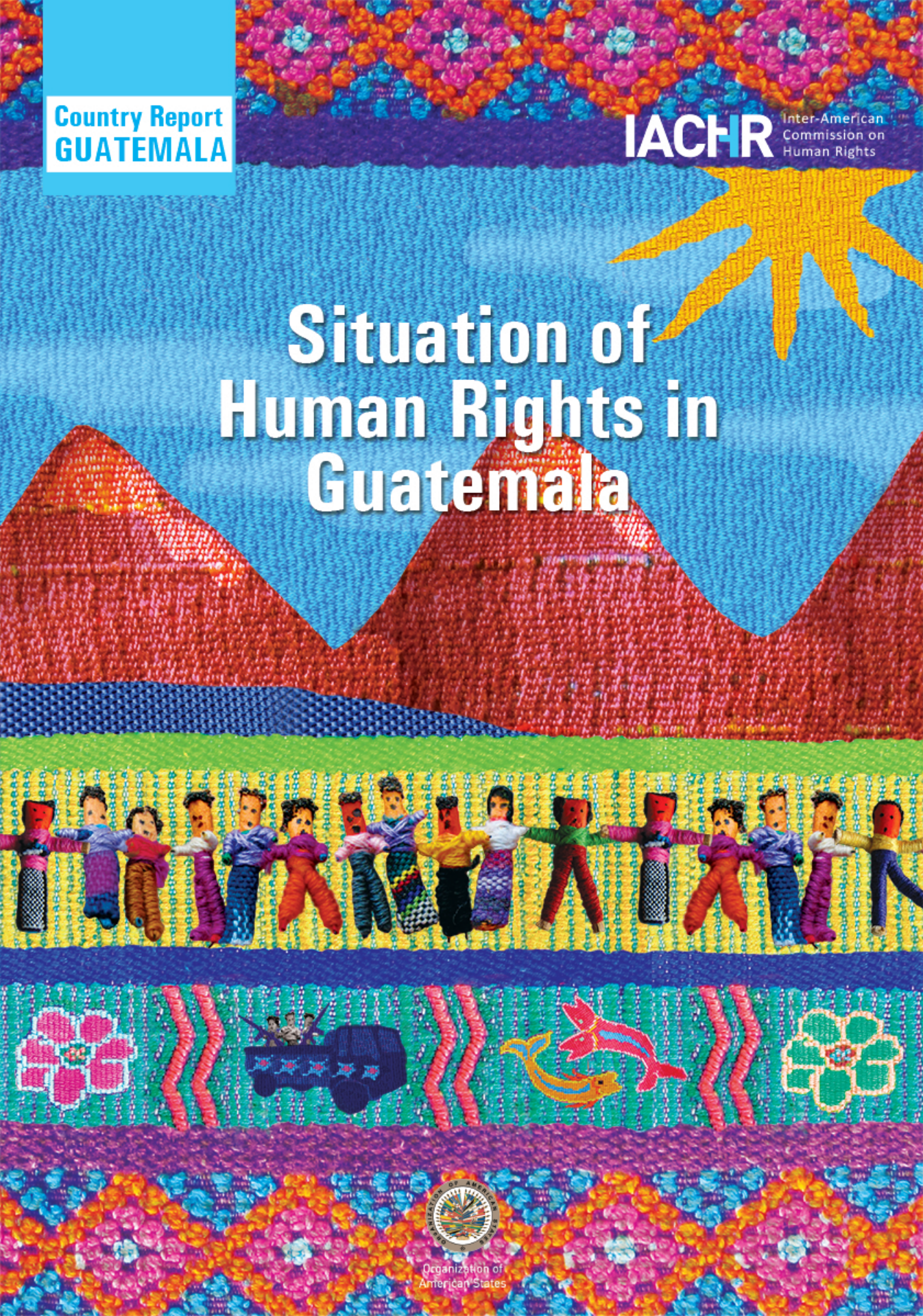


Country Report  
**GUATEMALA**

**IACHR** Inter-American  
Commission on  
Human Rights

# Situation of Human Rights in Guatemala



Organization of  
American States





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# Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion

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# EXECUTIVE SUMMARY



## EXECUTIVE SUMMARY

1. In the present report the Inter-American Commission on Human Rights (IACHR) addresses the situation of human rights in Guatemala, and a number of structural challenges in access to justice and impunity, citizen security, marginalization and discrimination which have affected severely the human rights of its inhabitants. Special attention is given to the situation of human rights defenders, journalists, women and children, LGBTI people, migrant population, among others. In this context, the report also addresses the situation of the indigenous peoples, who has seen their rights to ancestral lands, and to consultation affected due to grave levels of exclusion and inequality with generations of malnutrition due to structural discrimination and racism.
2. The IACHR has focused specific attention on the independence and autonomy of the administration of justice in Guatemala and the selection processes and guarantees of tenure for the positions of justice operators. It has also focused on the need for the State to provide an adequate, efficient, independent, and impartial system for the administration of justice to tackle the persistent structural impunity with respect to severe human rights violations in both the past and the present.
3. The IACHR is especially troubled by the State's failure to comply with the recommendations and judgments of the organs of the inter-American human rights system (IAHRS). Despite the fact that Guatemala accepted the jurisdiction of the Inter-American Court of Human Rights on March 9, 1987 and undertook to abide by its decisions, under the administration of former president Otto Pérez Molina, in adjudicated cases including those where the State accepted its responsibility, the Government denied its obligation to live up to its commitments questioning the temporal jurisdiction of the Court and stressing the legitimacy of amnesties during the internal armed conflict, including that contained in the National Reconciliation Act of 1996. The IACHR observes with concern that, during the administration of former President Pérez Molina, the government refused to characterize the incidents of the conflict, with its devastating impact on indigenous communities, as genocide.
4. In this regard, in a private hearing to monitor compliance with 11 judgments against Guatemala, the Inter-American Court in its last resolution of August 21, 2014, indicated that the position taken by Guatemala constituted "an act of obvious contempt of State regarding the enforceability of the judgments delivered by the Court, contrary to the international principle conform to its treaty obligations." The Court explained the inapplicability of the Reconciliation Act to the cases subject to the supervision and ordered the State to adopt "all measures necessary to comply promptly with the judgments, and "comply in good faith with their

treaty obligations and inform the Court<sup>1</sup>. During a hearing held in the 156 period of session of the Commission, held from October 17 to 28, 2015, the State reiterated to the IACHR its approach as to the scope of the jurisdiction of the Inter-American Court; also reiterated its position with regard on the alleged legitimacy of the amnesty as a cause of extinction of criminal responsibility in cases of human rights violations committed during the internal armed conflict. The Commission restates to the Government of Guatemala that this position is contrary to the standards and inter-American jurisprudence and contributes to the prevailing of impunity.

5. Notwithstanding, the IACHR recognizes progress in different areas which has a direct impact on the situation of human rights. The IACHR notes changes in favor of a society committed with human rights, promoted by the work of public officials compromised with justice and human rights defenders as well as social leaders. The support of international human rights agencies, as well as the International Commission against Impunity in Guatemala (CICIG, for its acronym in Spanish), has been critical to those efforts.
6. Throughout this report, the Commission highlights for example reduction of the rate of homicide; and, on indigenous rights, the decision of the Constitutional Court of September 2015 by which for the first time ordered the practice consultation with indigenous communities affected by an investment project.
7. Also in the administration of justice it is worth noting the work of the CICIG and the Public Ministry in the dismantling of criminal networks and the fight against corruption. In this regard the IACHR appreciates that in 2015 the State extended the mandate of the CICIG. Moreover, the Commission appreciates the State's efforts to create a protection program for journalists and the actions taken to prevent and combat human trafficking, and the creation of differentiated statistics on violence against women, which would contribute to the development of public policies, among others.
8. The year 2015 has had a special impact in the Guatemalan society. Since the revelation of the so called "case La Linea" and another series of acts of corruption, Guatemalan society took to the streets to demand the resignation of the President of the Republic. On September 3, 2015 Otto Perez Molina resigned from the Presidency of the Republic having been indicted for his alleged role in the network of customs fraud. According to the Office of the High Commissioner for Human Rights in Guatemala (OHCHR-Guatemala) "amid the deep political and institutional crisis in decades, and the Guatemalans are aware that only through comprehensive reforms will real change be achieved in the country."
9. On October 25, 2015 James Ernesto Morales was chosen in the second round as President of the Republic, and will take office on January 14, 2016. The new government has crucial challenges on human rights. To take steps to ensure that Guatemalans live in a country free of violence, continue the fight against impunity, corruption, exclusion and discrimination are just some of them. The Commission

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<sup>1</sup> I/A Court H.R., Joint Monitoring Compliance of 11 cases v. Guatemala. Monitoring Compliance with Judgment of the Inter-American Court of Human Rights of August 21, 2014.



urges the new government to resume the agenda of the peace agreements and ensure compliance with the recommendations of the Commission and judgments of Inter-American Court.

10. With regard to the preparation of the present Report and, as a result of the information received in recent years about the situation of human rights in Guatemala,<sup>2</sup> the IACHR sought the consent of the State of Guatemala to conduct an on-site visit so as to verify the situation for itself. Apart from verification, the visit would also have provided an opportunity to meet with government officials, civil society representatives, and indigenous leaders in order to gather and share information. Regrettably, that visit was unable to come to fruition in 2015 in feasible dates. In light of that, the Commission requested information on the human rights situation in the country from the State, the Human Rights Ombudsman (PDH, for its acronyms in Spanish), and civil society organizations. The IACHR has also taken into account the information and perspectives reflected through its mechanisms including public hearings, precautionary measures and the case system.
11. Poverty, racism, discrimination, exclusion, violence and impunity have been constantly observed in Guatemala by this Commission in the exercise of their various functions. This, framed in a weak state structure, with few resources by poor tax collection and high level of corruption.
12. The IACHR is mindful that the serious human rights situation in Guatemala affects all its inhabitants and permeates every sphere of society. In recognition of that, the IACHR decided that this report should focus on three fundamental aspects: citizen security, administration of justice, and the inequality and exclusion suffered by indigenous peoples.
13. The Commission analyzes the inequality and exclusion suffered by indigenous peoples in Guatemala as a consequence of racism and structural discrimination, situation that is also reflected in the State denial of the genocide suffered by the Maya people during the internal armed conflict. The IACHR also notes the ongoing lack of protection for the human rights of indigenous peoples and communities in accordance with international standards, which is causing social and environmental harm in indigenous areas, including the dispossession of their lands and contamination of their water sources.

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<sup>2</sup> The Commission has followed the human rights situation in Guatemala with particularly close attention and noted in its reports a series of structural issues in the areas of security, violence, justice, marginalization and discrimination that have affected the human rights of its people for decades. The Commission has monitored the situation by means of different mechanisms; on-site visits, country reports, Chapter IV of its annual report,<sup>2</sup> the system of individual petitions and cases, precautionary measures, and press releases. It has also held public hearings and made requests for information to the State under Article 41 of the American Convention on Human Rights, among other measures. Guatemala has been included in Chapter IV of the Annual Report in the following years: 1983-1984, 1984-1985, 1985-1986, 1986-1987, 1987-1988, 1988-1989, 1989-1990, 1990-1991, 1991, 1993, 1994, 1996, 1997 and 2003. In addition, the has published special reports on the situation of human rights in Guatemala in 1981, 1983, 1985, 1993, 1994, 2001, and 2003. In follow-up to its country reports, it was included in Chapter V of its Annual report in 2002 and 2004.

14. The chapter entitled “Inequality, Discrimination and Exclusion: The Situation of Indigenous Peoples” draws on valuable information and testimony gathered during the visit made from August 21 to 30, 2013, by Dinah Shelton, the IACHR Rapporteur on the Rights of Indigenous Peoples at that time.<sup>3</sup> During the 10-day visit, former Commissioner Shelton met with government officials and indigenous authorities and leaders. She also met scholars and representatives of civil society organizations. The various activities took place in Guatemala City, Cobán, Valle del Polochic, Nebaj, Huehuetenango, Totonicapán, San Marcos, and Chichicastenango. The aim of the visit was to gather information on the situation of indigenous peoples in Guatemala, with special emphasis on the discrimination and exclusion experienced by indigenous peoples, as well as the situation involving their lands, territories, and natural resources and their right to free and informed prior consultation.
15. With regard to citizen security in Guatemala, the IACHR notes that for several years, particularly since 2000, there has been a wave of generalized violence that has spiked (in 2008 and 2009) and waned, though without ever falling below levels that make Guatemala one of the most violent countries in Latin America. According to the United Nations Development Programme (UNDP), the high rates of violence and insecurity that plague Guatemala have to do with social exclusion and a failure of law enforcement. This occurs in a context of institutional weakness on the part of the State where the inefficiency to deal with the problem only increases the levels of violence allowing clandestine groups to establish themselves and create hidden networks with State institutions. In this context of violence and insecurity, the IACHR has observed a number of circumstances that make the situation worse, such as the resurgence of missing persons associated with the activities of organized crime groups; the serious problems of lynching and the seldom supervised and disproportionate use of private security providers.
16. The Guatemalan State has attempted a series of policies and strategies in response to the violence and insecurity. However, some of its acts (or omissions), such as the continuous weakening of the National Civilian Police (PNC, for its acronym in Spanish), the disproportionate use of states of emergency, militarization of citizen security, and the creation of special squads, have only increased tensions and exacerbated the problem.
17. Aside from the context of violence and insecurity, there is the situation of those whose role in society or because they have been subjected to a historic discrimination are disproportionately affected by the violence and discrimination. They include individuals who defend human rights, including indigenous authorities and leaders, environmental activists, trade union leaders, and justice

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<sup>3</sup> On that occasion, the former commissioner said that “racism and discrimination against indigenous peoples persists in Guatemala, but also that the government has initiated several new programs intended to address this situation. Unfortunately, disproportionate rates of poverty, extreme poverty, and child malnutrition, persist among the rural indigenous population.” She also said, “It is also of concern that the current licenses for mining and hydroelectric plants were granted without the State having implemented prior, free, and informed consultation with affected indigenous communities, as it is obligated to do under international treaties signed by Guatemala.” IACHR, Press Release 66/13 - Office of the Rapporteur on the Rights of Indigenous Peoples Conducted Working Visit to Guatemala. Washington, D.C., September 18, 2013.

- operators, among others. Other groups affected include women, children and adolescents, journalists, migrants and refugees, LGBTI persons, people with disabilities, and persons deprived of liberty.
18. According to reports from the NGO Protection Unit Defenders of Human Rights in Guatemala (UDEFEFUGUA) there would have recorded 380 attacks against defenders of human rights from January up to September 2015. Attacks and aggressions that include murder, threats, arbitrary detentions, persecution and surveillance. According to the same organization, in 2014 they have recorded 814 attacks. The attacks have been directed at human rights defenders who work the main problems affecting the country's human rights, such as those dedicated to defending the rights of indigenous peoples, territory, land and environment healthy, representing victims of the internal armed conflict or union. The IACHR laments these deaths and calls for their clarification, and reiterates that the work of human rights defenders is fundamental for the implementation of human rights and for the full existence of democracy and the rule of law.
  19. The IACHR stresses the need in Guatemala for an efficient, independent, autonomous justice administration to strengthen democracy and the rule of law because a judiciary with those characteristics puts limits on abuses of power and guarantees the rule of law and protection of human rights for all. In that regard, of special concern for the IACHR has been the independence of the judicial branch in light processes of selection and tenure of justice operators, access to justice and impunity, and the legacy of the internal armed conflict.
  20. In 2014 and 2015, the IACHR received information about the impacts on the independence of the judiciary in Guatemala from the absence of suitable processes to appoint and select justice operators. It also continued receiving information about the distressing rates of impunity, which among other impacts have direct repercussions for the access to justice. The IACHR observes that the impunity rate for the crime of homicide from 2008 to 2014, according to a report from the CICIG of November 2015,<sup>4</sup> fluctuated between 99.1% and 98.4%, with certain drops depending on the years and the subject. To this can be added the fact that most of the incidents that took place during the armed conflict (1960 to 1996) went unpunished. Notwithstanding, it is worth mentioning the progress made by judicial officials as self-executing the statement issued by the Inter-American Court rulings handed down by the Criminal Chamber of the Supreme Court, as well as progress in the investigation, prosecution and conviction in various cases. In this regard, by the magnitude of the cases that are still unpunished further efforts are required, including the correction of the position of the Government, as to question of the competence of the Inter-American Court and insist position of the State on the legitimacy of amnesties for cases during the internal armed conflict.

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<sup>4</sup> The CICIG defines impunity as the failure to report, investigate, arrest, bring to trial, find positive solutions for the victims, and/or convict those responsible for crimes classified in Guatemalan law and focuses its report on the subject of judgments of conviction. CICIG, Press release 091, [Sistema de Medición de Impunidad en Guatemala](#) [System to Measure Impunity in Guatemala], November 27, 2015.

21. At the end of the report, the IACHR makes a series of recommendations to the State and offers its good offices for working with it in the implementation process. In its observations about this draft report, the Guatemalan State indicated that

it would deploy its best efforts to tackle the challenges that persist arising from the manifestations of multi-causal violence, discrimination, and exclusion, and would implement the measures that are indispensable to make it possible to eliminate critical poverty, prevent and combat crime, as well as unrest, which prevent the full development of its inhabitants, as a result of which it is useful to implement those recommendations from the country report that are deemed relevant and timely [...].<sup>5</sup>

22. The Commission appreciates the contributions of the state and civil society in the preparation of this report; in particular, the testimony of hundreds of authorities and indigenous leaders that allowed him to better understand, from their voices, the situation experienced in Guatemala.<sup>6</sup>

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<sup>5</sup> Additional observations of by the State of Guatemala about the “Draft Country Report title: Situation of Human Rights in Guatemala: citizens security, access to Justice, diversity, inequality and exclusion” (from now on Draft Report on the Situation of Human Rights in Guatemala), [http://www.oas.org/es/cidh/docs/\\_anual/2015/doc-es/GT-Observaciones-adicionales2015.pdf](http://www.oas.org/es/cidh/docs/_anual/2015/doc-es/GT-Observaciones-adicionales2015.pdf). Ref. Note P-925-2015/AFAP/hm of December 9, 2015, received at the IACHR Secretariat on December 11, 2015, pp. 1 and 5.

<sup>6</sup> The testimonies were received during the visit of former Rapporteur Dinah Shelton to Guatemala in 2013.

CHAPTER 1  
INTRODUCTION





## BACKGROUND

23. In January 2015, the IACHR sought the consent of the State of Guatemala to conduct an on-site visit and verify the situation firsthand. Apart from verification, the visit would also have provided an opportunity to meet with government officials, civil society representatives, and indigenous leaders in order to gather and share information. Although the Guatemalan State gave its consent for the IACHR to visit the country, unfortunately, in the course of 2015, the said visit could not be carried out on feasible dates because of the agendas of both the State and the IACHR.
24. In view of the difficulty in reaching a consensus on a feasible date for the on-site visit, on August 3, 2015, the IACHR notified the State that it had decided to draw up a report on the situation of human rights in Guatemala. Accordingly, on August 14, 2015, the Commission asked the State to supplement the information that it (the IACHR) had on the following: citizen security, access to justice, protection program for defenders, progress in implementing the National Compensation Program, measures adopted to ensure the rights of indigenous peoples to consultation and free and informed prior consent in accordance with international standards, and any other information that the State considered pertinent.
25. On September 14, 2015, the State requested more time to present its response in light of "the conditions in the country and the difficulty in compiling information." On October 6, 2015, the State, presented the Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the Communication of the IACHR of August 14, 2015."<sup>7</sup>
26. On December 2, 2015, the IACHR transmitted to the State a copy of the preliminary draft of the present report approved by the IACHR on November 29, 2015 and requested that it send its observations by December 23, 2015. On December 11, 2015, the IACHR received the State's observations dated December 9, 2015.<sup>8</sup> The observations and comments were reviewed by the Inter-American Commission and, in those matters considered relevant, have been enshrined in this final version of the report on Guatemala, which was adopted by the IACHR on December 31, 2015.
27. In its additional observations, the State of Guatemala extended its appreciation for the Draft Country Report and reiterated its pledge to protect and ensure human

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<sup>7</sup> Report of the State of Guatemala on the "Draft General Project on the Human Rights Situation in Guatemala and the IACHR Communication of August 14, 2015." **INSERTAR HYPERLINK EN TITULO DE INFORME DEL ESTADO** Ref. Note P-766-2015/AFAF/HM/wr-er of October 6, 2015.

<sup>8</sup> Additional observations from Guatemala. Ref. Note P-925-2015/AFAF/hm of December 9, 2015 received at the Secretariat on December 11, 2015.

rights, which is evident "on the basis of various actions and efforts of the State and its institutions [...] whose ultimate goal is to facilitate the conditions that guarantee the full enjoyment and exercise of human rights and universal liberties on the country's territory." It also stated that

it would deploy its best efforts to tackle the challenges that persist arising from the manifestations of multi-causal violence, discrimination, and exclusion, and would implement the measures that are indispensable to make it possible to eliminate critical poverty, prevent and combat crime, as well as unrest, which prevent the full development of its inhabitants, as a result of which it is useful to implement those recommendations from the country report that are deemed relevant and timely [...].<sup>9</sup>

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<sup>9</sup> Additional observation from Guatemala. Ref. Note P-925-2015/AFAF/hm of December 9, 2015 received at the Secretariat on December 11, 2015, pp. 1 and 5.

CHAPTER 2  
BRIEF OVERVIEW OF THE  
HISTORICAL AND CURRENT  
TRENDS THAT AFFECT THE  
ENJOYMENT OF HUMAN RIGHTS





## BRIEF OVERVIEW OF THE HISTORICAL AND CURRENT TRENDS THAT AFFECT THE ENJOYMENT OF HUMAN RIGHTS

### A. *Diversity, inequality and exclusion*

28. Guatemala, which in the Náhuatl language is written Quauhtlemallan, meaning “place of many trees,” is a country with an area of 108,809 km<sup>2</sup> and a population of around 16 million,<sup>10</sup> most of it living in rural areas.<sup>11</sup> According to data from the most recent census, taken in 2002, 40% of the population identifies as indigenous; other sources say that 60% of the population belongs to that category.<sup>12</sup>
29. Today it is a multiethnic, pluricultural, multilingual society in which indigenous Maya, Xinka and Garífuna peoples and Ladinos coexist.<sup>13</sup> The Maya group comprises 22 distinct sociolinguistic communities.<sup>14</sup> Guatemala's cultural diversity is evinced by the 25 different languages spoken on its soil: Spanish and 24 indigenous tongues.
30. Its history has been characterized by war, domination, subjugation, and military dictatorships. The country had its first democratically elected president, Juan José Arévalo, in 1945. He was succeeded in 1951, likewise in a democratic election, by Jacobo Arbenz Guzmán. Both instituted sweeping educational and agrarian reforms. Arbenz was overthrown in 1954.<sup>15</sup> On the same day, the 27th, a military government junta was established and, after a succession of triumvirates, on July 7, 1954, Carlos Castillo Armas rose to power as the head of a new military junta<sup>16</sup>. Afterwards, there was a series of coups d'état and a long-term armed conflict

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<sup>10</sup> 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*.

<sup>11</sup> 51.0% of the population resided in rural areas. INE, *Caracterización Estadística de la República de Guatemala*.

<sup>12</sup> OHCHR, Regional Office for Central America. *Diagnóstico sobre la Situación de los Derechos Humanos de los Pueblos Indígenas de América Central*, 2011, Volume I, page 190.

<sup>13</sup> The mestizo or mixed-race Hispanic community that only speaks Spanish (Central America). Dictionary of the Spanish Royal Academy.

<sup>14</sup> Ministry of Education of Guatemala. Guatemala, *Un país con Diversidad Étnica, Cultural y Lingüística*.

<sup>15</sup> The CEH report Memory of Silence points out the role played by the United States in the process of overthrowing President Arbenz, when it states the following: “It has been described by many authors, among whom Nicholas Cullather, who worked for the Central Intelligence Agency (CIA). Cullather described in detail how the United States achieved its objective of overthrowing the administration of Arbenz, using tactics of misinformation, psychological operations, and even drafting a list of civil servants who had to be killed.” CEH, Memory of Silence, Volume I, *Causas y orígenes del enfrentamiento armado interno* [Causes and origins of the domestic armed conflict], pp. 105 and 106.

<sup>16</sup> CEH, Memory of Silence, Volume I, *Causas y orígenes del enfrentamiento armado interno*, paras. 105-113.

(1960-1996). From 1986 to 1996, there was a political transition period with governments elected by universal suffrage,<sup>17</sup> a trend that was afterwards upheld.

31. Guatemala's social and economic situation has been blemished by poverty, racism, exclusion, violence, and impunity. The above has occurred in a framework of weak state institutions with few resources as a result of a meager tax take and widespread corruption. In this troubling scenario, the force of civil society, the toil of human rights defenders and public officials committed to justice, and the struggles of indigenous leaders, trade unionists, and journalists, among others, have promoted and instigated profound changes in Guatemalan society in their efforts to establish a more just and equal nation. There is still a lot of work to be done in Guatemala. The numbers speak for themselves.
32. As for poverty,<sup>18</sup> according to Guatemala's National Statistics Institute (Instituto Nacional de Estadísticas—INE), 53.7% of the population lives in poverty, and of this percentage, 13.3% pertains to extreme poverty. As for the United Nations Development Programme (UNDP),<sup>19</sup> it indicates that 62.4% of Guatemala's population lives in medium poverty; 29.6% lives in extreme poverty; and 3.6% lives in severe poverty.<sup>20</sup> According to UNDP, between 1990 and 2015, "the number of persons living in poverty rose."<sup>21</sup> According to the World Bank's rural poverty map,<sup>22</sup> there were areas of Guatemala where the percentage of extreme poverty was over 70%. The most critical conditions were recorded in the department of Alta Verapaz, with 89.6% of its rural population living in poverty, of which 46.7% in extreme poverty. In various municipalities of Alta Verapaz, more than half the rural population lives in extreme poverty, for example in Panzos (76%), Tukurú and Chisec (both with 65%), Santa Catalina La Tinta (61%), and San Cristóbal Verapaz (54%).<sup>23</sup> In this scenario, according to the UNDP, in Guatemala

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<sup>17</sup> CEH, *Memory of Silence*, Volume I, *Causas y orígenes del enfrentamiento armado interno*, paras. 105-113.

<sup>18</sup> Poverty is "a human condition characterized by the sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights" and extreme poverty is "the combination of income poverty, human development poverty and social exclusion," where a prolonged lack of basic security affects several aspects of people's lives simultaneously, severely compromising their chances of exercising or regaining their rights in the foreseeable future. United Nations, *Guiding Principles on Extreme Poverty and Human Rights* [Guiding Principles on Extreme Poverty and Human Rights], Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda. Adopted by the Human Rights Council on September 27, 2012, para. 2.

<sup>19</sup> In its Report on Human Development 2014, UNDP ranks Guatemala 125 on the human development index. UNDP, *Human Development Report 2014*, , *Human Development Report 2014, Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience*, page 175.

<sup>20</sup> UNDP-Guatemala, *Guatemala en Breve*.

<sup>21</sup> UNDP-Guatemala, *Los Objetivos de Desarrollo del Milenio*.

<sup>22</sup> *Mapa de Pobreza Rural 2011*, drawn up on the basis of information from the Municipal Rural Census (Censos Rurales Municipales) from 2008 to 2011 and the Living Conditions Survey (Encuesta de Condiciones de Vida—ENCOVI), 2011. World Bank.

<sup>23</sup> World Bank, Press Release, *Guatemala: en 44% de los municipios rurales, tres de cada cuatro personas viven en pobreza*, April 30, 2013.

49.8% of children under five years of age are suffering from chronic malnutrition.<sup>24</sup>

33. According to UNICEF, the global economic crisis and the effects of climate change, especially droughts, are disproportionately impacting the economies and particularly the subsistence of indigenous families and of the poorest, with children being the worst affected. Around 3 million Guatemalans lack access to safe drinking water and some 6 million are without access to improved sanitation services. School retention remains a critical problem, given that only four in ten children who start elementary school complete it. Indigenous girls attend for only three years on average.<sup>25</sup> More than 1.8 million children and adolescents aged 10 to 19 are not in school.<sup>26</sup> According to the UNDP, recent years have seen some progress in education, although Guatemala still faces crucial challenges. Among the advances are progressive increases in primary education enrollment; almost complete gender parity in education and an increase in youth literacy (from 76% to 91.9% between 1994 and 2011).<sup>27</sup> As regards the right to health, there seems not to be access without discrimination to quality care services. With respect to the right to housing, “50% of the Guatemalan population reportedly lack decent, adequate, and healthy housing.”<sup>28</sup> About the housing situation, the State reported that it replaced the National Housing Fund of Guatemala (Fondo Nacional de la Vivienda de Guatemala—FODIGUA) by the National Fund for Housing (Fondo Nacional para la Vivienda—FOPAVI), which started functioning in 2013. One of the principal reforms had been the rise in the direct subsidy received by beneficiary families from 15,000 quetzales (about US\$1,900) to 35,000 quetzales (about US\$4,600). Regarding this, the State added that, since its establishment, FOPAVI had provided services to more than 26,000 families living in poverty or extreme poverty.<sup>29</sup>
34. With regard to the right to work, according to official statistics in Guatemala, the great majority of workers “do not even manage to earn more than the statutory minimum wage, much less enough to cover a basic food basket or their basic needs.” Furthermore, “there is also widespread violation of labor rights where working conditions and access to social security are concerned.”<sup>30</sup> In that regard, the UNDP said that the labor indicators reflect “the labor vulnerability of the majority” of the Guatemalan population.<sup>31</sup> In that connection, the IACHR takes a positive view of the decision of the Constitutional Court on September 8, 2015, to declare unconstitutional the monthly minimum wage of 1,500 quetzales (approximately US\$195) decreed in government decisions for employees of

<sup>24</sup> UNDP-Guatemala, *Guatemala en Breve*.

<sup>25</sup> UNICEF-Guatemala, *Malnutrition*.

<sup>26</sup> Information provided by the State of Guatemala at the 154th regular session of the IACHR.

<sup>27</sup> UNDP-Guatemala, *The Millennium Development Goals*.

<sup>28</sup> *Informe Alternativo al III Informe Periódico del Estado de Guatemala sobre la Aplicación del Pidesc*, March 21, 2014, pp. 75-76.

<sup>29</sup> Report of the State of Guatemala regarding the “Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015,” October 6, 2015.

<sup>30</sup> *Informe Alternativo al III Informe Periódico del Estado de Guatemala sobre la Aplicación del Pidesc*, March 21, 2014, p. 47-48.

<sup>31</sup> UNDP-Guatemala, *The Millennium Development Goals*.

companies in the light manufacturing for export sector installed or to be installed in the economic zones of the municipalities of San Agustín Acasaguastlán and Guastatoya, El Progreso; Estanzuela, Zacapa; and Masagua, Escuintla<sup>32</sup>.

35. In addition, according to the representative of the United Nations High Commissioner for Human Rights, public services in Guatemala are not ensured in terms of their availability, accessibility, acceptability, quality, and nondiscrimination.<sup>33</sup>
36. In that context of poverty, the plight of indigenous peoples exemplifies structural tendencies and confirms the persisting levels of racism and discrimination in Guatemala that verge on segregation. The exclusion is visible in all spheres, including land ownership, access to basic services, working conditions, access to the formal economy, access to justice, participation in decision-making and state institutions, and representation in the major media outlets and the forum of public debate.<sup>34</sup>
37. The United Nations guiding principles on extreme poverty and human rights recognize that poverty is an urgent human rights concern in itself and that it is both a cause and a consequence of human rights violations and an enabling condition for other violations, adding that not only is extreme poverty characterized by multiple reinforcing violations of civil, political, economic, social and cultural rights, but persons living in poverty generally experience regular denials of their dignity and equality.<sup>35</sup>

Persons living in poverty are confronted by the most severe obstacles—physical, economic, cultural and social—to accessing their rights and entitlements. Consequently, they experience many interrelated and mutually reinforcing deprivations—including dangerous work conditions, unsafe housing, lack of nutritious food, unequal access to justice, lack of political power and limited access to health care—that prevent them from realizing their rights and perpetuate their poverty. Persons experiencing extreme poverty live in a vicious cycle of powerlessness, stigmatization, discrimination, exclusion and material deprivation, which all mutually reinforce one another.

Extreme poverty is not inevitable. It is, at least in part, created, enabled and perpetuated by acts and omissions of States and other economic actors. In the past, public policies have often failed to reach persons living in extreme poverty, resulting in the transmission of poverty across generations.

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<sup>32</sup> In its ruling, the Constitutional Court upheld the action for partial general unconstitutionality brought by the Ombudsman and declared unconstitutional Article 2 of Government Decisions 471-2014, 472-2014, 473-2014, 474-2014, which would have set the minimum wage for the light manufacturing sector in each municipality. Constitutional Court, CC dicta sentencia en Inconstitucionalidad por Salarios Diferenciados, September 8, 2015.

<sup>33</sup> *Prensa Libre*, Q1,500, salario digno? October 1, 2015.

<sup>34</sup> OHCHR-Guatemala, Report on the activities of the office in Guatemala, 2011, January 27, 2012, para. 12.

<sup>35</sup> 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, para. 2.

Structural and systemic inequalities—social, political, economic and cultural—often remain unaddressed and further entrench poverty. A lack of policy coherence at the national and international levels frequently undermines or contradicts the commitment to combat poverty.

That extreme poverty is not inevitable means that the tools for ending it are within reach. A human rights approach provides a framework for the long-term eradication of extreme poverty based on the recognition of persons living in extreme poverty as rights holders and agents of change.<sup>36</sup>

38. Coupled with the situation of poverty that affects the majority of Guatemalans, is the situation of widespread violence and insecurity, impunity, and corruption.
39. According to Guatemalan civil society organizations, the principal obstacles in the exercise of fundamental rights derive from the way the Guatemalan State had been structured to ensure “the enjoyment of privileges by a small part of the population to the detriment of the majority.” According to those organizations, the greatest victims of human rights violations are indigenous people and women. Inhabitants of rural areas in Guatemala face severe exploitation, and poverty and chronic malnutrition are rife in the country.<sup>37</sup>

## ***B. Armed conflict: Repercussions on Guatemalan society***

40. The legacy of the internal armed conflict that Guatemala lived through from 1960 to 1996 exacted an enormous human, material, institutional, and moral cost. Multiple, systematic human rights violations were committed on a mass scale during that period: massacres, extrajudicial executions, forced disappearances, rape, scorched-earth operations, forcible displacement, torture, illegal detentions, and kidnappings, many of which were part of a campaign of genocide.<sup>38</sup> While the conflict lasted it is estimated that more than 200,000 people were victims of arbitrary executions and forced disappearance as a result of political violence.<sup>39</sup> In ethnic terms, 83% of victims were members of the indigenous Maya population.<sup>40</sup>

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<sup>36</sup> 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.

<sup>37</sup> *Committee on Economic, Social and Cultural Rights hears from stakeholders on Guatemala, Nepal and Romania*, 17 November 2014.

<sup>38</sup> In its reports on the merits in the cases of the Plan de Sánchez Massacre and the Río Negro Massacres, the IACHR concluded that the mass killings amounted to genocide: “[T]he massacres against the Río Negro community were planned by Guatemalan State agents with the objective of exterminating the community and constituted genocide. The massacres were executed within scorched-earth (*tierra arrasada*) policy directed by the Guatemalan State against the Maya people, who were referred as the ‘enemy within,’ in a context of discrimination and racism. These acts implied a violation of the fundamental human rights of individuals, indigenous peoples, and the values shared by the inter-American community.” Report on the Merits 86/10, Case 12.649. *Community of Río Negro of the Maya Achi People and Its Members (Río Negro Massacres)*, Guatemala, July 14, 2010.

