

Country Report
GUATEMALA

IACHR Inter-American
Commission on
Human Rights

Situation of Human Rights in Guatemala



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Situation of Human Rights in Guatemala

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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 addressesThe 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

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 reports¹ and 16 follow-up reports on the overall situation.² 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

¹ In 1981, 1983, 1985, 1993, 1996, 2001, 2003, and 2015.

² Every year between 1983 and 1991, and in 1993, 1994, 1996, 1997, 2002, 2004, y 2016.

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

Estuardo Chávez; the President of the Presidential Coordinating Commission for Executive Policy on Human Rights (COPREDEH), 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 Baquix Baquix; the President of the Constitutional Court, José Francisco de Mata Vela; Constitutional Court Judges Dina Ochoa, Gloria Porras, María Consuelo Porras, María Cristina Fernández, Bonerge 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 Mórán, Amílcar 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 Chirrequim, Aldea Cocop, Aldeas Infantiles SOS, ANH Chisec de Alta Verapaz, APCU, Articulación de Mujeres, Articulación Nacional, Asamblea Nacional de las Abuelas Comadronas del Movimiento Nim Alaxik, Asociación MIRIAM, Asies, Asociación Camilo Pacheco, Asociación Pro-Municipio Zona Reyna, Asociación Abogados Mayas, Asociación Achi, Asociación Ajkemab Rech K aslemal, 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’orti 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 (FAMDEGUA), Asociación de Familias de Migrantes Desaparecidos, Asociación Fomento, Asociación Gente Positiva, Asociación Guatemalteca de Hipertensión Pulmonar, Asociación Guatemalteca de Pacientes con Enfermedades Autoinmunes Reumáticas (ARTRILUP), Asociación Iseri Ibagari, Asociación Ixmukane, Asociación K’amalb’e , Asociación Kumool IsnJncoTzal 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 PROCRECE, Asociación SOMOS, Asociación Vidas Paralelas, Asolación de Fomento para el Desarrollo Integral, Asociación Voces por la Justicia, ASOCDENEB, Azoder Cobán, Bancada Convergencia, Bufete de Derechos Humanos, Bufete jurídico de Derechos Humanos (BDH), Cahibón, Caschibal Instancia, Campaña Guatemala Sin Hambre, Camma Addarti, Campaña Libertad, Campaña Guatemala Sin Nombre, Carcha 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, Çhisee A.V., Chiquixhi Corchá, Chiol Saq.Be Cahbón, CHILDHOPE, Children's Fund, Chool SabeChikajbom, CICODE, 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 (CILDH), 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 Pro ciegos y sordos, Comunidad Chabán, Comunidad Cristiana 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, Consejo 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),

Coordinación de Acompañamiento Internacional en Guatemala (ACOGUATE), Coordinadora Central Campesina Chortí Nuevo Día, Coordinadora de Cooperativas y ONGs (CONGCOOP), Coordinadora Institucional de Promoción por los Derechos de la Niñez (CIPRODENI), Corporación Energía y Renovación, Delegación de Comunidades de Petén, CRS, Derechos Humanos El Rosario, DSU JUL, D.Disi, Educación para Todos (EPT), EDUCO Verde & Azul, El Prado Ixcan, El Recuerdo Ixcan, El Refugio de la Niñez, El Rosario Corcha, Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP), ECAP Chimaltenango, ECAP Alta Verapaz, Coyombalam, Estor, Estrella Polar, Familia Nos Duelen 56, Familia Q'eqch', Familiares de Detenidos Desaparecidos de Guatemala (FAMDEGUA), Fe y Alegría, Federación Guatemalteca de Escuelas Radiofónicas, Foro Nacional de la Mujer, Freedom Guatemala, Fundación de Antropología Forense de Guatemala (FAFG), Fundación Esperanza y Prosperidad (FUNDAESPRO), Fundación Guatemalteca para Niños con Sordoceguera Alex (FUNDAL), Fundación Guillermo Tonello, Fundación Justicia y Género, Fundación Marista, Fundación Myrna Mack, Fundación para el Desarrollo y Fortalecimiento de las organizaciones de base (FUNDEBASE), Fundación para la Justicia y el Estado Democrático de Derecho (FJEDD), Fundación Sobrevivientes, Fundación Tierra Madre, FUNDESA, Gente Positiva, Gremial de Transporte Extraurbano de Pasajeros (GRETEXPA), GRETEXPA, Grupo de Apoyo Mutuo (GAM), Grupo Guatemalteco de Mujeres (GGM), Grupo Interdisciplinario por los Derechos Sexuales y Reproductivos, Grupo Multidisciplinario para la Defensa de los Derechos Sexuales y Reformativos en Guatemala, Human Rights Defenders Project, Human Rights For Everyone, Humanistas Guatemala, Iglesia Luterana en Guatemala (ILGUA), Iglesia luterana Ilubua, Ixmukané, IIHAA/USAC, ILUGUA, Impunity Watch, Ingenieros Ixcan, Instancia Cobán, Instituto Centroamericano de Estudios Fiscales (ICEFI), Instituto de Colaboración y Educación Familiar (ICEF), INCIDEJOVEN, Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG), Instancia Mujeres, Instituto de Investigaciones, Escuela de Historia USAC, Instituto de Protección Social, Instituto de Investigación y Proyección Social sobre Dinámicas Globales y Territoriales de la Universidad Rafael Landívar (IDGT - URL), Internews-Consultora, Ixmukare, Ixtzunun, JOC, Jóvenes contra la Violencia, Jóvenes por Guatemala, Asociación La Alianza (ALA), Jotaj, Las Minas, Ixcan, Comisión Internacional de Apostolado en Educación Jesuita, Comisión de Investigación, Fundación Guatemalteca para Niños con Sordoceguera Alex (FUNDAL), La Masa, La Niñez es Primero, Lambda, Ladvidud, Lotración El Poso, Ixcan, Mama Maquín Entre Ríos Petén, Mesa Nacional para las Migraciones en Guatemala MENAMIG, Mercedes I, Mercy Corps, Mesa de Transformación, Misioneros Scalabrinianos, Misioneros de San Carlos, Scalabrinianos, Monte Olivo CUC, Movimiento de Mujeres Indígenas Tzununija, Movimiento Nacional Comadronas Nim Alaxik, Movimiento

Nacional de Tejedoras, Movimiento Nacional de Víctimas, Muqb'ilha, MUNDIBAT, Municipalidades Indígena de Palín, MTC, Municipalidad de Sololá, Mujawil Qij, Mujeres de Afedes, Mujeres de Ate Oles, Mujeres Transformando el Mundo, Na'Ch'ooch, Nuevo Horizonte, Nuevo Paraíso Ixcan, Observatorio de Salud Sexual y Reproductiva (OSAR), Ocho Tajix, Oficina de Derechos Humanos del Arzobispado de Guatemala (ODHAG), ODAN, Organismo NALEB, Organizaciones Coban, Organización Líder y Pionera para las Mujeres Trans en Guatemala (OTRANS), Organización Maya Qeqchi, Organización Mujeres, Organización Negra Guatemalteca (ONEGUA), Organización para el Desarrollo Integral Sostenible para Oriente y Guatemala (ODISOG), Pan American Development Foundation (PADF), Parlamento Xinka, Pastoral de la Tierra, Dieciséis de San Marcos, Pastoral de Movilidad Humana de la Conferencia Episcopal de Guatemala (PMH-CEG), Para Todas y Todos de Guatemala, Pastoral de la Sierra San Marcos, Paz Joven Guatemala, Paz Para el Mundo, Peace Brigades International (PBI), Plan International Guatemala, PAMI, Planned Parenthood Global (PP Global), Plataforma contra la Impunidad, Plataforma de Organizaciones para Personas con Discapacidad, Plataforma Internacional contra la Impunidad, Pieza Clave, Pop Noj, Prensa Comunitaria, Programa de Atención, MENACI, Movilización e Incidencia por la Niñez y la Adolescencia (PAMI), Programa de Protección y Seguridad Infantil y Juvenil, Programa de Refugiados para Niños Menores Centroamericanos (CAM), Promoción y Desarrollos Hídricos (PDH), Proyecto Justicia, Equidad y Género, (USAID), Parulha CUC, Pastoral Ixalogica, Radio Xomilbe, Red de No Violencia contra Mujer, Región 18 Chircan, Renace, Radio Comunitaria Siwan Tinamit, Radio Única, Radio Snuq' Jolom Konob', Radios Comunitarias, Raxil Chinam San Pedro, Red Afroamericana XXI, Red de información Humanitaria para América Latina (TROCAIRE), Red de la No Violencia contra las Mujeres (REDNOVI), Red de Mujeres Afrodescendientes, Red de Organización de Víctimas Nacionales, Red Legal de Derechos Humanos, Red Nacional de la Diversidad sexual en Guatemala (REDNADS), Red Nacional de Víctimas, Red Niña Niño, Red No Violencia, REDVADS, Save the Children, San Cristobal, San Francisco Las Mercedes Ancestrales, Sank, Sindicatos Globales, Seguridad en Democracia en Guatemala (SEDEM), Seacte Coban, Sechaj A.V, Sechaj A.V SANK, Sechaj, Raxizilio Sank, Secretaria Cocode Aldea Rosario Ochimp, Setux Setzac, Sejax, Delegación Guatemala (ICM), Sobrevivencia Cultural, TRACAIRE, Tres Ríos, Ixcan, Tz'ununijal, UBAQ Garífuna, Tz'ununija', UAUX BE, UCP Santa Cruz, UVOC, UDEFEGUA, Unidad de capacitación (UNICAP), Unión Sindical de Trabajadores de Guatemala (UNSITRAGUA), Universidad Rafael Landívar (URL), Vida Independiente, Vidas Paralelas Quetzaltenago, Waqib' Kij, World Vision Guatemala, World Vision International, Xalub'e Sepop, Xbenil Salrouneuto Werig, Yalicoq Chisec, Yuwa Chiodeh, ZAPP.

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, 2017.³ 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.⁴
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

³ 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.

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,⁵ 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.⁶
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.”⁷ 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”⁸.

⁵ CEH, *Memory of Silence*, Volume I (in Spanish only), *Causas y orígenes del enfrentamiento armado interno*, p. 80

⁶ *Id.*, Volume V, *Conclusions and Recommendations*, p. 24.

⁷ CEH, *Guatemala, Memory of Silence, Conclusions and of recommendations*.

⁸ 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.

35. With the signing of the Accord for a Firm and Lasting Peace in December 1996,⁹ 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.¹⁰
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 Exclusion¹¹

37. Guatemala is a country in Central America with an area of 108,809 km² and a population of around 16 million,¹² most of whom live in rural areas.¹³ 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

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 (ASOCDENE), 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.¹⁴ It is a multiethnic, pluricultural, multilingual society in which indigenous Mayan, Xinka and Garífuna peoples and Ladinos coexist.¹⁵ 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.¹⁶ 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.¹⁷ 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.¹⁸ 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.¹⁹
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.²⁰ Based on the National Living Standards Survey

¹⁴ OHCHR, Central America, *Diagnóstico sobre la Situación de los Derechos Humanos de los Pueblos Indígenas de América Central*, 2011, Vol. I, p. 190.

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*

¹⁶ IACHR, Situation of Human Rights in Guatemala: *Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 30.

¹⁷ According to the Organisation for Economic Cooperation and Development, except for Venezuela, Guatemala was the country with the lowest average taxpayer from 1990 to 2010. OECD, Revenue Statistics in Latin America, 1990-2010. Available online: http://www.keepeek.com/oecd/media/taxation/revenue-statistics-in-latin-america-2012_9789264183889-en-fr#_WgZO5sanGUK.

¹⁸ ECLAC, Fiscal Panorama of Latin America and the Caribbean 2015: Policy space and dilemmas, March 2015 Se encuentra en: <http://caribbean.cepal.org/content/fiscal-panorama-latin-america-and-caribbean-2015-policy-space-and-dilemmas>

¹⁹ See newspaper article in La Prensa, *SAT Llegó al a meta de recaudación influida por las intervenciones*, January 17, 2017. Available online: <http://www.prensalibre.com/economia/economia/sat-llego-a-la-meta-de-cobranza-fiscal>.

²⁰ United Nations Development Programme in Guatemala, *Guatemala en breve*, 2017. Available online: <http://www.gt.undp.org/content/guatemala/es/home/countryinfo/>.

published in 2015 (the most recent version), 59.3 percent of Guatemalans live in poverty,²¹ 23.4 percent of them in extreme poverty.²² The national poverty rate grew 8 percentage points between 2006 and 2014,²³ in spite of GDP growth of 3.1 percent in 2016.²⁴

40. Nearly 4 out of 5 indigenous people live in poverty.²⁵ Extreme poverty is three times higher in the indigenous population than in the nonindigenous population.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.²⁷ Poverty in rural areas is almost double that (1.8 times higher) of urban zones.²⁸ 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.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;³⁰ indeed, its situation in that regard is among the worst globally.³¹ The food and nutrition insecurity situation reaches critical levels in rural areas, mainly affecting children under 5 years old, the school

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.

²² National Living Standards Survey (ENCOVI) 2014, National Statistics Institute. Available online: <https://www.ine.gob.gt/sistema/uploads/2015/12/11/vjNVdb4IZswOj0ZtuivPlcaAXet8LZqZ.pdf>.

²³ Ibid.

²⁴ United Nations Development Programme in Guatemala, *Guatemala en breve*, 2017. Available online: <http://www.gt.undp.org/content/guatemala/es/home/countryinfo/>. According to World Bank data, Guatemala's GDP grew 3.1 percent in 2016.

²⁵ National Living Standards Survey (ENCOVI) 2014, National Statistics Institute.

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.

²⁷ National Living Standards Survey (ENCOVI) 2014, National Statistics Institute.

²⁸ *Ibid.*

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

³⁰ In its Human Development Report 2014, the UNDP ranks Guatemala 125th on the human development index. UNDP, *Human Development Report 2014, Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, p. 175.

³¹ FANTA, *The Cost of Essential Nutrition Interventions to Reduce Chronic Malnutrition in Guatemala*, Executive Summary, 2015. Available online: <http://www.fantaproject.org/sites/default/files/resources/Guatemala-Nutrition-Costing-Exec-Summ-Dec2015.pdf>

population, and pregnant and nursing women, and worsens to an alarming degree in the indigenous population.³² In context of high poverty and extreme poverty, 48 percent—that is, practically half—of Guatemalan children are chronically malnourished.³³ The highest rates of chronic malnutrition and food insecurity occur in rural areas, where the population is predominantly indigenous.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.³⁵ The mortality rate from malnutrition is 9.1% nationwide and has trended downward (by 20.7%) since 2005.³⁶ 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.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 Malnutrition³⁸. 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.³⁹

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.

³³ United Nations Development Programme in Guatemala, *Guatemala en breve*, 2017. Available online: <http://www.gt.undp.org/content/guatemala/es/home/countryinfo/>.

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.

³⁵ Office of the Human Rights Ombudsman, *IX Informe del Procurador de los Derechos Humanos al Consejo Nacional de Seguridad Alimentaria y Nutricional. Análisis del Derecho a la Alimentación en el Marco de la Ley del SINASAN*, October 2016. UNICEF-Guatemala. *Panorama*.

³⁶ National Living Standards Survey (ENCOVI) 2014, National Statistics Institute.

³⁷ *Ibid.*

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, con contribute to the reduction in chronic malnutrition in children under two years of age. It also inciated 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 Situtation in Guatemala," December 22, 2017.

³⁹ 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.

42. In 2017, these levels of malnutrition caused the death of at least one girl beneficiary of court-ordered protection.⁴⁰ 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 it concluded the on-site visit.⁴¹ 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,⁴² including Mabelita, who were suffering from chronic and acute malnutrition, as well as their immediate families. The Constitutional Court confirmed the judgments in 2017.⁴³ 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.⁴⁴ 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.
43. 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.⁴⁵ Indigenous girls attend school for only three years

⁴⁰ According to the Secretariat for Food and Nutrition Security, 111 children died of malnutrition in the country in 2016. Newspaper article in *La Prensa*, *Niños desnutridos suman un millón*, December 3, 2016. Available online: <http://www.prensalibre.com/guatemala/comunitario/nios-desnutridos-suman-un-millon>.

⁴¹ Information from the organizations Campaña Guatemala Sin Hambre and IAN International (International Secretariat), August 25, 2017. In the IACHR archive. See also newspaper article in *Prensa Libre*, *Fallece Mabelita Interiano, niña que tenía medidas de protección*, August 14, 2017. Available online: <http://www.prensalibre.com/guatemala/comunitario/fallece-mabelita-interiano-nia-que-tenia-medidas-de-proteccion>.

⁴² Judgment No. 19003-2011-00641 Of. 1ª, Children's and Juvenile Offenders' Court of the Department of Zacapa in favor of the child Leonel Amador García; Judgment No. 19003-2011-00637 Of. 1ª, Children's and Juvenile Offenders' Court of the Department of Zacapa in favor of the child Mayra Amador Raymundo; Judgment No. 19003-2011-00638 Of. 1ª, Children's and Juvenile Offenders' Court of the Department of Zacapa in favor of the children Dina Marilú and Mabelita Lucila Interiano Amador; Judgment No. 19003-2011-00639 Of. 1ª, Children's and Juvenile Offenders' Court of the Department of Zacapa in favor of the child Brayan René Espino Ramírez.

⁴³ Judicial File No.19003-2011-00641-Of. 1ª. Children's and Juvenile Offenders' Court of the Department of Zacapa, May 31, 2013. Confirmation of the Judgment by the Constitutional Court, Case File 4474-2014.

⁴⁴ Information from the organizations Campaña Guatemala Sin Hambre and FIAN International (International Secretariat), August 25, 2017. In the IACHR archive.

⁴⁵ Child Fund, Annual Report 2016. Available online: <http://childfundannualguatemala.org/>. United Nations Development Programme in Guatemala (UNDP) (2016), *Más allá del conflicto, luchas por el bienestar*. National Human Development Report 2015/2016, p. 81.

on average.⁴⁶ More than 1.8 million children and adolescents aged 10 to 19 are not in school.⁴⁷ According to available information, in 2015, 50 percent of boys and girls in Guatemala did not attend preprimary school;⁴⁸ 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.⁴⁹ 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.⁵⁰ 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).⁵¹ 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%).⁵²

44. 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

⁴⁶ UNICEF-Guatemala, *Desnutrición*.

⁴⁷ Information provided by the State of Guatemala at the 154th regular session of the IACHR.

⁴⁸ 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/>.

⁴⁹ 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.

⁵⁰ National Living Standards Survey (ENCOVI) 2014, National Statistics Institute. Available online: <https://www.ine.gob.gt/sistema/uploads/2015/12/11/viNVdb4lZswOj0ZtuivPlcaAXet8LZqZ.pdf>. 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 national and international organizations. In the IACHR archive.

⁵¹ UNDP-Guatemala, *The Millennium Development Goals*.

⁵² 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.

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

⁵³ OHCHR, Meeting with civil society organizations in Alta Verapaz.

⁵⁴ National Living Standards Survey (ENCOVI) 2014, National Statistics Institute. Available online: <https://www.ine.gob.gt/sistema/uploads/2015/12/11/vjNVdb4lZswOj0ZtuivPlcaAXet8LZqZ.pdf>.

⁵⁵ Human Rights Ombudsman, press release, *Día Mundial del Agua*, March 22, 2017. Available online: <https://www.pdh.org.gt/biblioteca/sala-de-prensa/category/16-comunicados.html?start=60>.

⁵⁶ Human Rights Ombudsman, press release, *Día Mundial del Agua*, March 22, 2017.

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/a-cceso-al-agua-indispensable-para-el-bienestar.html>.

⁵⁸ Information received from civil society organizations, August 2017. In the IACHR archive.

