’s life.

Tags

Central America & Mexico Guatemala Human rights LGBTI Politics Sandra Moran

La Hora

by teleSUR / hg-jj-mk
Tab 31
Interview

"In Guatemala to be a feminist is not welcomed, a lesbian, even less so. I am a lesbian feminist"

Nina Lakhani in Guatemala City

Sandra Moran, the first openly gay member of Congress in Guatemala, says LGBT rights don’t define her - she is mainly known as a champion of women and indigenous people

Thu 11 Feb 2016 06.33 EST

Amid an extraordinary wave of people power which helped bring down a corrupt government in last year’s Guatemalan Spring, the LGBT community had its own political triumph.

Sandra Moran, 55, was elected to Congress as its first openly gay member in last September’s general election. She took office in January promising to drive forward reform to outlaw hate crimes and discrimination against the LGBT community, and sponsor a ground-breaking identity law that protects sexual diversity.

“For the first time the LGBT community feels represented in the organ of government which is meant to be representative and it has high expectations,” Moran says from her modest new office
in the historic centre of Guatemala City. “There's a long way to go but it’s an important start: Congress is still dominated by men and very conservative, but here I am.”

Moran’s ascent into mainstream politics is rooted in grassroots activism. Born in Guatemala City in 1960 - the year civil war was declared - Moran grew up in a hardworking, politically active family amid violent suppression by successive military dictatorships that targeted students, teachers, lawyers, activists and anyone else they regarded as subversive.

She joined the student’s movement aged 14. “The repression was severe, people in the social movement were being disappeared, and in 1981 I had to leave Guatemala to save my life.”

After 14 years in exile in Mexico, Nicaragua and Canada, she returned home in 1995 - a year before the peace deal ended Latin America’s longest and most brutal civil war which left at least 200,000 people, mainly ethnic Mayans, killed or “disappeared”.

Moran participated in the peace negotiations on behalf of a new women’s movement. In the same year, she co-founded the first collective of lesbian women called Mujeres Somos - We Are Women. “It was fundamentally a self-help group because we didn’t have the capacity to come out in public, but it helped us to become stronger.”

A few months later, Moran came out as a lesbian to her colleagues in the women’s movement. This set the course for her model of LGBT activism.

“I’ve never been an activist within the LGBT community. I have always fought for LGBT rights as an openly lesbian woman from within the women’s and feminist movement. I believe the struggle must take place from within the wider social movement,” she says.

It took a decade until the LGBT community was accepted as a key partner in the country’s broader fight for social justice. “I remember big protests against the free trade agreement in 2005 and men and women from the LGBT community were marching with the rainbow flag, it was such an important moment as the community was recognised part of the wider social movement.”

There are now more than 30 LGBT organisations across Guatemala. “There’s a lot still do but it’s important to recognise how much better organised the LGBT community is now.”
Nevertheless, Guatemala remains a deeply conservative and machismo society, with one of the highest murder rates in the world. Within this challenging context lesbians are raped as punishment and violent hate crimes force transgender people to flee overseas.

It is also not uncommon for female activists to be “smeared” through accusations of being lesbian on social networks and in the mainstream media.

“In Guatemala to be a feminist is not welcomed, to be a lesbian, even less so. But the fact that I have always been transparent about who I am - a lesbian feminist - took away that weapon from those who use misogynist, sexist, and homophobic attacks as a political strategy,” Moran says.

This honesty has enabled her to follow her instincts and fight for LGBT rights, without it defining her work. “It’s always be very important for me to be myself and identify who I really am. My work had helped make the LGBT community visible and I’ve contributed to organisations which put LGBT rights on the table. But I’m actually mainly known as someone who fights for the rights of women and indigenous groups.”

She adds: “I’m not sure how many people knew about my sexual orientation when they voted for me; it’s since I’ve been elected that news reports have focussed on me as the first gay woman in Congress because it’s a novelty. I hope what I do in Congress will encourage and open the way for other LGBT people to enter politics.”

In recent years there have been some notable victories for same-sex marriage campaigners in the Americas, but it is a long way off in Guatemala. The new president, Jimmy Morales, an evangelical Christian, has made his opposition clear, and it’s not a battle the Guatemalan LGBT community has so far taken to the courts. It isn’t a personal priority for Moran as she regards all marriage as a patriarchal contract.

Instead, she wants to use her four years in Congress to generate public debate about subjects still regarded as taboo in Guatemala, such as sexuality and sexual diversity, and draw attention to the homophobia and discrimination which exists. An anti-bullying campaign to help gay students stop of her to-do list as well.

“Respectful debate and discussion is necessary for the democracy of this country, to help people understand that diversity enriches the country and is not a problem,” she says.
From 8-14 February the Guardian Global Development Professionals Network is highlighting the work of the LGBT rights activists throughout the world. Join the conversation at #LGBTChange.