<sup>39</sup> The Commission for Historical Clarification (CEH) registered 42,275 victims of arbitrary executions and forced disappearance in the course of its documentation efforts. 23,671 people were arbitrarily executed and 6,159

41. In its 1985 report on Guatemala, the Commission recorded the extent and seriousness of the internal turmoil in that country and the way in which this had spawned a dramatically escalating spiral of violence “that remained ever latent throughout those years with periods of greater or lesser intensity.”<sup>41</sup> Even before then, in its first Report on the Situation of Human Rights in Guatemala, in 1981, the IACHR had noted its concern at the existence of a veritable “state of terror,” where repression reached all entities critical of the government.<sup>42</sup>
42. State forces and related paramilitary groups—putting into practice the National Security Doctrine—were responsible for 93% of the violations documented by the Commission for Historical Clarification (Comision para el Esclarecimiento Histórico—CEH), including 92% of the arbitrary executions and 91% of forced disappearances.<sup>43</sup> For their part, the actions of insurgent groups accounted for 3% of such acts.<sup>44</sup> It should be noted that 91% of all the violations recorded by the CEH were committed between 1978 and 1984,<sup>45</sup> a period that coincided with the dictatorships of Generals Romeo Lucas García (1978-1982) and Efraín Ríos Montt (1982-1983).
43. According to the report of the CEH, “Guatemala: Memory of Silence” (Guatemala: Memory of Silence), multiple coinciding factors caused the armed conflict in Guatemala,<sup>46</sup> including structural injustice, the closing of political spaces, racism,<sup>47</sup> the increasingly exclusionary and anti-democratic nature of institutions, as well as the reluctance to promote substantive reforms that could have reduced structural conflicts.<sup>48</sup>
44. As well as the underlying causes found in Guatemala's national history, the Cold War, the attendant anti-communist policy prevalent in the region, and the National Security Doctrine<sup>49</sup> as an ideological manifestation of the struggle against the

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were victims of forced disappearance. CEH, Memory of Silence, Volume V, *Conclusiones y Recomendaciones*, p. 21.

<sup>40</sup> CEH, Memory of Silence, Volume V, *Conclusiones y Recomendaciones*, p. 21.

<sup>41</sup> IACHR, Third Report on the Situation of Human Rights in Guatemala, 1985, *Guatemala, 1985*, Chapter II, para. 2.

<sup>42</sup> IACHR, Report on the Situation of Human Rights in Guatemala, *Guatemala, 1981*, Chapter II. B, para. 3.

<sup>43</sup> CEH, Memory of Silence, Volume V, *Conclusiones y Recomendaciones*, pp. 24-25.

<sup>44</sup> CEH, Memory of Silence, Volume V, *Conclusiones y Recomendaciones*, p. 26.

<sup>45</sup> CEH, Memory of Silence, Volume V, *Conclusiones y Recomendaciones*, p. 42.

<sup>46</sup> CEH, Memory of Silence, Volume I, *Causas y orígenes del enfrentamiento armado interno*, p. 80.

<sup>47</sup> As the CEH noted, “[t]he racism, as an ideological expression of colonization and subordination has its origins in the Spanish invasion. ... That moment had a profound impact on Guatemalan history because if, initially, the Spanish regarded themselves as biologically and culturally superior, that same attitude was subsequently adopted by the criollos [Tr: people from Spanish South or Central America, especially of pure Spanish descent] and, later, the ladinos.” CEH, Memory of Silence, Volume I, *Causes and origins of the domestic armed conflict*, p. 86.

<sup>48</sup> CEH, Memory of Silence, Volume V, *Conclusiones y Recomendaciones*, p. 24.

<sup>49</sup> The CEH pointed out that the National Security Doctrine was a practical way to tackle internally or externally the potential or real threat of Communism in the framework of the Cold War and the new ties between the United States of America and Latin America. This doctrine contributed to consolidating the ideological profile of Latin American armed forces, on the basis of clearly anti-Communist ideas. The National Security Doctrine deemed that the national power was comprised of four elements: economic power, social power, political power, and military power, which required a specific strategic to be implemented and to be subsequently

“enemy within,” played a key role in the origin, spread, and perpetuation of the conflict.<sup>50</sup> In keeping with these ideas, the “enemy within” concept encompassed not only the armed rebel groups, but progressively expanded to include any opinion or movement that dissented or differed from the government line, including intellectuals, artists, students, teachers, trade union leaders and others; in short, a host of different actors who suffered the consequences of the systematic violence that existed during that period.<sup>51</sup> Particularly dramatic was the impact generated by the internal conflict to the detriment of peasants, students, members of religious congregations and community leaders or cooperative.<sup>52</sup> With regard to the Maya population, the CEH concluded that agents of the State of Guatemala, in the framework of counterinsurgency operations conducted between 1981 and 1983, perpetrated acts of genocide against the groups of the Maya People living in the regions of Ixil, Zacualpa, Huehuetenango, and Rabinal.<sup>53</sup> The IACHR, in the cases of the massacres of Plan de Sánchez, Río Negro, and the Aldea de Chichupac submitted to the Inter-American Court, concluded that the massacres, killings, and disappearances perpetrated in the above-mentioned cases, respectively, turned out to be especially severe because they took place as part of the genocide committed in Guatemala against the Maya People.<sup>54</sup>

Time will never be sufficient to heal the wounds left in men, youths, children, old people and especially women, originated from that violence. Our relatives were cut off from their circle of life, they were tortured or made to disappear, kidnapped and massacred. Both men and women found their early, violent and unknown deaths, and their hundreds of bodies are buried in clandestine cemeteries located on cliffs, roads, forests and underneath buildings, making it impossible to exhume them. Animals ate some of the bodies and others were thrown in rivers such as the Motagua, Pixcayá and Usumacinta, and still others were thrown in volcano craters. It will be thus impossible to get to these bodies. This is the road to Calvary for multiple families, wives, parents, children and grandchildren of survivors of the genocide carried out by the military in Guatemala.<sup>55</sup>

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converted into a national strategy. Considering these four components of national power, and in accordance with a strategic planning, governments increasingly use their military power for interventions, for the purpose of tackling and eliminating subversion, a concept that included all those persons or organizations that represented any kind of opposition to the government in office at the time or the State, equating this notion with that of the “enemy within.” In Guatemala, this concept meant that all structures of the State and all the resources of power had to be at the disposal of the Armed Forces to combat and defeat the guerrilla viewed as the enemy within, in its broadest conception. CEH, Volume I, Causes and origins of the domestic armed conflict, pages 117-122.

<sup>50</sup> CEH, Volume V, Memory of Silence, *Conclusiones y Recomendaciones*, p. 24.

<sup>51</sup> CEH, Guatemala, Volume II, Memory of Silence, Chapter XI: Forced Disappearances, p. 426.

<sup>52</sup> CEH, Guatemala, Volume II, Memory of Silence, Chapter XI: Forced Disappearances, p. 426.

<sup>53</sup> CEH, Volume V, Memory of Silence: Conclusions and Recommendations, p. 51.

<sup>54</sup> IACHR, Case 11.763, *Massacre of Plan de Sánchez*, Report on the Merits 25/02, para. 100; Case 12.649, *Río Negro Community of the Maya Indigenous People and their members (Río Negro Massacres)*, Report on the Merits 86/10, para. 229; Case 12.788, *Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal*, Report on the Merits 6/14, para. 229.

<sup>55</sup> “From war to peace: A slow, difficult and traumatized process.” Statement by Rosalinda Tuyuc, President of CONAVIGUA, to the IACHR at its 118th regular session, October 2003.



45. With the signing of the Accord for a Firm and Lasting Peace in December 1996,<sup>56</sup> the government of President Álvaro Arzú and Guatemala National Revolutionary Unity (URNG) brought an end to 36 years of civil war. The Accord for a Firm and Lasting Peace comprised 10 other agreements that expressed national consensus on a variety of issues, the whole usually being referred to as the "Peace Accords."
46. The Peace Accords provided the basis for addressing the causes and consequences of the armed conflict, and a roadmap for the reforms necessary to construct a system based on respect for human rights, democratic participation, and the rule of law.<sup>57</sup> For many years, the agenda of the State and civil society was shaped by the Peace Accords, which, energetically supported by the United Nations Verification Mission in Guatemala (MINUGUA 1994–2004) and international cooperation agencies, brought about substantial reforms in the area of human rights.<sup>58</sup> The State, for its part, created the Secretariat for Peace (SEPAZ, for its acronym in Spanish) in 1997,<sup>59</sup> as an entity to support advice on, and coordinate compliance with the government's commitments under the Peace Accords. For example, in the area of demilitarization, MINUGUA verified important institutional reforms envisaged in the Peace Accords, including the demobilization and disarmament of URNG; the creation of the new PNC; reductions in the armed forces and their redeployment for peacetime purposes; and changes to the army's mission, doctrine and educational system, bringing them into accordance with human rights norms.<sup>60</sup> In addition, a law was passed by which for the first time the Guatemalan Criminal Code recognized racial discrimination and other forms of discrimination as offenses.<sup>61</sup>
47. The Peace Accords were an opportunity for profound change in Guatemala. The succeeding administrations since the end of the armed conflict have made efforts to implement. Notwithstanding most of the gross human rights violations committed during the armed conflict have gone unpunished. Therefore, the IACHR calls for the implementation of the Peace Accords to be reintroduced on the State's agenda.

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<sup>56</sup> The Accord for a Firm and Lasting Peace was signed and entered into force on December 29, 1996.

<sup>57</sup> IACHR, *Guatemala, 2001, Fifth Report on the Situation of Human Rights in Guatemala*, Chapter I, para. 1.

<sup>58</sup> MINUGUA began operations on November 21, 1994, under the terms of the Comprehensive Agreement on Human Rights. The accord committed both parties to respect international human rights standards and invited the United Nations to deploy a verification mission that would observe compliance with those commitments and, through its presence on the ground, help to build confidence in ongoing peace negotiations that were being moderated by the United Nations. "Human rights verification was in many ways the signature activity of MINUGUA, given its origin as a human rights mission, the centrality of human rights to the peace accords and Guatemala's active community of non-governmental human rights organizations." MINUGUA completed operations on December 31, 2004. United Nations Verification Mission in Guatemala, Report of the Secretary-General, March 18, 2005.

<sup>59</sup> Established by Decree No. 17-97 of March 12, 1997, which was substituted by Government Decision No. 115-2001 of March 13, 2001.

<sup>60</sup> United Nations Verification Mission in Guatemala, Report of the Secretary-General, March 18, 2005.

<sup>61</sup> Decree No. 57-2002 of the Congress of the Republic of Guatemala, published on October 9, 2002.



### C. *Guatemalan democracy: Obstacles and challenges*

48. As noted above, Guatemala's republican history is marred by coups d'état, military dictatorships, exclusion, discrimination, and a long, painful internal armed conflict that claimed hundreds of thousands of victims, leaving a country with an immense debt in terms of justice and reparation. After the end of the internal armed conflict there were a series of democratically elected governments under the respective presidencies of Álvaro Arzú (1996-2000), Alfonso Portillo (2000-2004), Oscar Berger (2004-2008), Álvaro Colom (2008-2012), and Otto Pérez Molina (2012-2015).
49. Since 1996, the ensuing administrations have faced significant challenges in the wake of the armed conflict, including, dire socioeconomic conditions with high incidences of inequality and exclusion and widespread child undernourishment, all in the context of discrimination, corruption, increasing violence, the creation or continuation of *de facto* criminal powers, and the gradually increasing occupation of territory and power by drug trafficking organizations and gangs (*pandilleros*). Added to this, the institutional framework is weak, and with a system of justice with high levels of impunity. Compounding the above are ever-louder calls from civil society for justice and reparation for the gross human rights violations that were committed during the internal armed conflict and the rights ignored for decades as a result.
50. On the other hand, important progress has been made in the area of human rights under the post-conflict administrations. Important examples include the signing of the Peace Accords in 1996; the acknowledgment of the State's responsibility in a number of massacres, extrajudicial executions, and forced disappearances during the internal armed conflict; the decision of the United Nations to establish and install the CICIG; and the appointment of the first female Attorney General (*Fiscal General*).
51. Guatemala's post-conflict governments have not escaped the challenges and obstacles posed by the country's history and political dynamics "To understand how a country's politics works, one must consider its history and political culture, the variables that mold the system overall."<sup>62</sup> In its report on political financing in Guatemala, CICIG mentioned that since 1984 the political system has acquired a series of unique characteristics that set it apart in the region, peculiarities that include the fluidity of the party political system, electoral volatility, the concentration of electoral options in the center and right of the political spectrum, the influence of *de facto* powers, and the continuity of the economic and social status quo. With regard to the country's political culture, it said that Guatemala society is deeply fractured and split by multiple divisions, including the ethnic divide, urban-rural disparities, tensions between the metropolitan area and the rest of the country, and the persistence of a racist, exclusive ethos among the elites.

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<sup>62</sup> CICIG, *El Financiamiento de la Política en Guatemala*, July 2015, pp. 19.

52. CICIG says that criminal drug trafficking organizations' links to political circles stem from their need for political protection, intelligence, and freedom of action in their areas of operations and that since the beginning of the democratization process such groups have financed electoral campaigns and funneled resources to political parties at different levels. By providing political funding, criminal organizations seek not only to benefit from certain levels of protection and information, but also to occupy key positions in the State to enable them to diversify their business interests and exert partial control or influence over security and justice institutions.<sup>63</sup>
53. Corruption has also been a part of the post-conflict administrations, not only undermining the legitimacy of the country's rulers and the rights of the ruled, but also deeply eroding the State's coffers, which are already insufficient to meet the basic needs of the citizenry in terms of decent living standards, health, work, education, and justice. A study on fiscal policy and human development in Guatemala concluded that

[o]ver the past 25 years the Guatemalan State has failed fully to harness the potential of fiscal policy to stimulate human development, in spite of concrete efforts at improvement in the form of instruments such as the peace agreements and the Fiscal Pact. This is explained by a variety of shortcomings and hurdles, such as lack of diversification in government finances, paltry fiscal pressure, and corruption, the largely outdated structure of the collection system, and insufficient and inequitable public and social spending.<sup>64</sup>

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<sup>63</sup> CICIG, *El Financiamiento de la Política en Guatemala*, July 2015, pp. 93-94, 101.

<sup>64</sup> A reform of the tax code that constitutes the basis of the current taxation system was introduced at the beginning of the 1990s in a bid to strengthen government finances. With the signing of the Peace Agreements in 1996, fiscal policy became particularly important for the State to meet its constitutional obligations. In 1998 negotiations began on a Fiscal Pact that was eventually signed in 2000 and embodied the spirit of the peace accords. In the first decade of the new century, particularly between 2003 and 2006, the State renewed efforts to implement the Fiscal Pact. It set up the Fiscal Pact Technical Committee (CTPF), which proposed a tax reform that was adopted in 2004. The business and farm tax (*Impuesto a las Empresas Mercantiles y Agropecuarias*—IEMA) was replaced with a temporary special tax in support of the peace accords (*impuesto extraordinario y temporal en apoyo a los Acuerdos de Paz*—IETAAP) and income tax (ISR) collection increased. In January 2008, the National Council for Implementation of the Peace Accords (*Consejo Nacional para el Cumplimiento de los Acuerdos de Paz*) put forward a fiscal modernization plan for Guatemala that sought to inject something of the spirit of the peace agreements into fiscal policy. In 2009, as part of the Emergency Economic Stimulus Program (*Programa de Emergencia y Reactivación Económica*) a fiscal reform package was proposed for delivering additional funding to municipalities, education, health, rural development, and security. The goals of this reform, which underwent several changes in 2010, are still pending approval. In conclusion, Guatemala's fiscal history has seen a number of government efforts that have produced partial results but failed broadly to strengthen either the taxation structure or the State's collection capacity, undermining the fiscal policy's impact in terms of benefiting social well-being. Guatemala: La política fiscal del Estado y el desarrollo humano [Fiscal Policy of the State and Human Development]. Desireé Arteaga de Morales. *Revista Latinoamericana de Desarrollo Humano*, Boletín 73, May 2011.

## 1. 2015: Political and institutional crisis

54. This context of institutional weakness served to intensify the political crisis associated with government corruption in 2015. The investigation of the so-called “La Línea” case and the Guatemalan Social Security Institute<sup>65</sup> disclosed a network of corruption which is under investigation and that involved state officials at the very highest level.
55. With respect to the “La Línea” case, on April 16, 2015, it was publicly announced that in May 2014 probes had been opened in response to suspicions that a group of importers was involved in smuggling activities and had contacts with a network of customs agents to avoid paying duties. As a result of the investigation, in April 2015, the Office of the Attorney General's Special Anti-Impunity Prosecution Unit (*Fiscalía Especial contra la Impunidad—FECI*), in coordination with CICIG arrested Álvaro Omar Franco Chacón, Chief of the Tax Authority (*Superintendencia de Administración Tributaria—SAT*) and Carlos Enrique Muñoz Roldán, the former head of that agency, along with 19 other individuals, including senior officials, employees, and private citizens. It was reported at the time that Juan Carlos Monzón Rojas, a private secretary in the office of the vice president of the Republic,<sup>66</sup> was involved in the criminal structure. Vice President Roxana Baldetti resigned from her position in early May and was arrested on August 21.
56. After the “La Línea” case and a series of other acts of corruption were exposed, Guatemalans took to the streets to demand the resignation of government authorities, including the President of the Republic and the restitution of public funds. The IACHR observes and appreciates that Guatemalans taught a lesson in democracy when they achieved key changes on the basis of public participation and without any violence. According to OHCHR-Guatemala, “amid the most serious political and institutional crisis in decades, Guatemalans realize that only comprehensive reforms will bring genuine change to the country.”<sup>67</sup> OHCHR-Guatemala added:

What started in April as a peaceful movement organized through social media under the hashtag *#RenunciaYa* (*#ResignNow*), mainly involving a number of groups in the capital, has spread to encompass people from all over the country and different social sectors: families, students, women, indigenous peoples, LGBTI groups, children, persons with disabilities, older persons, and urban and rural populations, who have staged weekly peaceful protests outside the *Palacio Nacional* (the presidential palace) in Guatemala City and other parts of the country. Even Guatemalans living abroad added their voices to the discontent.

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<sup>65</sup> In May 2015, a separate investigation by the Office of the Attorney General (*Ministerio Público*) and CICIG uncovered another case of corruption involving a contract worth US\$14 million (116 million quetzales) from the Guatemalan Social Security Institute for the provision of dialysis services. The investigations are still ongoing as several patients reportedly died as a result of not receiving adequate dialysis treatment. OHCHR-Guatemala, [A Guatemalan awakening: the revolt for justice and change](#).

<sup>66</sup> CICIG, Press Release 011, [Desmantelan red de defraudación aduanera](#), April 16, 2015. Juan Carlos Monzón Rojas turned himself in to justice on October 8, 2015.

<sup>67</sup> OHCHR-Guatemala, [A Guatemalan awakening: the revolt for justice and change](#).

The protesters have moved from calling for a clampdown on corruption to demanding the resignation of government officials and the return of public funds. In a country where 53% of the population lives below the poverty line and one in two children under age five is undernourished, the people are demanding the transparent use of the public budget to ensure basic rights such as food, health, and education. With three months to go before the general elections, disaffection with the political class is also a recurring theme on protesters' banners.<sup>68</sup>

57. Regarding the political crisis because of corruption, the State affirmed that this crisis was overcome in the framework of the Constitution and other laws, without breaking away from constitutional law and order, and it contended that "combating corruption and impunity has been the result of the State, developed since the year 2007, with the establishment of the International Commission against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala—CICIG) and institutional capacity building of security and justice institutions, where the principle of legality prevails and where no one is above the law owing to judicial guarantees of due process of law."<sup>69</sup>
58. On August 21, 2015, articles of impeachment were presented against former President Otto Pérez Molina charging him with the crimes of taking bribes, conspiracy to commit crimes, and customs fraud. The press release issued by CICIG indicated:

Articles of impeachment were brought against the president of the Republic for his suspected participation in these unlawful activities of the criminal organization known as 'la línea.' The judicial authorities were informed that, based on the documents seized in the searches and telephone intercepts, the president of the Republic likely participated in the commission of the same punishable acts of which the individuals who belonged to the organization have been accused.<sup>70</sup>

59. On September 1, 2015, the Congress of Guatemala removed Otto Pérez Molina's immunity from prosecution.<sup>71</sup> On September 3, he resigned as president of the Republic and that same day was "remanded in custody to ensure that the hearing to take his first statement could continue."<sup>72</sup> That hearing was set for September 8, 2015. On September 8, Judge Miguel Ángel Gálvez ordered him to be tried and investigated for his alleged participation in the customs fraud network.
60. Upon Pérez Molina's resignation, Alejandro Maldonado, who had been vice president since May 14, 2015, when he replaced Roxana Baldetti,<sup>73</sup> took up the

<sup>68</sup> OHCHR-Guatemala, *A Guatemalan awakening: the revolt for justice and change*.

<sup>69</sup> Additional observations made by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala. Ref. Note P-925-2015/AFAF/hm of December 9, 2015 received at the Secretariat on December 11, 2015, p. 3.

<sup>70</sup> CICIG, Press Release 050, *Capturan a ex Vicepresidenta Ingrid Roxana Baldetti y solicitan antejuicio contra Presidente Otto Pérez Molina*, August 21, 2015.

<sup>71</sup> Deputy Amílcar Pop filed a complaint against former president Pérez Molina in May 2015, alleging acts of corruption.

<sup>72</sup> *Prensa Libre*, *Pérez Molina queda sin inmunidad*, September 1, 2015.

<sup>73</sup> On September 16, 2015, the Congress elected Alfonso Fuentes Soria as vice president of the Republic.

presidency. He will remain in office until January 14, 2016, when James Ernesto Morales Cabrera, elected on October 25 in the second round of voting in the presidential election, will take office.

61. In that connection, on August 13, 2015, the Congress passed a series of amendments to the Electoral and Political Parties Law and submitted its opinion to the Constitutional Court to determine if that high tribunal had any objections. The amendments to the Electoral and Political Parties Law, which passed with the vote in favor of 122 of 158 lawmakers, require the democratization of political parties, oversight of public and private financing, and recognition of voided ballots and absentee voting, among other measures. They also prohibit the reelection of a deputy for more than two terms. Civil society and private organizations lobbying for the reforms after the Office of the Attorney General and CICIG dismantled 13 corruption rings in the three branches of government.<sup>74</sup>
62. The Commission underscores the importance of the democratic system and observance of the rule of law for effective protection of human rights. In a democratic society, the rights and freedoms inherent in the human person, the guarantees applicable to them, and the rule of law form a triad. Each component thereof defines itself, complements and depends on the others for its meaning. Democracy and the rule of law are prerequisites for achieving the enjoyment and observance of human rights in a society. One of the main threats to the observance of the rule of law is impunity. In its reports on Guatemala, the Commission has repeatedly drawn attention to the existence of a structural impunity in the country's justice system, which weakens the rule of law. The Commission urges the State to continue along the path to overcome this situation.
63. Human rights defenders have a key role to play in the process leading to the full attainment of the rule of law. Their action, through the defense of individuals and groups who are victims of human rights violations, public disclosure of injustices affecting large sectors of society, and the necessary monitoring they exercise on public officials and democratic institutions, among other activities, makes them an indispensable building block in the construction of a strong and lasting democratic society. When human rights defenders are silenced by intimidation and fear, thousands of people are deprived of the opportunity to find answers to the violations and injustices besetting vast sectors of society. The Commission would like to take this opportunity to congratulate those who devote their work and lives to the defense of human rights in order to bring about a more equitable society.

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<sup>74</sup> *La Vanguardia*, Congreso de Guatemala aprueba reforma de ley electoral y de partidos políticos, August 14, 2015.



CHAPTER 3  
DIVERSITY, INEQUALITY AND  
EXCLUSION: THE SITUATION OF  
THE INDIGENOUS PEOPLES





## DIVERSITY, INEQUALITY AND EXCLUSION: THE SITUATION OF THE INDIGENOUS PEOPLES<sup>75</sup>

64. As observed, Guatemala is a highly diverse country, ethnically and culturally, whose territory is home to the Maya people, the Xinka people, and the Garifuna people. According to the last population census (2002), 41% of the population self-identifies as indigenous, with 99.5% of those self-identifying as part of the socio-linguistic community of the Maya people.<sup>76</sup> The IACHR values the use, in the 2002 census forms, of categories on self-identification and belonging to an ethnic group or specific people.<sup>77</sup> Nonetheless, as observed, there is a difference between this source and others that indicate that the indigenous peoples account for nearly 60% of the population of Guatemala.<sup>78</sup> Most of the indigenous population is in the rural area, whereas in the urban area 13.87% are indigenous females and 13.28% indigenous males.<sup>79</sup> In 12 of the 22 departments, at least 25% of the population is indigenous. The departments of Totonicapán, Sololá, Alta Verapaz, Quiché, and Chimaltenango have 75% to 100% indigenous population.<sup>80</sup>

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<sup>75</sup> The section on “Inequality and Exclusion: The Situation of Indigenous Peoples” draws on valuable information and testimony compiled during the visit made from August 21 to 30, 2013, by the Rapporteur for the Rights of Indigenous Peoples of the IACHR, Dinah Shelton. During the 10 days of the visit, former Commissioner Shelton met with authorities of the State and with indigenous authorities and leaders. She also met with academics and civil society organizations. The various activities were carried out in Guatemala City, Cobán, Polochic Valley, Nebaj, Huehuetenango, Totonicapán, San Marcos, and Chichicastenango. IACHR, Press Release 66/13 - Office of the Rapporteur on the Rights of Indigenous Peoples Conducted Working Visit to Guatemala. Washington, D.C., September 18, 2013.

<sup>76</sup> INE. Eleventh Population Census and Sixth Housing Census of 2002. Cited by: UNDP. Informe Nacional de Desarrollo Humano 2005: La diversidad étnico-cultural y la ciudadanía en un Estado plural [National Human Development Report 2005: Ethnic-Cultural Diversity and Citizenship in a Plural State]. 2005, p. 350; OHCHR-Central America, Diagnóstico sobre la Situación de los Derechos Humanos de los Pueblos Indígenas de América Central, 2011, Volume I, p. 190; and UNICEF and FUNPROEIB Andes. Atlas sociolingüístico de pueblos indígenas en América Latina [Sociolinguistic Atlas of Indigenous Peoples in Latin America]. Volume 2. 2009, p. 853.

<sup>77</sup> INE. Censo 2002. Form for the Eleventh Population Census and Sixth Housing Census of 2002.

<sup>78</sup> As regards the Xinka people, the IACHR notes an inconsistency between the information from the census and other sources, which estimate that 400,000 persons self-identify as Xinkas. When the census was done, 21 Maya languages were recognized, as Chalchiteko was officially recognized on June 3, 2003, by Decree 24-2003, thus there was no disaggregated information on this linguistic community. OHCHR-Central America. Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central, 2011. Volume I, p. 189. Reform to the Law on the Academy of Maya Languages of Guatemala, Decree No. 24-2003, of June 10, 2003.

<sup>79</sup> Office of the Human Rights Ombudsman, Informe Anual Circunstanciado de 2013, p. 254.

<sup>80</sup> In the departments of Huehuetenango, Baja Verapaz, Quetzaltenango, and Suchitupéquez from 50% to 75% of the population is indigenous. The departments of Sacatepéquez, San Marcos, and Petén have an indigenous population that accounts for 25% to 50% of the total; and only 10 departments have less than 25% indigenous population (Guatemala, El Progreso, Escuintla, Santa Rosa, Retalhuleu, Izabal, Zacapa, Chiquimula, Jalapa, and Jutiapa). UNDP. Informe Nacional de Desarrollo Humano 2005: La diversidad étnico-

65. The Mayan people are significantly more numerous and are distributed across different departments of Guatemala. Of the 22 socio-linguistic communities that constitute the Maya, the most numerous are the K'iche' (28%), Q'eqchi' (19.3%), Kaqchikel (18.9%), and Mam (14%).<sup>81</sup> The Maya share common institutions and characteristics, such as their spirituality; ways of caring for the environment; the celebration of the Wajxaqi' B'atz' and the B'eleje' B'atz'; the writing and numbering systems; toponymies; and growing corn, beans, and squash; among other aspects. The Xinka people has origins that go back to the pre-colonial period; since that time they have constructed, consolidated, and safeguarded their own culture; and resisted attempts to exert cultural domination, maintaining their cosmovision and defending their territory.<sup>82</sup> Even though the Xinka have existed for thousands of years, it was the process and signing of the peace accords that gave them public recognition once again.<sup>83</sup> The origin of the Garifuna people goes back to the 17<sup>th</sup> century; they arose from the syncretism of indigenous and African peoples. During the colonial period they were known as “Vincentian black Caribs” (“*caribes negros vicentinos*”); as of Independence they were known as “*morenos*”; and since 1980 they have been identified as Garifunas, as they call themselves. It was only in the Agreement on Identity and Rights of the Indigenous Peoples that the Garifuna people were recognized by the State.<sup>84</sup>
66. The IACHR continued receiving information on the racism and discrimination that affect indigenous peoples in Guatemala and the situation of exclusion in which they are found. In addition, the IACHR observes the lack of regulation and protection of the human rights of the indigenous peoples and communities pursuant to international standards, which also is causing social and environmental harms in the indigenous territories,<sup>85</sup> such as the dispossession of their lands and the contamination of their waters.

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cultural y la ciudadanía en un Estado plural, 2005, p. 66; OHCHR-Central America. Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central, 2011. Volume I, p. 192 and UNICEF and FUNPROEIB Andes. Atlas sociolingüístico de pueblos indígenas en América Latina. Volume 2, 2009, p. 853.

<sup>81</sup> UNICEF and FUNPROEIB. Atlas sociolingüístico de pueblos indígenas en América Latina. Volume 2, 2009, p. 855; and OHCHR-Central America. Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central, 2011. Volume I, p. 189.

<sup>82</sup> National Maya Waqbib'Kej Coordination and Convergence. Preliminary Report on Human Rights Violations during the State of Siege in Jalapa and Santa Rosa. 2013, pp. 3-4.

<sup>83</sup> UNICEF and FUNPROEIB Andes. Atlas sociolingüístico de pueblos indígenas en América Latina. Volume 2, 2009, p. 856.

<sup>84</sup> UNICEF and FUNPROEIB Andes. Atlas sociolingüístico de pueblos indígenas en América Latina. Volume 2, 2009, p. 856.

<sup>85</sup> In relation to the term “territories,” the State asks that the interpretation be brought into line with the legal provisions established in the OAS Charter, and that the legal provisions related to the State and its political-administrative division established in the Guatemalan Constitution should be respected. Report of the State of Guatemala on the “Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015,” October 6, 2015.

## A. *Structural Discrimination*

67. The American Convention forbids discrimination of any kind, including unjustified distinctions based on race, color, national or social origin, economic position, birth, or of any other kind.
68. In Guatemala, being indigenous historically has negative connotation, which has placed indigenous peoples in a balance of power of extreme inequality.
69. Since the 1985 Report on Guatemala, the IACHR has voiced its concern about the situation of discrimination and social exclusion of indigenous peoples.<sup>86</sup> In 2003, the former Special Rapporteur, Rodolfo Stavenhagen, identified the existence, in Guatemala, of legal, interpersonal, institutional, and structural discrimination against the indigenous peoples.<sup>87</sup> As the Rapporteur explained, in the legal sphere, discrimination is evident in "the omission, in laws, of statements fostering the full enjoyment, by indigenous peoples, of all their human rights and the still insufficient adjustment of national legislation to the principles enshrined in the Peace Accords."<sup>88</sup>
70. Historical discrimination against the indigenous peoples is evident in the lack of respect for and enforcement of human rights of which they are the holders, places them in a situation of poverty and extreme poverty, and situates them among the majority of the population in the departments with the highest rates of social exclusion.<sup>89</sup> This exclusion can be observed in various areas, including land ownership, access to basic services, working conditions, access to the formal economy, participation in decision making and State institutions, and representation in the media and public debates.<sup>90</sup> The situation of extreme inequality and exclusion experience by the indigenous peoples in Guatemala, as a result of racism and structural discrimination, is evident as well in the State's denial that the Maya People suffered from genocide during the domestic armed conflict.

<sup>86</sup> IACHR, *Third Report on the Situation of Human Rights in Guatemala*. OEA/Ser.L/V/II.66. Doc. 16, October 3, 1985. Chapter III, para. 55. IACHR, *Fourth Report on the Situation of Human Rights in Guatemala*. OEA/Ser.L/V/II.83. Doc. 16 rev., June 1, 1993. Chapter III. IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*. OEA/Ser.L/V/II.111. Doc. 21 rev., April 6, 2001. Chapter XI, para. 4. IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*. OEA/Ser.L/V/II.118. Doc. 5 rev. 1, December 29, 2003, para. 434.

<sup>87</sup> United Nations, *Report of the UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples, Mr. Rodolfo Stavenhagen*. Mission Guatemala. E/CN.4/2003/90/Add.2. February 10, 2003, para. 16.

<sup>88</sup> United Nations, *Report of the UN Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples, Mr. Rodolfo Stavenhagen*. Mission Guatemala. E/CN.4/2003/90/Add.2. February 10, 2003, para. 16.

<sup>89</sup> IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, Chapter XI, Rights of the Indigenous Peoples. Introduction. Doc. OEA/Ser.L/V/II.111 Doc. 21 rev., April 6, 2001, para. 4; and IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, Chapter IV. The Situation of the Indigenous Peoples. A. Introduction. Doc. OEA/Ser.L/V/II.118. Doc. 5 rev. 1, December 29, 2003, para. 210.

<sup>90</sup> IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, General Conclusions, 2003, para 434; and OHCHR. *Report on the activities of its Office in Guatemala*. January 30, 2012. A/HRC/19/21/Add.1.

71. The persistence of historical and structural problems, created from the time of colonization, has posed difficulties in the path to achieving recognition of indigenous peoples as collective peoples vested with rights, and the full observance of their rights.<sup>91</sup> The 1996 Peace Accords represented the historical opportunity to overcome the scourges of exclusion and discrimination affecting indigenous peoples in Guatemala, and to remove the historical causes that gave rise to the armed conflict.<sup>92</sup> The IACHR has received repeated references to the need to fully carry out the Peace Accords, especially the Agreement on Identity and Rights of the Indigenous Peoples (*Acuerdo de Identidad y Derechos de los pueblos indígenas*), trusting that for indigenous communities, leaders, and organizations it will mean substantial progress in the full observance of their rights. The IACHR has received expressions from the highest authorities of Guatemala indicating progress in implementing the Peace Accords<sup>93</sup> and that they “continue to be valid and in force, and should guide the change in recognition as a multiethnic, multilingual, and multicultural Nation.”<sup>94</sup> Despite what was stated, the Commission regrets that according to the Secretariat of Peace (SEPAZ), the *Agreement on Identity and Rights of the Indigenous Peoples* and the *Agreement on Socioeconomic Aspects and Agrarian Situation* “are the ones with the largest number of commitments not yet implemented, which has a negative impact on the country’s socioeconomic and cultural situation.”<sup>95</sup>

72. Along these lines, the IACHR wishes to reiterate that the Peace Accords are commitments that the State of Guatemala is called upon to carry out through decisive actions by all the public institutions, in keeping with the Framework Law on the Peace Accords (Decree 52-2005), the Constitution of Guatemala, and international law.

73. Regarding this, the State of Guatemala pointed out that, according to the Constitution, natural resources belong to the State and not to any individual, specific person, or community.<sup>96</sup> Regarding the right to consultation, it indicated that there was no binding human right to consultation and that the IACHR was not empowered to interpret and enforce Convention 169 of the International Labor Organization (ILO). It also declared that the right of indigenous peoples to be

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<sup>91</sup> In a similar vein Rodolfo Stavenhagen, then United Nations Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous peoples stated: “The present status of the indigenous peoples in Guatemala is the result of a long process of colonial subjection of the Maya people starting in the sixteenth century, which was reinforced during the liberal period in the nineteenth century, when a governing class was formed that based its power and its privileges on large rural estates and the exploitation of indigenous labour, under authoritarian and property-based regimes.” United Nations. Report by Rapporteur Rodolfo Stavenhagen. Mission to Guatemala. February 10, 2003, para. 5.

<sup>92</sup> IACHR, Justice and Social Inclusion: The Challenges of Democracy in Guatemala, 2003, para. 219.

<sup>93</sup> Former President Otto Pérez Molina. Message on the National and International Day of Indigenous Peoples, August 9, 2012.

<sup>94</sup> Information received by the IACHR at a meeting with SEPAZ, COPREDEH, and the PNR, August 22, 2013, Guatemala City.

<sup>95</sup> SEPAZ. Memoria de labores de 2012. Guatemala. 2012, p. 9.