⁵⁹ IACHR, Situation of Human Rights in Guatemala: *Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 33.

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.⁶¹

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.⁶² According to the National Statistics Institute, in rural areas, 85 percent of the labor force is informally employed.⁶³ 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 2017.⁶⁴
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.⁶⁵ 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.⁶⁶
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,⁶⁷ and difficulties obtaining quality generic medicine.⁶⁸ In its comments to the draft of this report, the State indicated that in 2016 it established the Inclusive Health Model, which institutes

⁶¹ 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.

⁶² Ministry of Labor, *Ferías 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-suba-a-69.9-en-el-2016>.

⁶³ Newspaper article in La Prensa, *Empleo informal sube a 69.9 por ciento en 2016*, November 15, 2016.

⁶⁴ Ministry of Labor, *Ferías del trabajo reducen tasa de desempleo e informalidad en Guatemala*, April 2017.

⁶⁵ 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.

⁶⁶ 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 arrebató la niñez a un millón de menores trabajadores en Guatemala*, June 19, 2017.

⁶⁷ 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.

⁶⁸ Information received from civil society organizations during the on-site visit from July 31 to August 4, 2017.

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.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.

⁶⁹ 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.

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 justice⁷⁰. 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 percent⁷¹.
54. In that regard, most of the incidents that occurred during the armed conflict (1960 to 1996) have gone unpunished. The Commission noted in

⁷⁰ IACHR, 2016 Annual Report, Chapter V, Follow-up of the Recommendations Issued by the IACHR in Its Country or Thematic Reports, Follow-Up on the Recommendations Formulated by the IACHR in *Report on the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*.

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.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.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.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.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),⁷⁶ which,

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.

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." *Ibid*.

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.

⁷⁵ I/A Court H.R., *Case of Human Rights Defender et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 28, 2014, Series C No. 283; *Case of Veliz Franco et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of May 19, 2014, Series C No. 277; *Case of García and family members v. Guatemala*, Merits, Reparations and Costs, Judgment of November 29, 2012, Series C No. 258; *Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, Merits, Reparations and Costs, Judgment of November 20, 2012, Series C No. 253; *Case of the Río Negro Massacres v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, Judgment of September 4, 2012, Series C No. 250; *Case of Chitay Nech et al. v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs, Judgment of May 25, 2010, Series C No. 212; *Case of the "Las Dos Erres" Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 24, 2009. Series C No. 211.

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-optation 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

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.

⁷⁸ Ninth Report of Activities of the International Commission against Impunity in Guatemala (CICIG), p. 13. Available online (in Spanish): http://www.cicig.org/uploads/img/2016/others/COM_087_20161124_INFORME_ANUAL_2016.pdf. Other high-profile cases instigated by CICIG include that of Judge Martha Sierra/Bufete de la Impunidad, concerning a bribery network linked to the investigation in the *La Línea* case; Judge Erick Santiago de León, relating to a bribery scheme involving the judge; a passport counterfeiters network; corruption in the prison system; fraud in the National Civil Police; Deputy Muadi, involving the granting of phantom jobs in the legislature; cases involving illicit acts against the mayors of the municipalities of La Antigua, Chinautla; as well as a series of investigations and preliminary proceedings involving illicit election campaign funding. *Ibid.*

⁷⁹ *Id.*, pp. 10-21.

Public Prosecution Service.⁸⁰ 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.⁸¹

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.⁸² 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.⁸³
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.⁸⁴ 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.⁸⁵ 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.⁸⁶

⁸⁰ Statement by the spokesperson for the UN High Commissioner for Human Rights, Liz Throssell, "Support for CICIG and the Office of the Attorney General," August 25, 2017. 25 de agosto de 2017.

⁸¹ IACHR, Resolution 1/17, Human Rights and the Fight against Impunity and Corruption, September 12, 2017.

⁸² IACHR, Resolution 1/17, Human Rights and the Fight against Impunity and Corruption, September 12, 2017.

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=RQwJro8iZw0&feature=youtu.be>.

⁸⁴ United Nations, Statement attributable to the Spokesman for the Secretary-General on Guatemala, August 27, 2017. Available online: <https://www.un.org/sg/en/content/sg/statement/2017-08-27/statement-attributable-spokesman-secretary-general-guatemala-scroll>. On August 28, 2017, the International Commission of Jurists issued a press release in support of Commissioner Velasquez in which it said, among other things, that "President Morales decided to declare Commissioner Velasquez persona non grata to obstruct justice and create more impunity ..."

⁸⁵ Constitutional Court, Case 4182-2017, August 29, 2017.

⁸⁶ Newspaper article in Prensa Libre, *El Congreso vuelve a proteger a Jimmy Morales*, September 21, 2017. Available online: <http://www.prensalibre.com/guatemala/politica/congreso-protege-por-segunda-vez-la-inmunidad-de-jimmy-morales>.

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,⁸⁷ as well as several vice ministers and the Chair of the Presidential Commission for Human Rights (COPREDEH) resigned.⁸⁸ 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.⁸⁹ 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.⁹⁰ 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.⁹¹
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 “[i]mpunity 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 Teleguaro*, 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>.

⁸⁸ The minister of health resigned on August 27, 2017. The chair of COPREDEH quit on August 28. The ministers of the interior, public finance, and labor and social security stood down on September 19, 2017.

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

⁹⁰ IACHR, PM 431/17, Gloria Patricia Porras Escobar and Family, Guatemala, August 29, 2017. Available online (in Spanish): <http://www.oas.org/es/cidh/decisiones/pdf/2017/34-17MC431-17-GU.pdf>. See also para. 71, *infra*.

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.”⁹²

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.⁹³
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.⁹⁴ 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, 2017.⁹⁵ On September 14, the day after the Congress passed the reforms, the Constitutional court unanimously granted an application

⁹² IACHR, Resolution 1/17, *Human Rights and the Fight against Impunity and Corruption*, September 12, 2017.

⁹³ *Ibid.*

⁹⁴ See newspaper article in Prensa Libre, *Otras reformas buscan debilitar MP y justicia*, September 14, 2017. Available online: <http://www.prensalibre.com/guatemala/justicia/otras-reformas-buscan-debilitar-al-mp-y-justicia>.

⁹⁵ Press report, Guatevisión, *Jimmy Morales “devolvió” los Q450 mil que le dio Ejército*, September 14, 2017. Available online: <http://www.guatevision.com/2017/09/14/jimmy-morales-devolvio-los-q450-mil-que-le-dio-el-ejercito/>.

for provisional constitutional relief to prevent them coming into force.⁹⁶ Once again, Guatemalans took to the streets to demonstrate against the reforms and express their support for the fight against corruption and impunity.⁹⁷

66. In this context, the Public Prosecution Service and CICIG filed an application for the impeachment of Álvaro Arzú Irigoyen, 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."⁹⁸ According to CICIG, a new visa renewal application has been presented to the Guatemalan immigration authorities.
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 family⁹⁹. 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.

⁹⁶ 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>.

⁹⁷ 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>.

⁹⁸ Guatevisión, *Video: ONU responde por visa revocada de Iván Velásquez*, October 12, 2017.

⁹⁹ IACHR, *IACHR Grants Precautionary Measure for Human Rights Ombudsman of Guatemala*, November 3, 2017.

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.¹⁰⁰ 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.”¹⁰¹ 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.¹⁰² Moreover, Guatemala ratified the International Covenant on Civil and Political Rights in 1992¹⁰³ and to the Optional Protocol thereto in 2000,¹⁰⁴ 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).¹⁰⁵

¹⁰⁰ IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. Doc. 57, December 31, 2009, para. 167.

¹⁰¹ Inter-American Democratic Charter, Articles 3 and 4.

¹⁰² I/A Court H.R., Case of Gudiel Álvarez et al. ("Diario Militar") v. Guatemala, Merits, Reparations and Costs, Judgment of November 20, 2012, para. 330.

¹⁰³ Status of signatures, ratifications, and accessions to the International Covenant on Civil and Political Rights: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en.

¹⁰⁴ Status of signatures, ratifications, and accessions to the Optional Protocol to the International Covenant on Civil and Political Rights: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&clang=en.

¹⁰⁵ 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.

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

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. Press Release 114/17, IACHR Wraps up On-Site Visit to Guatemala, August 4, 2017.

¹⁰⁷ IACHR, Resolution 1/17, Human Rights and the Fight against Impunity and Corruption, September 12, 2017.

¹⁰⁸ The Commission learned that the former chair of COPREDEH, Víctor Hugo Godoy, resigned the position on August 28, 2017, amid the institutional crisis in the country. On September 22, 2017, Jorge Luis Borrayo became the new COPREDEH chair. COPREDEH, *Asume nuevo presidente de Comisión Presidencial de Derechos Humanos en Guatemala*, September 22, 2017. Available online: <http://copredek.gob.gt/4879-2/>.

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 Theissen¹¹⁰ and the Regional Training Command for Peacekeeping Operations (CREOMPAZ),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.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.

¹¹⁰ IACHR, Presse Release 001, *IACHR Welcomes Arrest of Individuals Accused of Forced Disappearance and Crimes against Humanity in Guatemala*, January 13, 2015. Available online: http://www.oas.org/en/iachr/media_center/PReleases/2016/001.asp.

¹¹¹ International Justice Monitor, CREOMPAZ Hearings Conclude; Tribunal to Determine if Case Goes to trial, June 7, 2016. Available online: <https://www.ijmonitor.org/2016/06/creompaz-hearings-conclude-tribunal-to-determine-if-case-goes-to-trial/>; NISGUA, *CREOMPAZ: Eleven retired military officers indicted on charges of crimes against humanity*, January 19, 2016. Available online: <http://nisgua.org/creompaz-eleven-retired-military-officers-indicted-on-charges-of-crimes-against-humanity/>.

¹¹² IACHR, Situation of Human Rights in Mexico, OEA/Ser.L/V/II. Doc. 44/15, December 31, 2015, para. 184; I/A Court H.R., *González et al case (“Cotton Field”) v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 16, 2009, Series C No. 205, para. 283.

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.¹¹³ In that regard, the IACHR has been closely following selection processes for justice operators in Guatemala.¹¹⁴
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.¹¹⁵
78. En Guatemala, nominating commissions are at the heart of the selection process for justice operators and other state officials.¹¹⁶ 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.¹¹⁷ 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

¹¹³ IACHR, *Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas*, OEA/Ser.L/V/II. Doc. 44, adopted on December 5, 2013.

¹¹⁴ IACHR, press release 41/14, [IACHR Urges Guatemala to Ensure Transparency and Meet Minimum Standards in the Appointment of Justice Operators](#). Washington, D.C., April 21, 2014. Press release 108/14, [IACHR Reiterates its Concern about the Processes to Select and Appoint Judges to Guatemala's Appeals Court and Supreme Court](#). Washington, D.C., September 27, 2014.

¹¹⁵ IACHR, *Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas*, OEA/Ser.L/V/II. Doc. 44, adopted on December 5, 2013, para. 34.

¹¹⁶ IACHR, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 372. IACHR, Hearing on the "Situation of Judicial Independence in Guatemala", 153rd regular session; IACHR, Hearing on the "Process for Appointing Justice Operators in Guatemala", 150th regular session. IACHR, 164th regular session.

¹¹⁷ The Nominations Committees are governed by the Political Constitution of the Republic of Guatemala and the Nominating Commissions Law (Legislative Decree No. 19-2009). IACHR, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 372.

and Head of the Public Prosecution Service; and the Human Rights Ombudsman.¹¹⁸

79. According to the Nominating Commissions Law, commissions are required to abide by the principles of transparency, professional excellence, objectivity, and disclosure.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.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.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 *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.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.¹²³

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.

¹¹⁹ *Id.*, Art. 2.

¹²⁰ *Ibid.*

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

¹²² *Id.*

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, *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.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.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.¹²⁶

in place objective predetermined criteria for assessing and grading candidates in order to minimize discretionary decisions on the part of individuals or bodies involved in the selection process. The State should also introduce safeguards to prevent selection processes being conducted on the basis of private or partisan interests that could erode the independence of the judiciary. IACHR, *Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas*, OEA/Ser.L/V/II. Doc. 44, adopted on December 5, 2013.

¹²⁴ Fundación Myrna Mack, *Convergencia por los Derechos Humanos*. Alternative Report for the Third Cycle of the Universal Periodic Review, March 29, 2017.

¹²⁵ IACHR, Press Release No. 030/16, [IACHR Calls on States in the Region to Strengthen Judicial Independence](#), March 7, 2016.

¹²⁶ United Nations High Commissioner for Human Rights, Guatemala: [“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,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.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.¹²⁹ Information received indicates that the President initially supported the reform.¹³⁰ However, the reform process that got underway in 2015 has stalled in the Congress and, according to

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.).

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

¹²⁹ Ninth Report of Activities of the International Commission against Impunity in Guatemala (CICIG), p. 29. Available online (in Spanish): http://www.cicig.org/uploads/img/2016/others/COM_087_20161124_INFORME_ANUAL_2016.pdf.

¹³⁰ Judicial Branch, *Presentan propuesta de reforma constitucional en materia de justicia*, October 6, 2016. Available online (in Spanish): <http://www.oj.gob.gt/index.php/publicaciones-oj/419-presentan-propuesta-de-reforma-constitucional-en-materia-de-justicia>.

Guatemalan civil society organizations, there is a lack of political will to move it forward.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 2018.¹³²
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

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

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.¹³³ 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.¹³⁴

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.¹³⁵
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.¹³⁶ 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

¹³³ Human Rights Ombudsman of Guatemala, *Informe Anual Circunstanciado 2016*, p. 37.

¹³⁴ United Nations, Public Prosecution Service of Guatemala, *MP, CICIG Y OACNUDH saludan aprobación de nueva ley de carrera judicial*, June 29, 2016.

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 Garífuna languages.¹³⁷

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.¹³⁸

C. 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

95. With respect to access to justice for women, the Commission recognizes the efforts made to develop laws and institutions to provide protection and justice for women in general, and for indigenous women in particular, in terms of specialized justice.¹³⁹ The country has a number of laws, including the *Law to Prevent, Punish and Eradicate Intrafamily Violence* (1996),¹⁴⁰ the *Law against Femicide and Other Forms of Violence against Women* (2008),¹⁴¹ the *Law against Sexual Violence, Exploitation, and Trafficking in Persons* (2009),¹⁴² and the *Law on Immediate Search for Missing Women* (2016).¹⁴³ Guatemala has also developed state institutions for advancement and protection of women's rights, including the General

¹³⁷ IACHR, Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 409.

¹³⁸ See, for example, I/A Court H.R., *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., *Case of Bámaca Velásquez v. Guatemala*, Supervision of compliance with judgment. Order of the Inter-American Court of Human Rights, November 27, 2009.

¹³⁹ UN Women, *Estudio de Caso de Guatemala: Avances y Retos de la Justicia Especializada*, 2015.

¹⁴⁰ Congress of the Republic of Guatemala, *Decree 97/1996: Law to Prevent, Punish and Eradicate Intrafamily Violence*, 1996.

¹⁴¹ Congress of the Republic of Guatemala, *Decree 22/2008, Law against Femicide and Other Forms of Violence against Women*, 2008.

¹⁴² Congress of the Republic of Guatemala, *Decree 9/2009, Law against Sexual Violence, Exploitation, and Trafficking in Persons*, 2009.

¹⁴³ Congress of the Republic of Guatemala, *Decree 9/2016, Law on the Immediate Search for Missing Women*, 2016.

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.

96. 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.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.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 14.¹⁴⁶ 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.¹⁴⁷
97. DEMI was created in the wake of the peace accords with the aim of advancing indigenous women's human rights. It represented an innovative

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'olchi 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.

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.

¹⁴⁶ 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.

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 38-2013.¹⁴⁸ 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.¹⁴⁹ 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.¹⁵⁰ 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 womens' rights, in which it trained 52,372 people, including indigenous women and public servants and employees.¹⁵¹ 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.¹⁵²

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

¹⁴⁸ IACHR, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II.Doc. 43/15, 2015, para. 99.

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'lj 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'lj 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.

¹⁵¹ 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.

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.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 victims.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.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.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 for the

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.

¹⁵⁴ Situation of Q'eqchi', Poqomchi and Achí women in the north of the country. Information received during the on-site visit of the IACHR from July 31 to August 4, 2017.

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.

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.¹⁵⁷ 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%.¹⁵⁸

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,¹⁵⁹ 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.¹⁶⁰
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-

¹⁵⁷ 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.

¹⁵⁸ *Ibid.*

¹⁵⁹ Asociación Femenina para el Desarrollo de Santiago Sacatepéquez (AFEDE), "*Violación a los Derechos Culturales de Mujeres Indígenas y Violación al Principio de 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.¹⁶¹ The Office of the Special Prosecutor for Femicide,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.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.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.”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

¹⁶¹ USAID, *Guatemala’s 24-Hour Courts: Changing the Way Women Access Justice*, 2012.

¹⁶² Ministry of the Interior, *Inauguran Fiscalía de delitos contra el Femicidio*, November 23, 2016.

¹⁶³ Impunity Watch, *¿Dónde está la justicia? El continuum de la violencia contra las mujeres*, 2015.

¹⁶⁴ IACHR, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 70. *Fifth Report on the Situation of Human Rights in Guatemala (2001)*, Chapter XI. The Rights of Indigenous Peoples, Introduction, para. 4; and *Justice and Social Inclusion: The Challenges of Democracy in Guatemala (2003)*, Chapter IV. The Situation of the Indigenous Peoples, A. Introduction, para. 210.

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.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.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.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.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

¹⁶⁶ 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, p. 27.

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

¹⁶⁸ *Ibid.*

¹⁶⁹ IACHR, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 104. IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala* (2003), Chapter IV, pars. 234 and 434.

with International Labour Organization (ILO) Convention No. 169.¹⁷⁰ 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.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."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...."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."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.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

¹⁷⁰ Constitutional Court, Joined cases 90-2017, 91-2017, and 92-2017, Case of Oxeq and Oxeq II, May 26, 2017. In reference to Convention 169 on Indigenous and Tribal Peoples in Independent Countries, which Guatemala ratified in 1996.

¹⁷¹ *Id.*

¹⁷² 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. 187. See also United Nations, *Report of the Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples*, James Anaya, A/HRC/12/34, July 15, 2009, paras. 53 to 55.

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).

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.

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 Convention 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.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.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."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.¹⁷⁹
109. During its visit, the Commission met with indigenous authorities of different peoples and regions of the country.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.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.

¹⁷⁶ Meeting with indigenous organizations and elders. Information submitted to the IACHR by several indigenous organizations on August 4, 2017.

¹⁷⁷ 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.

¹⁷⁸ *Ibid.*

¹⁷⁹ IACHR, Situation of Human Rights in Guatemala: *Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 495.

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.

¹⁸¹ IA Court of HR, *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, para. 133 to 137. IA Court of HR, *Case of the Saramaka People v. Suriname*. Interpretation of Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008, Series C No. 185, para. 17.

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.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.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 aftering unable to reach consensus on and approve an instrument to regulate consultation with indigenous peoples accoridngo 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.¹⁸⁴ By December 2016, six different linguistic

¹⁸² IACHR, Indigenous peoples in voluntary isolation and initial contact in the Americas: recommendations for full respect for their human rights. OEA/Ser.L/V/II, Doc. 47/13, December 30, 2013, para. 21-22. The Commission previously wrote: “the right to self-determination is directly and profoundly related to the rights [of indigenous peoples] to their lands, territories and natural resources.” Ibid. para. 22. IACHR, Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System. OEA/Ser.L/V/II, December 30, 2009, para. 165. United Nations Declaration on the Rights of Indigenous Peoples, 61/295. A/61/L.67 and Add.1, September 13, 2007, Art. 3, “Indigenous peoples have to the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Also see IACHR, Pleadings before the Inter-American Court of Human Rights in the case of Yakye Axa v. Paraguay. Cited in: IA Court of HR, Case of the Yakye Axa Indigenous Community v. Paraguay. Judgment of June 17, 2005. Series C No. 125, para. 157(c). IA Court of HR, Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of August 24, 2010, Series C No. 214, pars. 171-182. In the case of the Kichwa Indigenous People of Sarayaku v. Ecuador, the Inter-American Court wrote that “the right to cultural identity is a fundamental right – and one of collective nature – of the indigenous communities, which should be respected in a multicultural pluralistic and democratic society.” IA Court of HR. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations. Judgment of June 27, 2012. Series C No. 245, para. 217.