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- Working in development
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Tab 32
Report documents anti-trans violence in Central America

A report on anti-transgender violence and discrimination in Central America urges Honduras and other countries in the region to implement anti-discrimination laws that include gender identity. (Washington Blade photo by Michael K. Lavers)

A new report indicates transgender women in Central America remain particularly vulnerable to discrimination and violence.

The Latin American and Caribbean Network of Trans People, which is known by the Spanish acronym REDLACTRANS, and its affiliate organizations in Guatemala, El Salvador, Honduras, Costa Rica and Panama began collecting data last March. The groups received funding from the Chicago-based Heartland Alliance for Human Needs and Human Rights.

The report indicates the life expectancy of trans women in El Salvador is less than 35 years because of rampant violence.

REDLACTRANS' report also notes that police in Panama and other Central American countries routinely target trans women for abuse and other mistreatment. Many trans women also engage in sex work or so-called "survival sex" because of a lack of employment opportunities.

The report also notes trans women in Guatemala, El Salvador, Honduras, Costa Rica and Panama frequently lack formal education and access to health care because of their gender identity.
“(The report’s) primary objective is to generate documented evidence about the violence suffered by our trans counterparts in the region,” reads the report.

REDLACTRANS Regional Coordinator Marcela Romero and advocates from Guatemala, El Salvador, Honduras, Costa Rica and Panama on Wednesday formally released the report at the Organization of American States in D.C.

“We want to live in our countries with a real democracy,” said Romero, who is from Argentina. “We are part of the democracy in our countries.”

Representatives of the Honduran and Paraguayan governments were on hand for the report’s formal release. Casa Ruby CEO Ruby Corado, who is originally from El Salvador, was also in attendance.

Several of the advocates who spoke to representatives of the Organization of American States and the Inter-American Commission on Human Rights highlighted media reports of anti-trans violence in their respective countries.

“The life expectancy of trans people is very short,” said Johana Esmeralda Ramirez of Guatemala.

Ambar Alvarado Alfaro of El Salvador noted that her homeland is among the world's most violent countries.

She said that rates of violence among trans Salvadorans are three times higher than those found among the general population. Alvarado also told representatives of the Organization of American States and the Inter-American Commission on Human Rights that seven trans women have been killed in El Salvador so far this year.

“We are made invisible,” she said. “We do not have access to different fundamental rights as citizens.”

‘Everyone has equal rights’

The report contains a series of recommendations that includes the passage of laws that “recognize and guarantee the right of trans people to freely exercise their gender identity.”
Then-Argentina President Cristina Fernández de Kirchner in 2012 signed a law that allows trans people in the South American country to legally change their gender without undergoing sex-reassignment surgery. Diana Sacayán, a trans rights advocate who was killed last October inside her Buenos Aires apartment, personally received an identity card from Fernández that recognized her as a woman after the statute took effect.

“I have known democracy for three years,” said Romero, referring to the Argentina law.

The report recommends that lawmakers pass anti-discrimination measures that include gender identity and expression. It also urges countries to “seriously investigate and eventually punish” officials who commit violence and other human rights abuses against trans people.

The report also urges countries that are members of the Organization of American States, which created the Inter-American Commission on Human Rights, to sign the Inter-American Convention against Discrimination and Intolerance that includes gender identity.

“Everyone must be respected because everyone has equal rights,” said Organization of American States Secretary for Access to Rights and Equality Ideli Salvatti.

The Inter-American Commission on Human Rights’ Unit of the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons formed in 2011. The Organization of American States two years later adopted a “historic anti-discrimination resolution” that includes sexual orientation and gender identity.

An Inter-American Commission on Human Rights report notes that anti-LGBT violence claimed the lives of at least 594 people in the Western Hemisphere between Jan. 1, 2013, and March 31, 2014.

The report notes trans women and gay men were among the most likely to lose their lives to anti-LGBT violence. The Inter-American Commission on Human Rights also concluded the average life expectancy of trans people in the Western Hemisphere is between 30-35 years.

“The report highlighted to us the most serious manifestations of violence against trans people,” said Inter-American Commission on Human Rights Commissioner James Cavallaro on Wednesday. “It urges the Organization of American States’ member states to adopt all the necessary measures to prevent, investigate and punish as well as reduce murders and other acts of violence against trans people in the Americas.”

Michael K. Lavers
Michael K. Lavers is the international news editor of the Washington Blade.
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Tab 33
Gang rape prompts gay Guatemalan to seek asylum in U.S.

A gay Guatemalan immigrant who recently moved to D.C. said he fled his homeland earlier this year after he was gang raped because of his sexual orientation.

Milton Amezquita-Guzman, 27, told the Washington Blade last week during a telephone interview that men he described as gang members in the city of Quetzaltenango where he sold clothing and other items in March extorted money from him because he is gay. Amezquita-Guzman said the men called him a “faggot piece of shit” and a “whore” before they forced him to perform oral sex on them.

“They took me by force and one of them came up to me,” he told the Blade as he became emotional. “He stuck his penis inside of me and he shouted you are a whore. I will kill you.”