<sup>96</sup> Report of the State of Guatemala on the “Draft General Project on the Human Rights Situation in Guatemala and the IACHR Communication of August 14, 2015,” October 6, 2015.

consulted was incontrovertible, and that a proposal was in the process of being drafted to establish the procedures for consultations and those in charge of conducting them.<sup>97</sup>

74. In this regard, as will be seen in the section on property of indigenous peoples of this report, it should be noted that the jurisprudence of the Inter-American human rights system has maintained that indigenous peoples are entitled to the natural resources they have traditionally used and which are in their territories. Specifically, the Commission, “through its reports on individual petitions and on the general situation of human rights in member states, as well as in its authorization of precautionary measures, has pronounced upon the necessity of States to take the measures aimed at restoring, protecting and preserving the rights of indigenous peoples to their ancestral territories”<sup>98</sup>. It has also maintained that respect for collective property and ownership rights of indigenous peoples to ancestral lands and territories constitutes an obligation for Member States of the OAS. The I/A Court on its part, has said that

the members of tribal and indigenous communities have the right to own the natural resources they have traditionally used within their territory for the same reasons that they have a right to own the land they have traditionally used and occupied for centuries. Without them, the very physical and cultural survival of such peoples is at stake. Hence the need to protect the lands and resources they have traditionally used to prevent their extinction as a people.<sup>99</sup>

75. On the State's contention that there is no human right to the binding nature of consultation, the IAHRs has also been consistent in establishing the human right of indigenous peoples to consultation, and the corresponding obligation of States, because “the right to consultation of indigenous and tribal communities and peoples is precisely recognition of their rights to their own culture or cultural identity, which must be assured, in particular, in a pluralistic, multicultural and democratic society”.<sup>100</sup> Regarding the State's claim on which the Commission does not have authority to interpret and apply the ILO Convention 169, the Commission has held previously that

in the “development of the corpus of international human rights law it is pertinent “to draw from the provisions of other prevailing international and regional human rights instruments. This includes the American Convention on Human Rights which, in many instances, may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration. Pertinent developments have also been drawn from the provisions of other multilateral treaties adopted inside and outside of

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<sup>97</sup> Report of the State of Guatemala on the “Draft General Project on the Human Rights Situation in Guatemala and the IACHR Communication of August 14, 2015,” October 6, 2015.

<sup>98</sup> See, for example, IACHR, Report No. 40/04, Case 12.053 (Merits) Comunidades Indígenas Mayas del Distrito de Toledo, Belice, October 12, 2004, para. 115. Also, Case Yanomami, *supra*; Caso Dann, *supra*; Precautionary Measures, De Vereniging van Saramakaanse (Suriname) (August 8, 2002).

<sup>99</sup> I/A Court H.R. *Case of Pueblo Saramaka. Vs. Suriname*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, para. 121.

<sup>100</sup> I/A Court H.R. *Case Pueblo Indígena Kichwa de Sarayaku Vs. Ecuador*. Merits and reparations. Judgment of June 27, 2012. Series C No. 245, para. 159.

the framework of the inter-American system, including the Geneva Conventions of 1949, the United Nations Convention on the Rights of the Child, the Vienna Convention on Consular Relations and, of particular pertinence to the present case, International Labor Organization Convention (Nº 169) concerning Indigenous and Tribal Peoples in Independent Countries and other instruments concerning the rights of indigenous peoples.<sup>101</sup>

76. In such regard, the Commission “has developed the content and scope of Article 21 and has interpreted its dispositions in an evolutionary manner interpreting in a broad way the enjoyment and exercise of the rights recognized [by the State] in other articles, such as ILO Convention 169. Through that convention and through normative and case-law developments, international law has given a specific content to the right to prior consultation of indigenous people in situations that affected their territory.”<sup>102</sup>

## ***B. Inequality, social exclusion and conditions of poverty***

77. While ethnic discrimination and economic and social inequality are distinct concepts, such categories are interrelated, further aggravating the situation of discrimination against the indigenous peoples of Guatemala. Discrimination is one of the factors increasing social inequality and furthering the conditions of poverty affecting the indigenous population. Beyond the constitutional recognition of the principle of equality and gains in some aspects, *de facto* exclusion of the indigenous peoples continues as regards access to and effective and egalitarian enjoyment of rights in the economic and social spheres. The Commission notes as a positive aspect that the persistence of racism and discrimination, and its relationship with the situation of poverty of the indigenous peoples is recognized at the highest level of the Government.<sup>103</sup>
78. As noted, the highest levels of poverty are concentrated in 12 departments with the largest indigenous population, with nearly 75% of the population living in poverty and 40% in extreme poverty. In this regard, in 2006 National Survey of Living Conditions (ENCOVI, for its acronym in Spanish) found that 74.8% of the indigenous population was poor, compared to 36.2% of the non-indigenous population.<sup>104</sup> According to the ENCOVI as of 2011, of the total number of persons in poverty, 54.7% are indigenous persons, compared to 45.3% non-indigenous;

<sup>101</sup> See, for example, IACHR, Report No. 40/04, Case 12.053 (Merits) Comunidades Indígenas Mayas del Distrito de Toledo, Belice, October 12, 2004, para. 115. Also, Report No. 75/02, Case 11.140, Mary and Carrie Dann (United States), IACHR Annual Report 2002 (hereinafter, “Case Dann”), para. 127.

<sup>102</sup> IACHR, Complaint with the Inter-American Commission on Human Rights in the case of the Pueblo Indígena Kichwa de Sarayaku y sus miembros (Case 12.465) vs. Ecuador, April 20, 2010, para. 120.

<sup>103</sup> “It is recognized that Guatemala continues to be a nation in which economic, social, political, and cultural inequalities are profound, a country in which poverty and extreme poverty are concentrated mostly in territories inhabited by indigenous peoples.” Former President Otto Pérez Molina. Message on the National and International Day of Indigenous Peoples, August 9, 2012.

<sup>104</sup> OHCHR-Central America. Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central, 2011. Volume I, p. 194.

whereas of the total number of persons in extreme poverty, 66.8% are indigenous and 33.2% are not.<sup>105</sup> Approximately 65% of the indigenous population does not have access to a water supply system, more than 80% has no connection to sewerage systems, and half are not connected to the electricity grid. The IACHR takes note, moreover, that the Human Development Report by the UNDP shows that the indigenous population is the most vulnerable and most socially excluded sector, and that the incidence of the privations of certain basic services is more severe in the rural population, which is mostly indigenous.<sup>106</sup>

79. This persistence of the correlation between the social map of poverty and the marginalization of the indigenous peoples evidences the deep roots of structural discrimination.<sup>107</sup> Some of the areas of greatest concern to the IACHR refer to the situation of malnutrition, access to education in equal conditions, with culturally relevant education; the labor situation of indigenous persons subjected to various forms of exploitation, especially in agricultural work; and access to sufficient and culturally appropriate health services.
80. Literacy among the indigenous population in Guatemala is much lower than for the rest of the population, especially among women. In some rural communities illiteracy in adult indigenous women reaches 90%,<sup>108</sup> which poses an important challenge to carry out the commitment to assure education for indigenous women. In the job market they also suffer different forms of discrimination, and in general they have access to less skilled and poorly paid jobs.<sup>109</sup> Many indigenous women work as domestic workers without receiving a dignified salary,<sup>110</sup> in addition to being subject to various forms of violence and discrimination.<sup>111</sup> There are also cases of prostitution, exploitation, and trafficking of indigenous women in clandestine bars and taverns in the urban area of several municipalities.<sup>112</sup>

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<sup>105</sup> INE. ENCOVI 2011. Table 9. Population by poverty level in %. By sex and ethnic group, 2011.

<sup>106</sup> UNDP-Guatemala: ¿Un país de oportunidades para la juventud? Informe Nacional de Desarrollo Humano 2011/2012 [A Country of Opportunities for Young People? National Human Development Report for 2011/2012], p. 35.

<sup>107</sup> OHCHR-Central America. Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central, 2011. Volume I, p. 195.

<sup>108</sup> INE. ENCOVI, 2006.

<sup>109</sup> Therefore, for example, 90% of farm laborers earn monthly wages below the minimum wage that has been set and this percentage rises to 97% in the case of women. ODECA. Situación laboral de trabajadores/as agrícolas en Guatemala. Síntesis del estudio sobre las condiciones laborales de trabajadores agrícolas en las fincas [Labor Situation of Farm Laborers in Guatemala: Summary of the Study on Working Conditions of Farm Workers]. 2013, p. 6.

<sup>110</sup> “Indigenous women are in houses where the minimum wage for being of Maya descent is not even being given.” Information received at the meeting with indigenous leaders, communities, and organizations held on August 21, 2013 in Guatemala City.

<sup>111</sup> “Young women are employed for domestic help and oftentimes leave because they are cheated and are forced into prostitution or are raped by their employers.” Complaint by the Q’eqchi’, Poqomchi’, and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received August 23, 2013, in Cobán, Alta Verapaz, Guatemala.

<sup>112</sup> Complaint by the Q’eqchi’, Poqomchi’, and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received August 23, 2013, in Cobán, Alta Verapaz, Guatemala.



## 1. Right to food and the situation of malnutrition

81. The food and nutrition situation of Guatemalan children, and more so indigenous children, is extremely serious.<sup>113</sup> In Guatemala there were 672 deaths due to malnutrition in 2011, and 1,053 in 2012.<sup>114</sup> The food and nutrition situation reaches critical levels in rural areas, as observed, mainly affecting children under 5 years, the school population, and pregnant and nursing women, and is aggravated to an alarming extent in the indigenous population.<sup>115</sup> In effect, the highest rates of chronic malnutrition and risk of food insecurity coincide with the populations in the rural areas, where there is a predominance of indigenous population.<sup>116</sup> According to UNICEF, in Guatemala chronic malnutrition affects eight of every ten indigenous children (80%); it contributes to dropout rates, lowers productivity, is associated with a propensity to become infected by disease, and also with a loss of the intellectual coefficient, effects that are irreversible.<sup>117</sup> Those children who up to the age of 3 years have continuously maintained below-normal weight and height suffer a loss in their learning abilities and productivity, and are more vulnerable to diarrheal diseases and respiratory infections, which are the main causes of child morbidity and mortality. The food and nutrition situation has a significant impact on school-age children.<sup>118</sup>

82. The Commission observes that Guatemala has institutions and public policies aimed at reducing malnutrition and that there has also been litigation of the right to food with some success.<sup>119</sup> One of the programs is known as “Bolsas Seguras” (*Assured food baskets*) to ensure that families rendered vulnerable by poverty be provided periodically with a bag of food.<sup>120</sup> Another is the “Hambre Cero” (*Zero Hunger*) pact, whose objective is to reduce chronic nutrition 10% over four years. One of the main concerns observed is that those programs are not aimed at strengthening the communities’ food sovereignty, but rather are welfare-type

<sup>113</sup> Regarding the figures for 2014 and 2015, there was a discrepancy between what was reported by the administration of former President Pérez and what was reported by the National Epidemiology System of the Ministry of Public Health. *Plaza Pública*, [Las cifras de desnutrición y mortalidad infantil del gobierno son falsas](#), January 19, 2015.

<sup>114</sup> *La Hora*, [Registraron 1,053 muertes por desnutrición en 2012](#), February 16, 2013.

<sup>115</sup> Secretariat for Food and Nutrition Security. Strategic Plan for Food and Nutrition Security. p. 1.

<sup>116</sup> This is found in the departments of the northwestern Altiplano, Alta and Baja Verapaz, and the municipalities of the area of Chortí, in Chiquimula. Secretariat for Food and Nutrition Security. Strategic Plan for Food and Nutrition Security, p. 4.

<sup>117</sup> UNICEF-Guatemala. Overview.

<sup>118</sup> Secretariat for Food and Nutrition Security. Strategic Plan for Food and Nutrition Security. p. 1.

<sup>119</sup> The Court of Children and Adolescence and Adolescents in Conflict with the Criminal Law of Zacapa held the State of Guatemala liable in four judgments in April and May 2013 for breach of economic, social, and cultural rights and for omission in the duty to protect children, on not guaranteeing the rights of five children, three boys and two girls, from Chiquimula. The state institutions involved filed *amparos* against the judgments for alleged due process violations. The Supreme Court of Justice reportedly issued provisional *amparo* judgments in response to those requests, setting aside the actions ordered by the court. Office of the Human Rights Ombudsman. Informe Anual Circunstanciado. 2013, pp. 300-302. Peace Brigades International (PBI). *Agencia EFE*, [Juzgado condena Estado de Guatemala por no garantizar derecho a alimentación](#), July 8, 2013.

<sup>120</sup> Ministry of Social Development. Programas Sociales Mi Bolsa Segura.



(*asistencialista*) measures<sup>121</sup>, which reportedly do not reach all the population with similar needs and are used politically by local authorities and as a mechanism of political cooptation.<sup>122</sup> In addition, information was received indicating that institutional factors such as the lack of adequate cooperation and of capacity to secure financial resources play a part in thwarting attainment of the objectives proposed. In contrast, the State also reported the drafting of the Agricultural Policy for 2011-2015, which is aimed at building up the family economy on the basis of the Fertilizer Program, for example, which would provide one quintal sack of fertilizer per beneficiary; the Food for Action Program, and would supplying food to farmers for the time they spent on community activities; the Food Assistance Program would supply food to persons hit by natural disasters; and the Family Garden Program, which would support food production in vulnerable communities, among other programs.<sup>123</sup>

83. The programs and public policies on food and nutrition implemented in the future should consider that the problem of malnutrition has many causes and is closely related to the lack of access to and the juridical insecurity affecting indigenous lands and territories, as well as the acquisition of such lands and territories by third persons.<sup>124</sup> The indigenous peoples have referred to this aspect as a key part of their proposals for designing a policy for food and nutrition security.<sup>125</sup>

## 2. Right to education

84. The IACHR takes note of the constitutional provisions that recognize the right to education and in particular free access to early childhood, pre-primary, primary, and basic education. According to information gathered, the percentage of GDP earmarked for education in 2013 amounted to 2.9%, in 2014 to 3.2%, and in 2015 to 3.1%.<sup>126</sup> As can be observed, although there was a rise between 2013 and 2014, the share of GDP for education, according to the 2015 Draft Budget, declined by

<sup>121</sup> Information received in a meeting with indigenous leaders and organizations on August 21, 2013 in Guatemala City.

<sup>122</sup> In this respect, one Ixil Maya woman who works as a nurse in Nebaj said: "At times the personnel weighs and measures the child. They say yes he is malnourished, but as he is not affiliated with the official party they do not give him the '*bolsa segura*' or the benefits that the government is promoting." Testimony received at a meeting with indigenous leaders and organizations on August 25, 2013 in Nebaj, Quiché. Similar information was received at a meeting with indigenous leaders, communities, and organizations on August 21, 2013 in Guatemala City.

<sup>123</sup> In the observations made by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015.

<sup>124</sup> Instituto de Estudios Agrarios y Rurales de la Coordinación de ONG y Cooperativas de Guatemala [Agrarian and Rural Studies Institute of the Coordination of NGOs and Cooperatives of Guatemala]. *Aj Ral Ch'och. Despojo y resistencia en la Guatemala del siglo XXI [Plundering and Resistance in 21st Century Guatemala]*. Caracol Producciones.

<sup>125</sup> Declaración de Atitlán, Consulta de los Pueblos Indígenas sobre el Derecho a la Alimentación: Una Consulta Global [Atitlán Declaration, Consultation of the Indigenous Peoples over the Right to Food: a Global Consultation]. Atitlán, Sololá, Guatemala, April 17-19, 2002.

<sup>126</sup> Instituto Centroamericano de Estudios Fiscales and UNICEF, [¡Contamos! Boletín No. 19. El Presupuesto para 2015: los grandes desafíos para lograr resultados y retomar el camino para una mayor transparencia. Diagnóstico de la situación de las finanzas públicas en Guatemala a diciembre de 2014](#), p. 35.

0.1% in 2015<sup>127</sup> and, according to the multiannual budget for 2015–2017, this percentage shall continue to decline in 2016 and 2017.<sup>128</sup> Regarding the right to education in areas with the largest indigenous population, Article 76 of the Constitution provides: “In the schools established in predominantly indigenous areas, education should be given preferably in bilingual mode.”<sup>129</sup> The IACHR is satisfied to receive the information according to which in recent years the number of teachers in rural schools has increased, schooling has increased notably, and actions have been taken to implement a bilingual and intercultural education model, mainly through the General Bureau of Bilingual and Intercultural Education of the Ministry of Education.<sup>130</sup>

85. At the same time, the IACHR received information on important limitations on access, quality, and cultural adaptation in the education of the indigenous peoples, in conditions of equality. In particular, one observes that in some communities access to schools is very limited, and numerous communities do not have any teachers.<sup>131</sup> Indigenous children in rural areas attend school, on average, for just over two years, while girls receive barely one year of schooling. It was reported that the determinant factor in dropout rates among indigenous children is poverty, as they have to perform domestic activities in their homes or work on the farms.<sup>132</sup> The schools in the communities only offer the opportunity to study the primary cycle, and there is minimal coverage at the secondary level. To be able to continue studying indigenous children and youth must enroll in urban schools, and few families can cover the associated costs. In addition, the IACHR has been informed that public higher education is highly centralized, which in practice often excludes indigenous youth and reduces their possibilities of getting a higher education.<sup>133</sup>
86. As for cultural adaptation, the IACHR has found in general that strengthening bilingual and intercultural education continues to be a repeated request of the

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<sup>127</sup> Instituto Centroamericano de Estudios Fiscales and UNICEF, *¡Contamos! Boletín No. 19. El Presupuesto para 2015: los grandes desafíos para lograr resultados y retomar el camino para una mayor transparencia. Diagnóstico de la situación de las finanzas públicas en Guatemala a diciembre de 2014*, p. 35.

<sup>128</sup> Instituto Centroamericano de Estudios Fiscales and UNICEF, *¡Contamos! Boletín No. 19. El Presupuesto para 2015: los grandes desafíos para lograr resultados y retomar el camino para una mayor transparencia. Diagnóstico de la situación de las finanzas públicas en Guatemala a diciembre de 2014*, p. 35.

<sup>129</sup> Constitution of Guatemala, Articles 72 to 77.

<sup>130</sup> Information received at a meeting with the Minister of Foreign Affairs and COPREDEH, August 29, 2013, Guatemala City.

<sup>131</sup> Information received at a meeting with the indigenous communities and organizations, August 23, 2013 Cobán, Alta Verapaz.

<sup>132</sup> OHCHR-Central America. *Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central*, 2011. Volume I, p. 226. “Many parents decide to remove the girls from school because they already learned to read and write, and in the near future they will contract marriage, for they opt or are forced to marry at a very young age, from ages 13 to 15.” Complaint by the Q’eqchi’, Poqomchi’, and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received August 23, 2013, in Cobán, Alta Verapaz.

<sup>133</sup> MOVEMAYAS. *Movimiento de Estudiantes Mayas. Educación Superior Pública en Guatemala: Una aproximación desde la perspectiva de pueblos y mujeres indígenas* [Maya Students Movement. Public Higher Education in Guatemala: An Approach from the Perspective of Indigenous Peoples and Women]. Guatemala City, October 2013.

various peoples and organizations.<sup>134</sup> A small number of schools have bilingual intercultural education, including in the departments that have more than 90% indigenous population.<sup>135</sup> According to the information available, bilingual intercultural education does not cover all the grades<sup>136</sup> and does not extend to the various socio-linguistic communities.

### 3. Labor rights

87. The information available to the IACHR suggests that 69.2% of the population employed nationwide works in the informal sector of the economy. In the rural area almost 8 of every 10 workers is employed in that sector.<sup>137</sup> According to the INE, one finds greater vulnerability in the indigenous population, since in this group almost 9 of every 10 are in the informal sector and therefore lack basic job benefits.<sup>138</sup> Some 33.8% of workers are employed in agriculture<sup>139</sup>, 3 of every 4 of whom are poor, and 1 of every 4 of whom is extremely poor. Nearly 91% of agricultural workers in Guatemala are indigenous.<sup>140</sup> Racism has impacted and continues to impact directly social relations of production to the extent that it influences forms and types of work.<sup>141</sup> Forced labor and servile exploitation of indigenous persons has been a fundamental element in the subjugation of indigenous peoples throughout the history of Guatemala.<sup>142</sup>
88. The labor situation of indigenous persons continues to be extremely worrisome, as they are subject to various forms of exploitation; the unlawful use of certain labor arrangements to avoid the responsibilities associated with hiring workers on permanent employment contracts, especially on the African palm plantations; the

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<sup>134</sup> The testimony taken from several witnesses indicates that studying in one's own language and with culturally appropriate and quality contents continues to be very limited. Information received by the IACHR at a meeting with indigenous communities and organizations on August 23, 2013 in Cobán, Alta Verapaz, Guatemala.

<sup>135</sup> UNDP, Escobar Figueroa, Pamela. *Avances y desafíos en las dimensiones del desarrollo humano de los pueblos indígenas de Guatemala* [Progress and Challenges in the Human Development Dimensions of the Indigenous Peoples of Guatemala]. Guatemala City: 2011, p. 14.

<sup>136</sup> See United Nations. Report of the Special Rapporteur on the right to education, Mr. Vernor Muñoz. Mission to Guatemala, 2009, paras. 28-30.

<sup>137</sup> INE. *Encuesta nacional de empleo e ingresos*, September 2013, p. 12.

<sup>138</sup> INE. *Encuesta nacional de empleo e ingresos (INEI)* [National Employment and Income Survey]. INEI 1-2013, September 2013, p. 12.

<sup>139</sup> See in this respect Linares, Luis; Prado, Pedro; and Zelaya, Raquel. *El comercio exterior y el empleo agrícola en Guatemala*. ILO and ASIES. 2012, p. 9.

<sup>140</sup> CODECA. *Situación laboral de trabajadores/as agrícolas en Guatemala. Síntesis del estudio sobre las condiciones laborales de trabajadores agrícolas en las fincas* [Labor Situation of Farm Laborers in Guatemala: Summary of Study on the Working Conditions of Farm Workers]. 2013, p. 6.

<sup>141</sup> Casaús Arzú, Marta Elena. *Guatemala: Linaje y Racismo*. F&G Editores. Fourth edition. Guatemala City: 2010, p. 259.

<sup>142</sup> This is evidenced in colonial institutions such as the *encomienda* and the *repartimiento*, and the *libreto de jornaleros*, which made it possible to continue to legislate the forced labor of the indigenous population until the mid-20<sup>th</sup> century. The conditions of indigenous exploitation, and on the plantations and estates, were some of the historical causes behind the armed violence of 1960 to 1996.

scant availability of health centers and limitations on access due to the distances; and children who support their parents in agricultural tasks. The Commission also received consistent information that indicates that in rural areas salaries are less than half the minimum salary established by law.<sup>143</sup>

89. The IACHR notes with profound concern that contemporary forms of slavery, which have colonial origins, continue to exist in Guatemala for economic exploitation. According to the 2008 National Agricultural Survey, there are 5,043 agricultural productive units in which systems of labor servitude persist that are known as “*colonias de peones*” (*colonies laborers*) or “*mozos colonos*” (*resident laborers*). These are groups of families or communities that have lived on farms generation after generation, and who survive by serving the “bosses” (*patrones*) in exchange for miserable salaries or food. These persons are “inherited” or “transferred” to the new owners of the farms along with the land.<sup>144</sup> Also reported was the existence of a severe child labor problem in the agricultural sector, not only in view of the high percentage of indigenous children working, but also because of the overexploitation and working conditions, without payment or recognition of any rights.<sup>145</sup> The IACHR forcefully condemns the continuation of these situations as an extreme expression of the discrimination that the indigenous peoples of Guatemala have suffered historically and continue suffering; such discrimination should be eradicated.

90. While Guatemala has certain domestic provisions on agricultural workers, the Commission considers that actions should be taken to bring them into line with international instruments and international standards, and that greater efforts should be made to enforce them in practice.<sup>146</sup> Along with strengthening legal and practical protection, the Commission considers that there is a direct relationship between dispossession and lack of protection for territories and the labor

<sup>143</sup> According to a research study based on field information at 609 agricultural properties, situated in 14 of 22 departments of the country, 90% of the agricultural workers earn a monthly salary below the established minimum salary. Some 70% of agricultural workers work nine to 12 hours without overtime pay; 90% have no vacation; a similar percentage is not affiliated with social security; and the vast majority does not work with adequate protection, nor does it have adequate and hygienic places for eating during work. CODECA. Situación laboral de trabajadores/as agrícolas en Guatemala. Síntesis del estudio sobre las condiciones laborales de trabajadores agrícolas en las fincas. 2013, p. 6.

<sup>144</sup> “For some years on the farm [today called Finca Empresa Agrícola San Francisco S.A.] they have promoted forced work without pay or labor benefits, for the [126] families [that have lived on and possessed the lands for more than two centuries], which is translated into carrying bunches of plantain on human backs, carrying them two hours to their destination, as well as growing and harvesting coffee.” CUC. Casos de violaciones a derechos de comunidades indígenas y campesinas en Guatemala en el Departamento de El Quiché (Caso Regadillos, Sanchina y Buena Vista). Letter to Rapporteur Dinah Shelton, August 22, 2013.

<sup>145</sup> CODECA. Situación laboral de trabajadores/as agrícolas en Guatemala. Síntesis del estudio sobre las condiciones laborales de trabajadores agrícolas en las fincas. 2013, pp. 12 and 13. Information received at a meeting with the Ministry of Labor and the SND on August 22, 2013, in Guatemala City.

<sup>146</sup> According to the information provided to the IACHR, there is a lack of effective supervision by the State, through the General Office of Labor Inspection, due to the insufficient number of inspectors, the lack of adequate professional training for them, and the lack of the needed tools and logistics. Its inoperative state is also due to labor inspectors receiving bribes from the farm owners for not reporting the workers’ conditions. CODECA. Situación laboral de trabajadores/as agrícolas en Guatemala. Síntesis del estudio sobre las condiciones laborales de trabajadores agrícolas en las fincas. 2013. pp. 40-42.

exploitation of the indigenous peoples and their members, as evidenced by numerous examples throughout history.<sup>147</sup> Accordingly, it considers that comprehensive attention to the situation described requires promoting the recognition and effective enjoyment of the rights of indigenous peoples to their ancestral lands and territories such that they can strengthen their autonomy, their own ways of life, and their own development.

#### 4. Right to health<sup>148</sup>

91. While Article 93 of the Constitution of Guatemala recognizes that the enjoyment of health is a fundamental right of the human being without any discrimination, there are major gaps between the health indicators of the indigenous and non-indigenous population.<sup>149</sup> For example, morbidity and mortality indicators are higher in areas with larger percentage indigenous populations.<sup>150</sup> As has been indicated by the United Nations Rapporteur on the right to health, Anand Grover, these gaps have historical causes that are marked by discrimination and structural inequality and *de facto* have brought about a sharp contrast between the health outcomes of indigenous communities and non-indigenous persons.<sup>151</sup> Similarly, the OHCHR has noted that in the area of health there is a differentiated citizenry that that is determined fundamentally by the economic opportunities of some population groups and the low financing of health care in the public sector.<sup>152</sup>
92. The IACHR has been informed that there is a lack of adequate and accessible health services for indigenous peoples, as is required to counter this situation. According to the available information, in the departments with the largest indigenous population the health system is obsolete, and lacks the human, financial, and medical resources necessary. The IACHR also observes that there are serious geographic obstacles to the effective delivery of health services. In several regions of the country, indigenous persons must travel long distances to get to the nearest health center, which is more serious in emergencies. In addition to the scarcity and

<sup>147</sup> IACHR, *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, 2009, paras. 163 and 164.

<sup>148</sup> Information received by the IACHR on the 2013 visit.

<sup>149</sup> United Nations. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Mr. Anand Grover. Mission to Guatemala, May 12-18, 2002, para. 30.

<sup>150</sup> According to a study by the Instituto Centroamericano de Estudios Fiscales (ICEFI) [Central American Fiscal Studies Institute] and UNICEF Guatemala in 2011, major differences persist in child mortality between the rural areas (38%) and the urban areas (27%) and between the indigenous population (40%) and the non-indigenous population (30%). ICEFI and UNICEF. Series of review papers. *¡Contamos! El remedio de nuestros males*. Un análisis sobre los mecanismos, costos y formas de financiamiento para mejorar el sistema de salud pública en Guatemala [A Review of the Mechanisms, Costs, and Forms of Financing to Improve the Public Health System in Guatemala], 2012-2012. Bulletin No. 06, 2011, p. 54.

<sup>151</sup> United Nations. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Mr. Anand Grover. Mission to Guatemala, May 12-18, 2002. A/HRC/17/25/Add.2 Geneva, 2011, paras. 32 and 37.

<sup>152</sup> OHCHR-Central America. *Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central*, 2011. Volume I, p. 232.

insufficiency of health services is the lack of culturally appropriate services, expressed for example in the lack of medical personnel who speak the indigenous language of the zone, or interpreters.

93. The IACHR considers that one of the main challenges in indigenous health is providing culturally appropriate services, for the state health system is perceived to be alien to the indigenous peoples' conception of themselves, and its design and implementation has been decided upon with their systematic exclusion. In this respect, the Commission recalls that Article 98 of the Constitution provides that the communities have the right and the duty to participate actively in the planning, implementation, and evaluation of health programs; that provision is complementary to the obligations contained in ILO Convention 169<sup>153</sup> and in the Declaration on the Rights of Indigenous Peoples.<sup>154</sup> In addition, the IACHR considers that the implementation of these duties must take into account as central aspects the strengthening and consolidation of traditional medicine by establishing instruments and mechanisms that allow for its practice; as well as the special relationship of the indigenous peoples with their territories and the natural resources found on them.<sup>155</sup>
94. According to the information available, indigenous women continue having least access to basic services, such as health and education. Maternal mortality is estimated at 137 per 1,000 live births, and according to the Reproductive Health Observatory (*Observatorio de salud sexual y reproductiva*), Guatemala has the third highest maternal mortality rate in Latin America; the figure is three times higher in indigenous women.<sup>156</sup> The high level of maternal mortality is due to several factors, such as the lack of health centers, and their inaccessibility, in addition to the lack of culturally appropriate services, thus women generally turn to *curanderas* (*traditional healers*) and give birth in precarious conditions.<sup>157</sup>

95. The IACHR is especially concerned over the persistence of several forms of violence against indigenous women. According to what was reported by the Office for the Defense of Indigenous Women (DEMI: Defensoría de la Mujer Indígena), family violence is present in all age groups but affects young women to a greater extent; and it is estimated that one-third of women who live with a man suffer family violence. Nonetheless, there is no ethnic classifier in the statistics, reports, files, and other documentation of complaints received by the Attorney General's

<sup>153</sup> Articles 24 and 25 of ILO Convention 169.

<sup>154</sup> Articles 21, 23, 24, and 25 of the UN Declaration on the Rights of Indigenous Peoples.

<sup>155</sup> "Development-related activities that displace indigenous peoples from their traditional lands have been noted to negatively affect health outcomes. The consequences from this cultural disconnection notwithstanding, removing indigenous peoples from their land also contributes to poverty and food insecurity and alienation from mainstream society." United Nations. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Mr. Anand Grover. Mission to Guatemala, May 12-18, 2002, para. 39.

<sup>156</sup> *Emisoras Unidas*, *Analizan cifras de mortalidad materna en Guatemala*, May 22, 2013.

<sup>157</sup> Complaint from the Q'eqchi', Poqomchi', and Achi' peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received by the IACHR August 23, 2013, in Cobán, Alta Verapaz, Guatemala.

Office, the judiciary, the PNC, and others. Nor are there mental health programs for indigenous women who have been victims of violence or programs to provide psychosocial care for their children.<sup>158</sup> In addition, it was reported that while one of the concerns of the DEMI is the large number of femicides in Guatemala – 755 cases in 2013 – there are no statistics on the percentage of indigenous women who are victims of this phenomenon.<sup>159</sup>

## 5. Legal and institutional framework for combating discrimination against indigenous peoples and their main challenges

96. The IACHR observes that the Guatemalan State continues to have important tasks pending to combat discrimination against indigenous peoples and fully assume the guarantee of their rights from a multicultural perspective, through laws, institutions, and public policies. As observed, discrimination is prohibited by Guatemalan law. Nonetheless, the Commission observes that indigenous peoples continue experiencing a series of obstacles for their complaints regarding discrimination to be accepted and investigated, and for sanctions to be imposed. The IACHR has been informed of certain actions aimed at overcoming this situation, such as the construction of a Protocol and Critical Path for Addressing Discrimination Cases<sup>160</sup>, holding trainings for judicial personnel and the Attorney General's Office on the statutory definition of discrimination in the criminal law, and the use of cultural and language experts and the work of the Indigenous Peoples Unit of the SCJ to compile good practices in relation to discrimination-related judgments.
97. After the signing of the Peace Accords, a process of institutional reform took place in Guatemala in various areas recognizing the ethnic-cultural differences of the Guatemalan population. Several state offices were established such as the Academy of Maya Languages of Guatemala, the DEMI, the Presidential Commission against Discrimination and Racism, the Guatemalan Indigenous Development Fund, the Office of the Ombudsman for Indigenous Persons and Communities in the Office of the Human Rights Ombudsperson, and the Indigenous Prosecutor's Office (Fiscalía Indígena) within the Attorney General's Office. In addition, many of the government ministries have "indigenous venues", such as the General Bureau of Bilingual Intercultural Education. While the IACHR considers their establishment very significant, these measures are insufficient, and are plagued by serious limitations that have enormously reduced their impacts and results. Among the main concerns is the lack of representativity, participation, and input of the indigenous peoples and their representatives, the lack of capacity for decision-making, the scant effectiveness of their action, and the insufficient economic and

<sup>158</sup> DEMI. Statistics with ethnic characterization and typology of cases served by the DEMI.

<sup>159</sup> Information received at a meeting with DEMI, CODISRA, and the Ministry of Culture, August 21, 2013 in Guatemala City.

<sup>160</sup> CODISRA. Presentation to the IACHR. August 21, 2013, Guatemala City.



human resources.<sup>161</sup> To these failings are added the legacies of authoritarianism, such as the fragmentation of powers, corruption, and the existence of *de facto* powers.<sup>162</sup>

98. The IACHR would like to refer, in particular, to the Presidential Commission against Discrimination and Racism (CODISRA, for its acronym in Spanish) and the DEMI, which have important mandates for fighting discrimination. As regards CODISRA, according to Executive Decree 390-2002, that entity is entrusted with “designing public policies aimed at eradicating racial discrimination.”<sup>163</sup> One of its specific functions is “to keep a record of complaints of cases of racism and discrimination and channel them to the competent institutions.”<sup>164</sup> CODISRA reported that 60% of the persons against whom the complaints are filed, directly or indirectly, are public servants.<sup>165</sup> Among the problems the institution faces for carrying out its mandate is the lack of financing and the lack of sufficient personnel, lack of training for personnel to accompany victims, and failure to monitor the complaints received.<sup>166</sup> One challenge has to do with the need to strengthen its autonomy and independence for furthering policy the fight ethnic discrimination, for example through appointment procedures that take account of professional capabilities and ensure the broad participation of indigenous peoples. The IACHR considers that this institution can play a key role in fighting discrimination but it requires decisive measures to strengthen its capacities.
99. The DEMI was established by Executive Decree 525-99, which resulted from the struggle of the indigenous peoples, and especially indigenous women, for a state institutional framework to ensure respect for their rights.<sup>167</sup> The IACHR values the gains made so as to address comprehensively the cases of violations of the rights of indigenous women.<sup>168</sup> Even so, the IACHR notes some aspects of concern that consist of budgetary insufficiency, the scant presence in the different regions of the

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<sup>161</sup> Information received at a meeting with indigenous communities and organizations in Cobán, Alta Verapaz, August 23, 2013 and August 26, 2013 in Huehuetenango, Guatemala. Along the same lines, see SIEDER, Rachel. *Entre la multiculturalización y las reivindicaciones identitarias: construyendo ciudadanía étnica y autoridad indígena en Guatemala* [Between Multiculturalization and Identity Grievances: Building Ethnic Citizenship and Indigenous Authority in Guatemala]. In: Bastos, Santiago. “Multiculturalismo y futuro en Guatemala,” FLACSO/OXFAM, 2008, p. 80.

<sup>162</sup> Sieder, Rachel. *Entre la multiculturalización y las reivindicaciones identitarias: construyendo ciudadanía étnica y autoridad indígena en Guatemala* [Between Multiculturalization and Identity Grievances: Building Ethnic Citizenship and Indigenous Authority in Guatemala]. In: BASTOS, Santiago. “Multiculturalismo y futuro en Guatemala,” FLACSO/OXFAM, 2008, p. 89.

<sup>163</sup> Executive Decree 390-2002 of October 8, 2002, Article 1.

<sup>164</sup> Executive Decree 390-2002 of October 8, 2002, Article 2(e).