¹⁸³ IA Court of HR. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, para. 181. IA Court of HR, Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, pars. 133 to 137. IA Court of HR, Case of the Saramaka People v. Suriname. Interpretation of Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008, Series C No. 185, para. 17.

¹⁸⁴ 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, p. 28.

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.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%.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.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.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

¹⁸⁵ Ibid.

¹⁸⁶ IACHR, on-site visit to Guatemala, July 31 to August 4, 2017, meetings with civil society organizations and international agencies.

¹⁸⁷ See, e.g., <http://www.albedrio.org/hm/otrosdocs/comunicados/GAM-SituacionViolenciaNinezAdolescencia2016.pdf>.

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

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.

¹⁹⁰ IACHR, Violence, Children and Organized Crime, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, para. 398.

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.¹⁹³ 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-Gorrones), 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.¹⁹⁴

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 161-17.¹⁹⁵ 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.¹⁹⁶ 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" [calabozo] dormitories at the facility known as "Etapa II" ["Stage II"], as well as the installation of toilets in the adolescents' dormitories at the "Gorrones" facility, visited by the Commission.¹⁹⁷ In contrast, the IACHR

¹⁹³ Information provided by the State, Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017, pg. 11.

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).

¹⁹⁵ IACHR, MC 161-17, Centros Juveniles de Privación de Libertad, Guatemala, ['Juvenile Deprivation of Liberty Facilities, Guatemala'], June 12, 2017.

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.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.

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.

4. Lesbian, Gay, Bisexual, Trans and Intersex Persons (LGBTI)

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.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.²⁰⁰ Likewise, the Office of the United Nations High

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*.

¹⁹⁹ Redlactrans, Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá, [‘Violations of the Human Rights of Trans Women in Costa Rica, El Salvador, Guatemala, Honduras and Panama’], 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.

²⁰⁰ Redlactrans, Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá, [‘Violations of the Human Rights of Trans Women in Costa Rica, El Salvador, Guatemala, Honduras and Panama’], 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

²⁰¹ United Nations Human Rights Council, Informe anual del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre las actividades de su oficina en Guatemala A/HRC/34/4/Add.1, [‘Annual Report of the United Nations High Commissioner for Human Rights on the activities of his Office in Guatemala’], January 11, 2017, para. 61, p. 18.

²⁰² 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.

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 Civil

²⁰⁷ IACHR, *Violencia contra Personas Lesbianas, Gay, Bisexuales, Trans e Intersex en América*, ['Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas'], OEA/Ser.L/V/II. Rev.2.Doc. 36, approved on November 12, 2015, para. 423. IACHR, *The Situation of People of African Descent in the Americas*, 2011, para. 194.

²⁰⁸ IACHR, on-site visit, July 31 to August 4, 2017. Meetings with civil society organizations.

²⁰⁹ FADEP, *Familia Desarrollo Población. Guatemala: INE anuncia censo de población para el 2017*, ['Guatemala: INE Announces 2017 population census'], June 7, 2017.

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

²¹¹ CERD. Final observations on the 13th and 14th periodic reports of Guatemala. CERD/C/GTM/CO/14-15, June 12, 2015, p. 2.

²¹² Declaration of the First Congress of Afro-Guatemalan Women, July 22, 2017.

²¹³ IACHR, Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 422.

²¹⁴ UN WOMEN, *Resolución histórica en Guatemala, una victoria contra la violencia sexual en los conflictos armados*, [‘Historic resolution in Guatemala, a victory against sexual violence in armed conflicts’], March 3, 2016. It can be viewed at <http://www.unwomen.org/es/news/stories/2016/3/guatemala-victory-against-sexual-violence-in-armed-conflict>; UNDP, *Mujeres Maya Q’eqchí de Sepur Zarco marcan hito histórico contra la esclavitud sexual como acto de guerra*, [‘Q’eqchí Mayan Women from Sepur Zarco set historical milestone against sexual slavery as act of war’], 2016. It can be viewed at http://www.gt.undp.org/content/guatemala/es/home/ourwork/crisispreventionandrecovery/successstories/Sepur_Zarco.html

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.²¹⁵ 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 1981,²¹⁶ 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*.²¹⁷ 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.²¹⁸
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.²¹⁹ In

²¹⁵ International Justice Monitor, *CREOMPAZ Hearings Conclude; Tribunal to Determine if Case Goes to trial*, June 7, 2016. It can be viewed at <https://www.ijmonitor.org/2016/06/creompaz-hearings-conclude-tribunal-to-determine-if-case-goes-to-trial/>; NISGUA, *CREOMPAZ: Eleven retired military officers indicted on charges of crimes against humanity*, January 19, 2016. It can be viewed at <http://nisgua.org/creompaz-eleven-retired-military-officers-indicted-on-charges-of-crimes-against-humanity/>.

²¹⁶ IACHR, Press Release 001, *CIDH saluda detención de imputados por delitos de desaparición forzada y lesa humanidad en Guatemala* ['IACHR Welcomes Arrest of Individuals Accused of Forced Disappearance and Crimes against Humanity in Guatemala'], January 13, 2016. It can be viewed at: <http://www.oas.org/es/cidh/prensa/comunicados/2016/001.asp>.

²¹⁷ IA Court of HR, *Case of Molina Theissen v. Guatemala*, Merits, Judgment of May 4, 2004. Series C No. 106.

²¹⁸ Centro de Medios Independientes, *El Caso Molina Theissen está listo para ir a juicio* ['Case of Molina Theissen is ready to go to trial'], August 6, 2017. It can be viewed at: <https://cmiguate.org/el-caso-molina-theissen-esta-listo-para-ir-a-juicio/>. International Justice Monitor, *Judge Sends Five High-Ranking Military Officers to Trial in Molina Theissen Case*, March 6, 2017. It can be found at: <https://www.ijmonitor.org/2017/03/judge-sends-five-high-ranking-military-officers-to-trial-in-molina-theissen-case/>.

²¹⁹ Office of the Public Prosecutor, "Caso Sepur Zarco: sala de apelaciones confirma sentencia condenatoria obtenida por la Fiscalía de Derechos Humanos" ['Case of Sepur Zarco: appeals chamber upholds conviction obtained by the Prosecutor for Human Rights'], July 19, 2017. It can be viewed at:

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 Valdéz 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

<https://www.mp.gob.gt/noticias/2017/07/19/caso-sepur-zarco-sala-de-apelaciones-confirma-sentencia-condenatoria-obtenida-por-la-fiscalia-de-derechos-humanos/>.

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

²²¹ Mujeres 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.

²²² Human Rights Ombudsman of Guatemala, *Informe Anual Circunstanciado 2016*, ['2016 Annual Status Report'], January 31, 2017, p.72; CEJIL, "Observaciones al Informe sobre la situación de derechos humanos en Guatemala" ['Observations to the Report on the Situation of Human Rights in Guatemala'], October 14, 2016; IACHR, Annual Report 2016, *Capítulo V: Seguimiento de recomendaciones formuladas por la CIDH en sus informes de país o temáticos*, ['Chapter V: Follow-up of recommendations made by the IACHR in its country or thematic reports'] para. 121.

armed conflict. Civil society organizations also reported on increased assaults and harassment against human rights defenders who follow these cases.²²³ 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.²²⁴

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.²²⁵ 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

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 coronel 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>.

²²⁴ See, by way of example, CEJIL, “Observaciones al Informe sobre la situación de derechos humanos en Guatemala” [‘Observations to the Report on the Situation of Human Rights in Guatemala’], October 14, 2016, p. 7.

²²⁵ El Diario, “Ríos Montt declarado incapaz para afrontar un juicio por genocidio en Guatemala” [‘Ríos Montt found incompetent to stand trial for genocide in Guatemala’], November 16, 2016. It can be found at: http://www.eldiario.es/politica/Rios-Montt-declarado-genocidio-Guatemala_0_580943079.html.

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.²²⁶ 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 2000.²²⁷

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 2003.²²⁸ 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

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

²²⁷ Bufete Jurídico de Derechos Humanos, CALDH, Grupo de Apoyo Mutuo GAM, and FAMDEGUA, Report on the Situation of Memory, Truth and Justice, July 2017. In the archives of the Commission.

²²⁸ IACHR, 159th Session, Public Hearing “Right to full reparation for victims of the armed conflict in Guatemala,” Panamá, December 6, 2016. IACHR, 156th Session, Public Hearing, “Human rights and transitional justice in Guatemala,” October 22, 2015. IACHR, 153rd Session, Public Hearing “Access to justice and legacy of the internal armed conflict in Guatemala,” October 28, 2014. IACHR, 150th Session, Public Hearing “National Reparation Program in Guatemala,” March 25, 2014. IACHR, 144th Session, Public Hearing, “Situation of women victims of human rights violations during the internal armed conflict in Guatemala,” March 27, 2012. IACHR, 138th Session, Public Hearing “Public policy on reparations in Guatemala,” March 19, 2010.

adolescents. Consequently, this places the burden of trying to secure adequate reparation on the organizations supporting the victims.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.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.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.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.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

²²⁹ CEJIL, “Observaciones al Informe sobre la situación de derechos humanos en Guatemala” [‘Observations to the Report on the Situation of Human Rights in Guatemala’], October 14, 2016.

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.

²³¹ Republic of Guatemala, Report of the State of Guatemala on draft Chapter V on follow-up to the recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Nota P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, pg. 81. Information provided by the State, Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017, Annex 21.

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

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.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.²³⁵

140. As for the particular challenges faced by indigenous women,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.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.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.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.

²³⁴ 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.

²³⁵ Ibid.

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 144th 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.

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.

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.

²³⁹ 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

²⁴⁰ *Id.*

²⁴¹ Information provided by the State, Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017, Annex 21, pp. 9-16.

²⁴² *Id.*, Annex 21, p. 24.

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.

²⁴⁴ IACHR, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 127.

²⁴⁵ I/A Court of HR, *Case of Bámaca Velásquez v. Guatemala*. Judgment of November 25, 2000, Merits. Series C No. 70, para. 212. IA Court of HR, *Case of Bámaca Velásquez v. Guatemala*. Resolution of January 27, 2009, pars. 28-30.

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.²⁴⁶ 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.

²⁴⁶ IACHR, Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, paras. 445-451.

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 (UDEFEQUA) 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 253.²⁴⁷
146. In the first half of 2017 alone, UDEFEQUA 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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UDEFEQUA, *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, p. 6.

to the total of 37 assaults targeting this group in all of 2016.²⁴⁸ 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.²⁴⁹

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 (*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.²⁵⁰
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 *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.²⁵¹

²⁴⁸ *Id.*, p. 8.

²⁴⁹ IACHR, Press Release No. 088/17, [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.

²⁵⁰ UDEFEGUA, [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.

²⁵¹ 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, 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.²⁵² 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.²⁵³
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 2014.²⁵⁴ For the

²⁵² Human Rights Ombudsman, Contribution of the Human Rights Ombudsman Third Cycle for Guatemala Universal Periodic Review, March 2017, p. 3.

²⁵³ Ibid., pg. 3. See IA Court of HR. Caso Defensor de Derechos Humanos y otros Vs. Guatemala. Excepciones Preliminares, Fondo, Reparaciones y Costas. [‘Case of Human Rights Defender et al v. Guatemala. Preliminary Objections, Merits, Reparations and Costs’], Judgment of August 28, 2014. Series C No. 283.

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

first half of 2017 alone, UDEFEGUA 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, UDEFEGUA 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%²⁵⁶ 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

Rights, OACNUDH rechaza recientes asesinatos de defensoras y defensores de derechos humanos, [‘OUNHCHR rejects recent murders of human rights defenders’], June 21, 2016.

²⁵⁵ On June 5, 2017, in the context of World Environment Day, the IACHR noted its concern over the murder of Sebastián Alonso Juan, defender of indigenous rights and of native territory of Yulchen, on January 17, 2017, while he was taking part in a protest rally against a hydroelectric dam project in Ixquisis, in the Department of Huehuetenango. IACHR, Press Release No. 072/17, CIDH urge a proteger a defensoras y defensores de la tierra y el medio ambiente, [‘IACHR Issues Call for OAS States to Protect Defenders of the Land and Environment’], June 5, 2017. During the on-site visit to the hamlet of Ixquisis, the IACHR met with the family members of Sebastián Alonso Juan, who claimed that after being shot, workers of the hydroelectric project proceeded to beat him on one side of his face and neck when he was in the throes of death. Civil society organizations further contended that because of the blockade that workers and persons attached to the hydroelectric company PDHSA were maintaining in the major points of access to the village of Ixquisis, it took several hours to transfer Mr. Alonso Juan to provide him with medical assistance when he was wounded, and given the seriousness of his injuries, he passed away before he could be treated.

²⁵⁶ During the meeting with the family members, they reported to the IACHR delegation that persons connected to the hydroelectric company disturbed the resting place where the remains of Sebastián Alonso Juan were buried and that the case was reported to the Unit for Crimes Committed against Activists of the Office of the Prosecutor for Human Rights and registered under Case File No. MP 001-2017-5897. Meeting with community leaders in Ixquisis, Department of Huehuetenango, in the context of the on-site visit, on August 2, 2017; UDEFEGUA, Informe sobre situación de Defensoras y Defensores de Derechos Humanos, [‘Report on the situation of human rights defenders’], January 2017, p. 6.

²⁵⁷ UDEFEGUA, Informe sobre situación de Defensoras y Defensores de Derechos Humanos, [‘Report on the situation of human rights defenders’], January 2017, p. 8.

²⁵⁸ *Id.*, p. 7, table 3.

²⁵⁸ FIDH, Guatemala: Campaña de estigmatización, difamación y amenazas de muerte contra personal de CALAS, [‘Guatemala: Campaign of stigmatization, slander and death threats against CALAS staff’], July 7, 2017.

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.²⁵⁹

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.”²⁶⁰ According to the organizations, this is pervasive language aimed at stigmatizing community leaders and human rights defenders.²⁶¹
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.²⁶² 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.²⁶³ 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.²⁶⁴

²⁵⁹ Human Rights Ombudsman of Guatemala, Informe Anual Circunstanciado 2016, [‘2016 Annual Status Report’], p. 198.

²⁶⁰ 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, p. 45.

²⁶¹ *Ibid.*

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.

²⁶³ Human Rights Ombudsman of Guatemala, Informe Anual Circunstanciado 2016, [‘2016 Annual Status Report’], p. 197.

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.

156. 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
157. 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.
158. 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

²⁶⁷ FIDH, Guatemala: Campaña de estigmatización, difamación y amenazas de muerte contra personal de CALAS, [‘Guatemala: Campaign of stigmatization, smearing and death threats against CALAS staff’], July 7, 2017.

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, Meeting in Santa Eulalia with civil society organizations; 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.

²⁷¹ UDEFEGUA, Informe sobre situación de Defensoras y Defensores de Derechos Humanos, [‘Report on the situation of human rights defenders’], January 2017, p. 18.

²⁷² IACHR, Segundo Informe sobre la Situación de las Defensoras y Defensores de Derechos Humanos en las Américas, [‘Second Report on the Situation of Human Rights Defenders in the Americas’], OEA/Ser.L/V/II. Doc. 66 December 31, 2011, para. 283.

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.

²⁷⁶ Ministry of Public Prosecution, Office of the Prosecutor for Administrative Crimes, (AUX) Auxiliaries, (AGS) Agency Five, (UL) Litigation Unit, Testimony MP001-2015-59084.

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.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 Ixquis 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.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

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.

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.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.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.²⁸¹ During its visit to Ixquisis and Santa Eulalia, Department of Huehuetenango, the IACHR witnessed this situation with great concern.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

²⁷⁹ UDEFEGUA, *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, p. 7.

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.

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.

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.

²⁸⁴ IACHR, Informe sobre Criminalización de Defensoras y Defensores de Derechos Humanos, [‘Report on Criminalization of Human Rights Defenders’], OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 185.

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.”²⁸⁶

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.²⁸⁷ 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.²⁸⁸
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.²⁸⁹ 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.²⁹⁰ 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

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.

²⁹⁰ Bufete Jurídico de Derechos Humanos and CALDH, Report on Criminalization of Social Demands, to the Inter-American Commission on Human Rights in Guatemala, July 2017. In the archives of the Commission.

“criminalize the actions carried out by the ancestral authorities [...] to defend their rights.”²⁹¹

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.²⁹²
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.²⁹³ 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.²⁹⁴ Civil society organizations have contended that the case of human rights defender Fausto Sánchez stands as an example of the

²⁹¹ 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 Commission for Human Rights on the activities of his Office in Guatemala 2016’], A/HRC/34/3/Add.1, January 11, 2017, paras. 41-42.

²⁹² Meeting with criminalized human rights defenders in the Municipality of San Pablo, San Marcos, in the context of the on-site visit, in Guatemala City, August 1, 2017.

²⁹³ *Id.*

²⁹⁴ Meeting with criminalized human rights defenders in the Municipality of San Pablo, San Marcos, in the context of the on-site visit, in Guatemala City, August 1, 2017; Prensa Libre, *Líder comunitario queda en libertad*, [‘Community Leader released’], March 15, 2017.

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

²⁹⁵ Prensa Libre, *Líder comunitario queda en libertad*, [‘Community Leader released’], March 15, 2017.

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

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

²⁹⁸ IACHR. 164th Session. Hearing Denunciation of attacks on human rights defenders by extractive companies in Guatemala. September 7, 2017. Available for viewing at: <https://www.youtube.com/watch?v=yuVmLG9gkME&t=5s>

²⁹⁹ CIDH, *Informe sobre Criminalización de Defensoras y Defensores de Derechos Humanos*, [‘Report on Criminalization of Human Rights Defenders’], OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 181.

³⁰⁰ *Id.*, para. 182.

³⁰¹ Human Rights Ombudsman of Guatemala, Contribution of the Human Rights Ombudsman Third Cycle for Guatemala Universal Periodic Review, March 2017, p. 3.

³⁰² Amnesty International, *América: situación de los mecanismos de protección para los defensores y defensoras de los derechos humanos*, [‘Americas: State Protection Mechanisms for Human Rights Defenders’], May 17, 2017, p. 5.

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.³⁰³

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.³⁰⁴
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

³⁰³ Government of the Republic of Guatemala, Ministry of the Interior, General Directorate of the National Civilian Police, Official Letter No. 1251-2017 Ref. DG/NARR/Juárez, Reg 4842, August 21, 2017, p. 8.

³⁰⁴ Fundación Myrna Mack, *Convergencia para Derechos Humanos*, Alternative Report for the Third Cycle of the Universal Periodic Review, Situation of Human Rights Defenders, Justice, Security and Combating Impunity in Guatemala, March 29, 2017, pars. 7-9.

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.³⁰⁵ According to the authority of the Ministry of the Interior representing the Unit, no pattern of attacks on human rights defenders has been verified.³⁰⁶

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.³⁰⁷ 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.³⁰⁸
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 2017.³⁰⁹ 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

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 (DIGIC), 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.

³⁰⁷ Amnesty International, América: situación de los mecanismos de protección para los defensores y defensoras de los derechos humanos, [‘Americas: State Protection Mechanisms for Human Rights Defenders’], May 17, 2017, p. 5.