Amezquita-Guzman said he had been raped twice before prior to the March incident. He fled Guatemala in March while in disguise shortly after the third alleged sexual assault took place.

He traveled through Mexico before passing through Ciudad Miguel Alemán in the state of Tamaulipas and crossing the Rio Grande into Texas.
Agents with Immigration and Customs Enforcement detained Amezquita-Guzman in May. They sent him to a privately run detention facility in Georgia operated by Corrections Corporation of America from where he pursued his asylum claim.

“He could have been released on bond, and he wasn’t,” Amezquita-Guzman’s lawyer, Patrick Valdez, told the Blade as his client listened. “My clients not a danger. He doesn’t have a record in his country or in this country. His record is impeccable. And he had a legitimate asylum application and he had to litigate his case in custody the whole time. That was unfortunate.”

Amezquita-Guzman told the Blade that he experienced additional mistreatment and discrimination while at the Georgia detention facility that included personnel not allowing his lawyer to visit him. Amezquita-Guzman said the conservative judge who handled his case did not adequately respond to his complaints.

“He said OK, there is no problem,” Amezquita-Guzman told the Blade. “It is that we have no control over Corrections Corporation of America. We do not control this.”

Valdez told the Blade that his client while in ICE custody also did not receive psychological treatment in the aftermath of the sexual assault he experienced. He said detainees who seek such care are “immediately suspect.”

“It’s assumed that the inmate is not telling the truth or is exaggerating,” Valdez told the Blade, noting ICE facilities often lack adequate resources. “There’s no way to complain. There’s no regulatory mechanism to manage these kinds of challenges that these detention centers have.”

Sexual violence common among gay migrants
Amezquita-Guzman spoke with the Blade less than a month after President Obama announced an executive order on immigration that would, among other things, allow an estimated 5 million undocumented immigrants to remain in the U.S.

Valdez told the Blade he has worked with other gay asylum seekers from Latin America who have experienced sexual exploitation and other abuses.

Ender Manuel Martínez, an LGBT rights advocate from El Salvador who is seeking asylum in Mexico, claims guards at a detention facility in the Mexican state of Chiapas demanded “sexual favors” from him in exchange for better food during his incarceration last fall. He said he endured additional sexual harassment and anti-gay discrimination at a second detention facility outside of Mexico City to which he was transferred.

Julio Campos Cublas of Migrantes LGBT, a group that advocates on behalf of LGBT migrants, told the Blade in October during an interview in the Mexican capital that many lesbian and trans women smuggle drugs into the U.S. for drug cartels because they do not have the money to pay smugglers — known as “coyotes” in Mexican Spanish — who bring them across the border.

Ricardo Baruch, another Mexican LGBT rights activist, told the Blade during a separate interview at the International Lesbian Gay Bisexual Trans Intersex Association (ILGA) World Conference in Mexico that a number of the trans sex workers who work in cities along the U.S. border are from Central America. He said drug cartels sometimes force them to sell drugs.

A report by the Inter-American Commission on Human Rights released last week indicates anti-LGBT violence claimed the lives of nearly 600 people in the Americas between Jan. 1, 2013, and March 31 of this year.

“There has been advances, especially in Mexico in terms of gay rights,” Valdez told the Blade. “Gay marriage is legal in Mexico City and there’s a perception that now gay people have some degree of greater safety. Maybe they do to a certain extent. But the brutality that they face when they are confronted with homophobia is just as brutal as it has ever been.”

‘I suffered’ in Guatemala
The judge in Amezquita-Guzman’s case last month granted his asylum request.
“I was thankful for the judge who made the decision,” said Valdez. “She made the right decision. The facts were very compelling. She listened. She made her own inquiries and she listened to the case and took her own notes and she was conscientious in that regard.”

Amezquita-Guzmán told the Blade he would like to pursue a degree now that he is in D.C.

His sister supports him, but his mother and the rest of his family have ostracized him.


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**Michael K. Lavers**

Michael K. Lavers is the international news editor of the Washington Blade. Follow Michael

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3 Comments

**Michael Pescador Johnson**  December 23, 2014 at 6:37 pm EST at 6:37 pm

thanks for the story.

thank God he was granted asylum

personally I detest macho POS homophobes

and I will beat you for your ignorance

since the majority of these types are too ignorant to change

---

**Anonymous**  December 23, 2014 at 12:44 am EST at 12:44 am

Why would they have sex with a gay unless they are gay too? Weird. Nonetheless, the USA is the perfect country for homosexuals, just as long as you’re not one of our oppressed sexual minorities or a fifteen-year-old, in which case, the USA is worse than Guatemala or the Taliban. Happy holidays.

---

**Juan Carlos Lehr**  January 22, 2015 at 2:33 am EST at 2:33 am

We are living an homophobic state in Guatemala.
Gang rape prompts gay Guatemalan to seek asylum in U.S.