<sup>165</sup> Information received at a meeting with DEMI, CODISRA, and the Ministry of Culture, August 21, 2013 in Guatemala City.

<sup>166</sup> Complaint of the Q'eqchi', Poqomchi', and Achi' peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received August 23, 2013, in Cobán, Alta Verapaz.

<sup>167</sup> Executive Decree 525-99 of July 19, 1999.

<sup>168</sup> Information received at a meeting with DEMI, CODISRA, and the Ministry of Culture, August 21, 2013 in Guatemala City.



country<sup>169</sup>, the weak institutional framework, the lack of decision-making capacity at the local level, and the real possibilities for having an impact in support of indigenous women's rights. Of particular concern are the apparent setbacks in institutional independence, given the change in the mechanism for appointing the Defender (la Defensora) of the DEMI through Executive Decree 38-2013, suppressing the functions of the Coordinating Board and the Advisory Council of proposing the slate of three candidates to the President of the Republic based on consensus.<sup>170</sup> The information received suggests that neither the indigenous women nor the indigenous peoples had an opportunity to participate or to oppose that Executive Decree.

## 6. Lack of an integral public policy on indigenous peoples and the need to strengthen the indigenous institutional framework

100. The IACHR was informed of the existence of a "Public Policy for Living Together and the Elimination of Racism and Racial Discrimination" and at the same time of the lack of effective implementation and performance of the strategic actions proposed.<sup>171</sup> In addition, it was informed of the approval of a *Plan to activate and adapt the National Policy on Integral Rural Development*,<sup>172</sup> which targets the rural areas with the greatest concentration of poverty.<sup>173</sup> The IACHR is pleased to receive that report as it understands that the establishment of an integral rural development policy is a request from the indigenous peoples and organizations going back several years and its success is closely bound up with overcoming the conditions of exclusion that persist. Nonetheless, the IACHR takes note that this public policy is being promoted without their full participation and through measures that are not culturally appropriate.<sup>174</sup>

101. The IACHR observes that while State's initiatives have been taken to address the situation of discrimination and exclusion of the indigenous peoples, they have been presented in a fragmented manner and without occupying a central place in the actions and presence of the government. In addition, it notes that the public policies are not prepared through a process of consultation with the indigenous

<sup>169</sup> The DEMI informed the IACHR that it currently has 11 regional offices that are insufficient for the national territory. Information received at a meeting with DEMI, CODISRA, and the Ministry of Culture, August 21, 2013 in Guatemala City.

<sup>170</sup> Based on the Peace Accords the process was established that is regulated by said Executive Decree 525-99 to designate the Indigenous Women's Defender (Defensora de la Mujer Indígena), which consisted of the Coordinating Board and the Advisory Council proposing to the President of the Republic the slate of three candidates, after a public call to the national and regional women's organizations for them to propose a slate of three candidates. Executive Decree 525-99 of July 19, 1999.

<sup>171</sup> According to CODISRA, the Executive Decree is pending approval, after which it is to be implemented. CODISRA. Presentation to the IACHR. August 21, 2013, Guatemala City.

<sup>172</sup> Executive Decree No. 196-2009.

<sup>173</sup> Information received at a meeting with FONTIERRAS, SAA, RGP, and RIC, August 21, 2013, Guatemala City.

<sup>174</sup> Information received at meeting with indigenous leaders and organizations, August 21, 2013 in Guatemala City; and August 23, 2013 in Cobán, Alta Verapaz.

peoples; they do not have sufficient political will or an adequate budget, or a system of accountability or for reporting progress that would allow one to verify results. In that sense, the IACHR considers that an integral public policy should be implemented—with the full engagement of the indigenous peoples—that addresses the different areas and expressions of ethnic discrimination and economic and social exclusion, especially mindful of the intersectionality of the factors of discrimination. The Commission emphasizes that this presupposes articulating a legal and institutional basis as well as allocating the human and financial resources necessary, and ultimately putting forward a vision of the State that includes the concept of equality and respect for the rights of the indigenous peoples as the central pillar and guide of its action.

102. The Commission takes note that Executive Decree 117-2014 established the Cabinet of Indigenous Peoples and Interculturalism (*Gabinete de Pueblos Indígenas e Interculturalidad*) as “a high-level advisory and deliberative body” under the Presidency of the Republic, and with a temporary life of 10 years.<sup>175</sup> While this office could turn out to be an important space for an integral approach to the relevant public policy, the representation of the indigenous peoples is very limited to only three representatives for each people, compared to more than 20 representatives of State institutions. During its last visit, several indigenous and civil society organizations raised questions above the scope and dimension of this cabinet, and its capacity to contribute on key issues such as the protection of their lands and territories and the right to prior consultation.
103. In the Commission’s opinion, one crucial aspect in this area is to recognize and respect indigenous peoples’ own organizational forms and to guarantee their political participation. While there has been some progress at the local and regional levels, oftentimes such efforts are self-initiated and are not respected by the institutions of the State that have a presence in these spaces, through coordination and consultation with the indigenous authorities. In addition, it is not possible to identify national organizations or channels through which they can mobilize their demands and be the ones to bring about changes from the State itself. Along these same lines, both the State authorities and public officials and the representatives of indigenous peoples agreed on the need to strengthen the indigenous institutional framework within the State apparatus. The Commission considers that such a measure requires that a process be carried out that is participatory and that makes it possible to construct a proposal that reflects the vision of the indigenous peoples.
104. Eliminating every form of discrimination and intolerance as well as promoting and protecting the human rights of the indigenous peoples and respect for ethnic and cultural diversity contribute to strengthening democracy and citizen participation.<sup>176</sup> To this end, the IACHR considers that the rule of law in Guatemala

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<sup>175</sup> Articles 1 and 10 of Executive Decree 117-2014 of March 25, 2014.

<sup>176</sup> IACHR, Justice and Social Inclusion: The Challenges of Democracy in Guatemala, para. 434.

can only be consolidated when these historically excluded sectors achieve more egalitarian participation in society and in decision-making.<sup>177</sup>

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IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, 2003, Chapter IV, paras. 234 and 434.



CHAPTER 4  
CITIZEN SECURITY



## CITIZEN SECURITY

### A. *Violence and insecurity*

105. The Commission's concept of citizen security is a situation in which persons are able to live free of the threats caused by violence and crime, and the State has the necessary means to guarantee and protect the human rights directly threatened by violence and crime. Taking a human rights approach, citizen security is, in practical terms, a condition in which individuals live free from the violence practiced by State and non-state actors.<sup>178</sup>
106. In that connection, for the UNDP, citizen security is one of the dimensions of human security and therefore of human development, defined as the condition of living without fear and without need. According to that agency, this dimension is linked to the interrelated presence of multiple actors, conditions and factors. Among these factors are: the history and structure of the State and society; the policies and programs of governments; the effective exercise of economic, social and cultural rights; and the international and regional context.<sup>179</sup> In its report "Citizen Security with a Human Face: Evidence and Proposals for Latin America" it says that citizen security consists of protection of a basic core of human rights, including the right to life, to respect for the physical and material integrity of the person, and to live with dignity.<sup>180</sup> It also underscores the pivotal importance of the real observance and protection of a series of human rights that the State has a duty to ensure. Thus, unemployment, poverty, inequality or the lack of freedoms, to mention just some examples, are direct obstacles for citizen co-existence and security. For the UNDP, the provision of citizen security is an essential prerequisite for human development.<sup>181</sup>
107. The threats to citizen security are manifold and citizen security problems usually occur whenever States fail, either completely or partially, to protect their population from crime and social violence, signaling a breakdown in the basic

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<sup>178</sup> IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 221.

<sup>179</sup> UNDP, *Citizen Security with a Human Face*: Evidence and Proposals for Latin America, p. 5.

<sup>180</sup> UNDP, *Citizen Security with a Human Face*: Evidence and Proposals for Latin America, p. 5.

<sup>181</sup> This concept recognizes that the true wealth of a nation resides in its people, and that the aim of development should be the "creation of conditions that enable people to enjoy a long, healthy, and creative life." Human development should be understood as the process of expanding people's choices, freedoms, and capacities in order to enjoy health and wellbeing, and to have access to knowledge and resources necessary to lead life with dignity. UNDP, *Citizen Security with a Human Face*: Evidence and Proposals for Latin America, p. 3.

relationship between those governing and the governed.<sup>182</sup> According to the above UNDP report, in addition to crime and violence, other threats include street crime, violence and crime by and against youth, gender violence, illegal violence by state actors, organized crime. According to the UNDP, all these threats are widespread in the region and adversely affect human development in Latin America. The UNDP draws a distinction between the objective and subjective dimensions of citizen security: the objective dimension relates to crime and violence, while the subjective dimension depends on the perception of insecurity, which manifests itself as sensations of fear and vulnerability<sup>183</sup>.

108. That is why a public policy with regard to citizen security must address the causes of crime and violence specifically guided by human rights and aimed at ensuring the observance of rights on the normative and operational planes as well as in the practices of institutions and agents of the State.

109. In its Report on Citizen Security and Human Rights, the IACHR considered that while the international legal order of human rights does not expressly define a right to be safe from crime or interpersonal or social violence, whose prevention and control are the object of citizen security policies, States are bound by a normative core demanding the protection of rights particularly vulnerable to criminal or violent acts: the right to life, the rights to physical integrity, the right to personal liberty, the right to due process, and the rights to peaceful use of property and possessions. States' obligations in the area of citizen security also involve the right to a fair trial and the right to judicial protection, the right to privacy and the right to have one's honor respected and dignity recognized; the right to freedom of expression, the right to freedom of assembly and association, and the right to participate in public affairs. In broad terms, citizen security may also entail measures to guarantee other human rights, such as the right to education, the right to health, the right to social security, and the right to work, among others.

110. As regards international human rights standards in relation to citizen security, particularly with reference to the instruments embodied in the Inter-American human rights system, of particular import are the obligations of States with respect to human rights associated with the security of all persons under their jurisdiction, especially the rights of crime victims where violence committed by State and non-state actors is concerned. In addition, there are the international obligations of states as regards prevention and combating violence and crime and the design, implementation, and evaluation of citizen security policies in light of international human rights law and of the principles of participation, accountability, and nondiscrimination.

111. The positive obligations undertaken by member states demand public policies on citizen security contemplating as a priority an efficient institutional structure that guarantees the public the exercise of human rights related to the prevention and

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<sup>182</sup> Aguilera, Javier, "Sobre seguridad ciudadana y democracia" in "Buscando la seguridad. Seguridad ciudadana y democracia en Guatemala," Facultad Latinoamericana de Ciencias Sociales (FLACSO)—Programa Guatemala, Guatemala, 1996.

<sup>183</sup> UNDP. *Citizen Security with a Human Face*: Evidence and Proposals for Latin America, p. 7.



control of violence and crime. In that regard, the Commission has noted the difficulties that the region has had in the past in creating a set of institutions to enable the State to function properly in this area. These difficulties are particularly evident in the following areas: (1) the treatment of victims of violence and crime; (2) the privatization of security services; (3) the governability of citizen security; (4) the professionalization and modernization of the police forces; and (5) the intervention of the armed forces in tasks related to citizen security.<sup>184</sup>

112. It is a fact of life that the rates of crime and violence in the Hemisphere continue to make citizen security one of society's chief demands on state officials. The situation today is the result of a process that has been underway for decades, in which social, economic, cultural, and institutional factors have converged, operating as enablers allowing various forms of violent behavior to develop and multiply, mirroring the sharp increase in crimes that pose a threat to the effective exercise and enjoyment of human rights.<sup>185</sup>

113. The Commission has called attention to the effects of violence and crime on governance in the countries of the Hemisphere and indicated that citizen security requires a civil police to protect citizens, the strengthening of the administration of justice, the elimination of corruption or impunity, and a prison system aimed at the genuine rehabilitation and social reintegration of prisoners.<sup>186</sup> It has also said that in their domestic laws and procedures every State, without exception, must operate on the premise that the instruments that make up the universal and regional systems of human rights "[...] enable them to enforce measures to deal with the threats to citizen security [...] within a framework of the rule of law. Such measures must be put in place in such a way as to guarantee full respect for the basic, inalienable rights recognized under international law."<sup>187</sup>

114. To live in a place without violence is not one that most Guatemalans enjoy. Sadly, the end of the armed conflict did not mean an end to violence. For several years, particularly since 2000, there has been a wave of generalized violence that has spiked (in 2008 and 2009) and subsequently waned, though without ever falling below levels that make Guatemala one of the most violent countries in Latin America.

A common thread runs through the country's recent history and its color is red. In spite of real and significant differences between the internal armed conflict that spanned 36 years (1960–1996) and the postwar period up to the present day, there is a tragic continuity: the unrelenting accumulation of fatal victims of different types of violence.

<sup>184</sup> IACHR, [Report on Citizen Security and Human Rights](#), 2009, para. 7..

<sup>185</sup> IACHR, [Report on Citizen Security and Human Rights](#), 2009, para. 217.

<sup>186</sup> IACHR, [Report on Citizen Security and Human Rights](#), 2009, para. 2.

<sup>187</sup> IACHR, [Report on Citizen Security and Human Rights](#), 2009, para. 2.

An examination of murder rates in the postwar period and their comparison with the overall statistics from the internal armed conflict reveals that continuity.<sup>188</sup>

115. Violence in Guatemala encompasses different dimensions. The high homicide rate has to do particularly with organized crime and the activities of common criminals. However, domestic violence, violence that affects certain groups whose position in society makes them most vulnerable, or violence caused by deprivation, the repercussions of which include high incidences of chronically undernourished children, are dimensions of violence in Guatemala that paint an overall picture of extreme vulnerability.
116. Violence has social effects and economic costs. They include impacts on the consolidation and development of democracy with a high human cost. Violence annually consumes approximately 7.3% of GDP, predominantly in the form of spending on health care for victims and private security.<sup>189</sup> According to the UNDP, it saps economic activity as the country's budgetary resources are siphoned away from social or productive spending toward agencies in charge public security. It also causes losses in tourism receipts and healthy life years. It also harms people's daily lives by having an impact on their mental and physical health.
117. According to figures provided by the National Forensic Sciences Institute (*Instituto Nacional de Ciencias Forenses*—INACIF) between January 1 and December 31, 2013, there were 6,072 crime-related deaths. Based on the homicide statistics for 2013, the United Nations Office on Drugs and Crime (UNODC) found that there were 39.9 murders per 100,000 inhabitants<sup>190</sup>, a level only surpassed by Honduras, Venezuela, Belize and El Salvador. This means that the homicide rate in Guatemala is one of the highest in Latin America and the Caribbean, which is significant bearing in mind that Latin America is considered one of the world's most violent regions.
118. In the same period in 2014 (January to December), 5,924 people were killed in violent circumstances<sup>191</sup>, with firearms used in 4,494 cases.<sup>192</sup> By the INACIF estimates, the number of deaths in 2014 boiled down to almost 16 a day.<sup>193</sup> In the first nine months of 2015, there were 4,261 homicides, corresponding to 3,705 men and 556 women.<sup>194</sup>
119. The Ombudsman notes that the overall murder rate in the country has declined in recent years; in 2009 it was 46 per 100,000 inhabitants, compared with 39 in 2013

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<sup>188</sup> ODHAG, *Violencia en Guatemala*. Estudio estadístico en cinco departamentos: Chiquimula, Guatemala, Petén, Quetzaltenango y San Marcos", 2011, p. 11.

<sup>189</sup> Contribution of the Ombudsman's Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

<sup>190</sup> UNODC, *Homicide Statistics*, 2013.

<sup>191</sup> *Prensa Libre*, *Inacif reporta 16 crímenes diarios en el país*, January 2, 2015.

<sup>192</sup> *NTV Guatemala*, *Inacif registra 5 mil 924 asesinatos en 2014*.

<sup>193</sup> *Prensa Libre*, *Inacif reporta 16 crímenes diarios en el país*, January 2, 2015.

<sup>194</sup> *El Nuevo Diario*, *Homicidios en Guatemala se reducen 2.92% en primeros nueve meses de 2015*, October 14, 2015.

and 37 in 2014; the forecast for 2015 (based on data as at August 31) is 35 per 100,000, although there are departments where it is projected to be as high as 80 (Escuintla and Zacapa) or 60 (Chiquimula, Santa Rosa, Izabal, and Guatemala).<sup>195</sup> The State, for its part, says that the homicide rate is a good deal lower than the one recorded by the IACHR in its on-site visit in 2003.<sup>196</sup>

120. The Commission welcomes the drop in the homicide rate in Guatemala. However, it cannot fail to be concerned by the fact that it remains high in the regional context and signifies that several human lives are lost each day to violence.
121. In Guatemala, most crime is attributed to the violence generated by criminal organizations, such as drug trafficking cartels and gangs or *maras*. Of all violent deaths, 85.4% were due to firearms, a 4.3% increase from 2013. The Directorate-General of Arms and Munitions Control (DIGECAM) reported that it had registered only 56.7% of the nearly 500,000 privately owned firearms before registration deadline at the end of April. The remaining 214,023 were pending legalization, along with another estimated 800,000 unregistered firearms. A debate was also initiated on the proposed destruction of the more than 49,000 firearms deposited at DIGECAM.<sup>197</sup> A related problem concerns the possession and carrying of firearms and ammunition. In general terms, the rules in force in this area are extremely lax. For example, the Constitution of Guatemala "recognizes the right to possess arms not legally prohibited for personal use in the home" and that their owners are only required to turn them in if "ordered [to do so] by a competent judge."<sup>198</sup> The Firearms and Munitions Law (*Ley de Armas y Municiones*) Decree 15-2009 sets certain rules on carrying of firearms for civilian use that security companies have to satisfy; however, these demands are hardly ever met or enforced by the competent authorities.<sup>199</sup> Thus, for example, the Commission heard that indigenous leaders had to demand that the authorities verify the firearms registration and licenses of companies in regions historically occupied by indigenous peoples.<sup>200</sup> The Commission reiterates its call to the Guatemalan State regarding the lack of enforcement of the Firearms Control Law and urges it to adopt effective plans to control and eradicate illegal possession of firearms.<sup>201</sup> A national disarmament plan has yet to be proposed and challenges remain in the registration and control of firearms and munitions.

<sup>195</sup> Contribution of the Ombudsman's Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

<sup>196</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015.

<sup>197</sup> OHCHR-Guatemala. Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala (2014). 12 January 2015, paras. 38-43.

<sup>198</sup> Article 38 of the Constitution:

<sup>199</sup> Article 79 of the Firearms and Munitions Law, Decree 15-2009.

<sup>200</sup> In Santa Cruz Barillas private security guards had the local population in a state of constant fear and anxiety, prompting hundreds of community members to demand that the authorities step in and conduct checks on the firearms carried by the security guards. Informe Q'an B'alam Cataratas de Encuentros y Discordia: Santa Cruz Barillas.

<sup>201</sup> IACHR, Justice and Social Inclusion: The Challenges of Democracy in Guatemala, December 29, 2003, para. 91.

122. There has been a high incidence of extortion in recent years. According to the Office of the Attorney General, between 2012 and 2015 there were 24,221 registered complaints of extortion, intimidation and extortion, and extortive obstruction of traffic, and that over the same period the courts issued 2,051 judgments for such offenses: 1,694 convictions and 447 acquittals.<sup>202</sup> The Ombudsman said that extortion is another of the phenomena that undermine the security of the Guatemalan population. He said that the Office of the Attorney General had registered an average of 7,400 cases a year in the last four years, predominantly in the Department of Guatemala, although in the last two years cases were recorded in 321 of the country's 338 municipalities. Criminal organizations are said to be responsible for 10% of extortions. The Ombudsman reports that this led to the creation in July 2015 of the Special Prosecution Unit against Extortion (Fiscalía Especial contra las Extorsiones), which has a staff of 130 and plans to extend its coverage through offices in six departments.<sup>203</sup>
123. Violence on public transport has increased, especially in the form of attacks with firearms; between 2013 and 2014, 737 people were murdered and 640 wounded; as at September 9, 2015, 180 individuals had been murdered and 115 wounded in the year in acts of violence in the urban transport system.<sup>204</sup>

## 1. Situations that exacerbate the violence and insecurity

124. In this context of violence and insecurity, the IACHR has observed a number of circumstances in Guatemala that make the situation worse. The resurgence of disappearances, currently associated with the activities of criminal organizations, is extremely serious. Also of great concern are certain responses by the public to the violence, such as lynching and disproportionate use of private security providers.

### a. Disappearances

125. On top of the high murder rate in Guatemala, disappearances have reemerged at increasingly high and alarming levels. The Guatemalan Criminal Code, forced disappearance is committed not only by any person who acts on the orders or with the authorization or support of the State authorities or security forces, but also by “members of organized groups or gangs having terrorist, insurgent or subversive

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<sup>202</sup> *La Hora*. [84 linchamientos evidencian colapso del sistema de justicia](#), June 1, 2015.

<sup>203</sup> Contribution of the Ombudsman's Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

<sup>204</sup> Contribution of the Ombudsman's Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

purposes or any other criminal purpose who, as members of or participants in such groups or gangs, engage in abduction or kidnapping.”<sup>205</sup>

126. Civil society organizations report that more than 25,000 people disappeared in Guatemala between 2003 and 2014 according to figures from the National Civil Police (PNC). Approximately 13,000 were women and 12,000, men. According to the PNC, the causes of the disappearances over the last 12 years are illegal capture by organized crime groups, trafficking in persons, domestic violence, absconding for financial and romantic reasons.<sup>206</sup>The Mutual Support Group (GAM) says that “[m]ost disappearances are connected with violence against women in Guatemala and trafficking in persons” and that “the peace agreements signed in 1996, putting an end to 36 years of civil war, were supposed to close the chapter on disappearances; on the contrary, however, the number of cases increases every year.”<sup>207</sup>

127. Since 2007, civil society has been lobbying the Congress to pass law 35-90 to create the National Commission on the Search for Victims of Forced Disappearance and Other Forms of Disappearance,<sup>208</sup> with the purpose of establishing the whereabouts of more than 45,000 victims of forced disappearance and other forms of disappearance during the 1960–1996 period. This proposed law remains pending.

128. The Commission notes the pressing need to approve the proposed law, to which another must be added, aimed at resolving the serious problem of forced disappearances that have occurred since the end of the internal armed conflict. The families of the victims urgently need a response.

<sup>205</sup> Criminal Code, Article 201 ter: The offense of forced disappearance is committed by any person who, on the orders or with the authorization or support of the State authorities, deprives a person or persons of their liberty for political reasons, concealing their whereabouts or refusing to reveal their fate or acknowledge their detention, or by a public official or employee, whether a member of the State security forces or not, who orders, authorizes, supports or acquiesces in any such acts.

The offense of forced disappearance shall consist of the deprivation of the liberty of one or more persons, even in the absence of political grounds, by elements of the State security forces in their official capacity, if they act arbitrarily or with an abuse or excess of force. The offense of forced disappearance is also committed by members of organized groups or gangs having terrorist, insurgent or subversive purposes or any other criminal purpose who, as members of or participants in such groups or gangs, engage in abduction or kidnapping.

The offense shall be deemed to persist until such time as the victim is released.

<sup>206</sup> *Prensa Libre*, Más de 25,000 personas desaparecieron en Guatemala entre 2003 y 2014, April 20, 2015.

<sup>207</sup> GAM, “25,222 Desapariciones en 12 años en Guatemala.” *El Periódico*, Más de 25,000 personas desaparecieron en Guatemala entre-2003 y 2014, April 20, 2015.

<sup>208</sup> Working Group on Forced Disappearance in Guatemala, Thematic Hearing: Legislation on Forced Disappearance in Guatemala. Adoption of law 35-90 creating the National Commission on the Search for Victims of Forced Disappearance and Other Forms of Disappearance, in Guatemala, 138th regular session, March 2010.

129. In this context, during the ex President Pérez Molina administration, the IACHR received information about measures adopted in the area of citizen security,<sup>209</sup> particularly regarding coordination:

between the Ministry of the Interior and the Office of the Attorney General, through the establishment of task forces as a strategic component for combating the frequent crimes of paid assassinations, femicide, extortion, kidnapping, human trafficking, and automobile and cellular telephone theft. A task force was set up for each of these areas by General Order 9-2012 of the Director of the National Civil Police, staffed exclusively with police personnel and duly empowered to strengthen the criminal investigation of complex cases for periods of six months, subject to extension, all in coordination with the Office of the Attorney General.

In that regard, since their implementation, "more than 30 organizations that engaged in assassinations have been dismantled, reducing the number of homicides in the country by 16% compared to 2011, with 86 criminal groups broken up by 2014." According to the information, efforts centered on implementing the Pact for Security, Justice and Peace.<sup>210</sup>

130. The IACHR notes that the State does not offer information on homicides disaggregated by ethnic origin and/or economic background, but that the identification categories are the individual's parents' names, their first and last names, and their age, sex, gender, place of birth, place and neighborhood of residence, personal identity number, and civil status.<sup>211</sup>
131. Although it values the information supplied by the State, the IACHR observes that behind the high rates of violence are thousands of murdered individuals and thousands of affected families, groups, and sectors that coexist in circumstances of constant insecurity and vulnerability. The Guatemalan State should create integral policies directed at generating the conditions whereby those who live in its territory can lead lives without the threat of violence and crime.

## **b. Lynchings**

132. Lynchings are heinous acts of violence against individuals, whether they involve one or more victims and whether those victims perish or not as a result. This social phenomenon is perpetrated not by ordinary criminals, nor on individual impulse,

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<sup>209</sup> Response of the State of Guatemala to the in questionnaire of the IACHR for preparing the "Annual overview of the human rights situation in the Hemisphere of the Inter-American Commission on Human Rights." Guatemala, February 20, 2015.

<sup>210</sup> Response of the State of Guatemala to the in questionnaire of the IACHR for preparing the "Annual overview of the human rights situation in the Hemisphere of the Inter-American Commission on Human Rights." Guatemala, February 20, 2015. See also Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015.

<sup>211</sup> Response of the State of Guatemala to the in questionnaire of the IACHR for preparing the "Annual overview of the human rights situation in the Hemisphere of the Inter-American Commission on Human Rights." Guatemala, February 20, 2015.

but by normal citizens who act as vigilante groups, or even entire communities that participate in lynching. Victims are generally seized under suspicion of committing a crime, but they can also be taken from their homes or workplace. The victims, who are generally males, and to a lesser extent women and children, are normally tortured before they are executed, in order to force them to reveal the names of their presumed accomplices, and they die after beatings, mutilation, stoning, shooting or being burned alive.<sup>212</sup>

133. From 2008 and October 2015, 297 people died and 1,043 were injured by lynching. In 2008 19 people died, while from January to September 2015 there was an increase to 44 deaths.<sup>213</sup> In 2013 53 people died due to lynching. According to the National Civil Police (PNC), of the 84 people who died at the hands of lynch mobs in Guatemala from January 2012 to May 2015, 76 were men and 8 were women,<sup>214</sup> and they were mostly carried out in Huehuetenango, Guatemala and Alta Verapaz.<sup>215</sup> The condition of public authority serves no guarantee against this phenomenon, such was the situation then Mayor of Concepcion, Solola, Bacilio Juracán, who was allegedly severely beaten and burned by community members in October of 2015, time in which his son resulted also wounded.<sup>216</sup>
134. The high incidence of extortion has been pointed to as one of the causes of lynchings. However, the problem would appear to be more complex, with lack of confidence in the State apparently an important factor:

The public ends up taking desperate measures because the public security system does not work; it does not justify it at all, but it is a fundamental reason. There is a feeling in the population that there is no longer any point in waiting for state institutions where health, education, hospitals, and security are concerned. This produces a perverse knee-jerk reaction, leading communities to dispense 'justice' for themselves.<sup>217</sup>

135. The Commission reiterates that the State has a duty to prevent crime and resolve conflicts. The Commission urges the State to adopt a comprehensive policy for preventing and combating lynchings. The State must provide a prompt, coordinated and interinstitutional response in places where lynchings could be committed. There must be a rapprochement between the State and the communities, and the Government must have with a prevention policy, and the political will to enforce it. There must also be collaboration with municipal authorities, traditional indigenous authorities, and the Ombudsman's Office.

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<sup>212</sup> IACHR, Justice and Social Inclusion: The Challenges of Democracy in Guatemala, December 29, 2003, para. 133.

<sup>213</sup> La Prens Libre, Guatemala: 297 muertos por linchamientos entre 2008 y 2015, November 11, 2015.

<sup>214</sup> *La Hora*, 84 linchamientos evidencian colapso del sistema de justicia, June 1, 2015.

<sup>215</sup> *La Hora*, 84 linchamientos evidencian colapso del sistema de justicia, June 1, 2015.

<sup>216</sup> Bbc.com, Linchan y queman vivo a alcalde en Guatemala, October 13, 2015.

<sup>217</sup> *La Hora*. 84 linchamientos evidencian colapso del sistema de justicia, June 1, 2015.



### c. Private security

136. An especially critical issue in the field of security is the operation of private security forces in Guatemala. As the IACHR observed in its report “Justice and Social Inclusion,” in 2003 there were three private police officers for every public officer.<sup>218</sup> Over the last decade, the number of private security firms and personnel in Guatemala has risen substantially, to the point where, according to official information, at present, private security guards outnumber police personnel by five to one.<sup>219</sup> It is estimated that there are at least 120,000 private security agents in the country, roughly half of whom are illegal because the firms that employ them have not been set up under a governmental or ministerial decision, while the status of 94% of the other half has not been regularized in accordance with the laws in force.<sup>220</sup> The information available to the IACHR suggests that the State is one of the main entities that hire private security services.<sup>221</sup>
137. According to the Office of the United Nations High Commissioner for Human Rights in Guatemala (OHCHR-Guatemala) only 24 of the 151 registered private security companies were assessed to be in compliance with Decree 52-2010, which regulates private security services. The General Directorate of Private Security Services increased actions to control private security companies. However, major challenges persist, such as training and certification of guards and improvement of their working conditions. Only 477 of the estimated 46,000 private security agents are certified. Several cases illustrate the consequences of insufficient oversight on these companies. In July, a woman was killed and a police officer wounded when a private security guard opened fire in a pharmacy in Guatemala City. In October, two private security guards were apprehended in Mixco, Guatemala, for the kidnapping and murder of a 62-year-old woman.<sup>222</sup> In the year 2013 OHCHR-Guatemala registered various complaints of abuse by private security from companies in the context of protest against extractive industry projects. As an example, the OHCHR-Guatemala informed that in May a private security person from the San Rafael mine was processed for the crimes of leassion and obstruction of justice in relation to an attacked perpetrated by private guard of such company against a group of protesters. Additionally, the Supreme Court of Ontario, Canada admitted three complaints against the Hudbay Minerals Company for the crimes of homicide, injuries and sexual violence presumably committed by the security personal in El Estor (Izabal).<sup>223</sup>
138. In this context, information received indicates that companies interested in undertaking extractive projects on indigenous lands and territories often subcontract security services from private companies owned by or connected to

<sup>218</sup> IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, December 29, 2003, para. 93.

<sup>219</sup> Information received during the visit to Guatemala in March 2012.

<sup>220</sup> *Crónica de Actualidad*. “Policías privadas: Un ejército paralelo” [Private Police: A Parallel Army]

<sup>221</sup> Ministry of the Interior. General Directorate of Private Security Services. Press note from the newspaper *El Periodico* entitled *El Estado también utiliza seguridad privada*, May 8, 2014.

<sup>222</sup> OHCHR-Guatemala. *Report on the activities of the office in Guatemala*, January 12, 2015.

<sup>223</sup> OHCHR-Guatemala. *Report on the activities of the office in Guatemala*, year 2013, January 13, 2014, para. 44



serving or retired members of the Army.<sup>224</sup> The IACHR also notes that members of private security forces have been accused repeatedly of violating the rights of indigenous communities and their members defending their land and territory.<sup>225</sup> At the same time, private security guards are said to have taken part in joint operations with members of the public security forces, such as the detention of citizens or court-ordered<sup>226</sup>and extrajudicial evictions.<sup>227</sup>

139. The IACHR recalls that, as the organs of the inter-American system have found, the State's international responsibility may be engaged by the attribution to it of human rights violations committed by third parties or private individuals. The Court has held that:

Said international responsibility may also be generated by acts of private individuals not attributable in principle to the State. The States Party to the Convention have erga omnes obligations to respect protective provisions and to ensure the effectiveness of the rights set forth therein under any circumstances and regarding all persons. The effect of these obligations of the State goes beyond the relationship between its agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to take such steps as may be necessary to ensure effective protection of human rights in relations amongst individuals. The State may be found responsible for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfill these erga omnes obligations embodied in Articles 1(1) and 2 of the Convention.<sup>228</sup>

140. The IACHR has offered guidelines on compliance with the duty to prevent violations. In particular, it underscored the need for the domestic legal system to

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<sup>224</sup> Information received at a meeting with leaders of indigenous communities and organizations in Guatemala City on August 21, 2013.

<sup>225</sup> The communities of the Xinka people in the municipalities of Casillas and San Rafael Las Flores, Department of Santa Rosa, and in the municipalities of Mataquescuintla and Jalapa, Department of Jalapa, have been opposing mining operations by the company Mina San Rafael for several years. On April 27, 2013, at least 10 protesters came under attack with firearms by the company's private security guards, leaving six villagers wounded. The chief of the company's security service, who allegedly ordered the attack, is reportedly being prosecuted and is said to have been remanded in custody along with a member of the military who was apparently as a security advisor to the company. Information received by the IACHR on a visit in August 2013.

<sup>226</sup> Acting alongside the police, private security guards with the Chabil Utzaj company took part in the violent eviction of Maya Q'eqchi' communities in the Polochic Valley area in March 2011, as well as in subsequent attempted evictions in Cahaboncito and Sepurlimite. Those incidents resulted in several community members being killed and injured. Information received by the IACHR on a visit in August 2013.

<sup>227</sup> The Commission also heard that, in 2006 and 2007, Compañía Guatemalteca de Niquel instigated the forcible eviction from the Polochic Valley of Q'eqchi' communities in the Municipality of Panzós, Alta Verapaz Department and in El Estor, Izabal Department, for the purpose of mining operations. On January 17, 2007, "11 women were gang-raped by several men (security guards of the company, policemen, and Army soldiers) who carried out the eviction. All of these incidents have remained unpunished."<sup>227</sup> Letter to the Inter-American Commission on Human Rights from the Q'eqchi' community in Block 8, Chacpayla, Municipality of El Estor, Izabal Department, dated August 19, 2013. Also, testimony received by the IACHR at the community of El Rodeo, Cahaboncito, Panzós, Alta Verapaz Department, August 24, 2013. See also, complaint of the Q'eqchi', Poqomchi' and Achi' peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received by the IACHR on a visit in August 2013.

<sup>228</sup> IACHR, Report on Citizen Security and Human Rights, 2009, para. 40.

regulate the functions that private security services may perform, the types of weapons and materials they are authorized to use, proper mechanisms to oversee their activities and the introduction of a system of licensing that is accessible and offers sufficient information. It has also recommended the introduction of a system whereby such private security firms are required to report their contracts on a regular basis, detailing the type of activities they perform. Likewise, the public authorities should demand compliance with selection and training requirements that individuals hired by these private security firms must meet, specifying which public institutions are authorized to issue certifications attesting to the firms' employees.<sup>229</sup>

141. As regards Guatemala, specifically, more than 10 years ago the Commission referred to problems associated with the increasing involvement of private companies in security services. In its report "Justice and Social Inclusion" the IACHR drew attention to the numerous charges of human rights violations by private security forces, as well as the lack of oversight laws and mechanisms.<sup>230</sup> Although some progress has been made, the IACHR regrets to note that significant challenges remain with respect to licensing, oversight, and criminal investigation and prosecution, leading to multiple abuses as a result, as the preceding paragraphs denote.
142. In this regard, the Commission is encouraged by the fact that on November 23, 2010, Decree No. 52-2010 was enacted, adopting the Private Security Services Law, thus fulfilling a commitment contained in the Agreement on Strengthening Civilian Power and the Function of the Army in a Democratic Society. The Law established the General Directorate of Private Security Services (DIGESSP) within the Ministry of the Interior and security firms were given one year to comply with stricter requirements.<sup>231</sup> In spite of that, according to information available to the IACHR, the Law's enforcement has encountered serious delays and challenges. In particular, the Commission has learned that although the Law went into force in May 2011, the Ministry of the Interior did not pass Government Decision 417-2013 approving its implementing regulations until October 2013. Available information indicates that by May 2014, 148 companies had registered, having being set up under a governmental or ministerial decision, with a total of 50,000 agents in their ranks. However, 139 of them (94%) are not yet in compliance with the requirements set forth in the above law, despite which they continue to operate,<sup>232</sup> notwithstanding that the provision of services "without authorization or an operating license" constitutes a criminal offense.<sup>233</sup> The Commission also observes that there are dozens of unregistered companies and, as it noted in its report

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<sup>229</sup> IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 73.