³⁰⁸ Amnesty International, América: situación de los mecanismos de protección para los defensores y defensoras de los derechos humanos, [‘Americas: State Protection Mechanisms for Human Rights Defenders’], May 17, 2017, pg. 5; United Nations, Informe del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre las actividades de su Oficina en Guatemala 2016, [United Nations High Commissioner for Human Rights on the activities of its Office in Guatemala 2016’], A/HRC/34/3/Add.1, January 11, 2017, paras. 38-39.

³⁰⁹ United Nations, Informe del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre las actividades de su Oficina en Guatemala 2016, [United Nations High Commissioner for Human Rights on the activities of its Office in Guatemala 2016’], A/HRC/34/3/Add.1, January 11, 2017, paras. 37-38.

and human resources that are contributed by the public institutions making it up.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.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 *Human Rights Defender et al v. Guatemala*.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.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

³¹⁰ Fundación Myrna Mack, *Convergencia para Derechos Humanos*, Alternative Report for the Third Cycle of the Universal Periodic Review, Situation of Human Rights Defenders, Justice, Security and Combating Impunity in Guatemala, March 29, 2017, para. 5.

³¹¹ CIDH, *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.

³¹² 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.

³¹³ European Parliament, *Resolución del Parlamento Europeo, de 16 de febrero de 2017, sobre Guatemala, en particular la situación de los defensores de los derechos humanos (2017/2565(RSP))*, P8_TA(2017)0045, [‘Resolution of the European Parliament, February 16, 2017, regarding Guatemala, in particular the situation of human rights defenders’], February 16, 2017, para. M.(2) and (4).

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

³¹⁴ 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 regarding the activities of his Office in Guatemala 2016], A/HRC/34/3/Add.1, January 11, 2017, paras. 38-39.

³¹⁵ 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. Also see 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.

³¹⁶ 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. Also see 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.

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.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.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.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.³²⁰

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.

³¹⁷ Amnesty International, América: situación de los mecanismos de protección para los defensores y defensoras de los derechos humanos, [‘Americas: State Protection Mechanisms for Human Rights Defenders’], May 17, 2017, p. 6.

³¹⁸ Fundación Myrna Mack, *Convergencia para los Derechos Humanos*, Alternative Report for the Third Cycle of the Universal Periodic Review, Situation of Human Rights Defenders, Justice, Security and Combating Impunity in Guatemala, March 29, 2017, para. 6.

³¹⁹ IACHR, Segundo informe sobre la situación de las defensoras y los defensores de derechos humanos en las Américas, [‘Second Report on the Situation of Human Rights Defenders in the Americas’], OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 231.

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.³²¹

1. Acts Limiting or Hampering Performance of their Work

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 (*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.³²²
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

³²¹ 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.

³²² Meeting with justice operators in the context of the country visit, August 2, 2017, Guatemala City.

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 Pasion River. In this last case, Judge Karla Hernández was also reportedly threatened.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.³²⁴
199. The attempts to make progress in combatting impunity and corruption by justice operators, described in the chapter on access to justice³²⁵ 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);³²⁶ magistrates Claudia Escobar (MC 433-14); Patricia

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.

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.

³²⁵ See Section III.B, on Requirements for independence and impartiality: Public Prosecutor's Office and reforms to the Judiciary.

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);³²⁷ as well as judge Miguel Ángel Gálvez (MC 351-16);³²⁸ and magistrate Gloria Patricia Porras Escobar (MC 431-17).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.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.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.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.³³³ During the hearing on “Denunciations of

³²⁷ IACHR, MC 125/13, Iris Yassmín Barrios Aguilar y otros, respecto de Guatemala, [Iris Yassmin Barrios Aguilar et al, with respect to Guatemala’], June 28, 2013.

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.

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.

³³⁰ Rules of Procedure of the Inter-American Commission on Human Rights, Article 25.

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: <http://www.oas.org/es/cidh/decisiones/pdf/2017/34-17MC431-17-GU.pdf>

³³² IACHR, MC 431/17, Gloria Patricia Porras Escobar and family, with respect to Guatemala, August 29, 2017.

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.³³⁴ 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.³³⁵

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.³³⁶
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.³³⁷ 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

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.*

³³⁶ Impunity Watch, Report on threats and retaliation against tenured judges and magistrates of Guatemala, July 2017, p. 4.

³³⁷ IA Court of HR. Caso de la Masacre de la Rochela Vs. Colombia. [‘Case of the Massacre of La Rochela v. Colombia’]. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 297.

exercise of judicial function may be gravely affected, access to justice impeded, and the rule of law weakened.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.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.³⁴⁰

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.

³³⁹ IACHR, *Justicia e inclusión social: Los desafíos de la democracia en Guatemala*, ['Justice and Social Inclusion: The Challenges of Democracy in Guatemala'], OEA/Ser.L/V/II.118. Doc. 5 rev. 1, December 29, 2003, Chapt. III, para. 201.

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.³⁴¹ 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.³⁴² 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

³⁴¹ IOM, *Perfil Migratorio de Guatemala 2012*, [Migration Profile for Guatemala 2012, Spanish only], p. 22.

³⁴² *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.³⁴³

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.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,³⁴⁵ as well as factors linked to climate change and natural disasters.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.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.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

³⁴³ Constitutional Court, *Expediente 2265-2006*, [‘Case File 2265-2006’], September 4, 2006.

³⁴⁴ Internal Displacement Monitoring Centre, *Global Report on Internal Displacement*, 2017, p.114.

³⁴⁵ 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.

³⁴⁶ 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. 1.

³⁴⁷ *Ibid.*

³⁴⁸ *Ibid.*

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.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.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."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.³⁵² This situation places these displaced persons at risk of malnutrition and disease.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.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,

³⁴⁹ *Ibid.*

³⁵⁰ *Id.*, p. 2.

³⁵¹ Testimony of displaced person to IACHR Rapporteur on the Rights of Migrants, August 1, 2017.

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.

³⁵³ *Ibid.*

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.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.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.³⁵⁷ According to the information

³⁵⁵ Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2017*, p. 114.

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.

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’eqch’í 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

Communities of the Municipalities of San Andrés and La Libertad, Department of Petén Guatemala], November 15, 2012, p. 7.

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.

218. 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

³⁶⁰ International Commission of Jurists, *Pronunciamento de la Comisión Internacional de Justicia (CIJ) en ocasión de finaliza la Misión de Alto Nivel al Departamento de Petén Guatemala*, [‘Statement of the International Commission of Justice on the occasion of finalizing the High Level Mission to the Department of Peten, Guatemala’], August 9, 2012, p. 2.

³⁶¹ 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 Communities of the Municipalities of San Andres and La Libertad, Department of Peten Guatemala’], November 15, 2012, p. 4.

³⁶² International Commission of Jurists, *Pronunciamento de la Comisión Internacional de Justicia (CIJ) en ocasión de finaliza la Misión de Alto Nivel al Departamento de Petén Guatemala*, [‘Statement of the International Commission of Justice on the occasion of finalizing the High Level Mission to the Department of Peten, Guatemala’], August 9, 2012, p. 2.

³⁶³ *Id.*, p. 2.

³⁶⁴ International Commission of Jurists, *La Comisión Internacional de Juristas hondamente preocupada por la detención arbitraria del defensor de derechos humanos Jovel Tobar en Guatemala*, [‘The International

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.

219. 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
220. 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.
221. 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

Commission of Jurists deeply concerned over the arbitrary detention of human rights defender Jovel Tobar in Guatemala'], July 18, 2017.

³⁶⁵ 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 Communities of the Municipalities of San Andrés and La Libertad, Department of Peten Guatemala’], November 15, 2012, p. 18.

³⁶⁶ Report: 37 Communities of Laguna del Tigre and Sierra de Lacandón 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.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 woman 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

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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.”³⁶⁸

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.³⁶⁹
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.³⁷⁰

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.³⁷¹
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.³⁷²
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.³⁷³ 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:³⁷⁴ a) Adopt the necessary measures to protect the right to life and personal integrity of the beneficiaries, through measures aimed at improving, among

³⁷⁰ CIDH, *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.³⁷⁵

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

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Id.

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-borne 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).³⁷⁶

230. Subsequently to the granting of the precautionary measure to the community of Laguna Larga, the IACHR received information on evictions of Maya Q'eqchi' communities, which had been demanding legal recognition of their lands for several years.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,³⁷⁸ department of Izabal, were evicted, and had previously been subjected to force displacement during the internal conflict.³⁷⁹ The eviction was carried out by 1,141 members of the National Civilian Police.³⁸⁰ Separately, on November 1, 2017, the community of La Cumbre Sacuxha, Tactic, department of Alta Vera Paz, which was made up of approximately 25 families³⁸¹ (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.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

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.

³⁷⁷ Open letter to the International Commission against Impunity in Guatemala (CICIG) and the Inter-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.

³⁷⁸ Report requested by Chamber of Deputies member Locadio Juracan Salome of Bancada Convergencia, Memorandum October 31, 2017, COPREDEH, Izabal.

³⁷⁹ Open letter to the International Commission against Impunity in Guatemala (CICIG) and the Inter-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.

³⁸⁰ Report requested by Chamber of Deputies member Locadio Juracan Salome of Bancada Convergencia, Memorandum October 31, 2017, COPREDEH, Izabal.

³⁸¹ Report requested by Chamber of Deputies member Locadio Juracan Salome of Bancada Convergencia, Memorandum November 7, 2017, COPREDEH, Case of Finca Trece Aguas, Senahú, Alta Verapaz.

³⁸² *Id.*

the Community of Chaqchila Trece Aguas, Senahu, Department of Alta Verapaz were evicted by 217 National Civilian Police agents.³⁸³

231. 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.³⁸⁴ Additionally, in the view of the Commission, it is of deep concern that houses were burn 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.³⁸⁵ 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.³⁸⁶
232. 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.³⁸⁷ Likewise, should it

³⁸³ Report requested by Chamber of Deputies member Locadio Juracan Salome of Bancada Convergencia, Memorandum November 7, 2017, COPREDEH, Aldea la Cumbre Chamche.

³⁸⁴ 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'ó'ch, Livingston, Izabal; La Cumbre Sacuxha, Tactic, Alta Verapaz and Chaqchila Trece Aguas Community, Senahu, Alta Verapaz, Guatemala, November 6, 2017.

³⁸⁵ *Id.*

³⁸⁶ 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'ó'ch, Livingston, Izabal; La Cumbre Sacuxha, Tactic, Alta Verapaz and Chaqchila Trece Aguas Community, Senahu, Alta Verapaz, Guatemala, November 6, 2017.

³⁸⁷ 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

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'] A/HRC/4/18, y Principios Rectores de los Desplazamientos Internos, ['Guiding Principles on Internal Displacement'] E/CN.4/1998/53/Add.2.

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).³⁹¹ For the same period, the number of persons who were recognized as refugees increase by 121.06%.³⁹²

1.

Source: United Nations High Commissioner for Human Rights (UNHCR)
Reports Global Trends 2012 – 2016

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).³⁹³
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

³⁹¹ UNHCR, Global Trends (2012, 2013, 2014, 2015, 2016 and 2017).

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.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.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.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.³⁹⁷
239. Additionally, the Migration Code sets forth some important developments, such as recognition of the right to migrate,³⁹⁸ the right to request recognition of refugee status³⁹⁹ and the concept of diplomatic asylum.⁴⁰⁰ The Code allows for the entry of foreigners for humanitarian reasons,

³⁹⁴ Testimony provided to the Rapporteur on the Rights of Migrants on his visit to Guatemala, July 31, 2017.

³⁹⁵ Foundation for Justice and Democratic Rule of Law and Community Studies and Psychosocial Action Team, Report addressed to the IACHR on the occasion of its country visit to Guatemala of July 31 to August 4, 2017, Disappeared migrants, a Guatemalan reality: Search, identification and access to justice for their families, p. 9.

³⁹⁶ Human Rights Ombudsman, Independent Report of the Human Rights Ombudsman of Guatemala to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, p. 11.

³⁹⁷ Code of Migration, Chapter V: Procedure for assistance to the families of the persons reported as disappeared as a consequence of migration.

³⁹⁸ Code of Migration, Article 1.

³⁹⁹ *Id.*, Article 43.

⁴⁰⁰ *Id.*, Article 44.

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 Decembe 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 appilcants 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.

⁴⁰³ 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.

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 a 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).⁴⁰⁴ 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,⁴⁰⁵ and incorporating into the Migration Code the ability to request shelter and temporary care to stay overnight for 48 hours,⁴⁰⁶ 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.

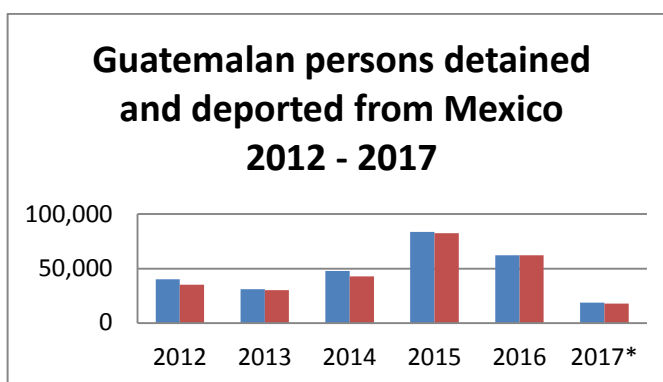
243. In its comments to the draft of this report, the State submitted statistics of Guatemalan individuals deported from Mexico by land as of October 23, 2017. These figures show 25,167 people have been so deported, of whom 15,659 are adult males, 428 adult females, 215 accompanied boys, 175 accompanied 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

⁴⁰⁴ National Migration Institute, *Boletines Estadísticos – Extranjeros presentados y devueltos*, ['Statistics Bulletin – Foreigners presented and returned'], 2012 – 2016.

⁴⁰⁵ Expansion, Guatemala opens a lounge in its airport to receive migrant children, May 31, 2017. Available at: <http://expansion.mx/mundo/2017/05/31/guatemala-abre-sale-en-su-aeropuerto-para-recibir-a-ninos-inmigrantes>

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.⁴⁰⁷



Source: Secretariat of the Interior, National Migration Institute 2010 -2017

* Statistics available until July 2017

244. 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.⁴⁰⁸ 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.⁴⁰⁹ According to the United Nations Office on Drugs and Crime (UNODC), crossborder trafficking in persons originating in Central America and the Caribbean accounts for

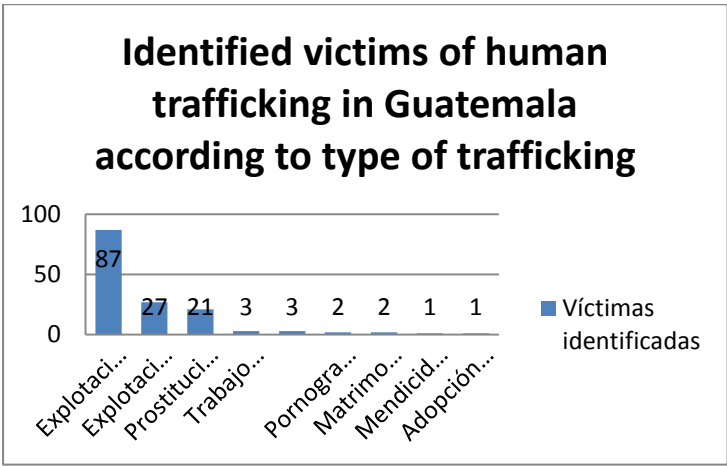
⁴⁰⁷ Communication from the State of Guatemala, "Submission of the State of Guatemala to Include in the Draft Report on the Human Rights Situation in Guatemala," December 22, 2017.

⁴⁰⁸ Guatemala, Report of the State on Trafficking in Persons, 2016, 2017, p. 66.

⁴⁰⁹ Office to Monitor and Combat Trafficking in Persons, US Department of State, *2016 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.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 2017.⁴¹¹ 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.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.⁴¹³ Most of the victims were Guatemalan nationals, while there were 3 Hondurans, 3 Mexicans, 3 Salvadorans and 1 Venezuelan national.⁴¹⁴



Source: Report of the Guatemalan State on Trafficking in Persons, 2016 and 2017.

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

⁴¹⁰ UNODC, *Global Report on Trafficking in Persons 2016*, p. 93.

⁴¹¹ Guatemala, Report of the State on Trafficking in Persons 2016, 2017, p. 66.

⁴¹² 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.

⁴¹³ Guatemala, Report of the State on Trafficking in Persons 2016, 2017, pp. 70, 71.

⁴¹⁴ *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.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.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.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, *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.

⁴¹⁵ 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.

⁴¹⁶ Guatemala, Report of the State on Trafficking in Persons 2016, 2017, pp. 74 and 75.

⁴¹⁷ 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.

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

⁴¹⁸ Prensa Libre. February 8, 2017. *PDH pide protección a periodistas*; República. February 6, 2017. *PDH pide implementar programa de protección a periodistas*.

⁴¹⁹ Centro de Reportes Informativos sobre Guatemala (Cerigua). *Estado de la Situación de la Libertad de Expresión en Guatemala – Primer Trimestre 2017*. May 2, 2017

⁴²⁰ IACHR. *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*. OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015. Para. 281.

⁴²¹ *Ibid.*

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."⁴²²
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,

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Prensa Libre. September 2, 2017. [*PDH abre expediente para investigar campaña de desprestigio contra la prensa independiente*](#); Procurador de los Derechos Humanos (PDH). September 4, 2017. [*PDH abre expediente por campaña para desacreditar a periodistas y medios de información*](#).

humane 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

⁴²³ IACHR. Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 31.

⁴²⁴ IACHR. Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17, March 15, 2017, paras. 641-644.

⁴²⁵ *Idem*, para. 645.

⁴²⁶ Inter American Press Association (IAPA). January 25, 2017. La SIP condena asesinato de periodista en Guatemala; Prensa Libre. February 2, 2017. Unesco pide esclarecer asesinato de periodista en Zacapa; La Opción de Chihuahua. February 7, 2017. Asesinan en Guatemala a comunicadora Vilma Gabriela Barrios; Centro de Reportes Informativos sobre Guatemala (Cerigua). February 6, 2017. Joven locutora asesinada en Quetzaltenango; Centro de Reportes Informativos sobre Guatemala (Cerigua). July 8, 2017. CERIGUA condena el vil asesinato de comunicador en Petén; elPeriódico. July 12, 2017. Otro comunicador asesinado.

crimes against life, as well as one acquittal and eight convictions for other crimes.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.⁴²⁸ According to publicly available information, significant progress has been made in the investigation of this crime.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.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.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.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 [*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.

⁴²⁷ 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.

⁴²⁸ Periodistas en Español. January 20, 2017. *Periodistas asesinados en Guatemala: Manuel Salvador Villagrán*; Radio ONU. February 3, 2017. *Condena por el asesinato del periodista Manuel Salvador Villagrán en Guatemala*; Notas Periodísticas. January 24, 2017. *Cámara Guatemalteca de Periodismo pide al MP pronta investigación de asesinato*.

⁴²⁹ CNN en Español. May 4, 2017. *Once periodistas fueron asesinados en quince meses en Guatemala*.

⁴³⁰ Centro de Reportes Informativos sobre Guatemala (Cerigua). July 8, 2017. *CERIGUA condena el vil asesinato de comunicador en Petén*; elPeriódico. July 12, 2017. *Otro comunicador asesinado*.

⁴³¹ Committee to Protect Journalists (CPJ). December 19, 2016. *Searching for answers in murder cases amid violence and corruption in Guatemala*.