<sup>230</sup> IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, December 29, 2003, para. 93.

<sup>231</sup> Article 67 of the Private Security Services Law.

<sup>232</sup> *Diario La Hora*, *139 de 148 empresas de seguridad privada aun no se adecuan a la ley*, May 28, 2014. *Diario La Hora*, *Empresas de seguridad privada señalan paralización de procesos*, June 2, 2014.

<sup>233</sup> Article 66 of the Private Security Services Law.

"Justice and Social Inclusion," as a result "the State has no control over their sometimes criminal activities, which is a factor enabling abuses."<sup>234</sup>

143. As regards oversight activities, the available information indicates that between January and May 2014, the DIGESSP carried out around 75 operations, compared with 33 in the same period for the year 2013.<sup>235</sup> The Commission acknowledges that the number of oversight actions doubled year on year; however, the large number of private security agents and the seriousness of the abuses reported suggest that these actions remain highly insufficient. According to information provided to the Commission the above has to do with the Directorate's lack of human and logistical resources. Therefore, the Commission urges the State to take decisive measures to ensure that the Private Security Services Law is effectively enforced through strict oversight by the Directorate, supported by the PNC, particularly its Supervision and Oversight Division for private security companies.
144. Additionally, the IACHR notes that, according to the law, security services providers are required to render assistance when requested to do so by the competent authority.<sup>236</sup> In that regard, the IACHR wishes to remind the State that private firms only offer security for assets and valuables, and are not intended to augment or supplant member states' obligations in the area of citizen security, as the state's responsibility for the protection of human rights is a non-delegable duty.<sup>237</sup> Private security bodies should be regulated and monitored; however, above all, the primary challenge for governments should be to strengthen the police. As the Commission has noted previously, the privatization of the functions involved in citizen security is a departure from the concept of human rights, where the State is responsible for guaranteeing that citizen security is defended and ensured. Instead, citizen security becomes a mere product to be bought on the market. To be in compliance with the duty to ensure human rights, member states must undertake the mission of preventing, deterring and suppressing crime and violence, as theirs is a monopoly on the legitimate use of force.<sup>238</sup>
145. The IACHR stresses that the State has a fundamental duty to investigate and, as appropriate, punish the perpetrators and architects of human rights violations that come to their attention. As the Commission and the case law of the Inter-American Court have consistently held, that obligation requires that all perpetrators directly involved in the crimes, as well as those who instigated them, be punished.<sup>239</sup> To fulfill its obligation to investigate with due diligence, the State must conduct "an effective search for the truth," it should seek to punish those directly responsible

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<sup>234</sup> IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, December 29, 2003, para. 93.

<sup>235</sup> DIGESSP, *Se incrementan supervisiones*, May 9, 2014.

<sup>236</sup> Article 4 of the Private Security Services Law.

<sup>237</sup> IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 73.

<sup>238</sup> IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 72.

<sup>239</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, Reparation and Costs. Judgment of July 8, 2004. Series C No. 110, para. 146; I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparation and Costs. Judgment of November 25, 2003. Series C No. 101, para. 275; and I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of June 7, 2003. Series C No. 99, para. 186.

as well as the masterminds, and the investigation “must be undertaken in a serious manner and not as a mere formality preordained to be ineffective,”<sup>240</sup> and must involve every State institution.<sup>241</sup> In that regard, the available information indicates that at the time in 2014, the DIGESSP had filed nine complaints for illegal provision of private security services and the Office of the Attorney General had designated a prosecution unit to take up the cases reported by the DIGESSP.<sup>242</sup> Nevertheless, based on the information at its disposal, the IACHR finds that the effective performance of those obligations has encountered serious snags, as evinced by reported cases that remain in partial or total impunity; the imposition of penalties not commensurate with the injury; and failure to investigate and punish all those involved in the alleged offenses, particularly the architects, such as the head of the security firm or extractive company, or the state authorities for failure of their duty to prevent the violations.

## **2. The State’s response: Security policies, National Civil Police, states of emergency, role of the armed forces and special squads**

146. In this context of violence and insecurity, the State has responded with a series of policies and strategies. However, some of its acts or omissions, such as the continuous weakening of the National Civil Police, the abusive use of states of emergency, militarization of citizen security, or the creation of special squads, have only increased tensions and exacerbated the problem.

### **a. Security policies and the National Civil Police**

#### **i. Security policies**

147. In 2012, the Government of Guatemala drafted the Covenant for Security, Justice and Peace with the overall aim of

implementing a cooperative strategy that engages and gives joint responsibility to all social sectors and state institutions for legitimizing and enabling a series of changes and outcomes that will have an impact in terms of achieving improved governance, security, and protection against crime, violence, and impunity in the country.<sup>243</sup>

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<sup>240</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits, Judgment of July 29, 1988. Series C No. 4, para. 177.

<sup>241</sup> I/A Court H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, paras. 130; I/A Court H.R., *Case of the Massacre of Pueblo Bello v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 120; and I/A Court H.R., *Case of Huilca Tecse v. Peru*. Judgment of March 3, 2005. Series C No. 121, para. 66.

<sup>242</sup> DIGESSP, *Se incrementan supervisiones*, May 9, 2014.

<sup>243</sup> Government of Guatemala, *Covenant for Security, Justice and Peace*.

According to the State, the core focus of the Covenant is to strengthen the institutions involved in ensuring democratic security and justice, which, in its opinion, has brought about a significant reduction in homicides in the country.<sup>244</sup>

148. In its observations on the Draft General Report on the Situation of Human Rights in Guatemala, the Guatemalan State pointed out that

the recommendations of the Inter-American System, in the context of social unrest, have outlined a critical institutional roadmap that has led to the discussion of the need to redesign public policies in the area of public security and protocols for the action of the police force in situations of social protest with emphasis on the protection of human rights. As for the State, it has adopted the recommendations of the Human Rights Ombudsman to fine-tune mechanisms to oversee the combined forces of the Civilian Police Force and the National Armed Forces, relegating the latter to intervene in case of situations of social unrest.<sup>245</sup>

149. In reference to the Covenant for Security, Justice and Peace, OHCHR-Guatemala welcomed the creation in 2013, within the Ministry of the Interior, of the Third Vice Ministry for Prevention of Violence and Crime. It also noted that steps were made towards a comprehensive approach to violence prevention, including the approval, in August, of the National Policy for Violence and Crime Prevention, Citizen Security and Peaceful Coexistence 2014-2034. However, owing to the extensive scope of the Covenant, preparations were still underway in areas such as deprivation of liberty, local security boards, and prevention of armed violence, with the result that its impact could not yet be assessed. It said that the Government's response to violence and insecurity remained predominantly reactive and without a focus on structural causes.<sup>246</sup>

150. The Ombudsman informed that in 2012 Guatemala adopted the National Security Policy (PNS) and the Strategic Plan for National Security, which highlighted as risks the latent social tensions; the deterioration of governance; the weakness of the security and justice institutions; corruption; impunity and lack of integral development; illicit trafficking in firearms, ammunition, and explosives; human trafficking; illegal armed groups; paid assassinations; kidnapping and extortion; robbery, and theft of personal property. Despite that assessment, however, it says that the State has not offered an effective response to combat crime and ensure public safety and that the absence of a legislative and public policy response as well as the weakening of institutions are ongoing problems.<sup>247</sup>

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<sup>244</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015.

<sup>245</sup> Observations by the State of Guatemala on the "Draft General Report on the Situation of Human Rights of Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015, p. 24.

<sup>246</sup> OHCHR-Guatemala. Report on the activities of the office in Guatemala, year 2014, January 12, 2015, para. 38.

<sup>247</sup> Contribution of the Ombudsman's Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

151. According to the Ombudsman, the Strategic Plan for National Security set forth a series of measures that should have been carried out in 2013 but were not. They included infrastructure projects to modernize prisons and the creation of the National Penitentiary Institute and National Institute for Migration and Naturalization. Other measures that were neglected include the gradual scaling back of the Army's participation in public security operations, the introduction of protocols for joint and combined security forces operations, and the drafting of a proposed reform of the Public Order Law. The Ombudsman also says that nor has the necessary legislative agenda concerning security issues been advanced, although the Congress did set up the Working Group on Security and Justice (*Mesa de Seguridad y Justicia*) in 2014.
152. Another measure adopted in this area was the National Policy for Violence and Crime Prevention, Citizen Security and Peaceful Coexistence 2014-2034, although, thus far, no resources have been allocated for its implementation. In his 2014 annual report, the Ombudsman recommended that the above policy be harmonized with the National Youth Policy (2012-2020), the National Policy on Advancement and Integral Development for Women and Equal Opportunities Plan (2008-2023), and the National Security Policy (2012).<sup>248</sup>In relation to specific policies, in its response of October 6, 2015, the State enlists the public policies for addressing insecurity in Guatemala, in particular the specific measures for protecting women, children and adolescents, human rights defenders, social leaders, journalists, and migrants, among others.<sup>249</sup>

## ii. National Civil Police: Police reform

153. The Agreement on Strengthening Civilian Power and the Function of the Army in a Democratic Society, signed on September 19, 1996, envisaged a security system that reflected an interest in reforming the State's relationship with the public. The National Civil Police (PNC) was established in 1997 in accordance with the Peace Agreements, which called for creating a civilian police force to deal with the country's internal security matters. It is essential that the PNC carry out its functions properly in order to increase security and people's sense of safety, to improve relations between the police and the public, and to demilitarize internal security.
154. The PNC has been plagued with difficulties and problems since its inception. Lack of resources, unqualified personnel, corruption, the involvement of its personnel in serious crimes, and impunity are just some of the problems that the institution has faced.

The institutional instability and weakness of the National Civil Police produced a gradual process of internal and public decline that coincided

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<sup>248</sup> Contribution of the Ombudsman's Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

<sup>249</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR communication of August 14, 2015," October 6, 2015.

with (and to a large extent also caused) the worsening of the security situation in recent years.<sup>250</sup>

155. On December 22, 2010, the Government of Guatemala adopted Government Decision 361-2010, creating the National Commission for Police Reform, whose purpose is to "promote, propose, and monitor implementation of the measures, strategies, plans and programs associated with the reform of the National Civil Police that would enable an institutional modernization process aimed at strengthening the democratic rule of law," based on the National Agreement for the Advancement of Security and Justice.<sup>251</sup> As a result of that initiative, in 2011, human rights defender Helen Mack was sworn in as the Presidential Commissioner for Police Reform. She worked on a diagnostic assessment and drafted a continuity plan to present to the 2012–2015 government administration. According to the diagnostic assessment, there was a clear need for a culture shift within the police, so that it could change from being a reactive to a preventive force. The need was also noted to boost the self-esteem of the institution and police personnel on the understanding that the police itself had to carry out the reforms and, therefore, it was necessary to empower them. There were five planks to the proposed strategy: prevention, professionalization, criminal investigation, control, and planning.
156. In keeping with the proposals of the National Commission for Police Reform, two regional PNC academies were set up along with an officer training school, with an intake of approximately 3,000 new recruits.<sup>252</sup> The police reform made progress in the area of police professionalization: there have been at least 156 police sciences graduates and 13 police chiefs gained a master's in criminal investigation. The Office of the Inspector General was strengthened with the addition of 100 new members in 2014, taking the total number of inspectors to approximately 600; the resources and technological capabilities of the Police Information System (SIPOL) were enhanced; the number of cases referred to the Office of the Attorney General as a result of internal inquiries by the PNC Office of Professional Responsibility into suspected wrongdoing by official personnel increased; in December 2014, the PNC National Policy on Gender Equality was adopted with the aim of ensuring dignity for women who work in the police.<sup>253</sup> However, in addition to low pay in the PNC, operational shortcomings persist, such as lack of fuel and equipment, patrol cars in poor condition, deteriorated infrastructure at police facilities, which causes overcrowding, lack of cleanliness, and service disruptions and, in general, impairs the operational capacity of the PNC.<sup>254</sup>
157. On the measures adopted to strengthen the PNC, the State noted that major efforts have been made to consolidate the police force. These include increasing the

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<sup>250</sup> National Commission for Police Reform, [Reforma Policial: Sistematización de una experiencia, 2011](#).

<sup>251</sup> Government of Guatemala, [Reforma Policial](#)

<sup>252</sup> OHCHR-Guatemala. [Report on the activities of the office in Guatemala](#), year 2013. January 13, 2014, para. 41.

<sup>253</sup> Contribution of the Ombudsman's Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

<sup>254</sup> Contribution of the Ombudsman's Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015, and OHCHR-Guatemala. [Report on the activities of the office in Guatemala](#), January 12, 2014. 39.



number of police by 9,984 agents in three years (2012-2014); as for education and professionalization, 4,881 new agents have graduated<sup>255</sup>.

158. According to the Ombudsman, the number of police personnel in 2014 totaled 34,099,<sup>256</sup> of which 14% were women. He specified that the figure of 34,099 police officers meant there were two police officers for every thousand inhabitants although the figure would be affected by the number of personnel who are discharged, either through retirement or because of involvement in illicit conduct and corruption.<sup>257</sup> In spite of that upswing, as is noted above, the number of private security personnel still outstrips that of the National Civil Police.

159. The IACHR values the incorporation of new agents to the National Police as well as the efforts made with regard to their professionalization and training. Also, the IACHR notes in responses to the violence and insecurity, the State's has continued to boost the involvement of the armed forces in internal security. In this regard, the IACHR calls on the state to retake the agenda of the police reform, specially to continue with its plan "*La policia que queremos*" (The police we want), set by the National Commission of the Police Reform.

## b. States of emergency

160. The IACHR has noted a practice in Guatemala of declaring states of emergency in response to public protests,<sup>258</sup> usually organized by indigenous peoples and communities in defense of their land. Often they are not declared for a set length of time, the respective government decision is sometimes issued after the state emergency actually occurred,<sup>259</sup> and the announcement of the measure is not culturally adequate.<sup>260</sup> Furthermore, declarations of states of emergency and the

<sup>255</sup> Report submitted by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2014," October 6, 2015.

<sup>256</sup> In 2014, the total number of active officers in the police came to 29,798. OHCHR-Guatemala. Report on the activities of the office in Guatemala, January 12, 2014. p. 39.

<sup>257</sup> Contribution of the Ombudsman's Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

<sup>258</sup> In 2012 and 2013, 10 states of emergency were decreed; of those seven were "states of calamity" connected with the earthquake on December 7, 2012; one was a "state of prevention" in Jalapa, Santa Rosa, declared on May 9, 2013, by Government Decree 8-2013; and two were "states of siege," one of which was related to the same situation in Jalapa, Santa Rosa, while the second, announced on May 4, 2012, by Government Decree 1-2012, concerned Santa Cruz Barillas, Huehuetenango, which was declared for 30 days but lasted 16 days in practice. UN. OHCHR-Guatemala. Report on the activities of the office in Guatemala, January 26, 2011. p. 14.

<sup>259</sup> Government Decree 1-2012, concerning the state of emergency in Santa Cruz Barillas, Huehuetenango on May 1, was announced in the *Diario de Centroamérica* newspaper on May 4, 2012.

<sup>260</sup> Declarations of states of emergency are published in the official gazette, which is only circulated in Spanish in the country's main cities.



massive presence of soldiers and police that generally accompanies such pronouncements induce uncertainty, worry, fear, and anxiety in the population.<sup>261</sup>

161. States of emergency in Guatemala are governed by Articles 138 and 139 of the 1985 Constitution and the Constitutional Law of Public Order (Decree 7 of December 9, 1965). Article 138 of the Constitution provides that states of emergency are appropriate “in case of invasion of the territory, serious disturbance of the peace, activities against the security of the State, or a public calamity,” it enumerates the rights whose “full observance [may cease],”<sup>262</sup> and it provides that the decree will specify “the causes that justify it; the rights that cannot be fully ensured; the territory affected; and the time that it will be in effect,” which may not exceed 30 days.
162. Regarding states of emergency, the State pointed out that it had temporarily suspended some constitutional guarantees on the basis of the articles of the Constitution indicated in the preceding paragraph and in fulfillment of the obligations set forth in Article 27 of the American Convention,

without obstructing the work of the Human Rights Ombudsman during states of emergency, in the light of Article 275 of the Constitution and for the basic purpose of managing the emergency, and without any discrimination, not for the purpose of containing social protest, the freedom of expression, let alone for the purpose of criminalizing indigenous leaders or human rights defenders or developing militarization of the areas where they were applied. [...The State also rejected indications that] in the management of the State there is a process of militarization or abuse of States of Emergency.<sup>263</sup>

As for civil society organizations, they have voiced particular concern about the use of states of emergency as mechanisms to suppress situations classed as social unrest, and at the same time they have reported abuses committed by army personnel while they are in effect.<sup>264</sup>

163. The IACHR recalls that, under the terms of Article 27 of the American Convention, the suspension of guarantees is any applicable “[i]n time of war, public danger, or other emergency that threatens the independence or security of a State Party.” As the Inter-American court has found, “[t]he starting point for any legally sound analysis of Article 27 and the function it performs is the fact that it is a provision

<sup>261</sup> National Maya Waq'ib'Kej Coordination and Convergence. Preliminary Report on Human Rights Violations during the State of Siege in Jalapa and Santa Rosa. 2013, pp. 3-4.

<sup>262</sup> Those rights are freedom of action (Article 5), right to legal detention (Article 6), right of detainees or prisoners to be questioned by judicial authorities within 24 hours (Article 9), freedom of movement (Article 26), rights of assembly and demonstration (Article 33), freedom of expression (Article 35, first paragraph), right to bear arms (Article 38, second paragraph), and the right of state workers to strike (Article 116, second paragraph). Constitution of the Republic of Guatemala, Article 138.

<sup>263</sup> Additional Observations by the State of Guatemala on the “Draft General Report on the Situation of Human Rights of Guatemala and the IACHR Communication of August 14, 2015,” Ref. Note P-925-2015/AFAF/hm of December 9, 2015 received at the Secretariat on December 11, 2015, p. 3, and Additional Observations by the State of Guatemala on the “Draft General Report on the Situation of Human Rights in Guatemala,” October 6, 2015, p. 24.

<sup>264</sup> IACHR, 153rd regular session, Hearing: Situation of Human Rights Defenders in Guatemala October 28, 2014.

for exceptional situations only.”<sup>265</sup> In situations where it is declared, the organs of the system have explained that Article 27 of the Convention only authorizes the suspension of certain rights and guarantees, and even then only “to the extent and for the period of time strictly required by the exigencies of the situation.” Such measures as are adopted must not violate the State Party’s other international legal obligations, nor may they involve “discrimination on the ground of race, color, sex, language, religion or social origin.”<sup>266</sup> The need for those specific guarantees must be strictly ensured by domestic provisions of law, in accordance with the obligation set forth at the Article 2 of the Convention. Likewise, the International Covenant on Civil and Political Rights indicates, in Article 4, that, in situations of emergency that jeopardize the life of the nation and whose existence has been officially proclaimed, the States Parties could adopt provisions that, to the extent that is strictly confined to the requirements of the situation, suspend obligations incurred as a result of the Covenant, as long as said provisions are not incompatible with the other obligations imposed on them by international law and do not entail any discrimination based only on reasons of race, color, gender, language, religion, or social origin. The law points out that this provision does not authorize the suspension of Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, and 18 of the above-mentioned international instrument. Both the American Convention and the International Covenant on Civil and Political Rights point out that the use of the right to suspension must be reported to the other States Parties to the respective instruments, through the Secretary General of the OAS or the United Nations, as appropriate.

164. As the Inter-American Court has found,

any action on the part of the public authorities that goes beyond those limits [of Article 27 of the Convention], which must be specified with precision in the decree promulgating the state of emergency, would also be unlawful notwithstanding the existence of the emergency situation. ... [T]he specific measures applicable to the rights or freedoms that have been suspended may also not violate these general principles. Such [a] violation would occur, for example, if the measures taken infringed the legal regime of the state of emergency, if they lasted longer than the time limit specified, if they were manifestly irrational, unnecessary or disproportionate, or if, in adopting them, there was a misuse or abuse of power.<sup>267</sup>

The IACHR recalls, likewise, that certain essential judicial guarantees are not subject to suspension, that is, “those judicial procedures, inherent to representative democracy as a form of government ... provided for in the laws of the States Parties as suitable for guaranteeing the full exercise of the rights referred to in Article 27 (2) of the Convention and whose suppression or

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<sup>265</sup> I/A Court H.R., *Habeas corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 19.

<sup>266</sup> I/A Court H.R., *Habeas corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 19.

<sup>267</sup> I/A Court H.R., *Habeas corpus in Emergency Situations* (Arts.27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 38 and 39.

restriction entails the lack of protection of such rights," which procedures should be exercised in accordance with the principles of due process of law.<sup>268</sup>

165. As regards the Public Order Law of 1965, the OHCHR has recommended that it be brought into line with the purposes of Guatemala's international obligations.<sup>269</sup> A few years ago, the former Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, noted the need to reform the law owing to its incompatibility with international human rights standards. Concretely, he said:

The public order law should be reformed as it dates from 1965, is based on the previous Constitution, and is not compatible with international standards in this area. For example, it states that arrests may be made without a judicial order and may be prolonged indefinitely until the end of the state of emergency, which may be renewed indefinitely, provided that a new decree is issued before it expires.<sup>270</sup>

166. In this regard, the Ombudsman has said that the Public Order Law of 1965 does not have a human rights approach, nor is it consistent with international instruments on such matters<sup>271</sup>.
167. The State on its part indicated that although the Public Order Law of 1965 may have legal incongruities with the Constitution, it is a law in force that cannot be attacked as unconstitutional and any amendment must be done by means of a legal reform.<sup>272</sup> On the subject of states of emergency, the State says that it has acted in accordance to law and in observance of both the pro homine principle and the guarantees recognized in Articles 27 of the American Convention on Human Rights and 4 of the International Covenant on Civil and Political Rights by informing the other states parties through the general secretariats of the OAS and UN. It also says that it acts within its sovereign power in limiting the exercise of certain freedoms and human rights based on the needs to restore the constitutional order, peace, governance, and public security, as well as to ensure and protect the universal human rights and freedoms of the country's inhabitants. Furthermore, the State reported that, in terms of security, the National Policy for Prevention of Violence and Crime, Public Security and Peaceful Coexistence for 2014-2034 was drawn up as a part of the National Policy for Human Rights, as well as mechanisms for the protection of human rights defenders for 2006-2015 and the National Policy against Human Trafficking and its Plan of Action for 2008-2017.<sup>273</sup>

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<sup>268</sup> I/A Court H.R., *Judicial Guarantees in States of Emergency (Arts. 1 and 2 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 06, 1987. Series A No. 9, para. 41.

<sup>269</sup> OHCHR-Guatemala. Report on the activities of the office in Guatemala, year 2008, February 28, 2009, para. 97.

<sup>270</sup> Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Addendum, Mission to Guatemala, 1 October 2008, para. 92.

<sup>271</sup> Report by the PDH to the IACHR on the Situation of Human Rights in Guatemala, September, 2015.

<sup>272</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and IACHR Communication of August 14, 2015," October 6, 2015.

<sup>273</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and IACHR Communication of August 14, 2015," October 6, 2015.

168. The Ombudsman has determined that the Government uses states of emergency as a means of social control amid the prevailing climate of unrest in the country, rather than employing effective dialogue and dispute settlement mechanisms. He says that between 2008 and 2014, 14 states of emergency were decreed, of which only those declared in 2011 in Alta Verapaz and Petén were in response to the activities of organized crime groups.<sup>274</sup>
169. The Commission also notes that during the administration of Otto Pérez Molina there were at least two declarations of a "state of siege"—the second most serious category after a "state of war"—and one of a "state of prevention" in areas inhabited by indigenous peoples and communities.<sup>275</sup> Those situations came about for reasons to do with the implementation of projects on indigenous land without prior consultation. The IACHR is concerned that the declaration of states of emergency might be designed as an attempt to stall community consultations or suppress social protests over investment or exploitation projects.<sup>276</sup>
170. For example, by Government Decree 6-2014 of September 21, 2014, a 15-day state of prevention was announced in the municipality of San Juan Sacatepéquez after a clash between local residents left eight people dead in the village of Pajoques. The incidents allegedly occurred because of differences over the building of a regional highway and a cemetery. According to the Decree, holding outdoor meetings, public demonstrations or other shows and the right to strike or work stoppage of public services are limited; the same decree stated that "the right to bear arms or other elements of violence, except for security forces" are also limited. Although the duration of the decree was set for 15 days as of September 21, it lasted six weeks when it was repealed by Government Decree No. 11-2014 of October 31,

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<sup>274</sup> Contribution of the Ombudsman's Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

<sup>275</sup> Public Order Law, Constituent National Assembly Decree No. 7, Articles 16-19.

<sup>276</sup> Regarding the state of prevention in San Rafael Las Flores, the State indicated that: "In the context of social conflict that has appeared as a result of opposition to mining activities in San Rafael Las Flores, the Minister of the Interior stated that the scope of the state of prevention is aimed at "separating criminal acts between individuals and organized crime from the legitimate protest against mining activities in the region," which is a matter that, in the opinion of the Minister of the Interior, leads to a confusions that is not beneficial to anybody." Observations by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015, p. 21. See also Government Decree 06-2013 of May 1, 2013, which declared a state of siege in the municipalities of Casillas and San Rafael Las Flores, department of Santa Rosa; and in the municipalities of Mataquescuintla and Jalapa, department of Jalapa. See Government Decree 06-2013 of May 1, 2013, published on May 2. According to Articles 3 and 4 of Government Decree 06-2013, as a result of the declaration, among others, the following constitutional rights had been restricted: freedom of action, legal detention, questioning of detainees or prisoners, freedom of movement, right to assembly and protest. In view of the above, the State indicated the following: "the State of Guatemala informs that, under no circumstance, did the security institutions incur in the perpetration of crimes or human rights violations, as there are not complaints being filed with the Human Rights Ombudsman, which is an institution that acts as a guarantor and observer of the actions of the State to restore public law and order and ensure the peace in the context of a state of emergency." Observations by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015, p. 23

2014. According to reports, certain constraints to human rights would have presumably contravened international and constitutional standards.<sup>277</sup>

171. The fact that declarations of states of emergency are often declares and are accompanied by a disproportionate deployment of security personnel, which, according to some testimonies, can number in hundreds or even thousands of soldiers and police in small municipalities or communities, is also a matter of concern to the IACHR. In addition, on occasion, the measure authorizing the state of emergency has been published after the actual date of its application<sup>278</sup>; the communities were not informed about the declaration of a state of emergency, its scope, and the rights restricted; or it was not done through culturally appropriate media, given that it was announced in the official gazette (*Diario de Centroamerica*), which is published exclusively in Spanish and only distributed in the country's main cities.

### **c. Military participation in citizen security and militarization of zones of social unrest**

172. One of the State's responses to the violence and insecurity has been to boost the military's internal security role.<sup>279</sup> According to a member of one of the affected communities:

In many cases, far from safeguarding human life in communities, the State has protected private property, pouring in large quantities of soldiers and police, imposing terror once more on communities.<sup>280</sup>

173. According to the Ombudsmen of Guatemala, militarization of citizen security exists because the participation of the Army in that area remains a recurring theme. In that regard he says that for the past four years the Ministry of Defense has increased its reserves for citizen security as well as its specific budget for providing assistance in that area, while the PNC has kept its budget the same, despite an increase in personnel. He says that the military's involvement in citizen security has not produced positive results as violence and crime in the country have not declined discernibly. He also says that the permanent presence of the army in citizen security matters runs counter to the Peace Accords, as that task is

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<sup>277</sup> Government Decree No. 11-2014 of October 31, 2014, published in *Diario de Centro América* on November 3, 2014. Guatemala declara estado excepción, September 23, 2014; *Diario El Universal*, Guatemala estado de excepción en poblado, 23 de noviembre de 2014.

<sup>278</sup> For example, Government Decree 1-2012 of May 1, 2012, which declared a state of siege in the municipality of Santa Cruz Barillas, Huehuetenango, was published in the *Diario de Centroamérica* on May 4, 2012.

<sup>279</sup> With the decree on May 1, 2013, of a state of siege in the Departments of Santa Rosa and Jalapa the number of police and soldiers in the municipalities reportedly swelled by around 3,500. *Coordinación y Convergencia Nacional Maya Waq'ib'Kej. Informe preliminar sobre Violaciones a los derechos humanos durante el estado de sitio en Jalapa y Santa Rosa* [Preliminary Report on Human Rights Violations during the State of Siege in Jalapa and Santa Rosa]. 2013. pp. 3-4. "On the night between May 1 and 2, 2012, hundreds of soldiers and police arrived in Santa Cruz Barillas (approximately 800)." Information received by the IACHR on a visit in August 2013.

<sup>280</sup> Information received by the IACHR on a visit in August 2013.

the exclusive purview of the civilian police, and it is an obstacle to strengthening civilian authority.<sup>281</sup>

174. The militarization of internal security remains a constant in Guatemala, where military personnel frequently take part in citizen security tasks and are sometimes put in command of the PNC. In Guatemala it is a recurring practice for military forces to take charge of internal security on grounds of an increase in violent or criminal activities, even due to roads being cut off or obstacles blocking transportation routes.<sup>282</sup> The presence of organized crime, especially in border areas, is also linked to the increase in military presence and the performance of citizen security tasks by soldiers.<sup>283</sup> At a public hearing held at the 153rd regular session of the IACHR, Guatemalan civil society organizations warned about the dangers that the increasing militarization of citizen security functions poses to the rule of law and observance of human rights.<sup>284</sup>
175. According to OHCHR-Guatemala, the army's participation in citizen security increased in 2014. In that regard, it mentioned joint military/police patrols made up of a majority of military personnel, that the presence of Reserve Army Squads for Citizen Security was extended from 2 to 12 departments in two years, and the military officially took part in guarding detention centers. Thus, the army continued to participate in task forces with the police, but this has not resulted in visible improvements in security. It noted, in that regard that in areas of the capital where the Maya (zone 18) and Kaminal (zones 7 and 12) task forces operate, the number of attempted murders and homicides increased by 5% and 38.8%, respectively, despite a decline in 2012 when the task forces began operations.<sup>285</sup>
176. The IACHR has verified that, in clear contradiction of the Peace Agreements, military garrisons were set up on ancestral lands and territories of indigenous communities and municipalities, particularly in areas where there were strong protests in defense of indigenous rights, purportedly as a strategy to allow projects to go ahead, in addition to which, Army personnel were said to be engaging in illegal acts.
177. The State has argued that the use of the Army in security tasks has a constitutional basis and is determined by the need to assist the PNC in meeting challenges that surpass its possibilities while the capacities of the police are strengthened. However, the IACHR observes that the efforts underway to enhance the capacity of the PNC are not sufficient.

178. The IACHR reiterates that a clear and precise distinction between internal security as a function for the police and national defense as a function for the armed forces

<sup>281</sup> Contribution of the Ombudsman's Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

<sup>282</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, para. 147.

<sup>283</sup> Information received by the IACHR on a visit in August 2013.

<sup>284</sup> IACHR, Hearing: Reports of Militarization in Guatemala, October 28, 2014.

<sup>285</sup> OHCHR-Guatemala. Report on the activities of the office in Guatemala, year 2014, January 13, 2014, pars. 41-42.

is essential to guarantee a use of force that does not violate the right of assembly.<sup>286</sup> The IACHR has stated more than once that the police and armed forces are two substantively different institutions insofar as the purposes for which they were created and their training and preparation are concerned.<sup>287</sup> The armed forces are trained "to fight against enemies and not to protect and control civilians, a task that is typical of police forces."<sup>288</sup> However serious the internal security situation or even the level of ordinary crime may be, it does not constitute a military threat to the sovereignty of the State.<sup>289</sup> As a rule, the intervention of the armed forces in internal security matters is accompanied by violations of human rights in violent circumstances. Therefore, it is advisable to avoid the intervention of the armed forces in matters of internal security since it carries a risk of human rights violations.<sup>290</sup>

179. It also recalls that the Agreement on Strengthening Civilian Power and the Function of the Army in a Democratic Society includes a commitment to the demilitarization of Guatemalan society and, therefore, improving internal security as a means of strengthening the democratic State. The Commission reiterates that this implies reducing the influence and involvement of the Armed Forces in issues beyond their specific responsibility, i.e. questions of external security, and avoiding their interference in all matters of government.<sup>291</sup> The Commission also recalls that the PNC was established in 1997 in accordance with the Peace Agreements, with the intention of creating a civilian police force to deal with the country's internal security matters. As the IACHR has noted previously, it is vitally important that the PNC carry out its functions properly in order to increase security and people's sense of safety, to improve relations between the police and the public, and to demilitarize internal security.<sup>292</sup> At the same time, the IACHR is concerned that the Guatemalan system of laws still contains provisions, such as ones contained in the Support for Civil Security Forces Law, which would allow the intervention of the Armed Forces in citizen security matters.<sup>293</sup> The lack of precision with regard to the conditions in which the intervention of the Armed Forces would be allowed permits a broad interpretation by the authorities that has enabled the use of force to suppress peaceful social protests.

<sup>286</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, para. 145.

<sup>287</sup> IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 102. IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, para. 145.

<sup>288</sup> IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 102. IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, para. 145.

<sup>289</sup> IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 103.

<sup>290</sup> IACHR, Report on the human rights situation in Venezuela, 2003, Chapter III, "State Security: The Armed Forces and the Police," para. 272; IACHR, *Report on Citizen Security and Human Rights*, 2009, para. 101.

<sup>291</sup> IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, December 29, 2003, para. 93.

<sup>292</sup> IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, December 29, 2003, para. 96.

<sup>293</sup> Article 1 of the Law authorizes the Army to provide support to the PNC "in its functions of preventing and combating organized crime [...], when security conditions in the country demand such assistance or the regular means at the disposal of the civilian security forces are considered insufficient." Decree 40-2000 of June 16, 2000.



180. With regards to intervention by the armed forces in citizen security tasks and militarization of areas of social unrest, the information received by the IACHR records numerous cases of military garrisons being set up on ancestral lands and territories of indigenous communities and municipalities engaged in efforts to defend their rights against the implementation of infrastructure projects without prior consultation, presumably as a strategy to allow the installation of projects.<sup>294</sup> A permanent garrison has been established—with reports of the introduction of a second brigade—in the 12 communities of San Juan Sacatepéquez that oppose activities being conducted by a cement company without prior consultation;<sup>295</sup> in March 2013 a garrison was reportedly set up in the Queqchi communities on the Dolores River in Cobán, Alta Verapaz, where there are plans to build a hydroelectric plant, which occurred after the communities organized a demonstration that led to the suspension of activities. In the Ixil region, one of the worst affected by the armed conflict, the number of military personnel was increased at the base in Chajul and at the garrison in Nebaj. A new garrison was also established in Cotzal.

[the soldiers] come to impose greater control on the people for the companies that want to come in. If people protest, they control the demonstrations. [...] They intimidate the population, especially the victims and survivors of the conflict. The wounds have not yet healed and now they are being opened again.<sup>296</sup>

181. The Commission also observes that the strategy of the State is contributing to the re-militarization of a country that experienced an armed conflict in its recent history, and it not only creates tremendous fear in the areas where it is declared, but also has an intimidating effect on other demonstrations.<sup>297</sup> As expressed by a resident of Santa Cruz Barillas:

In Santa Cruz Barillas the state of emergency caused fear and anxiety in the population of the municipality of Barillas, and in the Q'anjob'alano territory "we, the grandmothers, grandfathers, and small children, fled our homes on May 4 because of the Hidro Santa Cruz company."<sup>298</sup>

182. In this context, soldiers are also engaging in unlawful acts, such as participating in the irregular purchase of community lands,<sup>299</sup> holding recruitment drives in communities, in contravention of the procedure governed by the Civil Service Law,<sup>300</sup> and allegedly imposing the requirement on communities that a member of

<sup>294</sup> For example, the following areas were mentioned: Chisec, Cobán, Fray Bartolomé de las Casas, Raxruha, among others. Complaint of the Q'eqchi', Poqomchi, and Achi' peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received by the IACHR on the visit of August 2013.