⁴³² *Ibid.*

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

⁴³³ International Commission against Impunity in Guatemala (CICIG). January 26, 2017. [*Antejuicio contra diputado y capturas en caso asesinato de periodistas*](#); Prensa Libre. January 26, 2017. [*Diputado Julio Juárez habría ordenado el asesinato de periodista Danilo López*](#); Ministerio Público (MP). February 1, 2017. [*Sindicados en crimen de Periodistas son liados a proceso penal*](#).

⁴³⁴ Ministerio Público (MP). February 1, 2017. [*Sindicados en crimen de Periodistas son liados a proceso penal*](#); International Commission against Impunity in Guatemala (CICIG). January 26, 2017. [*Antejuicio contra diputado y capturas en caso asesinato de periodistas*](#).

⁴³⁵ Prensa Libre. February 9, 2017. [*Empieza antejuicio contra diputado Julio Juárez Ramírez*](#); Guatevisión. February 8, 2017. [*CSJ da trámite a antejuicio contra diputado de FCN Julio Juárez*](#).

⁴³⁶ Centro de Reportes Informativos sobre Guatemala (Cerigua). November 6, 2017. [*Jueza Pesquisidora recomienda retirar inmunidad a diputado Juárez por asesinato de periodista*](#); CRN Noticias. November 7, 2017. [*Juez recomienda retirar inmunidad al diputado Julio Juárez por asesinato de periodistas*](#); elPeriódico. November 6, 2017. [*Recomiendan retirar inmunidad a diputado señalado por muerte de dos periodistas*](#); Soy502. No date. [*Recomiendan quitar inmunidad a diputado de FCN implicado en asesinato*](#); Guatevisión. November 6, 2017. [*Diputado de FCN contra las cuerdas: Recomiendan retirar inmunidad a Julio Juárez*](#).

⁴³⁷ Ministerio Público (MP). June 15, 2017. [*Un total de 81 medios de prueba serán utilizados en juicio contra implicados en muerte de periodistas*](#).

to establish the identity of the masterminds of the crime against Jiménez.⁴³⁸

262. The IACHR received information about the May 2017 inauguration of a Prosecution Unit for Crimes against Journalists [*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.⁴³⁹ This agency has territorial jurisdiction over the departments of Suchitepéquez, Retalhuleu, San Marcos, Huehuetenango, Totonicapán, Sololá, and Quetzaltenango.⁴⁴⁰ 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.⁴⁴¹ This staffing increase represents a strengthening of the Unit's human resources, which in 2015 had only five prosecutors to handle over 100 cases.⁴⁴² 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.⁴⁴³

⁴³⁸ Ministerio Público (MP). May 30, 2017. *Un hombre fue condenado a 40 años de prisión por muerte de periodista*; Centro de Reportes Informativos sobre Guatemala (Cerigua). May 30, 2017. *Asesino de periodista condenado a 40 años de prisión incommutables*; Centro de Reportes Informativos sobre Guatemala (Cerigua). June 2, 2017. *MP logra nueva condena por crimen contra periodista*; Ministerio Público (MP). June 2, 2017. *Un hombre fue condenado a 23 años de prisión por muerte de periodista*; El Nacional. June 2, 2017. *Guatemala: asesino de periodista recibe 23 años de cárcel*; Clases de Periodismo. June 3, 2017. *Guatemala: asesino de periodista recibe 23 años de cárcel*.

⁴³⁹ El Periódico. May 9, 2017. *Inauguran fiscalías en Quetzaltenango*; Centro de Reportes Informativos sobre Guatemala (Cerigua). May 9, 2017. *Thelma Aldana inauguró Agencia Fiscal de Delitos contra Periodistas en Quetzaltenango*.

⁴⁴⁰ 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.

⁴⁴¹ *Ibid.*

⁴⁴² IACHR. *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*. OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015, para. 295.

⁴⁴³ 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.⁴⁴⁴ Not having exhausted completely the logical lines of investigation affects, above all, that the intellectual authors cannot be identified.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.”⁴⁴⁶

⁴⁴⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Study on the Status of Investigations into the Murders of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism. OEA/Ser.L/V/II.131. Doc. 35, March 8, 2008, para. 116.

⁴⁴⁵ Idem, Para. 125-126; IACHR. Office of the Special Rapporteur for Freedom of Expression. Impunity, self-censorship and armed internal conflict : an analysis of the state of freedom of expression in Colombia. OEA/Ser.L/V/II Doc.51. August 31, 2005. paras. 65-66.

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 *el Periódico*, were reportedly intercepted by two unknown men

Human Rights. September 13, 2013. *Joint declaration on violence against journalists and media workers in the context of protests*.

⁴⁴⁷ IACHR. *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*. OEA/Ser.L/V/II. Doc. 43/15. December 31, 2015, para. 289.

⁴⁴⁸ Information received during the on-site visit to Guatemala between July 30 and August 4, 2017. Data from the Unidad Fiscal de Delitos contra Periodistas. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁴⁴⁹ 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.

who threatened them with firearms and confiscated their cell phones and photography equipment.⁴⁵⁰

269. In June, it was learned that journalist Marielos Monzón, a columnist for *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.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 *Desde el cuartel, otra visión de Guatemala* ["From the Barracks: Another View of Guatemala"]. A Military Honor Board [*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.⁴⁵²
271. In July, *Centro Pen* [PEN Center] Guatemala condemned the assaults committed against various reporters from *Prensa Libre* in the capital and Quetzaltenango, and from *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

⁴⁵⁰ Inter American Press Association (IAPA). *Guatemala*. March 27, 2017; *elPeriódico*. April 2, 2017. *La prensa de Guatemala recurre al silencio por miedo a políticos y criminales*; Cámara Guatemalteca de Periodismo. March 1, 2017. *Asaltan a fotoperiodista de Diario ElPeriódico*.

⁴⁵¹ Cimacnoticias. June 28, 2017. *Guatemala: amenazas contra periodista Marielos Monzón*; Inter American Press Association (IAPA). July 6, 2017. *Guatemala: Denuncian amenaza e intimidación contra periodista*; Centro de Reportes Informativos sobre Guatemala (Cerigua). July 4, 2017. *Centro PEN Guatemala se solidariza con Marielos Monzón*; Centro Pen Guatemala. Press release, June 28, 2017. Available at: <http://centropenguatemala.blogspot.com/>; Guatevisión. June 26, 2017. *Lista en poder de narcos señala a una periodista*.

⁴⁵² La Hora. May 23, 2017. *Junta de Honor cita a coronel por publicación del libro "Desde el cuartel"*; Prensa Comunitaria. May 31, 2017. *Ministro de la Defensa y Jefe del Estado Mayor podrían enfrentar denuncias formales por violar la Constitución*; *elPeriódico*. May 25, 2017. *Ejército exige a coronel que pruebe que la institución armada violó derechos humanos*.

areas of the country.⁴⁵³ Similarly, on September 7, Rony Rolando Castillo, the *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 Cuilapa National Hospital in Santa Rosa.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.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.⁴⁵⁶
274. According to the information available, on August 28, *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 *persona non grata*.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 [*Procuraduría de Derechos Humanos*] (PDH) opened a file on September 2, as Ombudsman Augusto Jordán Rodas Andrade had indicated

⁴⁵³ Pen International. July 28, 2017. *PEN Guatemala denuncia las recientes agresiones en contra periodistas*.

⁴⁵⁴ Centro de Reportes Informativos sobre Guatemala (Cerigua). September 8, 2017. *Santa Rosa: Periodista fue agredido por “tuctuqueros”*; Pen International. September 13, 2017. *Pen Guatemala denounces attack against journalist*.

⁴⁵⁵ Prensa Libre. March 1, 2017. *Jimmy Morales se contradice*; Guatevisión. March 1, 2017. *[VÍDEO] Jimmy revela más detalles de supuesto golpe de Estado*; Inter American Press Association (IAPA). *Guatemala*. March 27, 2017.

⁴⁵⁶ HispanTV. February 17, 2017. *Presidente guatemalteco advierte de un golpe de Estado en el país*; República. February 16, 2017. *Jimmy Morales: “hay rumores de golpe de estado”*.

⁴⁵⁷ Prensa Libre. August 29, 2017. *Guatevisión denuncia bloqueo y campaña en su contra por recientes coberturas*; Aquitodito. August 30, 2017. *Denuncian ataque e insultos contra Guatevisión*.

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.”

⁴⁵⁸ Prensa Libre. September 2, 2017. [*PDH abre expediente para investigar campaña de desprestigio contra la prensa independiente*](#); Procurador de los Derechos Humanos (PDH). September 4, 2017. [*PDH abre expediente por campaña para desacreditar a periodistas y medios de información*](#).

⁴⁵⁹ Publinews. August 29, 2017. [*Se registra altercado entre periodistas y SAAS en actividad donde participó Jimmy Morales*](#); Cámara Guatemalteca de Periodismo. August 29, 2017. [*Periodistas denuncian agresiones de miembros de la SAAS*](#).

⁴⁶⁰ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. May 4, 2015. [*Joint declaration on freedom of expression and responses to conflict situations*](#).

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.⁴⁶¹ 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.”⁴⁶²
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 Velásquez, 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.”⁴⁶³
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

⁴⁶¹ Centro de Reportes Informativos sobre Guatemala (Cerigua). Estado de la Situación de la Libertad de Expresión en Guatemala – Primer Trimestre 2017. May 2, 2017; Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos. March 3, 2017. [#AlertaDefensoras GUATEMALA / Censuran artículo sobre la campaña de desprestigio que enfrenta el CICIG](#); Pedrovisión Noticias. March 4, 2017. [LA NOTA CHAPINA: La historia de la nota censurada sobre Iván Velásquez en “Contrapoder](#).

⁴⁶² Centro de Reportes Informativos sobre Guatemala (Cerigua). Estado de la Situación de la Libertad de Expresión en Guatemala – Primer Trimestre 2017. May 2, 2017; Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos. March 3, 2017. [#AlertaDefensoras GUATEMALA / Censuran artículo sobre la campaña de desprestigio que enfrenta el CICIG](#); Pedrovisión Noticias. March 4, 2017. [LA NOTA CHAPINA: La historia de la nota censurada sobre Iván Velásquez en “Contrapoder](#).

⁴⁶³ Prensa Libre. August 29, 2017. [Guatevisión denuncia bloqueo y campaña en su contra por recientes coberturas](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). August 31, 2017. [APG denuncia que Guatevisión ha sido objeto de censura](#).

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.⁴⁶⁴ 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.⁴⁶⁵
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

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.

⁴⁶⁵ IACHR. Annual Report 2014. Annual Report of the Office of the Special Rapporteur for Freedom of Expression Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. OEA/Ser.L/V/II Doc. 13. March 9, 2015, paras. 557-560.

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).⁴⁶⁶ 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.⁴⁶⁷

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.⁴⁶⁸ De León Duque reiterated that need on May 3, in a statement released for World Press Freedom Day.⁴⁶⁹
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.⁴⁷⁰ On June 1, after Representative Sandra Morán announced her willingness to work on a legislative bill for

⁴⁶⁶ *Idem*, paras. 683-694.

⁴⁶⁷ IACHR. Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17 March 15, 2017, para. 657.

⁴⁶⁸ Centro de Reportes Informativos sobre Guatemala (Cerigua). February 7, 2017. *PDH insta al gobierno a la pronta implementación del Programa de Protección a Periodistas*; Prensa Libre. February 8, 2017. *PDH pide protección a periodistas*; La Conexiónusa.com/EFE. February 7, 2017. *Ombudsman pide a Guatemala implementar un plan de protección para periodistas*.

⁴⁶⁹ Centro de Reportes Informativos sobre Guatemala (Cerigua). May 3, 2017. *PDH reitera necesidad de establecer Programa de Protección a Periodistas*; Procurador de los Derechos Humanos. May 3, 2017. Comunicado PDH – Día Mundial de la Libertad de Prensa. Available at: <http://pdh.org.gt/biblioteca/sala-de-prensa/category/16-comunicados.html?start=10>

⁴⁷⁰ Centro de Reportes Informativos sobre Guatemala (Cerigua). February 24, 2017. *Alianza de Entidades de Prensa denuncia al Estado por incumplimiento de promesas*; El Clarín. February 24, 2017. *Alianza de Entidades de Prensa de Guatemala en comunicado conjunto denuncia incumplimiento del gobierno*; Inter American Press Association (IAPA). *Guatemala*. March 27, 2017.

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

⁴⁷¹ Notas Periodísticas. June 2, 2017. *Alianza de Entidades de Prensa refuta fingido proyecto de Ley a favor del gremio*; elPeriódico. June 2, 2017. *Entidades de Prensa rechazan propuesta de diputada*; Centro de Reportes Informativos sobre Guatemala (Cerigua). June 1, 2017. *Entidades de Prensa se oponen a intención de diputados de crear espacios de protección a periodistas*.

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), Cámara 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.

289. 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
290. 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

⁴⁷⁵ República de Guatemala. Brief from the State of Guatemala regarding the request for information prior to the on-site visit of the IACHR. Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos (COPREDEH). Ref. P-859-2017/VHGM/LWC/nj. June 16, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

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

⁴⁷⁶ Centro de Reportes Informativos sobre Guatemala (Cerigua). September 22, 2017. [*Ileana Alamilla hace lobby en Ginebra por el Programa de Protección a Periodistas.*](#)

⁴⁷⁷ 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.

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

⁴⁷⁸ IACHR. Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III (Violence Against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators). December 31, 2013, paras. 81-84; IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. December 31, 2011, paras. 487-531.

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.⁴⁷⁹ 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.⁴⁸⁰ 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*].⁴⁸¹
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

⁴⁷⁹ IACHR. Annual Report 2016. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 22/17 March 15, 2017, para. 673.

⁴⁸⁰ Communication by the Asociación de Abogados y Notarios Mayas de Guatemala. August 4, 2016 [sic]. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁴⁸¹ Centro de Reportes Informativos sobre Guatemala (Cerigua). July 5, 2017. Las radios comunitarias en Guatemala, además de no ser reconocidas sufren persecución y criminalización; Federación Guatemalteca de Escuelas Radiofónicas. July 11, 2017. Sigue criminalización de la radio comunitaria.

conduct 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.”⁴⁸² 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 Jocosca* 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 Tactic, 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 Tactic, 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

⁴⁸² 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.

⁴⁸³ Ministerio de Gobernación de Guatemala. February 15, 2017. [*Localizan radio pirata en allanamiento.*](#)

⁴⁸⁴ Ministerio de Gobernación de Guatemala. February 22, 2017. [*Otra radio pirata desarticulada.*](#)

⁴⁸⁵ Ministerio Público (MP). March 9, 2017. [*Agencia que investiga delitos relacionados a frecuencias ilegales coordinó diligencia en Escuintla.*](#)

⁴⁸⁶ Ministerio Público (MP). March 8, 2017. [*MP coordina allanamientos por utilización de frecuencias ilegales en Alta Verapaz.*](#)

⁴⁸⁷ Ministerio Público (MP). March 9, 2017. [*Agencia que investiga delitos relacionados a frecuencias ilegales coordinó diligencia en Escuintla.*](#)

⁴⁸⁸ CRN Noticias. March 15, 2017. [*MP logra el cierre de tres radios que operaban de manera ilegal en Alta Verapaz;*](#) Ministerio Público (MP). March 16, 2017. [*Agencia de Delitos Cometidos por el Uso Ilegal de Frecuencia Radioeléctricas coordina allanamientos en Alta Verapaz.*](#)

Lorenzo Choc Pérez was reportedly arrested and charged with theft in one of those raids.⁴⁸⁹

298. 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.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.⁴⁹¹
299. 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, 2016.⁴⁹² 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.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.

⁴⁸⁹ Ministerio Público (MP). June 15, 2017. *Agencia que investiga delitos relacionados a frecuencias ilegales coordina diligencia en Chimaltenango*.

⁴⁹⁰ ChapinTV.com. July 25, 2017. *Realizan allanamiento en Baja Verapaz por radio pirata*; Ministerio Público (MP). July 26, 2017. *Baja Verapaz: Ministerio Público coordina allanamiento y secuestro de equipo en radio ilegal*.

⁴⁹¹ Ministerio Público (MP). September 1, 2017. *MP incauta equipo utilizado en frecuencia ilegal en Alta Verapaz*.

⁴⁹² Km 169 Prensa Comunitaria. November 30, 2016. *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*.

⁴⁹³ IACHR. *Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere)* OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015. Para. 716

300. 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.⁴⁹⁴ 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.⁴⁹⁵ Also, Article 13.2 of the American Convention on Human Rights holds that the exercise of the right to freedom of thought and expression “[s]hall 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,

⁴⁹⁴ IACHR. Office of the Special Rapporteur for Freedom of Expression. April 18, 2000. [Press Release 24/00. Preliminary evaluation of freedom of expression in Guatemala](#); IACHR. [Annual Report 2001. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#) Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.114. Doc. 5 rev. April 16, 2002, paras. 114-117; IACHR. [Annual Report 2002. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#) Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.117. Doc. 1 rev. 1. March 7, 2003, para. 139 – 141; IACHR. March 29, 2003. [Press release of the Inter-American Commission on Human Rights 08-03](#); IACHR. [Justice and Social Inclusion: The Challenges of Democracy in Guatemala](#). Chapter VII (The Situation of Freedom of Expression). OEA/Ser.L/V/II.118. Doc. 5 rev. 1. December 29, 2003, paras. 412 – 414; IACHR. [Annual Report 2005. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.124. Doc. 7. February 27, 2006, para. 91; IACHR. [Annual Report 2007. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.131 Doc. 34 rev. 1. March 8, 2008, para. 152; IACHR. [Annual Report 2008. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.134 Doc. 5 rev. 1. February 25, 2009, paras. 133 - 134; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, paras. 237 - 238; IACHR. [Annual Report 2010. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 5. March 7, 2011, paras. 281 – 285; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011, paras. 281 – 283; IACHR. [Annual Report 2012. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#) Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.147. Doc. 1. March 5, 2013. paras. 275 – 281; IACHR. [Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 483; IACHR. [Annual Report 2014. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 13. March 9, 2015, para. 577.

⁴⁹⁵ IACHR. [Annual Report 2013. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere).. OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 129; IACHR. [Annual Report 2011. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). OEA/Ser.L/V/II. Doc. 69. December 30, 2011, para. 467.

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.”⁴⁹⁶

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.⁴⁹⁷ 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 VH[F] competition.”⁴⁹⁸ 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

⁴⁹⁶ IACHR. Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 11.

⁴⁹⁷ Congreso de la República de Guatemala. Decreto 34-2012. November 20, 2012.

⁴⁹⁸ International Commission against Impunity in Guatemala (CICIG). Financiamiento de la política en Guatemala. July 16, 2015.

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)

⁴⁹⁹ República de Guatemala. Superintendencia de Telecomunicaciones de Guatemala (SIT). OFI-SIT-DSI-1010-2017. August 17, 2017. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁵⁰⁰ Congreso de la República de Guatemala. Ley General de Telecomunicaciones. Decree No. 94-96 reformed according to decree number 115-97 of the Congress of the Republic. Article 62. November 14, 1996.

⁵⁰¹ IACHR. Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting) OEA/Ser.L/V/II. Doc. 51. December 30, 2009. para. 65.

will allow for the introduction of mobile wireless broadband communications.”⁵⁰²

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.⁵⁰³
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

⁵⁰² República de Guatemala. Superintendencia de Telecomunicaciones de Guatemala (SIT). OFI-SIT-DSI-1010-2017. August 17, 2017. Available at: [Archive of the Office of the Special Rapporteur for Freedom of Expression](#).

⁵⁰³ I/A Court H. R. Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29, American Convention On Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Serie A No. 5. Para. 33-34; IACHR. [Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 117.

sources of information, the main pillar for the functioning of democracy is harmed.”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.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”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.

⁵⁰⁴ IACHR. Justice and Social Inclusion: The Challenges of Democracy in Guatemala. Chapter VII (The Situation of Freedom of Expression), para. 419.