<sup>295</sup> According to the testimony of one community leader, "militarization has been used to clear the way in the area, so that no one bothers the people doing the work for the cement company's installation." Information received by the IACHR on a visit in August 2013.

<sup>296</sup> Information received by the IACHR on a visit in August 2013.

<sup>297</sup> Assembly of the Peoples of Huehuetenango. Informe Q'an B'alam Cataratas de Encuentros y Discordia: Santa Cruz Barillas.

<sup>298</sup> Information received by the IACHR on a visit in August 2013.

<sup>299</sup> Information received by the IACHR on a visit in August 2013.

<sup>300</sup> Civil Service Law, Decree No. 20-2003, Chapter III.



the military or persons representing them sit on the *Consejo Comunitario de Desarrollo* (COCODE), the community representatives' body.<sup>301</sup> Military personnel are also carrying out acts to intimidate community leaders in areas of intense social unrest brought about by the presence of extractive enterprises. Thus, for example, according to testimony given to the IACHR by a community leader in San Juan Sacatepequez:

On July 27 this year [2013], the Army went into the communities to ask for names. They went into schools, gave out candy, piñatas, to gather the children. They asked them where the mayor, the community leader lived, what he was doing, where he was. There is persecution. There is a psychological war; they are not killing us with the gun, but it is psychological harm, nonetheless. The children are worried about going to school. We have filed habeas corpus petitions, complaints. We are still waiting to hear from the Supreme Court of Justice.<sup>302</sup>

183. In relation to the states of exception, the State indicated that it informed the IACHR on October 24, 2014, of the conflicts and violent acts that occurred on September 19 and 20, 2014, in the village of Los Pajones, San Juan de Sacatepéquez, and the reasons for decree a state of prevention (*estado de prevención*) in the zone. The order states the reasons for having decreed a state of siege in Santa Cruz de Barillas on May 1, 2012, which was lifted May 18, 2012. That State reports that while it was in effect, 30 searches were conducted and 23 persons detained. On the state of prevention decreed on May 2 in Jalapa and Santa Rosa, the State affirms that is not a policy to criminalize social protest, and that in its view such statements reflect an ideological approach associated with certain residents' or communities' opposition to mining. It states that criminal acts occurred against the governability and internal security of the State.<sup>303</sup>
184. On social unrest, the State noted that through inter-institutional coordination priority is accorded to democratic and participatory dialogue and indicates that the lead agency on the subject is the National System of Dialogue. It indicates that in 2013 and 2014 more than 39 cases of social unrest were filed with the Presidential Dialogue Commission, which would have avoided the intensification of the conflict, promoting its resolution and favoring democratic governance. Among the cases it notes the unrest in La Puya around a mining project.<sup>304</sup>

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<sup>301</sup> Complaint of the Q'eqchi', Poqomchi' and Achi' peoples. Analysis of the situation of racism and discrimination in Alta Verapaz.

<sup>302</sup> Information received by the IACHR on a visit in August 2013.

<sup>303</sup> Report submitted by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the communication of August 14, 2014, from the IACHR," October 6, 2015.

<sup>304</sup> Report submitted by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the communication of August 14, 2014, from the IACHR," October 6, 2015.

#### **d. Special Reserve Army Squads for Citizen Security**

185. Another response of the State was to adopt Government Decision 31-2015, legalizing Special Reserve Army Squads for Citizen Security and creating nine such squads with the mission of supporting civilian security forces in their functions of preventing and combating organized and common crime and restoring or maintaining citizen security.<sup>305</sup> The squads, which will include career officers, reserve officers, and hired personnel, will operate in Guatemala City, adjacent municipalities, and the departments of San Marcos, Quetzaltenango, Huehuetenango, Quiché, Zacapa, Chiquimula, and Izabal. According to the above government decision, the special squads will act strictly in accordance with human rights and the Constitution. Human rights organizations have offered the following statement on the subject:

The creation of a squad within the military hierarchy implies the Army taking full and complete charge of citizen security and not as an incidental or momentary measure. In other words, the formation of these squads is a step toward the institutionalization of the Army's involvement in citizen security, making it a *de facto* sentinel of territorial occupation.

Government Decision 31-2015 is patently unconstitutional and contrary to the spirit and letter of the Peace Agreements and to a vision of security that is respectful human rights. It lacks clear administrative controls that would allow the actions of those squads to be correctly guided, with result that they can be used to apply strategies of repression and criminalization of vulnerable sectors, without oversight institutions being able to supervise them.<sup>306</sup>

186. In addition to the foregoing, "military commands, organized by brigades, were created with the aim of bolstering internal peace and security in the national territory and, in order to continue the process of designing the force envisaged in the Integrated Defense Planning and Management System, it is necessary to restructure military units and create, to that end, the Central Regional Command with the composition, location, and jurisdiction set out in Government Decision 189-2015 of July 21, 2015", thus constituting Military Command , organized by Brigades.
187. The IACHR worries that the Guatemalan State will resort to militarization to address the challenges of violence and citizen security.

### **3. Disproportionate impact of violence on certain groups**

188. Violence transects Guatemala, affecting the whole of society and all groups. Aside from the context of violence and insecurity, there is the situation of those whose role in society or particular vulnerability due to historic discrimination and

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<sup>305</sup> Government Decision 31-2015 of January 20, 2015.

<sup>306</sup> [Comunicado Convergencia por los derechos humanos](#), February 12, 2015.

exclusion leads them to be disproportionately affected. They particularly include individuals who defend human rights in Guatemala, among them, indigenous authorities and leaders, environmental activists, trade union leaders, and justice sector operators, among others. Others groups affected include women, children and adolescents, journalists, migrants and refugees, LGBTI persons, people with disabilities, and persons deprived of liberty.

### a. Human rights defenders

189. Human rights defenders are an essential pillar for the strengthening and consolidation of democracies, since the purpose that motivates their work involves society in general, and seeks to benefit society. Accordingly, when a person is kept from defending human rights, the rest of society is directly affected.
190. In the inter-American system, the Court has noted that “the States have the duty to provide the necessary means for human rights defenders to conduct their activities freely; to protect them when they are subject to threats in order to ward off any attempt on their life or safety; to refrain from placing restrictions that would hinder the performance of their work, and to conduct serious and effective investigations of any violations against them, thus preventing impunity.”<sup>307</sup>The aforementioned duties of the State are related to the enjoyment of several rights contained in the Declaration of Rights and Duties of Men and in the American Convention on Human Rights, such as the rights to life, personal integrity, freedom of expression, judicial guarantees, and judicial protection, among others—rights which, taken together, allow for the free exercise of activities of defense and promotion of human rights. Thus, an attack on a human rights defender in reprisal for his or her activities can have the effect of violating several rights recognized in the inter-American instruments.<sup>308</sup>
191. The situation of human rights defenders in Guatemala has been a constant concern for the IACHR, given the dangers and harassment to which they are permanently exposed, often of such a degree as to result in murder. Between 2000 and August 2014, the Unit for the Protection of Human Rights Defenders of Guatemala (UDEFEQUA) reported 174 murders of defenders. As for the State, it reported that, since 2001, it has a specialized prosecution service for the investigation of crimes “against human rights activities, trade unionists, journalists, social leaders, media persons, children and young people.” Likewise, it

“has developed an entire infrastructure that guarantees the discharge of its duties without any type of obstacle, implementing precautionary measures and creating ad hoc institutions to tackle the problems they are facing, such

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<sup>307</sup> I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009. Series C No. 196, para. 145.

<sup>308</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, paras. 12-19.

as the establishment of the Unit for Reviewing Attacks against Human Rights Activists."<sup>309</sup>

192. Without detriment to the above, during 2015 the Commission has continued to receive information about the persistence of murders, intimidation, and criminalization of human rights defenders in Guatemala. From January to September 2015, UDEFEGUA had recorded 380 attacks or acts of aggression against human rights defenders. These attacks or acts of aggression included murder, threats, arbitrary arrests, following, and surveillance.<sup>310</sup>
193. In 2014, UDEFEGUA recorded 814 attacks against human rights defenders and in the course of 2013<sup>311</sup>, 657 violent incidents were documented,<sup>312</sup> while 2014 was an even more violent year for human rights defenders.<sup>313</sup> The attacks have mainly targeted defenders who work to address the country's predominant human rights problems, such as those who defend the rights of indigenous peoples, land rights and the environment, and the rights of victims of the internal armed conflict and trade union leaders. In this context, the organizations found that 55% of those attacked were women. Several environmental defenders are also awaiting decisions in proceedings instituted against them.<sup>314</sup>
194. Recent years have seen a rise in attacks on human rights defenders who advance indigenous peoples' rights and economic, social, and cultural and environmental rights, which "represent 90% of attacks, while civil and political rights represent 5%."<sup>315</sup>

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<sup>309</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015.

<sup>310</sup> Contribution of UDEFEGUA, Information on the situation of human rights in Guatemala. September 2015, p. 57.

<sup>311</sup> Contribution of UDEFEGUA, Information on the situation of human rights in Guatemala. September 2015, p. 57.

<sup>312</sup> UDEFEGUA, Informe parcial de la situación de defensores/as de derechos humanos a la segunda quincena de noviembre del 2014 [Partial Report on the Situation of Human Rights Defenders up to the second half of November 2014]. The attacks documented include: 7 murders, 12 threats, 201 cases of property damage, 22 lawsuits, 9 arbitrary arrests, 53 unlawful arrests, 47 acts of deformation, 20 attempted murders, 1 attempted abduction, 244 acts of intimidation, 26 instances of mistreatment and cruel and inhuman punishment, 143 cases of being followed, 4 robberies, and 7 acts of surveillance. UDEFEGUA has been systematizing statistics on attacks against defenders since 2000. See UDEFEGUA, El silencio es historia: Informe sobre situación de Defensoras y Defensores de Derechos Humanos, enero a diciembre de 2013.

<sup>313</sup> UDEFEGUA, "El Acompañante" Informe parcial de la situación de defensores/as de derechos humanos a la segunda quincena de noviembre del 2014 ["The Accompanying Person": Partial Report on the Situation of Human Rights Defenders up to the second half of November 2014]; UDEFEGUA, El silencio es historia: Informe sobre situación de Defensoras y Defensores de Derechos Humanos, enero a diciembre de 2013.

<sup>314</sup> UDEFEGUA, El Acompañante Informe parcial de la situación de defensores/as de derechos humanos al mes de julio de 2014.

<sup>315</sup> Contribution of UDEFEGUA, Information on the situation of human rights in Guatemala, September 2015, p. 60.

195. The Ombudsman reported that more than 60% of the defenders attacked were members of indigenous peoples and worked in defense of land rights.<sup>316</sup>

The majority of instances in which defenders have been criminalized have had to do with defense of the environment; the rights of indigenous peoples to consultation prior to implementation of administrative, economic, or productive measures in their places of habitation or surrounding areas; and land rights. Other defenders that have been highly criminalized are those that work in cases of transitional justice.<sup>317</sup>

196. The IACHR notes how frequently the attacks have targeted traditional indigenous authorities or leaders.<sup>318</sup> The Commission has heard how in recent years several indigenous leaders and authorities in different parts of the country have been murdered for reasons presumably to do with their activities in defense of the rights of their peoples or communities. In addition, a series of attacks and arrests have occurred in the context of evictions and demonstrations. In that connection, numerous acts of violence have been observed against indigenous communities that oppose development and investment projects, in particular, attacks, intimidation, and harassment against their leaders. According to reports, such acts have consisted of destruction, looting, and burning of homes and crops; blockading of roads or destruction of bridges that are sometimes the only means of communication; verbal intimidation and threats with knives and firearms; discharging of firearms into the air or at community members; filing of complaints with local courts to obtain warrants for their arrest; and direct physical assaults of villagers, including children, among others.<sup>319</sup>

197. Compounding the above, the information shows a series of alleged cases of presumed criminalization of activities in defense of indigenous peoples' lands, territories, and natural resources. Criminalization, understood as excessive and unwarranted use of criminal law, is presumably being utilized against indigenous authorities and leaders,<sup>320</sup> in contexts of investment projects implemented without prior consultation and protests over land rights. According to UDEFEGUA, there has been "a disproportionate increase in judicial complaints brought against human rights defenders," which totaled 61 in 2013 alone, 40 of which were

<sup>316</sup> Contribution of the Ombudsman's Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

<sup>317</sup> Contribution of the Ombudsman's Office to the Report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

<sup>318</sup> In the words of one community leader, "[t]oday we are suffering another level of harassment, like one that we have suffered before. By harassment I mean threats, intimidation and even attacks and attempted murders of leaders because of the role they play. Just as they did in the Peace Agreements process." Information received by the IACHR on a visit in August 2013.

<sup>319</sup> Complaint of the Q'eqchi', Poqomchi' and Achi' peoples. Analysis of the situation of racism and discrimination in Alta Verapaz.

<sup>320</sup> IACHR, Hearing on the Situation of Human Rights Defenders in Guatemala, 141st session, March 29, 2011. IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, para. 94.

accompanied by allegedly unlawful detentions.<sup>321</sup> One emblematic case was that of the leaders of the 12 Kaqchikel Maya communities in San Juan Sacatepéquez, who oppose a mining project and have “86 criminal suits against them, [...] six of their fellows in jail, and another four with warrants issued for their arrest.”<sup>322</sup>

## i. Murderers, attacks, threats, and harassment

198. According to news articles, Telésforo Odilio Pivaral González was murdered on April 5, 2015, in Las Nueces, a village in the municipality of San Rafael Las Flores, Department of Santa Rosa, Guatemala. Pivaral González was a member of the Committee for the Defense of Life and Peace in San Rafael Las Flores (CDVPSRLF-SR), which had been opposing the El Escobal mining project since 2011. The human rights defender was allegedly attacked by unknown assailants and shot five times while waiting for a bus.<sup>323</sup>
199. Alfredo Ramos, member of the Central Campesina Ch'ortí Nuevo Día (CCCND), a peasant farmers' union, died on June 7, 2015 following a knife attack on May 28, 2015.<sup>324</sup>
200. Sebastián Sajic Córdova, the 70-year-old spiritual leader of the Ixil and member of the Council of Elders of the Village of San Antonio Titach, San Juan Cotzal, Quiché, and of the Ixil Council of Elders of San Juan Cotzal, was murdered on September 10, 2015. According to the PNC, the crime occurred in Santa Avelina de Nebaj, where, using machetes, individuals attacked the spiritual guide, "who was a victim of the genocide<sup>325</sup> and was involved in the native peoples' struggle to ensure that the dictator Efraín Ríos Montt pays for his crimes."<sup>326</sup> A propos of the murder of the spiritual leader Sebastián Sajic Córdova, OHCHR-Guatemala called on “the State to adopt the necessary measures to ensure the safety and physical integrity of the

<sup>321</sup> According to UDEFEGUA, in 2013, there were 657 reported attacks against defenders, an increase of 46.42% compared with 2012, making it the most violent year in recent times. According to the same source, although the year saw attacks on rights defenders across all sectors, almost 20% of attacks were against peasant farmers' leaders who stood up in defense of their right to prior consultation. The Commission was also informed that in 2013, 41% of the defenders who were attacked were advancing the rights of indigenous peoples. UDEFEGUA. *El Silencio es historia. Informe sobre Situación de Defensoras y Defensores de Derechos Humanos*, January to December, 2013, p. 11.

<sup>322</sup> Information received by the IACHR on a visit in August 2013.

<sup>323</sup> *El Tiempo*, *Varias organizaciones defensoras de los derechos humanos pidieron que se investigue el homicidio de Telésforo Odilio Pivaral González, un ambientalista comunitario guatemalteco asesinado a principios de mes en un camino rural*, April 11, 2015; OXFAM, *Guatemalan activist murdered near mine site*, April 9, 2015; CERIGUA, *Miembro de Resistencia en San Rafael Las Flores fue asesinado*, April 6, 2015.

<sup>324</sup> Peace Brigades International (PBI), *Monthly Information Pack Guatemala No.141*, June 2015, p. 2.

<sup>325</sup> As documented by the CEH, the Maya-Ixil area was one of the regions where genocidal actions were committed. Specifically, between 70% and 90% of the region's villages were razed to the ground by the Guatemalan Army, the population who was being displaced was bombed, and the population who had been captured or gave themselves up voluntarily continued to be subject to violations, although they were under the absolute control of the Army. CEH, *Memory of Silence*, Volume V, *Conclusiones y Recomendaciones*, p. 51.

<sup>326</sup> *Telesurtv*, *Asesinan a líder ancestral indígena en Guatemala*, September 15, 2015.

indigenous authorities of the Ixil Council, given its importance for maintaining social cohesion and for allowing indigenous peoples to exercise their autonomy and right to self-determination.”<sup>327</sup>

201. On September 15, 2015, three armed men wearing ski masks broke into the offices of the organization Mamá Maquin and held up four workers and a five-year-old girl at gunpoint.<sup>328</sup> According to their complaint, they stole all the organization's information. Mamá Maquin is a women's organization established in 1990 that is located in Nueva Libertad, a community in Fray Bartolomé Municipality, Alta Verapaz.<sup>329</sup>
202. Rigoberto Lima Choc, a 28-year-old human rights defender and recently elected member of the Sayaxché Municipal Council in Petén, was murdered in Sayaxché on September 18, 2015. Lima Choc was at the forefront of the complaint against the palm oil processing company blamed for causing environmental damage on La Pasión River. He was shot dead by two men on a motorcycle. "The victim was outside a courthouse where the day before the palm oil plant had been ordered to suspend its operations for six months.”<sup>330</sup>
203. According to OHCHR-Guatemala, three human rights defenders (Lorenzo Pérez, a leader of Coordinadora Nacional de Desplazos de Guatemala; Hermelindo Asij; and Manuel Pérez Ordoñez) would have been illegally detained that same day, September 18, but released in the afternoon later that day. "According to information received, they were illegally detained by persons said to work for Reforestadora de Palma de Petén, S.A. (REPSA), following the company's temporary closure ordered yesterday by the Petén Criminal Court of First Instance in the context of the investigations under way into the pollution of La Pasión River.”<sup>331</sup>
204. Rigoberto Patzan was arrested by members of the PNC on September 21, 2015. He was allegedly tortured while in detention. Rigoberto Patzan is one of the representatives of Pajoques, a community affected by the San Gabriel cement plant belonging to Cementos Progreso in San Juan Sacatepéquez, as well as by the construction of a private road (regional ring road project). According to community press reports:

He was violently arrested without an arrest warrant being shown to him; there was no prosecutor from the Attorney General's Office or a competent judge present; his captors, whom he recognized as National Civil Police agents, beat and tortured him as well as stealing part of his produce (1.5

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<sup>327</sup> OHCHR-Guatemala, [Condena muerte de autoridad indígena ixil](#), September 11, 2015.

<sup>328</sup> The organization is named in honor of the Q'eqchi' Maya leader Adelina Caal Maquin, one of the victims of the massacre perpetrated by the Guatemalan Army on May 29, 1978, in the Municipality Panzós, Alta Verapaz.

<sup>329</sup> PCS, Guatemala, [Organizaciones rechazan agresiones contra colectivo feminista mama maquin](#), September 29, 2015.

<sup>330</sup> *BBC Mundo*, [Guatemala: matan a tiros a un activista comunitario que denunció ecocidio](#), September 19, 2015.

<sup>331</sup> OHCHR-Guatemala, [OACNUDH condena hechos violentos en Sayaxché, Petén](#), September 18, 2015.



liters of milk). He also lost 15 bottles of milk, had to abandon a cow, and, worst of all, had to leave his family, crops, and work for the community untended.<sup>332</sup>

205. According to news media, on August 14, 2014, the National Civil Police, acting in coordination with the Army, reportedly carried out eviction operations in the Q'eqchi' Maya communities of Cobán, Chisec and Raxruhá in Alta Verapaz, with the alleged involvement of private security guards and members of communities in favor of the hydroelectric plant in the area.<sup>333</sup> The following day, several members of the indigenous people reportedly attempted to prevent the operation from going ahead by blocking the Chisec-Raxruhá road, which reportedly prompted a violent reaction from the agents of the State, who entered homes without a court order, damaged property and personal belongings, fired tear gas grenades, and used firearms against the protesters.<sup>334</sup> According to reports, three community leaders died from gunshot wounds allegedly inflicted by the security forces and around 40 people were detained.<sup>335</sup> On April 22, 2014, human rights defender Yuri Melini allegedly found the name of the national policeman in charge of his personal security painted on his front gate.<sup>336</sup> Yuri Melini is a director of Centro de Acción Legal, Ambiental y Social de Guatemala (CALAS), which promotes community participation and collective indigenous rights in relation to environmental matters. In 2008, he was shot four times in a suspected attack on his life,<sup>337</sup> which was why the officer had been assigned for his security. In addition to this security measure, the police monitor Mr. Melini's home three times a day.

206. The IACHR issues a reminder that, pursuant to the State's obligation to guarantee human rights, protecting the right to life of human rights defenders entails not just prohibitions but also obligations of a positive nature. Accordingly, in addition to the absolute ban on arbitrary executions and forced disappearances, States are obliged to take positive steps conducive to generate the conditions needed to eradicate violations of the right to life and personal security by state agents or private individuals, in such a way that human rights defenders can freely go about their work.<sup>338</sup>

207. Furthermore, as the Commission has previously stated on several occasion, acts of violence and other attacks against human rights defenders not only affect the

<sup>332</sup> *Prensa Comunitaria*, San Juan Sacatepéquez: Rigoberto Patzan detenido por defender el territorio, September 22, 2015.

<sup>333</sup> Front Line Defenders, Guatemala – Asesinatos y detenciones de líderes indígenas comunitarios Maya Q'eqchi' en Alta Verapaz por defender los derechos del medio ambiente, August 21, 2014.

<sup>334</sup> Front Line Defenders, Guatemala – Asesinatos y detenciones de líderes indígenas comunitarios Maya Q'eqchi' en Alta Verapaz por defender los derechos del medio ambiente, August 21, 2014.

<sup>335</sup> Front Line Defenders, Guatemala – Killings and detention of Mayan Q'eqchi indigenous community leaders in Alta Verapaz for defending environmental rights, August 21, 2014; *Prensa Libre*, Organizaciones indígenas denuncian tres ejecuciones.

<sup>336</sup> Front Line Defenders, Guatemala: Intimidation of human rights defender Dr Yuri Melini, April 30, 2014.

<sup>337</sup> Front Line Defenders, Guatemala: Assassination attempt against human rights defender Yuri Melini, December 9, 2008.

<sup>338</sup> IACHR Second Report on the Situation of Human Rights Defenders in the Americas. OEA/Ser.L/V/II. Doc 66, December 31, 2011, para. 24.



guarantees of every human being, but undermine the fundamental role that human rights defenders play in society and leave all those for whom they fight defenseless. The Commission also calls to mind that the work of human rights defenders is essential for the construction of a solid, lasting democratic society, and rights defenders play a leading role in the process of pursuing the full attainment of the rule of law and the strengthening of democracy.<sup>339</sup>

208. Of particular concern to the IACHR are the lack of attention to official complaints of threats against social and community actors so as to prevent the materialization of risks, and the lack of presence of public authorities when called upon by communities to guarantee their security and protection. The available information also indicates that complaints of attacks are not being properly investigated or punished by the competent institutions. As the IACHR has seen, such attacks usually result in murders, most of which remain unpunished. Moreover, the above has also been identified as factors that help to create fuel or exacerbate the conflicts and, in general, the violence that affects the communities.<sup>340</sup>

## ii. Criminalization and arbitrary detention

209. The IACHR has received information which suggests a misuse of the criminal law system against defenders in the form of presumably unfounded criminal proceedings, arbitrary arrests, and prolonged use of pretrial detention.
210. Among some of the examples denounced by human rights organization include the situation of Francisco Juan Pedro, Arturo Pablo Juan, and Sotero Adalberto Villatoro, community leaders from the Municipality of Santa Cruz Barillas who have acted as mediators in conflicts between civil society and the authorities since 2008, particularly in relation to the Hidro Santa Cruz company's hydroelectric project. According to the information received, in February 26, 2015, the Seventh Division of the Huehuetenango Court of Appeals for Criminal, Drug Trafficking, and Environmental Offenses ordered their preventive detention for the offenses of making threats, illegal detention, coercion, and kidnapping of the company workers. According to information from April 2015, the community leaders are still in pretrial detention in a process which allegedly presents serious irregularities with regard to their detention and pretrial.<sup>341</sup>
211. The indigenous leaders Domingo Baltazar and Rigoberto Juárez, representatives of the plurinational government of the Q'anjob'al, Chuj, Akateka, Popti and mixed-race nation of Huehuetenango, were arrested on March 24, 2015, accused of having led a group of people from the area to destroy the facilities of the San Luis Farm (offenses of coercion, illegal detention, and making threats). According to the information available, they were detained after lodging a complaint against the

<sup>339</sup> IACHR, Press Release No. 62/14. [IACHR Condemns Murder of Human Rights Defender in Honduras](#), Washington, D.C., May 28, 2014.

<sup>340</sup> Peace Brigades International (PBI), Monthly Information Pack Guatemala No. 124 – January 2014.

<sup>341</sup> Front Line Defenders, [Guatemala – Continued detention of three environmental rights defenders](#), March 25, 2015.

Mayor of Santa Eulalia, Diego Marcos Pedro, for attacks on traditional authorities and journalists on March 19, 2015, the day on which the attempt was made to reopen the Snuq Jolom Konob community radio station, which had been closed in January.<sup>342</sup>In spite of being granted house arrest, on March 27, 2015, the day they were due to be released, they were again arrested and charged with kidnapping, coercion, and inciting crime.<sup>343</sup>

212. In addition, Bárbara Díaz Surín, a community leader from the 12 Kaqchikeles Communities of San Juan Sacatepéquez, was arrested by a contingent of 40 policemen on October 29, 2014; she is reportedly being tried for murder. According to the information received from various human rights organizations, her detention was allegedly unjust and she would have been on trial as a reprisal for her struggle against the construction of a cement plants as well as her participation in a march on October 24, 2014, to call for an end to the state of emergency in San Juan Sacatepéquez and denounce sexual harassment of women and girls by members of the police and army as a result of the state emergency.<sup>344</sup> According to the information received, the cement company had tried to negotiate with the human rights leader her release in exchange for a public tour of all the communities where should accept her mistake, apologize and call the community to support the plant.<sup>345</sup>
213. Also, Jacinto Pineda Catalán, Fernando Castro Carrillo, Eusebio Muralles Díaz, and Gregorio de Jesús Catalán Morales, environmental human rights defenders and activist against the activities of La Puya were reportedly being charged with the offenses of “illegal detention,” “coercion,” “making threats,” and “causing injuries” to former workers of the EXMIGUA mining company. It is alleged that the charges would be motivated in reprisal for their activities of defense of the environment.<sup>346</sup>In another matter, the court has reportedly dismissed the accusation against Yolanda Oqueli, a human rights defender who has been a beneficiary of precautionary measures granted by the IACHR since August 24, 2012,<sup>347</sup>on the basis that it lacked merit.<sup>348</sup> Ramiro Choc, a Q’eqchi’ leader, was imprisoned from February 14, 2008 to August 14, 2013, after being convicted of robbery in aggravating circumstances (continuous offense). He was originally

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<sup>342</sup> Peace Brigades International, Monthly Information Pack Guatemala, No. 138 – March 2015.

<sup>343</sup> Contrapoder, Rigoberto Juárez fue capturado por segunda vez, March 28, 2015, Comunicado Ch’orti’ en apoyo a presos políticos de representantes del Gobierno Plurinacional de Guatemala, March 27, 2015; Cmiguat.org, ¿Qué hacen tres líderes comunitarios de Barillas en el Preventivo de la Zona 18?, March 25, 2015.

<sup>344</sup> Asociación para los Derechos de la Mujer y el Desarrollo, Detienen a Bárbara Díaz Surín por defender La Vida y las Flores, October 30, 2014; Front Line Defenders, Guatemala: Criminalisation of human rights defender Bárbara Díaz Surín, November 11, 2014.

<sup>345</sup> FIDH, Guatemala:Faltas al debido proceso en la sentencia contra los Sres.Alonso de Jesús Torres Catalán, Valerio Carrillo Sandoval y Jorge Adalberto López Reyes, May 9, 2014.

<sup>346</sup> FIDH, Guatemala: Hostigamiento judicial y arresto domiciliario de los Sres. Jacinto Pineda Catalán, Fernando Castro Carrillo, Eusebio Muralles Díaz, and Gregorio de Jesús Catalán Morales, June 3, 2014.

<sup>347</sup> IACHR, PM 207/11 – Telma Yolanda Oqueli Véliz and family, Guatemala.

<sup>348</sup> FIDH, Guatemala:Hostigamiento judicial y arresto domiciliario de los Sres.Jacinto Pineda Catalán, Fernando Castro Carrillo, Eusebio Muralles Díaz y Gregorio de Jesús Catalán Morales, June 3, 2014.

charged with illegal detention, encroachment, and aggravated robbery.<sup>349</sup> Choc has started peasant struggles in Izabal, Alta and Baja Verapaz and Peten and alleged that his arrest and conviction was plagued by irregularities and have been motivated by interests of landowners. Timoteo Chén Tun, a rights defender from the community of Monte Olivo in Alta Verapaz, has been in pretrial detention since April 2014. According to an NGO, the criminal trial against him has to do with his activities in opposition to the operations of Hidroeléctrica Santa Rita, S.A.<sup>350</sup>

214. The IACHR notes with concern that arrest warrants are issued and executed at critical moments in communities' struggles. An example of this situation is the case of Saul Mendez and Rogelio Velasquez, community leaders, native of Santa Cruz Barillas, who after more than two years in prison on charges of femicide and murder by lynching occurred on 19 August Barillas 2010, were acquitted on 28 October 2015 by the Court of Femicide of Quetzaltenango. In the acquittal the Court noted that "the Court accepts the argument of the defense" in the sense that the case was "a matter of retaliation" and that "testing the repression and retaliation for a hydroelectric resistance." The Court, citing the opening statements of defense, described that this kind of cases (of criminalization against human rights defenders and community leaders) are repeated elsewhere in Guatemala, as in the cases of San Juan Sacatepequez, San Rafael, Chiquimula, among others.<sup>351</sup>
215. The information suggests also the use of pretrial detention against human rights defenders and leaders, in situations where there would no risk of leaks or obstruction of justice. The Commission also notes that criminal complaints might be used as a means of exerting pressure by companies or their representatives, who then offer to withdraw the charges or desist from the proceeding if the leaders accept a given project or promote its acceptance.<sup>352</sup> Furthermore, community members perceive that complaints brought against them are admitted, while the same is not true for the ones lodged by them in response to intimidation or attacks. According to a local leader:

The state brings the full weight of its judicial apparatus to bear in favor of companies but against us. That is why so many of our community leaders have arrest warrants hanging over them.<sup>353</sup>

216. The IACHR also notes that prosecutors frequently present indictments for numerous criminal offenses presumably without gathering the necessary evidence to establish whether or not there was wrongdoing, which goes against the principle of no crime and punishment without prior law and creates considerable difficulties for community members to mount a defense.<sup>354</sup> One area of particular

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<sup>349</sup> *Prensa Comunitaria*, *Una entrevista con Ramiro Choc*, July 3, 2015.

<sup>350</sup> Peace Brigades International (PBI), *Monthly Information Pack Guatemala*, No. 136 – January 2015.

<sup>351</sup> Acoguate, *Saúl Méndez y Rogelio Velásquez tras más de dos años en prisión son declarados inocentes*, 30 de octubre de 2015.

<sup>352</sup> Complaint of the Q'eqchi', Poqomchi', and Achi' peoples. Analysis of the situation of racism and discrimination in Alta Verapaz.

<sup>353</sup> Information received by the IACHR on a visit in August 2013.

<sup>354</sup> The usual charges are conspiracy, terrorism, activities against the internal security of the Nation, incitement to commit crime, aggravated encroachment, making threats, coercion, arson, intimidation, abduction,

concern is the use of the criminal charge of aggravated encroachment. The crime of encroachment is committed by whomsoever "unlawfully, for any reason ... occupies a property"; this crime is considered "flagrant" in the case of "remaining on the property"; it is aggravated by "inciting," "proposing," or "inducing" others to "commit this crime or cooperate in its planning, preparation, or execution"; and that if such a crime is committed, the police, the Attorney General's Office, or the judge are required to carry out an "immediate eviction." As there is no precise definition of what "unlawfully, for any reason" means and because the required intent on the part of the perpetrator is not clearly described, this criminal charge is often used broadly and to encompass very different situations. Thus, for example, the vague definition of this criminal offense reportedly allowed arrest warrants to be issued against eight indigenous women from the village of Ángel de San Miguel Ixtahuacán for preventing a company from installing electricity cables that passed through their homes.<sup>355</sup>

217. The State emphasizes that it does not promote or carry out actions to criminalize human rights defenders who participate in movements or social protests and that it does not prohibit or impair their individual and collective rights and guarantees. It notes that perpetrating violent acts or propagating violence does not qualify any individual or group of individuals as human rights defenders.<sup>356</sup>

218. In that regard, the Commission recalls that, in addition to the obligation to investigate and punish those who violate the law within their territory, States have the duty to take all necessary measures to prevent unfair or unfounded trials to people who legitimately demand respect and protection of human rights. Opening groundless criminal investigations or judicial actions against human rights defenders not only has a chilling effect on their work but it can also paralyze their efforts to defend human rights, since their time, resources, and energy must be dedicated to their own defense.<sup>357</sup>

### iii. Stigmatization and defamation

219. Sometimes, criminal complaints against indigenous authorities and leaders are accompanied by terms belittling them personally and the work they do, which undermines the credibility and integrity of human rights-related activities in the eyes of society<sup>358</sup> and those leaders' right to have their honor respected and their

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trespass, kidnapping or abduction, attack on the security of a public utility service, and use of chemical or biological weapons. Information received by the IACHR on a visit in August 2013.

<sup>355</sup> Movimiento de Mujeres Indígenas Tz'ununija'. Sistematización de caso legal de ocho mujeres de San Miguel Ixtahuacán, San Marcos. Information received by the IACHR on a visit in August 2013.

<sup>356</sup> Report submitted by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR communication of August 14, 2014" October 6, 2015

<sup>357</sup> IACHR *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc 66, December 31, 2011, para. 76.

<sup>358</sup> United Nations, Commission on Human Rights, Report submitted by the Special Representative of the Secretary-General on human rights defenders, Ms. Hina Jilani, Annual Report 2004, para. 55; IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, para. 95. IACHR, *Second Report on the Situation of Human Rights in Peru*, June 2, 2000, para. 124.

dignity. In this regard, the UN Special Rapporteur on the Situation of Human Rights Defenders expressed concern said that "[t]he multitude of arrests and detentions of defenders also contributes to stigmatization, as people perceive and as troublemakers".<sup>359</sup> Moreover, criminalization in itself delegitimizes social struggles, discredits community struggles, and casts doubt on the legitimacy of community claims, thereby creating a false impression in public opinion.

220. Information was likewise received regarding media campaigns by organizations or foundations related to serving or retired military officers against indigenous leaders and civil society organizations, purportedly aimed at discrediting their activities in defense of indigenous lands and territories. National and local State authorities are reported to have made public statements along the same lines, discrediting the work of these organizations. According to the Unit for the Protection of Human Rights Defenders in Guatemala (UDEFEQUA), in 2013 defamation accounted for 26% of the attacks on defenders that year.<sup>360</sup>

#### **iv. Forced migration and displacement**

221. The IACHR observes with concern how other forms of violence are triggering the forced migration of communities and indigenous people.<sup>361</sup> As already noted, in recent years, the Guatemalan State has had serious problems controlling illegal drug trafficking groups and mafias. Moreover, one outcome of the Mexican State's fight against drug trafficking cartels has been an increase in their operation and in levels of violence in Guatemala.<sup>362</sup> The IACHR notes that the impact of organized crime has forced Guatemalans to seek asylum in neighboring countries and may be driving the internal displacement of people within Guatemala.<sup>363</sup> Although quantitative data are hard to come by, information received by the IACHR indicates that organized crime is impacting indigenous peoples and communities. Information available to the IACHR suggests that some communities, because of either the poverty or coercion they are exposed to, are being used to plant opium poppy. Other communities are reported to have been forced to sell their land for use by drug traffickers, above all in the North and East of the country.<sup>364</sup> The places where drug trafficking is most prevalent are the country's western borders, in departments like Huehuetenango and San Marcos, in areas where indigenous peoples and communities live.

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<sup>359</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, para. 122.

<sup>360</sup> UDEFEGUA. *El Silencio es historia. Informe sobre situación de Defensoras y Defensores de Derechos Humanos*, p. 28.

<sup>361</sup> International Displacement Monitoring Centre. *Guatemala: Violence and inequality still blocking solutions for IDPs*. 2009.

<sup>362</sup> IACHR. See IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, December 30, 2013.

<sup>363</sup> IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. December 30, 2013.

<sup>364</sup> International Displacement Monitoring Centre. *Guatemala: Violence and inequality still blocking solutions for IDPs*. 2009.

222. It has also been reported that illegal groups are responsible for the forced displacement of indigenous communities in order to illegally acquire their lands for organized crime and drug trafficking activities. Compounding the problem have been rural development policies conducive to the expansion of agroindustrial projects at the expense of subsistence agriculture, which are said to have led to extrajudicial evictions and hence the forced displacement of communities. To cite one example, the Q'eqchi' Maya Community of Santa Elena Samanzana II in the Municipality of Cobán, Alta Verapaz has allegedly been subjected to several acts of harassment, threats, and violence by individuals said to be interested in appropriating their lands, for which land titling procedures are reportedly under way with the Land Fund (FONTIERRAS, for its acronym in Spanish).<sup>365</sup> There are reports that in March 2014, violent acts against the community were stepped up, to a point at which, on March 14, 30 heavily armed men irrupted into the community in search of its leaders, locked up several families in the Church and threatened that they would "kill and burn them all alive."<sup>366</sup> As a result, by the end of March, four families are reported to have moved to Guatemala City, while the remaining 27 families reportedly escaped to the jungle of the Santa Elena Samanzana Mountain, where they remained without access to food, medicine, or health care. These facts are said to have been brought to the attention of various State authorities, such as the PNC and the PDH (Ombudsperson), without any timely steps being taken to prevent them and protect the community.<sup>367</sup>

## v. Justice system operators

223. The IACHR has been especially worried about the security situation of justice system operators, as the defenders of access to justice for thousands of victims of rights violations in Guatemala. On several occasion, the Commission has had to grant precautionary measures to request protection for them. For example, the deputy prosecutor at the Public Prosecution Service (*Ministerio Público*), Edgar Ariel Morales Cahuec, was murdered on December 4, 2014 while driving his vehicle near Police Station 33 of the PNC in Mazatenango, Suchitepéquez.<sup>368</sup> The Public Prosecution Service condemned that act and stated that it was conducting the corresponding investigations with a view to identifying, capturing, and achieving the conviction of the perpetrators and instigators of the crime.<sup>369</sup>

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<sup>365</sup> On August 20, 2013, private individuals allegedly entered the community firing at its dwellings and wounding two people. They also allegedly destroyed some crops and put up barriers to prevent the community from harvesting. Similar acts are said to have been perpetrated in January 2014. UDEFEGUA Guatemala. Complaint 2-2014. April 2, 2014.

<sup>366</sup> UDEFEGUA Guatemala. Complaint 2-2014. April 2, 2014. See also, *Prensa Libre*, [Denuncian desalojo violento en Cobán](#), November 8, 2013.

<sup>367</sup> The motives for extrajudicial appropriation of land are reported to be drug crop cultivation and hydroelectric projects, due to the fact that the Canguinic river, which flows through the Community, is a major tributary of other rivers where hydroelectric plants are to be built. UDEFEGUA Guatemala. Complaint 2-2014, April 2, 2014.

<sup>368</sup> Noticias.emisorasunidas.com [Asesinan a auxiliar fiscal del MP frente a comisaría de PNC](#). December 4, 2014.

<sup>369</sup> Public Prosecution Service, [El Ministerio Público condena energicamente el asesinato del Auxiliar Fiscal Edgar Ariel Morales Cahuec](#), December 4, 2014.

224. According to information received by the Commission, between 2002 and 2012, 640 judges and magistrates were subjected to threats and intimidation, 24 were assaulted, and 5 kidnapped. Eleven administrators of justice were murdered<sup>370</sup>. Thirty-two of the cases of threats and intimidation occurred in first half 2012<sup>371</sup>. According to information provided by the Guatemalan State, there were 54 denunciations of crimes against prosecutors in 2010; 57 in 2011; and 61 in 2012. The State of Guatemala also told the Commission that between 2010 and 2013, it had received 124 denunciations of crimes committed against public defenders.<sup>372</sup>
225. According to the Ombudsman, justice system operators engaged in transitional justice proceedings and/or proceedings relating to corruption by officials and authorities are the main victims of attacks.<sup>373</sup> He indicated that, justice operators conducting these kinds of proceedings have even been attacked by the authorities or their peers, in the form of verbal abuse, insults, and threats, attempts to impeach or bring criminal charges against them, complaints, and even harassment of family members.<sup>374</sup>
226. At the same time, the IACHR has been told that those who denounced irregularities in the process for selecting and appointing high court judges in 2014 were victims of reprisals by the judiciary in the form of unwarranted dismissal, "preventive supervision," and allegedly illegal transfers. The IACHR received information concerning the election of Supreme Court and appeals court judges by the Congress of the Republic at the legislative sessions of September 25 and 30, 2014, respectively. In that framework, Claudia Escobar, one of the judges-elect, resigned and reported a series of irregularities in the election and appointment process for Supreme Court and appeals court judges in Guatemala. Among other things, the judge claimed that Vernon Eduardo González Portillo, a lawyer, and Wilfido

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<sup>370</sup> IACHR, Guarantees for the independence of justice operators. Towards strengthening access to justice and the rule of law in the Americas, 2013, para. 155.

<sup>371</sup> IACHR, Guarantees for the independence of justice operators. Towards strengthening access to justice and the rule of law in the Americas, 2013, para. 155.

<sup>372</sup> IACHR, Guarantees for the independence of justice operators. Towards strengthening access to justice and the rule of law in the Americas, 2013

<sup>373</sup> The Ombudsman indicated that: "Although it is true that there has not been another attack with a grenade like the one in March 2001 against Judge Jazmín Barrios Aguilar, when she (like Judge Eduardo Cojulún, who was also intimidated on the occasion) was a member of the Third Sentencing Court conducting oral proceedings in the case of the murder of Monseñor Juan Gerardi, there are still attacks and threats against judges and prosecutors, as when the Ombudsman requested". It is worth noting that the IACHR to grant precautionary measures for Judges Pablo Xitumul de Paz and Patricia Isabel Bustamante García, in May 2013. Both judges were sitting, along with Judge Barrios Aguilar, on the First Criminal Sentencing Court for matters relating to Drug Trafficking and Major Crimes against the Environment, which was trying José Efraín Ríos Montt and José Mauricio Rodríguez Sánchez, for the crime of genocide. In this regard, it should be noted that the Commission granted the June 28, 2013 precautionary measures (MC 125/13) in favor of Judge Iris Jasmin Barrios Aguilar and Patricia Isabel Bustamante Garcia and Pablo Xitumul Paz, members of the First Tribunal Criminal Court of Increased Risk of the department of Guatemala, because they were at risk as a result of their judicial activities in various processes related to organized crime, cases against soldiers accused of serious violations of human rights, as the massacre of " Plan de Sanchez " and " Las Dos Erres " among other. Ombudsman's contribution to the IACHR Report on the Situation of Human Rights in Guatemala, September 2015.

<sup>374</sup> Ombudsman's contribution to the IACHR Report on the Human Rights Situation in Guatemala, September 2015.



Gudiberto Rivera Estrada, a member of Congress, came to her office and advised her that a petition for constitutional relief had been brought against the Citizens Register (*Registro de Ciudadanos*) and that she should admit the petition "if she wanted to be reelected." The judge apparently reported this intimidation to the CIGIG together with evidence that included an audio recording of the conversation with Mr. Gonzales and Deputy Rivera. As a result of those denunciations, her life and personal integrity were presumably at risk, so that, on November 10, 2014, the IACHR requested the State of Guatemala to adopt precautionary measures in favor of the Judge and her nuclear family.<sup>375</sup>

227. The IACHR was also informed of the transfers ordered by the Supreme Court of Justice to the detriment of Judges Patricia Gámez and Jennie Molina, for no good reason warranting such transfers. The measure against the judges was reportedly due to their support of Claudia Escobar in October 2014, when she denounced the irregularities in the proceedings for the election of new judges to the Supreme Court of Justice, Appeals Courts, and tribunals of similar stature.<sup>376</sup> The Court for Constitutional Matters (*Corte de Constitucionalidad—CC*) provisionally stayed the transfer of the three judges ordered by the Supreme Court of Justice (CJJ) sitting en banc, stating that they had concluded their constitutional period.<sup>377</sup> The Commission voiced its concern regarding this matter and recalled the importance of transfers of justice system operators being based on public and objective criteria,<sup>378</sup> otherwise they could be considered or used as reprisals.

## vi. Trade union leaders

228. On September 24, 2015, Mynor Rolando Ramos Castillo, a trade union leader, was murdered when he was leaving his home in Jalapa. The alleged murderer captured on that occasion, 28 year-old Ever Leonel Sandoval Orellana, reportedly said he had charged 1,500 quetzales (approximately US\$196) for the crime. Mynor Rolando Ramos Castillo had been a member of the Workers Union of the Municipality of Jalapa (SITRAM), dismissed in May 2012 for having formed a trade union, reinstated in December of that same year, and then dismissed in 2013. Along with others, he was waiting for the Municipal Mayor to comply with a Labor Judge's order to reinstate those who had been dismissed.<sup>379</sup> Referring to this matter, in a letter addressed to the President of the Republic, the Confederation of Workers of Mexico wrote: "This cowardly murder, once again plunging Guatemalan families and the Guatemalan and international trade union movement into grief, reflects the climate and culture of terror, persecution, and physical

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<sup>375</sup> MC 433/14 – *Claudia Escobar and others.*, Guatemala.

<sup>376</sup> *Fundación Mirna Mack*, "La Fundación Myrna Mack ante el Irregular traslado de las Juezas Patricia Elizabeth Gámez Barrera y Jenni Aimee Molina Morán", March 5, 2015.

<sup>377</sup> *Siglo 21*, *CC suspende traslado de jueces del OJ*, March 20, 2015.

<sup>378</sup> Report on the 154th Session of the IACHR.

<sup>379</sup> *Prensa Libre*, *Ultiman a sindicalista de la comuna de Jalapa*, September 24, 2015.



elimination that persists in Guatemala, the brunt of which is borne by workers, and social and trade union leaders."<sup>380</sup>

229. The International Trade Union Confederation reported that 53 trade union leaders were murdered between 2007 and 2013.<sup>381</sup> Allegedly, acts of violence against trade unions continued in 2014, without investigations into those crimes. One case reported was the murder, in January 2014, of 19 year old Marlon Dagoberto Vásquez López, a member of the National Trade Union of Construction and Services Workers of Guatemala (SINCSG).<sup>382</sup> Three member of the Municipality of Jalapa's Workers Union were reportedly murdered in April.<sup>383</sup> Then, in July, the Guatemalan Autonomous Trade Union and People's Movement condemned the murder of Joaquín Chiroy y Chiroy, Assistant Secretary General of the Trade Union of Vendors and Similar Workers of the Municipal Market in Sololá, and of Gabriel Enrique Ciramagua Ruiz, Secretary for Organization of the Municipal Workers Union of Guatemala.<sup>384</sup>
230. Although, for some of these murders, it has not been shown whether they were acts committed by criminal groups, or had to do with trade union and other fights for rights, or with the administration of justice, the IACHR has pointed out that the State is duty bound to investigate whether those acts were committed because of the victims' activities. The Commission has further pointed out that the fact that the sources of the attacks may not have been State agents does not exempt the State from its obligations to protect the lives and personal integrity of trade union leaders.<sup>385</sup>

## vii. Protection programs

231. In 2004, the State approved Executive Decree 11-2004 of the Presidential Commission for Human Rights, which established the Coordinating Unit for Protection of Human Rights Defenders, Judicial Administrators and Officers, Journalists and other Media Workers, which currently has the status of a bureau (*dirección*). It is the organ entrusted with

“coordinating with the institutions of the Executive branch in charge of granting and implementing the measures of protection for persons who request precautionary measures, provisional measures, and security measures from the Inter-American Commission on Human Rights, the Inter-

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<sup>380</sup> Letter from the Confederation of Workers of Mexico to the President of the Republic of Guatemala, October 5, 2015.

<sup>381</sup> International Trade Union Confederation, Countries at risk. Violations of Trade Union Rights, 2013.

<sup>382</sup> International Trade Union Confederation, Guatemala: Asesinato de un miembro de la red de jóvenes sindicalistas de Quetzaltenango, January 13, 2014.

<sup>383</sup> International Trade Union Confederation, Tres Sindicalistas son asesinados en Guatemala, April 14, 2014.

<sup>384</sup> CERIGUA, Condenan asesinatos de dos sindicalistas, July 16, 2014; Central Unitaria de Trabajadores, Guatemala: Asesinatos de dirigentes sindicales Gabriel Ciramagua y Joaquín Chiroy y Chiroy, July 14, 2014.

<sup>385</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2011, para. 268.

American Court of Human Rights, rapporteurs of the universal human rights system, and national mechanisms for the purpose of ensuring their effective implementation.”<sup>386</sup>

232. In this regard, the Commission has identified certain challenges that persist in implementing precautionary and provisional measures: (i) the lack of sufficient trained personnel to provide an adequate protection scheme; (ii) the lack of coordination among the units that provide protection; (iii) on some occasions, security schemes have been removed without prior notice; and (iv) the beneficiaries have had to cover the food expenses of the persons assigned to protect them, or adapt the space in their home or office for security personnel.<sup>387</sup>
233. In addition, the Office of the Analysis of Attacks on Human Rights Defenders in Guatemala was established in 2008, by ministerial decree No. 103-2008. Among its functions will be preparing an analysis of cases to be able to determine the existence of patterns of attacks as well as to make recommendations to investigate cases of attacks on human rights defenders. In its *Second Report on the Situation of Human Rights Defenders in the Americas*, the IACHR noted that while that office could make a significant contribution to the situation of human rights defenders, it would have a fragile and provisional institutional grounding since its mandate was to expire in 2012.<sup>388</sup> While the IACHR recognizes as a positive measure the renewal of this office’s mandate for another four years. Considering that the mandate is about to expire in 2016, it urges the State to ensure that it continues and is made permanent.
234. In the period from 2012 to 2014, the Office held 139 meetings, without interruption. Among the accomplishments noted by the State are: (i) incorporating 12 agents to the Unit for Investigation of Attacks on Human Rights Defenders of the PNC, for a total of 20 investigators and two commanding officers, which has made it possible to assign five investigators to each prosecutorial unit in the Human Rights Section of the Attorney General’s Office; (ii) strengthening of the Prosecutorial Unit for Crimes against Unionists; and (iii) implementing properly the mechanisms of protection and preventive security in favor of human rights defenders by the PNC.
235. The Commission recognizes and views in a positive light the gains made in the Office, yet it observes that challenges persist in its implementation. In this respect, the United Nations High Commissioner for Human Rights has emphasized that this entity alone cannot replace the functions of a mechanism of protection that can produce a comprehensive risk and context analysis on deciding whether to grant or lift security measures.<sup>389</sup> In addition, in its 2014 report it indicated that the

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<sup>386</sup> Communication from the Permanent Mission of Guatemala to the OAS. M12-OEAF.9.2.1 No. 463-2013. April 22, 2013, which transmits the communication from the Presidential Commission for Human Rights (COPREDEH), March 4, 2013.

<sup>387</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, para. 453.

<sup>388</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, para. 248.

<sup>389</sup> OHCHR-Guatemala. Informe sobre las actividades de su oficina en Guatemala, year 2012, January 7, 2013, para. 54.

Office of the Analysis of Attacks on Human Rights Defenders in Guatemala was no longer as important, since the representatives of the organizations participating in it were replaced by technical staff, which led some civil society organizations to decide to no longer work with it.<sup>390</sup>

236. The IACHR has noted that adopting special measures of protection contributes to major progress in implementing its recommendations. It has also indicated that the adequate implementation of these mechanisms may help the state carry out its obligation to protect, on allowing for closer contact with and specific knowledge of the particular situation of the human rights defenders at risk, and consequently being able to provide a timely, specialized intervention proportional to the risk the defender may be facing.<sup>391</sup> In this regard, it recalls that for a protection program to be effective, it must have a strong political commitment on the part of the State as well as sufficient, trained human resources capable of receiving the requests for protection, evaluating the levels of risk, adopting and implementing the measures of protection, as well as monitoring the measures in place.<sup>392</sup> It should be noted that pursuant to the decision of the Inter-American Court in the *Case of Human Rights Defender et al. v. Guatemala*, the State must implement a public policy for the protection of human rights defenders within a reasonable time.<sup>393</sup>

## b. Women

237. Several international organizations have spoken out emphatically about the seriousness of the problem of violence against women in Guatemala and the generalized impunity surrounding such crimes. The IACHR has repeatedly voiced its concern at the prevalence of this type of violence. Femicide in Guatemala would have risen 400% between 2001 and 2010.<sup>394</sup> According to Economic Commission for Latin America and the Caribbean (ECLAC) in 2014 there were 876 femicides.<sup>395</sup> This grave problem besetting Guatemalan society is echoed by the failure of the State to perform due diligence to prevent, investigate, and punish acts of violence against women even as the problem is becoming more acute.<sup>396</sup>

<sup>390</sup> OHCHR-Guatemala. Informe sobre las actividades de su oficina en Guatemala, year 2013, January 13, 2014, para. 49.

<sup>391</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, para. 484.

<sup>392</sup> IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, para. 487.

<sup>393</sup> 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, para. 263.

<sup>394</sup> *Revista Proceso*, Los estragos de la violencia, March 3, 2011. The figures refer to the period between 2001 and 2010.

<sup>395</sup> *La Hora*, Cepal advierte sobre alto número de femicidios, November 25, 2015.

<sup>396</sup> IACHR, Press Release No. 20/04, Special Rapporteur evaluates the effectiveness of the right of women in Guatemala to live free from violence and discrimination. Washington, D.C., September 18, 2004; Committee on the Elimination of Discrimination against Women, 35th Session, 15 May to 2 June 2006, para. 23; Integration of the Human Rights of Women and the Gender Perspective: Violence against Women, Report of United Nations Special Rapporteur, Yakin Ertürk, on her mission to Guatemala, 8 to 14 February 2004; Human Rights Ombudsman of Guatemala, Compendio “Muertes Violentas de Mujeres”, 2003 to 2005 [Compendium “Violent Deaths of Women, 2003 to 2005], p. 92; Amnesty International, Guatemala, No

238. In 2001, the IACHR pointed out that one of the serious limitations on the design of effective responses to gender violence in the country was the lack of clear data on the precise magnitude of the problem.<sup>397</sup> In 2003, the IACHR reiterated that while precise statistics were difficult to obtain, the number of murders involving female victims had risen and that these cases had not been properly investigated nor the guilty parties punished.<sup>398</sup> In 2004,<sup>399</sup> the IACHR Office of the Rapporteur on the Rights of Women announced in the context of its working visit to Guatemala that several sources had stated that there had also been an increase in the degree of violence and cruelty displayed against the bodies of many of the victims.<sup>400</sup> In 2012, the IACHR reiterated that the high levels of violence against women in Guatemala constituted an issue of grave concern. At the time, it was pointed out that, according to Public Prosecution Service figures, violence against women was the most frequently denounced crime in the country, with over 40,000 such denunciations each year. According to data provided at the time by the Presidential Commission against Femicide, in 2001, 705 women were murdered and 28 cases of dismemberment of the victim's bodies were reported. Moreover, for every 10 cases of femicide, women had complained of being victims of acts of violence or had had judicial orders to protect them.<sup>401</sup> According to civil society sources, there was still a tendency to blame women for the violence to which they were subjected.
239. In its concluding observations on Guatemala adopted in 2013, the United Nations Committee against Torture welcomed the legislative and other measures adopted by the State party to prevent and punish violence against women, particularly the definition of femicide as a specific offense, addressed in the "Law on Femicide and Other Forms of Violence against Women" of 2008. However, the Committee noted with deep concern that the level of violence against women, including murders, remained high. Accordingly, it urged the State to redouble its efforts to prevent and combat violence against women, including gender-related murder; ensure the full and effective application of the relevant legislation; and ensure effective coordination between the various bodies that have a role to play in tackling violence against women.<sup>402</sup> In addition, in its Concluding Observations on the combined fifth and sixth periodic reports on Guatemala, the Committee noted that, according to the National Institute of Forensic Sciences, there were 709 violent

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Protection, No Justice: Killings of women (an update), AMR 34/019/2006, 2006; Amnesty International, Guatemala: No protection, No Justice: Killings of Women, June 2005. International Federation for Human Rights, International Investigation Mission Report, El Femicidio en Mexico y Guatemala [Femicide in Mexico and Guatemala], No. 446/3, April 2006.

<sup>397</sup> IACHR, Fifth Report on the Situation of Human Rights in Guatemala, April 6, 2001, para. 47.

<sup>398</sup> IACHR, Justice and Social Inclusion: The Challenges of Democracy in Guatemala, 2003, para. 296.

<sup>399</sup> According to data provided by the National Police of Guatemala, 303 women were murdered in 2001, 317 in 2002, 383 in 2003, 509 in 2004, and 552 in 2005. IACHR, working visits on September 12 and 18, 2004 and July 14 and 17, 2006.

<sup>400</sup> IACHR, Press Release No. 20/04, Special Rapporteur evaluates the effectiveness of the right of women in Guatemala to live free from violence and discrimination. Washington, D.C., September 18, 2004, para. 17.

<sup>401</sup> IACHR, Press release 33/12 - IACHR Hails Progress Against Impunity in Guatemala and Expresses Concern About the Human Rights Situation of Indigenous Peoples and Women, March 27, 2012.

<sup>402</sup> United Nations, Committee against Torture, Concluding Observations on the combined fifth and sixth periodic reports of Guatemala, adopted by the Committee at its fiftieth session (6–31 May 2013).

deaths of women in 2012 and 200 more between January and March 2013,<sup>403</sup> and it observed with concern the low number of convictions handed down for offenses relating to violence against women.<sup>404</sup>

240. In January 2014, the Office of the United Nations High Commissioner for Human Rights (OHCHR) pointed out that in 2013 there had been 198 denunciations of femicide and 31,836 complaints of other forms of violence against women.<sup>405</sup> In the Report presented in January 2015, it stated that INACIF had reported 774<sup>406</sup> violent deaths of women. 1,236 femicide denunciations were filed, along with 281 complaints regarding other forms of violence against women. It also reported that courts specializing in femicide and other offenses involving violence against women handed down 1,400 sentences, compared to 779 in 2013, and that the Judiciary had inaugurated four specialized courts in four departments, bringing the total number of departments covered to 11.<sup>407</sup> In its response to the draft report received on October 6, the State reported the creation of "14 specialized national courts and 8 specialized tribunals."<sup>408</sup>
241. The National Institute of Statistics (Instituto Nacional de Estadísticas, INE) drafted the report entitled "Violencia en contra de la Mujer (2008-2013)", as part of its commitment "to implement and strengthen the National Information System on Violence against Women –SNIVCM- with a view to providing the statistics needed to advance knowledge of the causes and consequences of violence against women." That report shows the following denunciations of offenses under Decree 22-2008 [Law against Femicide and Other Forms of Violence against Women], received by the Public Prosecution Service (2010-2013):<sup>409</sup>

TYPE OF OFFENSE	2010	2011	2012	2013
OTHER TYPES AND COMBINATIONS	2	-	-	223
FEMICIDE	205	245	246	300

<sup>403</sup> United Nations, Committee against Torture, Concluding Observations on the combined fifth and sixth periodic reports of Guatemala, adopted by the Committee at its fiftieth session (6–31 May 2013), 24 June 2013, para. 13.

<sup>404</sup> United Nations, Committee against Torture, Concluding Observations on the combined fifth and sixth periodic reports of Guatemala, adopted by the Committee at its fiftieth session (6–31 May 2013), 24 June 2013, para. 13.

<sup>405</sup> OHCHR-Guatemala. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala, in 2013, 13 January 2014, para. 51.

<sup>406</sup> According to the National Civil Police (PNC), in that same period there were 603 violent deaths of women. The difference in the figures is explained by the fact that the PNC statistics are based on crime scenes in which there are both corpses and wounded people. When one of the latter dies in hospital, that statistic is never recorded in the PNC's database. El Quetzalteco, Persiste cifra de muertes violentas, April 25, 2015.

<sup>407</sup> OHCHR-Guatemala. Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala, in 2014, 12 January 2014, para. 51.

<sup>408</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015.

<sup>409</sup> INE-Guatemala, report on "Violencia en contra de la Mujer (2008-2013)", October 2014, p. 5.

<b>VIOLENCE AGAINST WOMEN</b>	33.602	38.260	40.120	49.400
<b>FINANCIAL</b>	320	366	344	315
<b>FEMICIDE, VIOLENCE AGAINST WOMEN</b>	29	11	9	10
<b>VIOLENCE AGAINST WOMEN, FINANCIAL</b>	480	395	229	183
<b>PHYSICAL</b>	-	-	-	232
<b>PSYCHOLOGICAL</b>	-	-	-	824
<b>SEXUAL</b>	-	-	-	38
<b>TOTAL</b>	<b>34.638</b>	<b>39.277</b>	<b>40.948</b>	<b>51.525</b>

242. The same report points out that between 2011 and 2013, there was an increase in the number of judgments—convictions and acquittals—handed down for offenses covered by the Law against Femicide and other Forms of Violence Against Women:<sup>410</sup>

	2011	2012	2013
<b>CONVICTIONS</b>	271	386	983
<b>ACQUITTALS</b>	112	139	347
<b>TOTAL</b>	<b>383</b>	<b>525</b>	<b>1.330</b>

243. The IACHR welcomes the effort undertaken by the INE. Precisely one of the problems detected by the IACHR during its visits and in reports on violence against women was the lack of differentiated statistics for shaping public policies. The IACHR values in particular the efforts to investigate and sanction the crimes contemplated in the Law against Femicide and other Forms of Violence Against Women, reflected in the increase of sentences.

244. The 2014 Annual Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala (OHCHR-Guatemala) commended the fact that the start-up of the Special Cabinet for Women (*Gabinete Específico de la Mujer*) began triggering greater interagency coordination on behalf of women's rights, as well as the activation of the gender units in ministries and secretariats, which are to advise the Executive when it comes to formulating gender policies.<sup>411</sup>

<sup>410</sup> INE-Guatemala, report on "Violencia en contra de la Mujer (2008-2013)", October 2014, p. 41.

<sup>411</sup> OHCHR-Guatemala. *Report of the United Nations High Commissioner for Human Rights on the activities of the office in Guatemala*, year 2013, 13 January 2014, para. 50.

That notwithstanding, OHCHR-Guatemala expressed its concern at the delays in providing funding for the Centers for Comprehensive Support of Women Survivors of Violence (CAIMUS), the nonexistence of a breakdown of the data on violence against women with respect to indigenous and Afro-descendant women victims, and the high level of impunity (reportedly 93% of cases) for offenses covered by the Law against Sexual Violence, Exploitation, and Trafficking in Persons.<sup>412</sup> In particular, the Report underscored the effectiveness (in terms of the number of judgments handed down) of the courts specializing in assassination of women and other forms of violence against women, because 427 of the 556 judgments handed down in such cases were issued by those specialized courts.<sup>413</sup> In its 2015 report, OHCHR-Guatemala stated that it had conducted a review of the judgments of specialized courts in cases of femicide and other forms of violence against women and found that there was a significant difference in enforcement of the law between specialized and ordinary courts. Women in rural areas do not benefit from such protection and reparation, since they lack access to the specialized courts. Some of the deficiencies found in the approach to violence against women in ordinary courts include application of the criterion providing for a chance to refrain from bringing criminal suit; changes in the definitions of offenses; failure to analyze other kinds of discrimination, including ethnic origin and age; and gender stereotypes in the rationale given for some decisions. On this, the Report stressed that, in its judgment in the *María Isabel Veliz Franco v. Guatemala* case, the Inter-American Court of Human Rights established that gender stereotypes had had a negative impact on the investigation by shifting the blame for what happened on to the victim and her family members, thereby precluding other possible lines of investigation.<sup>414</sup>

245. With regard to the initiatives adopted to tackle insecurity in Guatemala, the State indicated the following specific measures to protect women: the National Policy for the Integral Promotion of Women (Política Nacional para la Promoción Integral de la Mujer—PNPDIM); Program for the Prevention and Elimination of Domestic Violence (Programa de Prevención y Erradicación de la Violencia Intrafamiliar—PROPEVI);<sup>415</sup> the Equal Opportunity Plan for 2008-2023; the Integral Training Plan of the Office for the Defense of Indigenous Women; Implementation of Municipal Agreements with Equity in four departments, through municipal offices for women; the Institutional Strategy Plan for Gender and Ethnic Groups, for the exercise of human rights by indigenous women for 2011-2015; in addition to the activities undertaken by the Prosecution Service for Women of the Public Prosecution Service;<sup>416</sup> the Institute for Public Criminal

<sup>412</sup> OHCHR-Guatemala. Report of the United Nations High Commissioner for Human Rights on the activities of the office in Guatemala, year 2013, 13 January 2014, para. 53.

<sup>413</sup> OHCHR-Guatemala. Report of the United Nations High Commissioner for Human Rights on the activities of the office in Guatemala, year 2013, 13 January 2014, para. 52.

<sup>414</sup> OHCHR-Guatemala. Report of the United Nations High Commissioner for Human Rights on the activities of the office in Guatemala, year 2014, 12 January 2015, para. 52.

<sup>415</sup> Observations by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and on IACHR Communication of August 14, 2015," October 6, 2015, p. 76.

<sup>416</sup> Regarding this, the State reported the rise in assigned staff from 8 persons at the time of its establishment in 1995 to 481 persons by 2012. Observations by the State of Guatemala on the "Draft General Report on the



Defense (Instituto de la Defensa Pública Penal—IDPP);<sup>417</sup> the Sexual Crimes Unit of the Division Specializing in Investigation of the National Civilian Police Force; and the participation in regional efforts such as the Regional Project for the Prevention of Violence against Women, Trafficking, and Femicides.<sup>418</sup>

246. The State reports on the attachment of this program to the Presidency's Secretariat for Women (Secretaría Presidencia de la Mujer—SEPREM), which was able, between 2012 and 2014, to rescue 320 victims of domestic violence, including women, children, and adolescents; to provide legal and psychological assistance and social orientation to 6,385 victims and assailants; to provide training in the prevention of domestic violence to 453 fathers, mothers, and community leaders and to 2,744 civil servants; to carry out family education and reinsertion programs attended by 89 persons deprived of their liberty for domestic violence and against women, among other achievements<sup>419</sup> Also, the Institute of Public Defense (in Spanish IDPP) reports having responded to 15,236 cases of violence against women, human trafficking, and femicide in 2012; 19,563 cases in 2013; and 11,878 cases up to July 2014.<sup>420</sup>
247. As regards indigenous women, the United Nations Deputy High Commissioner for Human Rights, Flavia Pansieri, met in 2014 with indigenous women victims of sexual violence during the internal armed conflict and reiterated to the State that it was obliged to guarantee to victims of serious human rights violation during the internal armed conflict the rights to the truth, justice, reparation, and measures to preclude a repetition of those violations.<sup>421</sup> She also emphasized the need to strengthen traditional mechanisms for dialogue and for indigenous women's participation in community decision-making.<sup>422</sup>
248. On this issue, it is important to consider that in 2014 the IACHR submitted to the Inter-American Court three cases relating to women's rights: denial of health care to a woman (*María Inés Chinchillaetal*)<sup>423</sup>; acts of sexual violence committed against indigenous women during the armed conflict (*Members of the Chichupac*

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Situation of Human Rights in Guatemala and on IACHR Communication of August 14, 2015," October 6, 2015, p. 75.

<sup>417</sup> The State also reports that to the above can be added implementation, on November 25, 2008, of a phone line (1571), whereby emergency calls, complaints, and queries regarding women, children, and adolescents who are victims of domestic violence are taken, with the following number of calls recorded: 60,017 calls in 2012; 54,258 calls in 2013; and 17,438 calls between January and July 2014. Observations by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and on IACHR Communication of August 14, 2015," October 6, 2015, p. 76.

<sup>418</sup> Observations by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and on IACHR Communication of August 14, 2015," October 6, 2015.

<sup>419</sup> Observations by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and on IACHR Communication of August 14, 2015," October 6, 2015, p. 76.

<sup>420</sup> Observations by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and on IACHR Communication of August 14, 2015," October 6, 2015, p. 76.

<sup>421</sup> OHCHR, Concluding Statement, Visit by the United Nations Deputy High Commissioner for Human Rights, Flavia Pansieri, 22 May 2014.

<sup>422</sup> OHCHR, Concluding Statement, Visit by the United Nations Deputy High Commissioner for Human Rights, Flavia Pansieri, 22 May 2014.

<sup>423</sup> IACHR, Press release [113/14 - IACHR Takes Case Involving Guatemala to the Inter-American Court of Human Rights](#). October 7, 2014.



*settlement and neighboring communities in the Municipality of Rabinal*)<sup>424</sup>, and acts of extreme violence, including the murder of a woman (*Claudina Isabel VelásquezPaiz*)<sup>425</sup>.

### c. Children and adolescents

249. Almost half the population of Guatemala—6.7 million people—is comprised of children and adolescents under the age of 18.<sup>426</sup> According to the State census, 41%, that is to say, approximately 2.7 million are indigenous members of the Maya, Xinka, and Garífuna peoples.<sup>427</sup> The situation of the children and adolescents of Guatemala has been a matter of constant concern for the IACHR. There are numerous factors still affecting this especially vulnerable group. The long periods of internal armed conflict (1960 to 1996) affected and did grave harm to Guatemalan children. On this, in its "Memory of Silence" report, the Commission for Historical Clarification ascertained

"with special concern that large numbers of children were among the direct victims of arbitrary executions, forced disappearances, torture, and rape, as well as other violations of fundamental rights. In addition, the armed conflict left huge numbers of children orphans and bereft of any help, especially in the Maya population, who experienced the rupture of their family ties and were unable to experience the kind of childhood that their culture traditionally nurtured."<sup>428</sup>

250. Children and adolescents continued to have their human rights severely violated by the social and economic situation; domestic violence; collective violence (crime, organized crime, gangs or "maras") and by the State's failure to comply with its duty to afford them special protection. Such factors have a grave impact on, for instance, violence and impunity; migration; trafficking;<sup>429</sup> the right to nutrition; child labor; children in institutions; adoptions; adolescent pregnancies; the juvenile justice system, and other areas.
251. Children and adolescents are both direct and indirect victims of violence. According to UNICEF, on average 46 children—mostly adolescents—are murdered every month, most of them shot. In 2008-2009, 53,764 crimes were committed against children under 17 years of age, the most common offenses being murder, rape, bodily harm, disappearances, kidnapping, robbery, corruption

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<sup>424</sup> IACHR, Press release [100/14 - IACHR Takes Case Involving Guatemala to the Inter-American Court of Human Rights](#). September 17, 2014.

<sup>425</sup> IACHR, Press release [29/14 - IACHR Takes Case Involving Guatemala to the Inter-American Court of Human Rights](#). April 1, 2014.

<sup>426</sup> UNICEF-Guatemala. Overview.

<sup>427</sup> UNICEF-Guatemala. Overview.

<sup>428</sup> CEH, Memory of Silence, Volume V, [Conclusiones y Recomendaciones \[Conclusions and Recommendations\]](#), p 28.

<sup>429</sup> A topic that will be addressed in the Chapter on migrants.

of minors, and sexual assault.<sup>430</sup> UNICEF informed that convictions were handed down for 24% of crimes against children and adolescent; for 2010, the figure was just 4%.<sup>431</sup>

252. The death of Keneth López, a four-year-old boy who was kidnapped in December 2009 and then murdered triggered a campaign headed by UNICEF and the Survivors Foundation to adopt the Alba-Keneth Warning System, a national law in honor of Keneth and a girl called Alba España, who was also kidnapped and murdered. The Warning System seeks to prompt the search, finding, and immediate rescue of children and adolescents who are abducted or disappeared, through coordinated responses by a number of governmental, justice system, and border patrol institutions, working together with grass-roots groups. The Law requires the authorities to undertake an immediate search as soon as the disappearance of a child is reported. In Keneth's case, the PNC began looking for him 72 hours after his disappearance was reported. According to UNICEF "Murders such as those of Alba and Keneth still occur, but less frequently than before the law was passed." "For that reason, we have put pressure on the authorities to start searching immediately after a disappearance has been reported, because had that law been in effect when Keneth was kidnapped, maybe he would still be alive"<sup>432</sup>.