⁵⁰⁵ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. May 4, 2015. Joint declaration on freedom of expression and responses to conflict situations.

⁵⁰⁶ IACHR. Annual Report 2009. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter VI (Freedom of Expression and Broadcasting). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, para. 80.

(*Canal 3*) and Televisiete S.A. (*Canal 7*), owned by Mexican businessman Ángel González.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.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.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

⁵⁰⁷ International Commission against Impunity in Guatemala (CICIG). June 2, 2016. [*Comunicado de prensa 047. Caso Cooptación del Estado de Guatemala*](#); elPeriódico. July 25, 2016. [*Ángel González: el encantador de presidente está molesto*](#); Observacom. July 28, 2016. [*"El Fantasma" González rodeado por la Justicia: pedido de captura internacional para su esposa por caso "Cooptación del Estado" en Guatemala*](#); Proceso. June 6, 2016. [*Magnate mexicano de medios es vinculado con red de corrupción en Guatemala*](#); Observacom. June 14, 2016. [*Ángel González recibió US\\$ 27 millones de publicidad oficial tras financiar ilícitamente campaña presidencial de Otto Pérez Molina en Guatemala*](#).

⁵⁰⁸ International Commission against Impunity in Guatemala (CICIG). June 2, 2016. [*Comunicado de prensa 047. Caso Cooptación del Estado de Guatemala*](#); elPeriódico. July 25, 2016. [*Ángel González: el encantador de presidente está molesto*](#); Observacom. July 28, 2016. [*"El Fantasma" González rodeado por la Justicia: pedido de captura internacional para su esposa por caso "Cooptación del Estado" en Guatemala*](#); Proceso. June 6, 2016. [*Magnate mexicano de medios es vinculado con red de corrupción en Guatemala*](#); Observacom. June 14, 2016. [*Ángel González recibió US\\$ 27 millones de publicidad oficial tras financiar ilícitamente campaña presidencial de Otto Pérez Molina en Guatemala*](#).

⁵⁰⁹ International Commission against Impunity in Guatemala (CICIG). June 2, 2016. [*Comunicado de prensa 047. Caso Cooptación del Estado de Guatemala*](#); Prensa Libre. June 2, 2016. [*Esposa de magnate de la TV y banqueros, con orden de captura*](#); Observacom. July 28, 2016. [*"El Fantasma" González rodeado por la Justicia: pedido de captura internacional para su esposa por caso "Cooptación del Estado" en Guatemala*](#); Diario Extra. June 4, 2016. [*Orden de captura por Interpol a esposa de dueño de Repretel*](#); Estrategia y Negocios. September 8, 2016. [*Guatemala: Interpol emite alerta roja contra la esposa del magnate televisivo Ángel González*](#); Prensa Libre. September 9, 2016. [*Interpol publica orden de captura de Alba Lorenzana*](#).

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.⁵¹⁰

312. In May, the Guatemalan Prosecutor's Office filed an indictment in the "Co-optation of the State" case, naming 46 individual defendants, including former President Pérez Molina.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.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

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*.

⁵¹¹ Agencia EFE. March 7, 2017. *La Fiscalía de Guatemala presenta una acusación por el caso "Cooptación del Estado"*; Prensa Libre. March 7, 2017. *Tres acusados en caso Cooptación piden juicio abreviado*; Fundamedios. March 6, 2017. *Así consiguió el Fantasma González contratos con el Estado en Guatemala*.

⁵¹² Centro de Investigación de Crimen Organizado. June 5, 2017. *Exvicepresidenta de Guatemala controlaba e influenciaba los medios de comunicación: Testigo*; Prensa Libre. June 1, 2017. *Fortuna de Roxana Baldetti surge de ocho empresas*.

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 Juárez, who was shot to death on January 17 during a peaceful protest outside the company *Proyectos de Desarrollo Hídrico 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

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Resumen Latino Americano. No date. *Guatemala: Un campesino asesinado por policías y paramilitares en una manifestación contra Hidroeléctrica*; Consejo de Pueblos Wuxhtaj. January 18, 2017. *Asesinan a Sebastien Alonso, líder opositor al proyecto hidroeléctrico Pojom 1*; Prensa Comunitaria. January 17, 2017. *Disparos Contra Manifestantes En Yichkisis En San Mateo Ixtatán*; European Parliament. February 16, 2017. *Human rights: Nicaragua, executions in Kuwait and Bahrain, and Guatemala*; International Federation for Human Rights (FIDH). February 7, 2017. *Guatemala: Asesinato de Sebastián Alonso Juan y actos de intimidación y amenazas de muerte contra una caravana que buscaba verificar los hechos*; IACHR. February 7, 2017. *Press Release 011/017 IACHR Condemns Murders of Human Rights Defenders in the Region*; IACHR. June 5, 2017. *Press Release 072/17. IACHR issues call for OAS States to Protect Defenders of the Land and Environment*.

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 Juárez. 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.⁵¹⁴

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 consensus, 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 [*Unidad de delitos contra activistas de la Fiscalía de*

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IACHR. March 22, 2017. *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: <https://www.youtube.com/watch?v=3TW9U6ql-fA>

Derechos Humanos] by human rights defenders stem from attacks by the extractive corporations.⁵¹⁵

319. 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 Niquel* [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
320. 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
321. 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

⁵¹⁵ IACHR. 164 Period of Sessions. Public Hearing - Reports of attacks on human rights defenders by extractive companies in Guatemala. September 7, 2017. Available at: <https://www.youtube.com/watch?v=yuVmlG9gkmE&t=5s>.

⁵¹⁶ Km 169 Prensa comunitaria. May 30, 2017. *El Estor: Pueblo Q'eqchi Enterró A Pescador Carlos Maaz, Asesinato Negado Por El Gobierno*; Front Line Defenders. May 31, 2017. *Carlos Maaz Coc Killed While Participating in Peaceful Demonstration*.

⁵¹⁷ Ministerio de la Gobernación. May 27, 2017. *Urgente: Cuatro PNC heridos en bloqueo en El Estor Izabal*; Ministerio de la Gobernación. May 28, 2017. *PNC y autoridades se reúnen en Izabal*.

⁵¹⁸ Prensa Libre. June 22, 2017. *Disturbios en Casillas dejan 11 intoxicados y cuatro capturados*; Info impacto/You tube. June 22, 2017. *Manifestantes agreden a la policía en Casillas*.

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.⁵¹⁹ PNC Officers reportedly fired tear gas canisters to break up the protest, and at least four people were sickened as a result.⁵²⁰

322. 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.⁵²¹ 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, the PNC used tear gas to disperse the crowd and no injuries were reported.⁵²²

323. 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.⁵²³

⁵¹⁹ Prensa Libre. July 5, 2017. [CSJ suspende licencias de operación de minera San Rafael](#); elPeriódico. July 6, 2017. [CSJ suspende licencias de explotación minera a empresa Minera San Rafael S.A.](#)

⁵²⁰ Prensa Libre. July 21, 2017. [Enfrentamiento entre pobladores y PNC deja varios intoxicados](#); Publinews. July 21, 2017. [Varias personas intoxicadas por gas lacrimógeno durante disturbios en Santa Rosa](#).

⁵²¹ Prensa Libre. August 24, 2017. [Disturbios, maestros detenidos y policías heridos en jornada de protestas](#); El Orbe. August 27, 2017. [Caos en la Frontera Por Bloqueos y Protestas de Maestros en Guatemala](#).

⁵²² Prensa Libre. August 24, 2017. [Disturbios, maestros detenidos y policías heridos en jornada de protestas](#); Guatevisión. August 24, 2017. [Capturan a maestros por bloquear carreteras](#).

⁵²³ IACHR. September 12, 2017. [Press Release 140/17. IACHR Publishes Resolution on Human Rights and the Fight Against Impunity and Corruption](#); IACHR. [Resolution 1/17 Human Rights and the Fight against Impunity and Corruption](#). September 12, 2017.

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*.⁵²⁴ 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.⁵²⁵
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.⁵²⁶ One representative from the *FCN-Nación* party reportedly called the demonstrators “terrorists.”⁵²⁷ 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.⁵²⁸
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

⁵²⁴ Prensa Libre. September 14, 2017. [*Ciudadanos protestan en la Plaza de la Constitución contra Morales y diputados*](#); 20 minutos. September 14, 2017. [*Por protestas contra presidente, Guatemala suspende desfile patrio*](#).

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*](#).

⁵²⁶ Guatevisión. September 16, 2017. [*Festejos de independencia fueron marcados por manifestaciones anticorrupción*](#); Prensa Libre. September 16, 2017. [*CC ordena garantizar los derechos de los manifestantes*](#).

⁵²⁷ Prensa Libre. September 16, 2017. [*El diputado Estuardo Galdámez calificó de terroristas a manifestantes*](#); Elsalvador.com. September 16, 2017. [*Diputados guatemaltecos quedan encerrados siete horas en el Congreso*](#).

⁵²⁸ Noticiero Guatevisión/You tube. September 16, 2017. [*“Diputados dentro de buses insultan a los guatemaltecos con señas soeces”*](#); Guatevisión. September 16, 2017. [*VIDEO: Diputados dentro de buses insultan a los guatemaltecos con señas soeces*](#).

to him, among people trying to destabilize the demonstrations there were security staff of some congressmen.⁵²⁹

327. The same day, the Constitutional Court [*Corte de Constitucionalidad*](CC) admitted two petitions for constitutional remedies [*amparos*] filed by the Office of the Human Rights Ombudsman [*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.⁵³⁰ The same day, the Guatemalan government released a statement on Twitter indicating that it would comply with the decision.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.”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”⁵³³ and that

⁵²⁹ Prensa Libre. September 16, 2017. [*Jordán Rodas dice que la PNC hizo uso excesivo de la fuerza contra manifestantes*](#); Soy 502. September 16, 2017. [*Guardias armados de algunos diputados estaban infiltrados en protestas*](#).

⁵³⁰ Agencia EFE. September 16, 2017. [*Constitucional ordena respetar los derechos de los manifestantes en Guatemala*](#); Prensa Libre. September 16, 2017. [*CC ordena garantizar los derechos de los manifestantes*](#).

⁵³¹ “El presidente [@jimmymoralesgt](#) en atención a la resolución emitida hoy por la honorable Corte de Constitucionalidad (CC)”. Official Twitter account of the Government of Guatemala [@GuatemalaGob](#). September 16, 2017.

⁵³² Gobierno de Guatemala. September 24, 2017. [*Presidente Jimmy Morales se reúne con representantes del sector ganadero del país*](#); Prensa Libre TV/ YouTube. September 24, 2017. [*Duras críticas contra protestas ciudadanas en apoyo a Jimmy Morales | Prensa Libre*](#).

⁵³³ IACHR. [*Report on Citizen Security and Human Rights*](#). OEA/Ser.L/V/II.Doc. 57. December 31, 2009, para. 197.

“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.”⁵³⁴

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.”⁵³⁵ 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.⁵³⁶
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.⁵³⁷ 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

⁵³⁴ IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. December 31, 2011, para. 139.

⁵³⁵ 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 Human Rights. September 13, 2013. Joint declaration on violence against journalists and media workers in the context of protests.

⁵³⁶ IACHR. Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc. 66. December 31, 2011, para. 58.

⁵³⁷ IACHR. Annual Report 2015. Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter IV. (The Use of Force).

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 Ombudsman⁵³⁹
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

⁵³⁸ 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>

⁵³⁹ Procuraduría de Derechos Humanos (PDH). Informe Implementación Ley de Acceso a la Información Pública. Conclusiones del Informe Anual 2016. No date. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

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.⁵⁴⁰ 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.⁵⁴¹ The new Human Rights Ombudsman, Jordán Rodas Andrade, reportedly confirmed that the agreement remains in effect.⁵⁴²

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-anuales.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 Jordan 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.⁵⁴³ 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.⁵⁴⁴ 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

⁵⁴³ IACHR, *Informe sobre seguridad ciudadana y derechos humanos (2009)*, [Report on Citizen Security and Human Rights (2009)], OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 221.

⁵⁴⁴ IACHR, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 117.

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 2016.⁵⁴⁵ 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 2016.⁵⁴⁶ 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 2017.⁵⁴⁷

339. 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.⁵⁴⁸ 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).⁵⁴⁹ The varying criteria lead to apparently disparate homicide figures.
340. By way of example, the figures of the Office of the Public Prosecutor (MP) post 4,831 “violent deaths” in 2016,⁵⁵⁰ while INACIF registered 5,459 autopsies performed in deaths from “causes associated with criminal acts” in the same period.⁵⁵¹ Likewise, the PNC recorded 1,498 homicides from January 1 to May 4, 2017, while the MP reflected 1,053 homicides in the

⁵⁴⁵ Information provided by the State, Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017, pg. 23, Annex 14.

⁵⁴⁶ 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: <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.

⁵⁴⁷ Information provided by the State, Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017, pg. 23, Annexes 14, 15.

⁵⁴⁸ *Id.*, Annex 13.

⁵⁴⁹ *Id.*, Annex 15(a) and 15(b).

⁵⁵⁰ *Id.*, Annex 13.

⁵⁵¹ *Id.*, Annex 15(a) and 15(b).

same period of time.⁵⁵² 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 8⁵⁵³), while the Public Prosecutor recorded 1,382 violent deaths in the same period.⁵⁵⁴ 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).⁵⁵⁵

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."⁵⁵⁶ 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.⁵⁵⁷ 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.⁵⁵⁸ The IACHR hopes that with the creation of

⁵⁵² *Id.*, Annexes 13 and 14.

⁵⁵³ *Id.*, Annex 15(a) and 15(b). Information also available on the INACIF website, at: http://www.inacif.gob.gt/index.php?option=com_content&view=article&id=96&Itemid=2.

⁵⁵⁴ Information provided by the State, Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017, Annex 13.

⁵⁵⁵ *Id.*, Annex 13 and 15(a). INACIF figures can be found at: <http://www.inacif.gob.gt/docs/estadisticas/anual/AnualM2016.pdf>.

⁵⁵⁶ Information provided by the State, Ref. P-859-2017/VHGM/LWC/nj, August 29, 2017, Annex 14, p. 3.

⁵⁵⁷ INACIF website can be found at: http://www.inacif.gob.gt/index.php?option=com_content&view=article&id=96&Itemid=2.

⁵⁵⁸ Information provided by the State, Ref. P-859-2017/VHGM/LWC/nj, August 29, 2017, Annex 14, p. 3.

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

⁵⁵⁹ Ministry of the Interior, “Bajan homicidios en primer semestre de 2017” [‘Homicides are down in the first half of 2017’], August 2, 2017. *Ibid.*

⁵⁶⁰ IACHR, CIDH publica informe sobre la situación de derechos humanos en Guatemala, [‘IACHR publishes report on the situation of human rights in Guatemala’], OEA/Ser.L/V/II. December 31, 2015, para. 136.

⁵⁶¹ Portal of the General Directorate of Private Security Services (DIGESSP). Resolución para escoltas privados, [‘Resolution on private escorts’], September 21, 2016.

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.

of private security agents.⁵⁶³ 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.⁵⁶⁴

345. 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.⁵⁶⁵ In May 2017, the Legislative Branch of government upheld the declaration of a state of siege for the municipalities of Ixchiguan and Tajumulco, 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.
346. 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.⁵⁶⁶ 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.⁵⁶⁷
347. 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).⁵⁶⁸ The IACHR has noted above that lynching not only constitute

⁵⁶³ IACHR, Country visit to Guatemala, July 31 to August 4, 2017, meetings with civil society organizations, international agencies and others.

⁵⁶⁴ International Peace Brigades, Monthly Guatemala Information Packet, No. 164, May 2017, p. 2.

⁵⁶⁵ IACHR, *CIDH publica informe sobre la situación de derechos humanos en Guatemala*, [‘IACHR publishes report on the situation of human rights in Guatemala’], OEA/Ser.L/V/II, December 31, 2015, para. 160.

⁵⁶⁶ 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.

⁵⁶⁷ *Id.*, para. 132-133.

⁵⁶⁸ Information provided by the Office of the Human Rights Ombudsman in the context of the country visit, July 31 to August 4, 2017.

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.⁵⁶⁹ Lynching is 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.⁵⁷⁰

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.⁵⁷¹ The Commission reiterates its appeal and reminds the State that it is its duty to prevent crime and resolve conflicts or disputes, which trigger violence.⁵⁷² Additionally, the State has the obligation to conduct an investigation 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.⁵⁷³

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, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 134.

⁵⁷⁰ Report of the Human Rights Ombudsman, PDH, on lynchings, 2017, citing United Nations Special Rapporteur 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, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, paras. 132-135.

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, Inequality and Exclusion*, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 135.

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.⁵⁷⁴ 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.⁵⁷⁵

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.⁵⁷⁶ 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.⁵⁷⁷ 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

⁵⁷⁴ Information provided by the State, Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 18.

⁵⁷⁵ These policies include the 2008-2023 National Policy for the Promotion and Comprehensive Development of Women (Government Decision 302-2009), the Public Policy for Peaceful Coexistence and the Elimination of Racism and Racial Discrimination (Government Decision 143-2014), the Public Policy against Trafficking in Persons and Comprehensive Victim Protection la Política (Government Decision 306-2014), the Public Policy for the Comprehensive Protection of Children and Adolescents (Government Decision 281-2014), the 2012-2017 National Youth Policy (Government Decision 173-2012), the National Policy against Addictions and Illicit Drug Trafficking, the National Defense Policy, the National Security Policy and the National Prison Reform Policy. Republic of Guatemala, Report of the State of Guatemala in response to draft Chapter V on follow up to the recommendations of the IACHR IV Country Report: Diversity, Inequality and Exclusion (2015). Nota P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, pg. 19. Republic of Guatemala, Report of the State of Guatemala in response to draft Chapter V on follow up to the recommendations of the IV IACHR Country Report: Diversity, Inequality and Exclusion (2015). Nota P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 18.

⁵⁷⁶ See press article, Prensa Libre, Guatemala abre una fiscalía dedicada a menores ['Guatemala opens a prosecutor's office devoted to juveniles', October 26, 2016, at: <http://www.prensalibre.com/guatemala/justicia/guatemala-abre-una-fiscalia-dedicada-a-menores>.

⁵⁷⁷ Government Decision No. 281-2014 of August 20, 2014.

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.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.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.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.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.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."⁵⁸³ The State explained that it would continue to provide

⁵⁷⁸ Information provided by the State, Nota Ref. P-859-2017/VHGM/LWC/nj, June 16, 2017.

⁵⁷⁹ 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. 153, 174, para. 178.

⁵⁸⁰ *Id.*, para. 153. Submission of the PDH to the IACHR report on the Situation of Human Rights in Guatemala, September 2015.

⁵⁸¹ Information provided by the State, Ref. P-1261-2017/WHGM/LWC/nj, August 29, 2017, Annex 14, p. 7.

⁵⁸² *Ibid.* Communication of the State of Guatemala, Comments of the State of Guatemala on the "Draft: Chapter V Follow Up to Recommendations made by the IACHR in the Report on the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion," January 23, 2017.

⁵⁸³ Information provided by the State, Ref. P-1261-2017/WHGM/LWC/nj, August 29, 2017, Annex 14, p. 7.

security outside prison facilities and along the borders of the country.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.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 2017.⁵⁸⁶
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.⁵⁸⁷ It was the largest operation ever reported by the MP and the PNC as of that time.⁵⁸⁸ In similar operations against organized crime, authorities reported arresting more than 50 alleged criminals.⁵⁸⁹ Likewise, in September 2017, the MP and the PNC reported another “mega operation” of enforcement against gangs and

⁵⁸⁴ Information provided by the State, Ref. P-1261-2017/WHGM/LWC/nj, August 29, 2017, Annex 14, p. 7; Communication of the State of Guatemala, Comments of the State of Guatemala on the “Draft: Chapter V Follow Up to Recommendations made by the IACHR in the Report on the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion,” January 23, 2017.

⁵⁸⁵ Republic of Guatemala, Report of the State of Guatemala on draft Chapter V regarding follow-up to the recommendations of the 4th Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Nota P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 52.

⁵⁸⁶ Communication of the State of Guatemala, Comments of the State of Guatemala on the “Draft: Chapter V Follow Up to Recommendations made by the IACHR in the Report on the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion,” January 23, 2017.

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 clicla 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-clicla-solo-para-locos-de-la-mara-18-capturados/>.

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/>.

⁵⁸⁹ *Id.*

criminal groups in the business of extortion.⁵⁹⁰ 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.⁵⁹¹

356. 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

357. The IACHR has repeatedly voiced its concern over the prevalence of violence against women in Guatemala and the general context of impunity for it.⁵⁹² 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.⁵⁹³ 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

⁵⁹⁰ Press article, PubliNews, *Más de 100 capturados en megaoperativo contra extorsiones* [‘More than 100 arrested in megaoperation against extortionists’], September 11, 2017. View at: <https://www.publinews.gt/et/noticias/2017/09/11/megaoperativo-pnc-las-extorsiones-realizan-357-allanamientos.html>.

⁵⁹¹ *Ibid.* Also see, Office of Public Prosecutor, September 11, 2017, <https://twitter.com/MPguatemala/status/907254387692765184>. Ministry of the Interior, September 11, 2017, <https://twitter.com/mingobguate/status/907227046044200960>.

⁵⁹² IACHR, *Situación de los derechos humanos en Guatemala: Diversidad, desigualdad y exclusión*, [Situation of human rights in Guatemala: Diversity, Inequality and Exclusion’], OEA/Ser.L/V/II.Doc. 43/15, 2015, para. 238.

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

⁵⁹⁴ United Nations, Report of the United Nations High Commissioner for Human Rights on the activities of its Guatemala Office 2016, A/HRC/34/3/Add.1, 2017. In response to the Draft Report on the Situation of Human Rights in Guatemala, 2017.

⁵⁹⁵ 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.

⁵⁹⁶ UN Women, [Guatemala Country Background](#), 2017.

⁵⁹⁷ INACIF, [Datos Consolidados Anuales y Mensuales](#) – 'Consolidated Annual and Monthly Data, viewed on August 4, 2017.

⁵⁹⁸ Human Rights Ombudsman, Submission of the Human Rights Ombudsman, Third Cycle of Universal Periodic Review Guatemala, March 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.⁶⁰⁰ 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.⁶⁰¹ 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).⁶⁰² 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 5178,⁶⁰³ 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.⁶⁰⁴
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.⁶⁰⁵ 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

⁶⁰⁰ Secretariat against Sexual Violence, Exploitation and Trafficking in Persons (SVET), Datos estadísticos [statistical data]—viewed on August 4, 2017.

⁶⁰¹ Human Rights Ombudsman, Annual Status Report, 2016. State's Response, comments on the Draft Report on the Situation of Human Rights in Guatemala, 2017. Human Rights Ombudsman, Statistics on sexual crimes from 2012 to 2017, May 2017. Information received during IACHR country visit, from July 31 to August 4, 2017.

⁶⁰² 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.

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.

⁶⁰⁴ 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.

⁶⁰⁵ IACHR, Situación de los derechos humanos en Guatemala: Diversidad, desigualdad y exclusión, ['Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion'], OEA/Ser. L/V/II.Doc. 43/15, 2015, para. 114 and following.

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.⁶⁰⁶ 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.⁶⁰⁷

363. In response to the Preliminary Observations of the IACHR, following its country visit,⁶⁰⁸ 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.⁶⁰⁹ 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

364. 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.

⁶⁰⁶ YAGENOVA, SIMONA V, *La violencia contra las mujeres como problema de seguridad ciudadana y las políticas de seguridad. El caso de Guatemala, El Salvador, Honduras y Nicaragua*, [‘Violence against women as a citizen security problem and security policies. The case of Guatemala, El Salvador, Honduras and Nicaragua’], European Union, Diakonia, FLACSO, 2013.

⁶⁰⁷ YAGENOVA, SIMONA V, *La violencia contra las mujeres como problema de seguridad ciudadana y las políticas de seguridad. El caso de Guatemala, El Salvador, Honduras y Nicaragua*, [‘Violence against women as a citizen security problem and security policies. The case of Guatemala, El Salvador, Honduras and Nicaragua’], European Union, Diakonia, FLACSO, 2013.

⁶⁰⁸ 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.

⁶⁰⁹ Institutional Statement of the National Civilian Police of Guatemala to the IACHR, Official Letter No. 1251-2017, Ref. DG/NARR/Juárez, Reg. 4842, August 21, 2017. Communication of the State of Guatemala, Observations of the State of Guatemala to the IACHR’s preliminary observations regarding its On-site Visit, August 29, 2017.

365. 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).⁶¹⁰ 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.⁶¹¹ Available information to the IACHR suggests that most homicides can be attributed to activities of the *maras*.
366. 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.⁶¹² 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.
367. 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.⁶¹³
368. 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

⁶¹⁰ IACHR, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, CIDH, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015.

⁶¹¹ UNICEF, *Hidden in Plain Sight: A statistical analysis of violence against children*, 2014, pg. 38 and 40, para.59.

⁶¹² IACHR, *Violencia, niñez y crimen organizado*, ['Violence, Children and Organized Crime'], OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, para. 154 to 179.

⁶¹³ By way of example, the Office of the Public Prosecutor reported that in 2013, 451 violent deaths of children took place, but in 60% of the cases, no information was recorded about the hypothesis of the crime or any other information that would aid in defining the victims' profile. No information was recorded either to make it possible to characterize the circumstances related to their deaths and thus help to design more effective public prevention and response policies and tailor them to protection needs, in addition to help to detect potential patterns of discrimination against particular social groups. Response to the questionnaire submitted by the State in preparation for the report *Violencia, niñez y crimen organizado*, [Children and Organized Crime], p. 6.

from January to October 2016 there were already 12,115 cases⁶¹⁴ 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.⁶¹⁵ 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.⁶¹⁶ 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.⁶¹⁷ 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.⁶¹⁸

369. 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.⁶¹⁹ 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.⁶²⁰ 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.
370. 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

⁶¹⁴ Human Rights Ombudsman of Guatemala, Annual Status Report 2016, p. 33.

⁶¹⁵ *Id.* Prensa Libre, Guatemala registra hasta 22 violaciones sexuales al día, ['Guatemala reports up to 22 rapes per day'], June 30, 2017.

⁶¹⁶ Human Rights Ombudsman of Guatemala, Annual Status Report 2016.

⁶¹⁷ Prensa Libre, Guatemala registra hasta 22 violaciones sexuales al día, ['Guatemala reports up to 22 rapes per day'], June 30, 2017.

⁶¹⁸ Human Rights Ombudsman of Guatemala, Annual Status Report 2016. Additionally, the departments where the most victims were reported were: Guatemala (32%), Alta Verapaz, Escuintla and Quiché (5% each); Huehuetenango, Quetzaltenango, Petén and Suchitepéquez (4% each); Chimaltenango and San Marcos (3% each).

⁶¹⁹ Report on the general situation of children and adolescents in Guatemala, in the context of the country visit of the Inter-American Commission on Human Rights to Guatemala from July 31 to August 4, 2017, National and international organizations. In the IACHR archives.

⁶²⁰ *Ibid.*

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

⁶²¹ 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.

⁶²² *Ibid.*

⁶²³ *Ibid.*

⁶²⁴ Press article, Prensa Libre, Congreso prohíbe matrimonio de menores de edad sin excepciones [‘Congress prohibits marriage of minors without exception’], August 17, 2017. Can be viewed at: <http://www.prensalibre.com/guatemala/politica/congreso-prohibe-matrimonio-entre-menores-de-edad-sin-excepciones>.

⁶²⁵ Informe del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre las actividades de sus Oficina en Guatemala 2014, [‘Report of the United Nations High Commissioner for Human Rights on the activities of his Office in Guatemala 2014’], para. 41.

⁶²⁶ IACHR, Press Release 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.

⁶²⁷ Communication of the Guatemalan State, Observations of the State of Guatemala to the *Preliminary Observations of the IACHR regarding its On-Site visit*, Annex 10, Communiqué of the Ministry of National Defense, August 29, 2017

373. The IACHR has expressed that the trust of the civilian population in the Armed Forces must be built 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.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.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 stress 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.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 Sebox, 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

⁶²⁸ IACHR, *Violencia, niñez y crimen organizado* [‘Violence, Children and Organized Crime’], OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015, para. 533.

⁶²⁹ IACHR, 2016 Annual Report, *Capítulo V: Seguimiento de recomendaciones formuladas por la CIDH en sus informes de país o temáticos* [‘Chapter V: Follow-Up of Recommendations Issued by the IACHR in its Country or Thematic Reports’] para. 121.

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.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 been 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.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.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.”⁶³⁴

378. The IACHR also received reports of threats, harassment, intimidation and attempted cooptation against the members of the Central Campesina Ch’orti’ 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.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

⁶³¹ International Peace Brigades, Monthly Information Packet of Guatemala, No. 164, May 2017, p. 3.

⁶³² International Peace Brigades, Monthly Information Packet of Guatemala, No. 164, May 2017, p. 3.

⁶³³ IACHR, *Justice and Social Inclusion: Challenges of Democracy in Guatemala (2003)*. General Conclusions, para. 434; and UNHCHR. Report on the activities of his office in Guatemala. January 30, 2012. A/HRC/19/21/Add.1.

⁶³⁴ SEPAZ, Memoria de labores de 2012. Guatemala, 2012, pg. 9. Also see SEPAZ, Memoria de labores de 2016. Guatemala, 2016.

⁶³⁵ International Peace Brigades, Monthly Information Packet of Guatemala, No. 164, May 2017, p. 4.

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.⁶³⁶

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.⁶³⁷ 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.⁶³⁸
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.⁶³⁹ In this sense, the offices of

⁶³⁶ See Section III.C, para. 109, *supra*.

⁶³⁷ Redlactrans, [Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá](#) ['Violations of the Human Rights of Trans Women in Costa Rica, El Salvador, Guatemala, Honduras and Panama'], January 2016, para. 121, p. 33.

⁶³⁸ Redlactrans, [Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá](#) ['Violations of the Human Rights of Trans Women in Costa Rica, El Salvador, Guatemala, Honduras and Panama'], January 2016, pars. 132-134, p. 36.

⁶³⁹ Redlactrans, [Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá](#) ['Violations of the Human Rights of Trans Women in Costa Rica, El Salvador, Guatemala, Honduras and Panama'], January 2016, para. 139, p. 38.

certain organizations have allegedly been attacked by unknown individuals.⁶⁴⁰ On this score, the Commission cites the murder of the trans leader and activist Evelyn Zúñiga, who was a beneficiary of precautionary measures requested by the IACHR,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;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.”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.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.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.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

⁶⁴⁰ Redlactrans, *Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá* [‘Violations of the Human Rights of Trans Women in Costa Rica, El Salvador, Guatemala, Honduras and Panama’], January 2016, para. 141, p. 38.

⁶⁴¹ IACHR, *MC 3-06 - Kevin Josué Alegría Robles y miembros de OASIS*, Guatemala, February 3, 2006.

⁶⁴² IACHR, *Comunicado de Prensa 181/2016, CIDH repudia asesinato de defensora de derechos humanos de personas trans en Guatemala* [Press Release 181/2016, IACHR repudiates murder of defender of trans rights in Guatemala], December 2, 2016.

⁶⁴³ PDH and OUNHCHR *Preocupan graves hechos de violencia contra mujeres trans* [‘Concern over serious acts of violence against trans women’], December 8, 2016.

⁶⁴⁴ El Periódico, *Complicadas normas administrativas afectan a pacientes con VIH/sida* [‘Complicated administrative rules affect HIV/AIDS patients’], November 7, 2017.

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.

⁶⁴⁶ UNAIDS, *Guatemala*, in 2016.

complaints in order to shed light on and document the violence suffered by LGBTI persons.”⁶⁴⁷ 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.”⁶⁴⁸ 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”⁶⁴⁹ and that “the OAV agents must respect self-identification”⁶⁵⁰ 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.”⁶⁵¹

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

⁶⁴⁷ Human Rights Ombudsman of Guatemala, *Informe Anual Circunstanciado 2016*, [‘2016 Annual Status Report’], January 31, 2017, p. 62.

⁶⁴⁸ *Ibid.*

⁶⁴⁹ *Ibid.*

⁶⁵⁰ *Ibid.*

⁶⁵¹ *Ibid.*

penalty for crimes committed by members of the *maras*.⁶⁵² 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.⁶⁵³ 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.”⁶⁵⁴ 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 resuming implementation of the death penalty, in particular, in response to the high levels of insecurity afflicting the country.⁶⁵⁵

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, Dominica, United States, Granada, Guyana, Jamaica, Saint Kitts and Nevis, Santa Lucia, Saint Vincent 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.⁶⁵⁶ 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, *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.⁶⁵⁷ In May 2016, in relation to compliance with judgment in the case of *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.⁶⁵⁸ 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

⁶⁵⁶ IACHR, On-site visit to Guatemala, July 31 to August 4, 2017, meetings with State officials.

⁶⁵⁷ IA Court of HR, *Case of Raxcacó Reyes v. Guatemala*, Judgment of September 15, 2005. Merits, Reparations and Costs. Series C, No. 133, para. 88.

⁶⁵⁸ IA Court of HR, 2016 Annual Report of the Inter-American Court of Human Rights, pg. 83.

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.⁶⁵⁹ 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.⁶⁶⁰ The IACHR welcomes this advancement toward abolition of the death penalty.⁶⁶¹

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.⁶⁶²

⁶⁵⁹ Case file 5986-2016, which found unconstitutional paragraphs of Articles 131, 132 Bis, 201, 201 Ter and 383 of the Criminal Code and of the Law against Narcoactivity. Press article, Agencia EFE, La Corte de Constitucionalidad de Guatemala anula la pena de muerte de cinco delitos ['Guatemala's Court of Constitutionality nullifies death penalty for five criminal offenses'], October 27, 2017. Can be viewed at: <https://www.efe.com/efe/america/sociedad/la-corte-de-constitucionalidad-guatemala-anula-pena-muerte-cinco-delitos/20000013-3420629>.

⁶⁶⁰ American Convention on Human Rights, Article 4.2: "2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply."

⁶⁶¹ After the issuance of this ruling, the death penalty still exists in the Military Code (Decree 2014).

⁶⁶² Press Release 27/15, [La CIDH celebra la aplicación de la pena de muerte en Suriname](#), ['IACHR Welcomes Abolition of the Death Penalty in Surinam'], March 12, 2015.

CHAPTER 7

SITUATION OF PERSONS UNDER STATE CUSTODY

SITUATION OF PERSONS UNDER STATE CUSTODY

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.⁶⁶³ Additionally, approximately 1,600 persons are regularly held in custody at police stations.⁶⁶⁴ 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.⁶⁶⁵ 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.⁶⁶⁶

⁶⁶³ 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.

⁶⁶⁴ PDH, Guatemala, Information provided to the IACHR on July 25, 2017.

⁶⁶⁵ PDH-Guatemala. Information provided to the IACHR on July 25, 2017, in the context of country visit.

⁶⁶⁶ 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

396. High rates of overcrowding pose one of the main concerns in connection with the prison system in Guatemala.⁶⁶⁷ Available information shows that from 2010 to the present, the prison population in the country has nearly doubled.⁶⁶⁸ 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),⁶⁶⁹ 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.⁶⁷⁰ In its comments to the draft of this report, the

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, Situación 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.

State informed that it is currently working on the regulations to implement this Law.⁶⁷¹ 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,⁶⁷² 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.⁶⁷³ 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.

⁶⁷¹ 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.

⁶⁷² 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.

⁶⁷³ 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.

⁶⁷⁴ 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, pars. 2 and 20, and *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, 30 December 30, 2013, para. 317.

⁶⁷⁵ 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. 231. Recommendation A “General Measures Related to State Policy.” For more information on specific measures to reduce the use of pretrial detention, see IACHR, *Guía práctica para reducir la prisión preventiva*, [‘Practical Guide to Reducing Pretrial Detention’], OEA/Ser.L/V/II.163 Doc. 107, July 2017.

deprivation of liberty, and c) impose more requirements for release.⁶⁷⁶ 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;⁶⁷⁷ in addition to allowing for repeat offense as a criterion *per se* to automatically impose this regime.⁶⁷⁸ 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;⁶⁷⁹ 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.⁶⁸⁰

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.⁶⁸¹ 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.”⁶⁸²

⁶⁷⁶ PDH, Guatemala, *Informe Anual Circunstanciado 2016*, [‘2016 Annual Status Report’] p. 44. Also see, Annual Report of the OUNHCHR on the activities of its office in Guatemala, A/HRC/34/3/Add.1, January 11, 2017, para. 31.

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 Femicidio y otras Formas de Violencia contra la Mujer*, [‘Law against Femicide and other Forms of Violence against Women’], Decree 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’], Decree No. 17-2009, Guatemala, in force as of May 2009, Article 3.

⁶⁸¹ 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. 86 and 90.

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.⁶⁸³

402. 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,⁶⁸⁴ 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.⁶⁸⁵ 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.”⁶⁸⁶ 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.⁶⁸⁷ Accordingly, and taking into account the incompatibility of this legislation with international standards, the IACHR welcomes the

⁶⁸³ IACHR, Report No. 53/16, Case 12.056. Merits. Gabriel Oscar Jenkins. Argentina. December 6, 2016, paras. 147-149.

⁶⁸⁴ 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.

⁶⁸⁵ 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 y 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.

⁶⁸⁶ *Ley contra la Narcoactividad*, [‘Law against Narcoactivity’], Guatemala, in effect as of October 1992, Article 61.

⁶⁸⁷ 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.

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.”⁶⁸⁸

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.⁶⁸⁹ 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.⁶⁹⁰ 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.⁶⁹¹
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.⁶⁹² Regarding this

⁶⁸⁸ 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 to Addiction and Illicit Drug Trafficking, August 17, 2017.

⁶⁸⁹ OUNHCHR and PDH, “Use of pretrial detention in Guatemala: A human rights problem,” 2016, para. 19.

⁶⁹⁰ National Mechanism Office of Prevention of Torture, Guatemala. Response to the consultation questionnaire for the Report on Measures aimed at Reducing the Use of Pretrial Detention in the Americas, submitted to the IACHR on May 16, 2016.

⁶⁹¹ 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. 231 Recommendation D “Independence of Judicial Officers.”

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.”⁶⁹³ 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.⁶⁹⁴

405. 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.⁶⁹⁵ 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.⁶⁹⁶

see: OUNHCHR and PDH, “La aplicación de la prisión preventiva en Guatemala: un problema de derechos humanos” [‘The use of pretrial prevention in Guatemala: a human rights problem’], 2016, para. 67, and PDH, Guatemala, Informe Anual Circunstanciado 2016 [‘2016 Annual Status Report’] pgs. 45 and 179, and Informe Anual Circunstanciado, Situación de los Derechos Humanos y Memoria de Labores 2015 [‘2015 Annual Status Report, Situation of Human Rights and Record of Activities’], September 10, 2016, pg. 205.

⁶⁹³ IA Court of HR. *Case of Ruano Torres et al v. El Salvador*. Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 303, para. 156.

⁶⁹⁴ 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. 231 Recommendation C “Public Defense.” 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. 326. Recommendation E “Legal Defense.” About most detailed standards in the area of public defense, see IA Court of HR. *Case of Ruano Torres et al v. El Salvador*. Merits, Reparations and Costs. Judgment of October 5, 2015. Series C No. 303.

⁶⁹⁵ PDH, Guatemala, Informe Anual Circunstanciado 2016, [‘2016 Annual Status Report’] pgs. 45 and 176, and Informe Anual Circunstanciado, Situación de los Derechos Humanos y Memoria de Labores 2015, [‘2015 Annual Status Report, Situation of Human Rights and Record of Activities’], September 10, 2016, pg. 205. With respect to the situation of pretrial detention, see OUNHCHR and PDH, [‘The use of pretrial prevention in Guatemala: a human rights problem’], 2016, para. 66.

⁶⁹⁶ 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.⁶⁹⁷ 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.⁶⁹⁸ 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.⁶⁹⁹ 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.⁷⁰⁰

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

⁶⁹⁷ In this regard, OUNHCHR and PDH, ['The use of pretrial prevention in Guatemala: a human rights problem'], 2016, para. 39.

⁶⁹⁸ 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 13, Response of the Judiciary, August 18, 2017.

⁶⁹⁹ For more information on implementation of hearings in jail facilities, 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, para. 231 Recommendation I "Measures Related to Speedy Process and Correcting the Procedural Delay", section 4. Also see: IACHR, *Guía práctica para reducir la prisión preventiva*, ['Practical guide to reduce pretrial detention'], OEA/Ser.L/V/II.163 Doc. 107, pp. 36 and 36.

⁷⁰⁰ 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. 175.

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.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 “telcom 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).”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 14-2017.⁷⁰³

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.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.”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

⁷⁰¹ Código Procesal Penal, [Code of Criminal Procedure], Decree No. 51-92, Guatemala, in force as of December 1993, Article 264.

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

⁷⁰³ 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 13, Response of the Judiciary, August 18, 2017.

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.

⁷⁰⁵ PDH, Guatemala, Informe Anual Circunstanciado 2016, [‘2016 Annual Status Report’], p. 179.

the detriment of persons unable to afford said amounts of money.⁷⁰⁶ 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.⁷⁰⁷

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 2013⁷⁰⁸– 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.⁷⁰⁹
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.⁷¹⁰ 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.⁷¹¹
412. In light of the main concerns voiced by the IACHR in the *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

⁷⁰⁶ IACHR, *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.”

⁷⁰⁷ 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. 134.

⁷⁰⁸ 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.

⁷⁰⁹ *Id.*, Article 4, section d).

⁷¹⁰ *Id.*, Article 12; IACHR, Hearing “Measures to reduce pretrial detention in the Americas,” 157th regular session, April 5, 2016. Information provided by the IECCPG (Institute for Comparative Studies in Penal Sciences of Guatemala).

⁷¹¹ 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.

measures to ensure implementation of a drug policy that pursues a public health rather than an enforcement and criminalizing approach.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.⁷¹³

2. Conditions of Detention

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.

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.⁷¹⁴ In its comments to the draft of this report, the State notified that

⁷¹² 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, pars. 148 to 151.

⁷¹³ *Id.*, para. 153.

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.⁷¹⁵

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.⁷¹⁶ 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.⁷¹⁷ 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.⁷¹⁸
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.⁷¹⁹
417. The use of solitary confinement witnessed by the Commission at the three prison facilities it visited runs counter to international standards, inasmuch

⁷¹⁵ 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.

⁷¹⁶ For more information about medical care at prison facilities, see PDH, Guatemala, Informe Anual Circunstanciado 2016, ['2016 Annual Status Report], p. 210.

⁷¹⁷ Annual Report of the OUNHCHR on the activities of its office in Guatemala, A/HRC/34/3/Add.1, January 11, 2017, para. 31.

⁷¹⁸ PDH, Guatemala, Informe Anual Circunstanciado 2016, ['2016 Annual Status Report], p. 210.

⁷¹⁹ 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 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.⁷²⁰ 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.⁷²¹ Additionally, it reiterates that solitary confinement orders should be

⁷²⁰ 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 131st Regular Session held from March 3 to 14, 2008, Principle XXII.3; and 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 43.

⁷²¹ 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. 411; 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 131st Regular Session held from March 3 to 14, 2008, Principle XXII.3; and 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.

authorized by a competent authority⁷²² and subjected to independent review.⁷²³

3. Acts of Violence Occurring at Prison Facilities

419. 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 59⁷²⁴ and 57;⁷²⁵ while during the period of 2010 to 2014, a total of 23 violent deaths were reported.
420. 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.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.⁷²⁷

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 131st Regular Session held from March 3 to 14, 2008, Principle XXII.3.

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.

⁷²⁴ DGSP-113907-2016 REF/JURÍDICO/VCM/oa-cp/D.HUMANOS. Guatemala, November 24, 2016. Cited in PDH, Guatemala, Informe Anual Circunstanciado 2016, [‘2016 Annual Status Report’], p. 182.

⁷²⁵ This number is for data from January to November 2016. PDH, Guatemala, Informe Anual Circunstanciado 2016, [‘2016 Annual Status Report’], p. 182.

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.

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.⁷²⁸ 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.⁷²⁹

4. Deprivation 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.”⁷³⁰ 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.⁷³¹

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

Guatemala [‘Situation of Human Rights in Guatemala’], OEA/Ser.L/V/II, Doc. 43/15, December 31, 2015, para. 363.

⁷²⁸ IACHR, *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.

⁷²⁹ IACHR, Press Release 106/16 - “*CIDH condena violencia en cárcel de Guatemala*” [‘IACHR Condemns Violence in Guatemalan Prison’], August 3, 2016.

⁷³⁰ PDH, Guatemala, *Informe Anual Circunstanciado 2016*, [‘2016 Annual Status Report’] p. 53.

⁷³¹ 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.

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

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

⁷³⁶ Ley contra el Lavado de Dinero y Otros Activos, [‘Law against Money and other Asset Laundering’], Decree No. 67-2001, Guatemala, in force as of December 17, 2001, Article 4.

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.

⁷⁴⁰ PDH, Legal Opinion, September 6, 2016. Information submitted to the IACHR on September 22, 2017.

and degrading punishments or treatment,⁷⁴¹ also entails the requirement of proportionality in “state punishments for the perpetration of offenses.”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 *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.

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.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, *inter alia*.⁷⁴⁴

⁷⁴¹ IA Court of HR. *Case of Mendoza et al v. Argentina*. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013 Series C No. 260, para. 174.

⁷⁴² *Ibid.*

⁷⁴³ National Institute of Statistics, INE. Rough figures for 2015, the most recent year for which these figures are available.

⁷⁴⁴ IACHR, *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, 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

¿quién vela por su bienestar? [‘4,215 children are institutionalized, who watches over their wellbeing?’], November 23, 2016. It can be found at: <http://lahora.gt/4-mil-215-ninos-ninas-estan-institucionalizados-quien-vela-bienestar/>.

⁷⁴⁵ IACHR, *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, para. 271. UNODC, *Homicide Statistics*, 2013.

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.⁷⁴⁷ 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.⁷⁴⁸
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.”⁷⁴⁹ 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.⁷⁵⁰ 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.

⁷⁴⁸ IACHR, the Right of Boys and Girls to a Family. Alternative care. Ending Institutionalization in the Americas, OEA/Ser.L/V/II. Doc. 54/13, October 17, 2013.

⁷⁴⁹ IACHR, the Right of Boys and Girls to a Family. Alternative care. Ending Institutionalization in the Americas, OEA/Ser.L/V/II. Doc. 54/13, October 17, 2013. para. 215.

⁷⁵⁰ IACHR, Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion, OEA/Ser.L/V/II.Doc. 43/15, December 30, 2015, paras. 271-275.

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.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.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.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.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.⁷⁵⁵

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>.

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.

⁷⁵³ IACHR, Information received during country visit, July 31 to August 4, 2017. Meetings with inmates and prison facility staff.

⁷⁵⁴ *Id.*

⁷⁵⁵ The SBS's figure is from 2016. Press story, *El 73 por ciento d ellos jóvenes privados de libertad proviene del área metropolitana* [“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.”⁷⁵⁶

436. 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.⁷⁵⁷
437. 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 “Gorriónes,” 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.⁷⁵⁸
438. The Commission also visited the juvenile women’s facility called the Centro Juvenil de Privación de Libertad para Mujeres (CEJUPLIM) “Gorriónes,” 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,

metropolitana/. Also see, IACHR, *Violencia, niñez y crimen organizado*, [‘Violence, Children and Organized Crime’], para. 440. State of Guatemala’s response to the IACHR questionnaire.

⁷⁵⁶ These facilities are: (i) Centro Juvenil de Privación de Libertad para Varones II San José Pinula (CEJUPLIV II–“ETAPA II”); (ii) Centro Juvenil de Privación Provisional para Varones (CEJUDEP–“Gaviotas”); (iii) Centro Juvenil de Privación de Libertad para Varones Anexo II (CEJUPLIV–“Anexo”); and (iv) Centro Juvenil de Privación de Libertad para Mujeres (CEJUPLIM–“Gorriónes”).

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.⁷⁵⁹

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.⁷⁶⁰
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.⁷⁶¹
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.⁷⁶² The

⁷⁵⁹ Information received during the IACHR's on-site visit, from July 31 to August 4, 2017.

⁷⁶⁰ *Id.*

⁷⁶¹ *Id.*

⁷⁶² *Id.*

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.

445. On March 8, 2017, there were 600 children and adolescents housed at the Hogar Virgen de la Asunción.⁷⁶⁴ 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.⁷⁶⁵ 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.⁷⁶⁶
446. The Office of the Public Prosecutor opened a criminal investigation into the incidents against the public officials.⁷⁶⁷ 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.⁷⁶⁸ 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

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.

⁷⁶⁶ Statement given by Prosecutor Edwin Marroquín at indictment hearing, on April 7, 2017. Press conference of the Office of the Public Prosecutor, June 12, 2017.

⁷⁶⁷ IACHR, see press releases, *CIDH otorga medidas cautelares a Guatemala y lamenta muertes por incendio en el Hogar Seguro Virgen de la Asunción*, ['IACHR Issues Precautionary Measures to Guatemala and Laments Deaths in Fire at Children's Residential Institution'], March 13, 2017 and *Relatoría sobre los Derechos de la Niñez realiza visita a Guatemala*, ['Rapporteur on the Rights of the Child Conducts Visit to Guatemala'], April 13, 2017.

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.⁷⁶⁹ 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.⁷⁷⁰

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).⁷⁷¹ 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.
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

⁷⁶⁹ Information received during the on-site country visit, July 31 to August 4, 2017.

⁷⁷⁰ 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.

⁷⁷¹ 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.

to be impartial was called into question.⁷⁷² 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.⁷⁷³

449. 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,⁷⁷⁴ and two remained hospitalized in the United States.⁷⁷⁵ 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

⁷⁷² Press story, *La hora*, *Juez se excusa de seguir conociendo el Caso Hogar Seguro* [‘Judge recuses himself from continuing to preside over the Hogar Seguro Case’], August 25, 2017. It can be viewed at: <http://lahora.gt/juez-se-excusa-seguir-conociendo-caso-hogar-seguro/>.

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.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.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.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.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 Child⁷⁸⁰ and the Convention on the Rights of Persons with Disabilities.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

⁷⁷⁶ Information provided by *Disability Rights International*, October 8, 2017. In the IACHR archives.

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.

⁷⁷⁸ *Id.*

⁷⁷⁹ 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, p. 33.

⁷⁸⁰ Guatemala acceded to the Convention on the Rights of the Child on June 6, 1990.

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 the 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.⁷⁸² 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.⁷⁸³ In this regard, the

⁷⁸² Information received during the on-site visit, July 31 to August 4, 2017.

⁷⁸³ On March 30 and 31, along with members of the IACHR Secretariat, and the participation of a MESECVI expert, the Rapporteur on the Rights of the Child conducted a visit to Guatemala to follow-up on compliance with the Precautionary Measure. In Precautionary Measure No. 958/16, [*Medida Cautelar No. 958/16*], granted on March 12, 2017, the State of Guatemala was asked to take the necessary measures to protect the lives and safety of the children and adolescents, who are housed at the “Hogar Seguro Virgen de Asunción,” including those who were seriously burned or otherwise affected physically or psychologically as a result of the fire; to ensure that the conditions in which the children and adolescents are living at the facility are brought into line with applicable international standards, while the State undertakes effective measures to promote reintegration with their family members, when possible and with the necessary family support; it should also identify alternatives for their care that serve to better protect them; prohibit any more children and adolescents from entering the “Hogar Seguro Virgen de la Asunción;” come to a

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.”⁷⁸⁴
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.⁷⁸⁵ 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.⁷⁸⁶ Persons who are sent to the hospital as “protection measures”

consensus about the measures to be taken in conjunction with the beneficiaries and the requesting party; and report on the actions taken in order to investigate the alleged incidents that gave rise to the instant precautionary measure and thus avoid the repetition thereof.

⁷⁸⁴ IACHR, *Situación de derechos humanos en Guatemala*, [‘Situation of Human Rights in Guatemala’], OEA/Ser.L/V/II, Doc. 43/15, December 31, 2015, para. 350.

⁷⁸⁵ National Statistics Institute, *Características de la Población y de los Locales de Habitación Censados*, 2002, pgs. 12 and 13.

⁷⁸⁶ According to request for precautionary measure MC 370-12, the three main categories of inpatients under security measures in terms of their mental health status, institutionalized at the Federico Mora Hospital are the following: (1) inpatients who were already convicted as criminally liable, and were transferred to the hospital to treat a mental illness; (2) persons who are being evaluated to determine whether or not they

imposed by the judicial authority, who are in situations such as living on the streets, are also considered “forensic patients.”⁷⁸⁷ 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.⁷⁸⁸

2. Conditions of Detention

457. 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.⁷⁸⁹ 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.⁷⁹⁰ 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.⁷⁹¹ 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

have a mental illness or are competent to stand trial; and (3) persons with mental disability, who have committed a crime and have already been declared incompetent to stand trial.” DRI and ODHAG, Solicitud de medidas cautelares a favor de las 334 personas con discapacidad mental internadas en el Hospital Federico Mora, [‘Request for precautionary measures for 334 persons with mental disability confined at the Federico Mora Hospital’], October 2012, p.2.

⁷⁸⁷ Authorities of the Federico Mora Hospital. Information provided to the IACHR during the visit to the institution on August 2, 2017.

⁷⁸⁸ In its comments to the draft of this report, the State informed that the National Council for Attention to Persons with Disabilities has urged the creation of municipal offices for people with disabilities in 10 municipalities and 21 Department Commissions for People with Disabilities, in compliance with the National Policy on Disability. 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.

⁷⁸⁹ In this regard, the IACHR was informed that patients faced the following violations: a) threats, harassment and acts of violence perpetrated by medical and guard staff, as well as by patients themselves; b) inhuman and degrading conditions; c) negligent medical care, which even led to the loss of life from diseases that are preventable and readily treated, such as pneumonia and diarrhea; d) use of protracted solitary confinement, and e) physical and sexual abuses, mainly of women and girls.

⁷⁹⁰ IACHR, Precautionary Measures, MC 370/12, Asunto de los 334 Pacientes del Hospital Federico Mora respecto a Guatemala, [‘MC 370/12, Matter of 334 Patients of the Federico Mora Hospital with respect to Guatemala’], November 2012.

⁷⁹¹ In this regard, see PDH, Guatemala, Recommendation EIO-GUA-106-2002/DR, “Diligencias Practicadas e Informes Recibidos” [‘Investigative steps taken and reports received’], May 13, 2002; PDH, Office of the Human Rights Ombudsman of Persons with Disabilities, Report on the Monitoring of the National Mental Health Hospital, Guatemala, 2007, p. 5, and PDH, Recommendation REF.EXP.ORD.GUA “Resultados de la Investigación” [‘Results of the investigation’], 2595–2009/DE, January 27, 2012.

Guatemala to adopt several measures to ensure the lives and personal integrity of the patients at the aforementioned hospital.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.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.”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—⁷⁹⁵ and that

⁷⁹² 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.

⁷⁹³ 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.

⁷⁹⁴ BBC, “Inside the ‘world’s most dangerous’ hospital”, December 4, 2014.

⁷⁹⁵ 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.

currently there are only 15 prison guards on-site.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).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 2012,⁷⁹⁸ 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.”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.”⁸⁰⁰ In contrast, the State argues that the use of solitary confinement has been

⁷⁹⁶ Authorities of the Federico Mora Hospital. Information provided to the IACHR, during the visit to the institution on August 2, 2017.

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.

⁷⁹⁸ Information provided in the context of the precautionary measure, submitted to the IACHR by the petitioners, on May 5, 2017.

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.

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.⁸⁰¹

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.⁸⁰² 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.⁸⁰³ 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.⁸⁰⁴
464. Inasmuch as States play the role of guarantor of persons under their custody⁸⁰⁵ and that persons with disabilities at psychiatric institutions are in a special at-risk situation of being subjected to torture and mistreatment,⁸⁰⁶ 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.⁸⁰⁷ Moreover, under the assumption of the existence of an intrinsic imbalance of power

⁸⁰¹ Information provided in the context of the precautionary measure, submitted to the IACHR by the State of Guatemala, on February 27, 2017.

⁸⁰² Information provided in the context of the precautionary measure, submitted to the IACHR by the petitioners, on May 5, 2017.

⁸⁰³ 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.

⁸⁰⁴ Information provided in the context of the precautionary measure, submitted to the IACHR by the State of Guatemala, on February 27, 2017.

⁸⁰⁵ 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.

⁸⁰⁶ 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.

⁸⁰⁷ 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).]

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.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.⁸⁰⁹

3. Indefinite Institutionalization because of a Lack of Community Services

465. 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.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.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.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.⁸¹³

⁸⁰⁸ IA Court of HR, *Case of Ximenes Lopes v. Brazil*. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, para. 107.

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’]

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).

⁸¹¹ *Id.*, para. 16 b) and 19.

⁸¹² *Id.*, para. 16 c).

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 4th 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,⁸¹⁴ it also recognizes patients are subjected to prolonged institutionalization because of an absence of support in the community.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,⁸¹⁶ which is based on the decentralization of medical treatment through health care promotion, at the primary care level.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.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.⁸¹⁹

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.

⁸¹⁵ Information provided in the context of the precautionary measure, submitted to the IACHR by the State of Guatemala, on February 27, 2017.

⁸¹⁶ State of Guatemala, Submission regarding the preliminary observations to the IACHR’s on-site visit, Ref. P-1261-2017/VHGM/LWC/nj, August 29, 2017. Annex 5, Response of the Ministry of Public Health and Social Assistance, “Comments regarding the observations on the visit to the Federico Mora National Mental Health Hospital,” August 18, 2017.

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.

⁸¹⁸ *Id.*

⁸¹⁹ 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. 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.⁸²⁰ 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.⁸²¹
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;⁸²² b) ensure the participation of persons with disabilities, directly and through the organizations representing them, in the design and implementation of said strategy;⁸²³ and c) allocate sufficient resources for the development of support services.⁸²⁴ 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.⁸²⁵

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.

⁸²¹ DRI, “[Disability Rights International continues to pressure Guatemalan government to end human rights abuses at notorious psychiatric facility](#)”, March 15, 2013.

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.

470. 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.⁸²⁶ 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.⁸²⁷ 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.⁸²⁸ 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.⁸²⁹

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.

⁸²⁸ IACHR, *Situación de derechos humanos en Guatemala*, [Situation of Human Rights in Guatemala], OEA/Ser.L/V/II, Doc. 43/15, December 31, 2015, para. 353. Information provided in the context of the precautionary measures and in the Observations of the State of Guatemala on the “Draft General Report on the Situation of Human Rights in Guatemala and on the IACHR’s communication of August 14, 2015,” October 6, 2015.

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 interests 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

expression. 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.