253. According to public information put out by the Attorney General's office, between June 18, 2012 and August 6, 2015, the Alba-Keneth Warning System was activated 4,720 times.<sup>433</sup> Notably, between January and April 2015, nearly 1,800 warning alarms were activated in respect of disappeared children. Of those, 1,046 cases were resolved, meaning that 786 are still active cases of children who presumably have still not reappeared.<sup>434</sup> Regarding specific public policies to protect children and adolescents, the State, in its response of October 6, 2015, points out the following: National Youth Policy updated for 2012-2010; Policy for the Integral Protection of Children and Young People for 2004-2015; and Policy for Integral Development of Early Childhood for 2011.<sup>435</sup>

254. With deep concern, the IACHR has received information appearing to indicate that gangs and organized criminal groups have been victimizing ever younger children by making them participate in their activities. According to reports in several media, some groups recruit children from age 11 and, in some cases, even 6-year-olds, to be used in criminal activities ranging from transporting drugs and

<sup>430</sup> UNICEF-Guatemala. *Violence and Impunity*.

<sup>431</sup> UNICEF, Guatemala Country programme document 2015-2019. See also Public Prosecution Service statistics, 2014; and the CICIG, 2011.

<sup>432</sup> UNICEF-Guatemala. Overview. February 22, 2012.

<sup>433</sup> Government of Guatemala. *Alerta Alba-Kenneth*.

<sup>434</sup> *La Hora*, *Más de 1 mil 800 alertas Alba-Kenneth*, May 5, 2015.

<sup>435</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and on the IACHR Communication of August 14, 2015," of October 6, 2015.

weapons to murder, the latter often as part of a ritual marking their affiliation to the gang.<sup>436</sup>

255. The murder of 12-year-old Ángel Ariel Escalante Pérez is a ferocious example of the impact of gangs and organized crime on Guatemala's children. Reportedly, he was kidnapped by gang members and, when he refused to kill a bus driver, he was thrown off the 125-meter-high Belice bridge. The child suffered multiple fractures and died 20 days later, on July 4, 2015. Before dying, he said:

"Some men abducted me at midday on Tuesday. They took me to a house; I think it was in the Paraíso district in Zone 18. On Wednesday, they handed me a pistol to go and shoot a bus driver, but I refused. They got angry with me and told me they were going to kill me. They even asked me if I preferred to be quartered or thrown off the Belice bridge. I said the latter was the better of the two; they took me and threw me off the bridge."<sup>437</sup>

### i. The right to food: Chronic malnutrition

256. One of the grave human rights violations that stunts the development of Guatemalan children is the prevalence of chronic malnutrition among them. The ongoing food insecurity seriously impairs children's and adolescents' right to life and personal integrity. In 2014, 130 children died of causes related to severe malnutrition.<sup>438</sup>

257. According to UNICEF, four out of every 10 (43.4% of boys and girls under the age of five in Guatemala suffer from chronic malnutrition (on a height-to-age ratio). Among indigenous children, the chronic malnutrition percentage increases to 80%, since eight out of every 10 are affected.<sup>439</sup> Guatemala has the sixth highest rate of malnutrition in the world. The Food and Agriculture Organization of the United Nations (FAO) points out that chronic malnutrition is fairly severe in El Salvador, Honduras, and Nicaragua and very severe in Guatemala, where almost half all children suffer from stunted growth.<sup>440</sup>

258. Chronic malnutrition causes lower school retention rates, lower productivity, a propensity to contract diseases, and even a loss of I.Q., with irreversible effects throughout life.<sup>441</sup> A report by the World Food Programme (WFP) points out that:

<sup>436</sup> *Agence France-Presse*, Guatemalan gangs recruiting kids as young as 6 years old (Pandillas Guatemaltecas Reclutando Niños tan joven como de 6 años de edad), October 2, 2013; *Teletica*, Violentas pandillas reclutan a niños de hasta seis años en Guatemala, October 2, 2013.

<sup>437</sup> *Siglo21.com.gt*, Vive tras ser lanzado desde puente Belice, June 19, 2015.

<sup>438</sup> OHCHR-Guatemala. Report of the United Nations High Commissioner for Human Rights on the activities of the office in Guatemala, year 2014, 12 January 2015, para. 63.

<sup>439</sup> UNICEF-Guatemala, Malnutrition.

<sup>440</sup> FAO, Panorama of Food and Nutrition Security in Central America and Dominican Republic, 2014, p. 6.

<sup>441</sup> UNICEF-Guatemala, Malnutrition.

"child malnutrition in the first years of life is irreversible and has consequences for both the child's development and health in adult years, including a higher risk of contracting chronic diseases. Areas in which hunger is rampant reflect profound inequalities, with stunted growth rates among indigenous children of over 70%, while the rate in poor rural areas is four times that of urban areas."<sup>442</sup>

259. According to data published by the Economic Commission for Latin America and the Caribbean (ECLAC), the United Nations Children's Fund (UNICEF), and the World Food Programme (WFP),

"the groups most vulnerable to hunger and malnutrition are the poor living in rural areas, indigenous people and persons of African descent, and those with a low level of education and scant access to drinking water and sewer systems. Moreover, given that malnutrition negatively impacts health, education, and productivity, it becomes one of the main mechanisms for transmitting poverty and inequality from one generation to another."<sup>443</sup>

260. In January 2015, the Government of Guatemala presented the National Food and Nutrition Security Information System (Siinsan), which will measure progress achieved under the Zero Hunger Pact, a social program created in 2012 to reduce child malnutrition in Guatemala.<sup>444</sup> The IACHR has taken note of progress made toward eliminating this scourge by implementing food plans and programs. It was said during the ex President Pérez Molina administration that "thanks to the timely interventions of the anti-hunger strategy, the lives of 99% of the 16,000 children under the age of 5 diagnosed with severe malnutrition last year (2013) were saved."<sup>445</sup> In addition, according to the Government another 800,000 children under the age of five were reportedly treated, bringing the mortality rate among severely undernourished children from 2.2 to 0.68 per 100,000 children.<sup>446</sup>

261. According to the 2014 Global Hunger Index, malnutrition declined from 17.0 in 2005 to 15.6 in 2014, and declined further (to 13.0) in respect of children aged 0 to

<sup>442</sup> World Food Programme (WFP) Eradication of child malnutrition. Joint IDB-WFP Regional Programme, Towards the Eradication of Child Malnutrition in Central America and the Dominican Republic.

<sup>443</sup> United Nations, Centro de Noticias, Desnutrición infantil afecta a 8,8 millones de niños en América Latina, April 28, 2006.

<sup>444</sup> The objectives of the Zero Hunger Pact program are: To combat hunger and promote food and nutrition security in the 166 municipalities on the priority list; To reduce by 10% the prevalence of chronic malnutrition among children under 3; To prevent and reduce mortality in children under 5 years of age related to severe malnutrition; and to prevent and address the food and nutrition emergency. Ministry of Education of Guatemala.

<sup>445</sup> Reliefweb, El sueño de una Guatemala sin hambre sigue siendo mi compromiso, afirma el Presidente", January 14, 2014.

<sup>446</sup> Reliefweb, El sueño de una Guatemala sin hambre sigue siendo mi compromiso, afirma el Presidente", January 14, 2014. In the observations made by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," of October 6, 2015, it contended that despite the "rise in the recording of cases of acute malnutrition, [with] the implementation of the Zero Hunger Pact, it had been possible to reduce the cases of mortality due to acute malnutritions from 2.20% in 2011 to 0.68% by 2013. Regarding the nutritional status from 2012 to 2013, the degree of chronic malnutrition in the population under five years of age, pregnant women, and breast-feeding infants fell 1.7%."

5 years of age with chronic malnutrition.<sup>447</sup> Thus UNICEF has welcomed the implementation of State plans to expedite the reduction of malnutrition, underscoring the urgent need to prioritize them.<sup>448</sup>

262. Nevertheless, the overall situation in Guatemala has deteriorated significantly due to the shortage of rain in the region in recent years, which has hurt agriculture, livestock rearing and other income-earning activities and left 236,000 families in Guatemala suffering from food insecurity.<sup>449</sup> According to estimates by the Food and Nutrition Security Secretariat, the above-mentioned climate change that has impacted 70% of the country has hit the population living below the poverty line hardest, particularly children and adolescents, and has resulted in malnutrition, health problems, child labor, school dropout rates, and chronic malnutrition among children of 0 to 5 years of age.<sup>450</sup> Indigenous children and adolescents are the hardest hit by poverty and lack of food, and have the highest levels of malnutrition. Furthermore, multiple and serious health issues related to insufficient food have been identified, including stunted growth, fatigue, weakened immune systems, and so on.<sup>451</sup>

263. In 2015, the IACHR received information indicating that there had not been satisfactory compliance with the measures<sup>452</sup> ordered<sup>453</sup> in 2013 by the Court for Juveniles and Juvenile Criminal Offenders of the Department of Zacapa, in five judgments that held the State "responsible by omission for the violation of the human rights to food, life, health, education, housing, and work."<sup>454</sup> The five complaints filed on November 17, 2011 by a coalition of nongovernmental organizations against the State of Guatemala, were based on medical, psychological, nutritional, socioeconomic, and anthropological examinations of three girls and three boys belonging to families living in the communities of Lela Chancó and Cañón Tisipe of the municipality of Chiquimula. The complaints alleged the violation of the human right to food and the State's omission for not having adopted the measures needed to ensure enforcement of the human right to

<sup>447</sup> State Secretariat for Food and Nutrition Security (SESAN), [Guatemala reduce desnutrición según índice global del hambre elaborado por IFPRI](#), October 14, 2014.

<sup>448</sup> UNICEF, Press release, [Hay que acelerar el progreso para los niños y niñas de Guatemala o se corre el riesgo de perder una generación](#), March 22, 2013.

<sup>449</sup> OXFAM, [Alerta del impacto de la prolongada sequía sobre más de dos millones de centroamericanos](#), August 28, 2014.

<sup>450</sup> World Bank, [Record Drought: Four countries, 40 days without rain, two million facing hunger](#), September 10, 2014.

<sup>451</sup> UNICEF Annual Report 2013–Guatemala; See also the publication by Humanium, [Los niños de Guatemala. La implementación de los derechos infantiles en Guatemala](#). Oxfam publication, [Guatemala](#)

<sup>452</sup> Among the measures, the State was ordered to implement social programs to combat chronic and acute malnutrition to guarantee, for children and adolescents, access to the human right to food. FIAN, [El Derecho a la Alimentación- Acciones y Omisiones del Estado](#). "Informe del Monitoreo de las Sentencias en el Caso de Desnutrición Infantil en Camotán, Guatemala" [Report on Monitoring Enforcement of Judgments in the Case of Child Malnutrition in Camotán, Guatemala], August 2014, p. 23.

<sup>453</sup> OHCHR-Guatemala. [Informe sobre las actividades de la oficina en Guatemala](#), year 2013, January 13, 2014, para. 25. See also [Plaza Pública, Cinco niños olvidados ganan juicio al Estado](#), July 8, 2013.

<sup>454</sup> FIAN, [El Derecho a la Alimentación- Acciones y Omisiones del Estado](#). Report on Monitoring Enforcement of Judgments in the Case of Child Malnutrition in Camotán, Guatemala," August 2014, p. 22.

food for the girls and boys, because of their situation of malnutrition and deficiency in which they were found at the time the cases were heard.

264. According to the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), the prevalence of malnutrition in the region is not fortuitous, but rather the reflection of huge income inequality and of the scant importance attached to food and nutrition on the countries' political agenda.<sup>455</sup> In UNICEF's opinion, malnutrition is a vicious circle: undernourished women give birth to underweight babies, thereby increasing the possibilities of malnutrition in the following generations. By impairing a child's intellectual and cognitive capacity, malnutrition lowers school performance and the ability to acquire skills throughout life. It therefore limits the ability to become an adult able to contribute, through his/her life and profession, to the advancement of her/his community and country. When malnutrition is perpetuated from one generation to another, it becomes a serious obstacle to development and sustainability.<sup>456</sup>

## ii. Migration: assaults, sexual violence, and return

265. Violence, impunity, and threats to join gangs and take part in acts of violence and criminal activities, along with the lack of effective protection by the national authorities, are all factors prompting migration to countries regarded as being safer, among them the United States, in order to safeguard one's personal integrity. The IACHR has heard testimony from Guatemalan children in migration stations in Mexico and the United States, who report having undergone multiple assaults during their journey, not only by gangs but also by State police authorities. The IACHR has also received worrying information regarding the sexual violence to which girls and female adolescents are subjected during their journey. The Commission was also told of the failure by Guatemalan consulates to respond and assist in a timely manner, especially in Mexico, which increases the length of time that unaccompanied minors are detained, given that they cannot be returned without information concerning their family in Guatemala.
266. According to information published by the General Directorate of Migration, 313 cases of deportation of children from the United States were reported in 2013 (along with 2,532 from Mexico). Statistics for 2014 show that, through June of that year, 67 children and adolescents were deported by air from the United States and 1,394 were deported overland from Mexico.<sup>457</sup> As for the State, it reported that, on July 8, 2014, it launched the Campaign for the Prevention of Migrant Children and

<sup>455</sup> FIAN, *El Derecho a la Alimentación- Acciones y Omisiones del Estado*. Report on Monitoring Enforcement of Judgments in the Case of Child Malnutrition in Camotán, Guatemala," August 2014, p. 8.

<sup>456</sup> FIAN, *El Derecho a la Alimentación- Acciones y Omisiones del Estado*. Report on Monitoring Enforcement of Judgments in the Case of Child Malnutrition in Camotán, Guatemala," August 2014, p. 13.

<sup>457</sup> Secretariat of Social Communication *Gobierno brinda atención a niños migrantes no acompañados*, June 8, 2014.

Adolescents called Stay Here! (*¡Quédate!*). And that same year, the Program for Unaccompanied Migrant Children and Adolescents was created.<sup>458</sup>

267. The Commission reiterates its concern that the lack of an effective system for promoting rights fosters the vicious circle of violence in the country, when children face the same situations that prompted them to emigrate, combined with the traumatic experiences that most of them experienced during their journey. For their part, the gangs have a well-organized system for welcoming and recruiting those deported children.

### iii. Child labor

268. According to UNICEF, in Guatemala child labor<sup>459</sup> makes registered from 2002 to 2012 is approximately up to 25.8% of the labor force.<sup>460</sup> For its part, the Ombudsperson's Office reckons that nearly 850,000 children are engaged in some kind of economic activity.<sup>461</sup> Most (58.8%) of the child workers are Maya: "three out of every 10 indigenous children work, compared to 1.5 for every 10 non-indigenous children."<sup>462</sup> In June 2015, the Vice-Minister of Labor indicated that "children who are prematurely forced to enter the labor market are deprived of their right to education and recreation, because of the vicious circle of poverty they are trapped in."<sup>463</sup> Thus, she explained that 67% of exploited minors are in rural areas of the country, working in agriculture, cattle-raising, making fireworks, or as domestic servants or sex workers<sup>464</sup>. Of all the countries in the region, Guatemala has the largest number and greatest share of people under the age of 18 participating in the economy. It is also estimated that 20% of GDP is produced by children under the age of 14.<sup>465</sup>
269. Associated with this state of affairs are a series of challenges in the educational sphere. 28 percent of the population aged 4 to 17 is not enrolled in the educational system. The lack of access to school is particularly worrisome with respect to

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<sup>458</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015.

<sup>459</sup> The term "child labor" is usually defined as any work that deprives children of their childhood, potential, and dignity, and that is detrimental to their physical and psychological development. Thus the term refers to work that is dangerous or detrimental to the physical, mental or moral wellbeing of the child; interferes with their schooling because it deprives them of the possibility of attending classes; forces them to drop out of school prematurely, or requires them to combine their studies with work that is both burdensome and time-consuming. In the most extreme forms of child labor, children are subjected to slave-like conditions, separated from their family, exposed to serious dangers and or diseases; and/or left to their own devices on the streets of big cities (often at a very tender age). ILO, What is child labour.

<sup>460</sup> UNICEF-Guatemala. [Statistics](#).

<sup>461</sup> *La Hora*, [PDH 850 mil niños trabajan en el país](#), June 12, 2015.

<sup>462</sup> *La Hora*, [PDH 850 mil niños trabajan en el país](#), 12 de junio de 2015.

<sup>463</sup> *La Hora*, [PDH 850 mil niños trabajan en el país](#), 12 de junio de 2015.

<sup>464</sup> *La Hora*, [PDH 850 mil niños trabajan en el país](#), June 12, 2015.

<sup>465</sup> *Publinews*, [Preocupa que el trabajo infantil siga en aumento en Guatemala](#), June 11, 2013.



indigenous children and adolescents, who on average attend school for only 3.7 years, far less than the average 6.5 years for non-indigenous children.<sup>466</sup>

270. A large percentage of children and adolescents below the minimum age for employment are still being forced to perform child labor, mainly due to poverty-related causes, as ascertained by the ILO in its 2013 Global Report on Child Labour.<sup>467</sup> Moreover, it has also been noted that 65.6% of child workers come from rural communities and the poorest segments of the population.<sup>468</sup> The most frequent working activities for children involve mostly work in the farming, livestock, hunting, forestry, and fishing sectors (60.2%); commerce, hotels, and restaurants (19.7%); manufacturing industries (9.5%); and community, social, and personal services (4.5%).<sup>469</sup> There are also records of children working in hazardous sectors such as mines and quarries (3.9%), as well as in transportation (1.5%) and construction (1.3%).<sup>470</sup> National and international organizations, and the State itself, are especially worried by the finding that children and adolescents are being exploited for dangerous jobs and in other at-risk situations, which violates their rights to education and health.<sup>471</sup> The State informs that the Secretariat against Sexual Violence, Exploitation and Human Trafficking (Secretaría contra la Violencia Sexual, Explotación y Trata de Personas—SVET) installed, implemented, and coordinated the National Forum against Child Labor Exploitation, which is an initiative that brings together the establishment of the National Commission for the Prevention and Elimination of Child Labor and Protection for Working Adolescents (Comisión Nacional para la Prevención y Erradicación del Trabajo Infantil y Protección a la Adolescencia Trabajadora—CONAPETI) in 2002 and the 12 Departmental Committees for the Prevention and Elimination of Child Labor and Protection for Working Adolescents (Comités Departamentales para la Prevención y Erradicación del Trabajo Infantil y Protección a la Adolescencia Trabajadora—CODEPETI) in whose framework plans to prevent and eliminate child labor and protect working adolescents are discussed, designed, implemented, and supported.<sup>472</sup> The IACHR voices the pressing need to continue working to build up measures to respond to and eliminate child labor.

<sup>466</sup> ILO, *Trabajo Infantil y Pueblos Indígenas: [Child labour and Indigenous Peoples] El Caso de Guatemala*, [The Guatemalan Case], 2006.

<sup>467</sup> *La Vía Campesina*, *Trabajo, trabajo y más trabajo para los niños y niñas*, June 12, 2014.

<sup>468</sup> Instituto Nacional de Estadística [National Statistics Institute], *Informe Nacional sobre Trabajo Infantil en Guatemala. De la Encuesta Nacional de Condiciones de Vida. ENCOVI 2011*, 2013, p. 27.

<sup>469</sup> Instituto Nacional de Estadística [National Statistics Institute], *Informe Nacional sobre Trabajo Infantil en Guatemala. De la Encuesta Nacional de Condiciones de Vida. ENCOVI 2011*, 2013, p. 27.

<sup>470</sup> Instituto Nacional de Estadística [National Statistics Institute], *Informe Nacional sobre Trabajo Infantil en Guatemala. De la Encuesta Nacional de Condiciones de Vida. ENCOVI 2011*, 2013, p. 34.

<sup>471</sup> An Oxfam publication, *Guatemala OXFAM*; See also *La Prensa Gráfica*, *Rescatan a 55 menores víctimas de explotación laboral Guatemala*, September 13, 2014.

<sup>472</sup> As reported by the State, the CODEPETI are located in Chiquimula, Huehuetenango, Jalapa, Jutiapa, Retalhuleu, Sacatepéquez, San Marcos, Sololá, Totonicapán, Zacapa, Quiché, and Quetzaltenango. Observations by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015, p. 95.



#### iv. Children in institutions

271. UNICEF established that, in 2013, there were 5,474 children, including adolescents, in institutions in Guatemala as measure of protection: 1,925 in public institutions and 3,549 in private establishments. Although lower than the figures for 2011, the number of children in institutions remains very high, a situation exacerbated by the fact that only 35% of institutionalized children are under proper judicial protection.<sup>473</sup> The main reasons detected for children to become separated from their families in Guatemala include domestic conflicts, domestic violence, sexual abuse within the family circle, neglect, addictions to narcotic drugs, and other—poverty related—causes. Moreover, it is especially alarming that because of the violence and high homicide rates in Guatemala, some 40 boys and girls are orphaned every day.<sup>474</sup> In particular, UNICEF has noted that in 2013 there were 5,558 cases of emergency warnings of disappeared children and 3,096 reported cases of domestic violence against children. The Commission observes with concern the high rates of mistreatment and violence inside institutions, the absence of ties with family members, as well as the lack of parallel opportunities for family members to help with looking after children who need alternative care and the delays in judicial proceedings aimed at finding definitive solutions in life for these children.
272. The violence in institutions is generally the result of a set of factors related to the way they operate, such as the precarious state of the facilities in terms of health and safety, overcrowding, the lack of staff trained to work with children, social isolation, the use of disciplinary and oversight methods that include the use of violence or unnecessary psychiatric medication, the practice of some forms of treatment that themselves constitute a form of violence, and other practices.<sup>475</sup>

#### v. Illegal adoptions

273. Another issue impacting children in Guatemala is illegal adoption. The combination of armed conflict<sup>476</sup> and external demand brought as a consequence that international adoptions grew exponentially, mainly due to lack of government oversight, corruption, and permissive legislation. Just to give an idea of the dimension of the problem: between 2000 and 2007, more than 20,000 children left Guatemala without even minimum procedures for overseeing their fate.<sup>477</sup>

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<sup>473</sup> UNICEF, Guatemala Country programme document 2015-2019; See also National Adoption Council, 2013; Informe Nacional sobre el Trabajo Infantil en Guatemala, based on the national living conditions survey ENCOVI 2011. pp. 26-27.

<sup>474</sup> UNODC, *Homicide Statistics*, 2013.

<sup>475</sup> IACHR, *The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas*, 2013.

<sup>476</sup> During the internal armed conflict, the Guatemalan armed forces played a major role in adoptions. CICIG, *Report on Players Involved in the Illegal Adoption Process in Guatemala*.

<sup>477</sup> CICIG, *Report on Players Involved in the Illegal Adoption Process in Guatemala*, p. 20, December 1, 2010.

Guatemala was one of the major "child-exporting" countries<sup>478</sup>. The CICIG, an agency with ties to the United Nations, points out that child adoptions got caught up in human trafficking networks, comprised of "recruiters" (*enganchadoras*) who took or "bought" children from their biological mothers, or in other cases threatened, coerced and deceived mothers in order to garner children for adoption.<sup>479</sup>

The statistics reveal that only 10% of notarial proceedings refer to abandoned children, even though, in 2007, there were 5,600 children assigned by juvenile court judges to foster care due to abandonment or who were under protection measures due to maltreatment of child abuse. That same year, 5,110 young children meeting demand criteria were handed over for adoption. Most of the institutionalized children (5,295) remained in institutions in 2010, supporting the conclusion that the children handed over for adoption were not necessarily abandoned or needing adoption.<sup>480</sup>

274. On December 11, 2007, the Guatemalan Congress passed the Adoption Law (Decree 77-2007), which contemplated a follow-up mechanism to check on how the system was working and thereby guarantee the circumstances, safety, and integrity of adopted children. Three years later, the implementing regulations for the Adoption Law were put in place by Government Decision 182-2010. The new legal regime was an advance in that it incorporated international standards for international adoptions and gave preference to adoption by families residing in Guatemala. It also established procedures supervised by a specialized juvenile court judge and the National Council for Adoptions (CNA), the main authority for adoption cases. During the transition to the new law, CICIG found that 60% of the adoption cases processed during that period exhibited some kind of irregularity, and yet in more than 90% of cases they were allowed to proceed.<sup>481</sup>
275. Between 2008 and 2015, the CNA reported having conducted 708 adoption procedures, all of them adoptions within Guatemala.<sup>482</sup> Despite the regulations and substantial reduction in the number of irregular proceedings, according to the CICIG:

"everything suggests that, until effective protection is assured and guaranteed by investigations and judicial oversight of the situation of children up for adoption, the networks, groups, and criminal arrangements formed in connection with trafficking in persons to carry out illicit adoptions will seek new loopholes in order to continue their activities, given that the financial incentives remain."<sup>483</sup>

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<sup>478</sup> *Revista Contralínea*, [Guatemala paraíso de tráfico de niños](#), March 2006.

<sup>479</sup> CICIG, Report on Players Involved in the Illegal Adoption Process in Guatemala, p. 7.

<sup>480</sup> CICIG, Report on Players Involved in the Illegal Adoption Process in Guatemala, p. 23.

<sup>481</sup> CICIG, Report on Players Involved in the Illegal Adoption Process in Guatemala, p. 8.

<sup>482</sup> *Siglo 21*, [Por ahora no hay adopción internacional](#), June 7, 2015.

<sup>483</sup> CICIG, Report on Players Involved in the Illegal Adoption Process in Guatemala, p. 84.

## vi. Teenage pregnancies

276. The Commission notes with concern that in 2013 some 2,850 girls and adolescents between the ages of 10 and 14 became pregnant. Teenage pregnancies are associated with multiple impairments of girls' and adolescents' rights and are highly risky for the health of both the mother and her unborn child. In addition, all such pregnancies are presumably the result of sexual abuse. In 2013, 2,609 cases of sexual violence were reported, and more than 80% of cases abuse of girls and female adolescents is allegedly committed by family members.<sup>484</sup> And yet, as UNICEF observed, impunity is still the norm with these grave cases of rape.
277. In view of this highly alarming scenario, the State reported the adoption of various measures aimed at tackling the problem of teenage pregnancies, as follows: 1) National Plan for the Prevention of Pregnancy among Adolescents and Young People of Guatemala for 2013-2017, whose implementation started in 5 departments and 16 municipalities, in the hopes of "reducing to 5% teenage pregnancies, raising awareness about increasing the age of first pregnancy, providing access to comprehensive instruction about sexuality, disseminating family planning methods, fostering the relevance of sexual education in secondary education and among adolescents;" 2) Roadmap to Addressing Services for Children under 14 years of age (September 26, 2012), which defines the cooperation parameters between the Ministry of Public Health and Social Welfare, the Ministry of Education, the Ministry of Social Development, and the Secretariat against Sexual Violence, Exploitation, and Human Trafficking for the purpose of implementing actions and a roadmap for services aimed at preventing pregnancies and helping pregnant adolescents, reaching out, as of 2012, to 2,500 pregnant adolescents; 3) the Consolidated File to identify cases of pregnant teenagers under 14 years of age taken care of in hospitals, a tool that makes it possible to compile information about pregnant girls or adolescents; 4) the campaign "Protect me from pregnancy" (Protégeme del embarazo) that was launched in 2013,<sup>485</sup> aimed at raising the awareness of families, educators, and civil society in general about the legal consequences of pregnancy for girls under 14 years of age; 5) the Ministry of Public Health has implemented the Handbook for Addressing Sexual and Reproductive Health; Guide for the Implementation of Adolescent-Friendly Spaces; Guide on Contraceptives for Adolescents; Circle of Pregnant Adolescents; and it "has trained 180 health providers in a strategy for integral and differentiated services and integral education in sexuality, 148 local operating plans for integral services aimed at adolescents and young people, monitoring and evaluation plan for the implementation of the integral education in sexuality strategy, dildos

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<sup>484</sup> OHCHR-Guatemala. [Report of the United Nations High Commissioner for Human Rights on the activities of the office in Guatemala](#), in 2014, 12 January 2014, para. (53-54); PDH [Análisis de la situación de embarazos en niñas y adolescentes en Guatemala 2011-2013](#), pp. 25 and 34; *Siglo 21* "Violaciones se incrementaron en un 47% en 2013, January 6, 2014

<sup>485</sup> The campaign was conducted using posters, as well as TV and radio spots nationwide, in both Spanish and the Maya languages. Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015, p. 93.

supplied to each one of the health districts to teach the adequate use of a condom.”<sup>486</sup>

#### d. Journalists and freedom of expression

278. The Commission and its Special Rapporteurship for Freedom of Expression have paid close attention to the status of freedom of expression in Guatemala<sup>487</sup>, because the right to freedom of expression is essential for democracy to develop and become stronger, as well as for the full exercise of human rights. Respect for the exercise of freedom of expression is a priority on the Commission's agenda when it reviews the human rights situation in any member state of the Organization of American States. Freedom of expression consolidates other fundamental freedoms by facilitating citizen participation in decision-making processes, by serving as a tool to attain a more tolerant and stable society, and by dignifying human beings through the exchange of ideas, opinions and information. In addition to contributing to the protection of other fundamental rights, freedom of expression plays an essential role in the control of public administration, by exposing abuses of power and infractions of the law committed to the detriment of the citizenry. The Inter-American Court has consistently emphasized the importance of this right, stating:

“Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a *condition sine qua non* for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, one can assert that a society that is not well informed is not entirely free.”<sup>488</sup>

279. As regards violence against journalists and others because of their exercising freedom of expression, the Special Rapporteurship has underscored, based on inter-American doctrine and case history, the importance of three positive obligations emanating from the rights to life, personal integrity, and freedom of expression: that is to say, the obligation to prevent, the obligation to protect, and the obligation to investigate, try and punish according to criminal law the perpetrators of those crimes. As the Special Rapporteurship has pointed out, these obligations complement one another: for there to be free, robust, and unfettered democratic debate, violence against journalists has to be fought through a comprehensive policy of prevention, protection, and prosecution.<sup>489</sup>

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<sup>486</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015, p. 93.

<sup>487</sup> Monitoring through visits, annual and country reports, the cases system, and precautionary measures.

<sup>488</sup> I/A Court H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85, November 13, 1985, para. 70.

<sup>489</sup> IACHR, Special Rapporteurship for Freedom of Expression, "Violence against Journalists and Media Workers: International Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators,"

280. Article 35 of the 1985 Political Constitution of the Republic of Guatemala, as amended in 1993, establishes that "The expression of thought through any mass medium without censorship or prior permission is free [...]" (Tr.: [http://www.right2info.org/resources/publications/laws-1/guatemala\\_constitution\\_eng](http://www.right2info.org/resources/publications/laws-1/guatemala_constitution_eng)) Despite the text of the Constitution, during its many years of monitoring the human rights situation in Guatemala, the Commission has constantly received information to the effect that the full exercise of that right has been obstructed by acts of intimidation against independent media and journalists. The Commission notes with particular concern the attacks against social communicators covering investigations into public administration, acts of corruption, and human rights violations.
281. In the hearing on the "Situation of Human Rights Defenders in Guatemala," held on October 28, 2014, the Commission received information about the increase in alleged detentions and acts of violence against journalists and social communicators in Guatemala and the impunity associated with those crimes. It also heard of alleged spying and cyber-attacks against media and of lawsuits filed as reprisal against critically-minded journalists in Guatemala; about alleged problems with devising and implementing a protection mechanism for journalists; and about the activities of the Unit for Investigation Crimes against Journalists (*Unidad Fiscal de Delitos Contra Periodistas*). In that regard, the organizations requesting the Hearing reported that, based on official figures, through August 2014, the aforementioned Unit had opened 44 cases to investigate assaults on 89 journalists (including 19 women). Sixty of the perpetrators are said to be government officials and 37 private individuals. For its part, the State said it respected journalists and that it was untrue that acts of violence against defenders had increased in Guatemala. It also reported that it had set up mechanisms and institutions to protect human rights defenders and journalists and that it had provided protection to a number of at-risk individuals.<sup>490</sup>

### **i. Murders of journalists and reporters**

282. Thus far in 2015, two journalists and one reporter have been murdered in Guatemala. Reporter Guido Villatoro was murdered on March 13, 2015 in the municipality of Chicacao, department in Suchitepéquez. According to the information received, 20-year-old Villatoro was gunned down outside the television company for Servicable subscribers, where he worked as a cameraman. He was taken to a hospital, where he died.<sup>491</sup>
283. On March 10, 2015, journalists Danilo López and Federico Salazar were murdered in the municipality of Mazatenango, in the department of Suchitepéquez. According to information received, the journalists were covering an official event in the

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December 31, 2013, para. 31 [[http://www.oas.org/en/iachr/expression/docs/reports/2014\\_04\\_22\\_Violence\\_WEB.pdf](http://www.oas.org/en/iachr/expression/docs/reports/2014_04_22_Violence_WEB.pdf)]

<sup>490</sup> IACHR 153rd session, Hearing on the Situation of Human Rights Defenders in Guatemala, October 28, 2014.

<sup>491</sup> IACHR Press release R35/15—Office of the Special Rapporteur Condemns Killing of Reporter in Guatemala. March 23, 2015.

central square in Suchitepéquez, opposite the departmental government building and barely a few yards away from a police station, when they were gunned down allegedly by two men who then escaped. Reportedly another journalist—Marvin Túnchez—was wounded in the attack and taken to hospital. Danilo López worked at the daily newspaper *Prensa Libre* and had reportedly been threatened previously by a former mayor due to articles he had written on improper practices by government officials. He had reported those threats to the authorities.<sup>492</sup> Federico Salazar worked at Radio Nuevo Mundo and was not known to have received any threats. Both were part of the recently established Press Association of Suchitepéquez, where they were Vice Chair and Secretary, respectively.<sup>493</sup>

284. Journalist Danilo López had given an interview on February 20, 2014, in which he said he feared for the possible consequences of his investigations. He had reported on operations by organized criminal groups, police corruption, and drug trafficking.

"My name is Danilo López. I work for Prensa Libre in Guatemala. I am a correspondent for the department of Suchitepéquez.

Working as a journalist in Mazatenango is quite tough. We journalists are vulnerable, particularly due to the criminal activities that can be seen every day in the department. Unlike journalists working in cities, we have no security.

In some cases, there have been attacks in reprisal for reporting denunciations of corruption. Suchitepéquez is a department riddled with corruption.

I had to greet this mayor and say: Pleased to meet you. Good morning. As he shook my hand, he tells me that he is in power and can do anything he wants against me.

In Guatemala, that is normal. You find bodies tied hands and feet, with tourniquets; headless, with their mouths stuffed, hanging from bridges or trees. Such things happen in Mazatenango, too."<sup>494</sup>

285. At the same time, the IACHR appreciates the fact that, thanks to a decision by the judges of the Criminal Division of the Supreme Court of Justice (CSJ), the case involving the murder of journalists Danilo López and Federico Salazar is being heard by the High-Risk B Court. The Public Prosecution Service had requested that the case be referred to the Capital, because the District Prosecutor's Office in Suchitepéquez had received a phone call "warning the prosecutors not to investigate, because if investigations continued they would kill more journalists in Suchitepéquez."<sup>495</sup> In June 2015, the security forces captured two PNC officers and a third individual implicated in the murder of journalists Danilo López and

<sup>492</sup> IACHR, Press release R28/15-R35/15—Office of the Special Rapporteur Condemns Killing of Two Journalists in Guatemala March 12, 2015.

<sup>493</sup> IACHR Press release R28/15—The Office of the Special Rapporteur Condemns Killing of Two Journalists in Guatemala. March 12, 2015.

<sup>494</sup> The full interview with correspondent Danilo López can be heard at Danilo López: "Mi nombre es Danilo López," March 14, 2005.

<sup>495</sup> *Prensa Libre*, *Juzgado de mayor riesgo conocerá crímenes contra periodistas*, April 8, 2015.

Federico Salazar. The PNC officers captured—León Cabrera Solís and Luis Emerio Juárez Pichiyá—were members of the unit responsible for protecting VIPs. The investigation is being led by the Unit for Crimes against Journalists of the Ombudsperson's Office (*Fiscalía de Derechos Humanos*)<sup>496</sup>.

286. On the day of the attack, the police captured Sergio Valdemar Cardona Reyes and, two days later, Artemio de Jesús Ramírez Torres, charged with being the person who fired the shots at the journalists.<sup>497</sup> All the detainees were brought to trial.<sup>498</sup>
287. The IACHR also appreciates the fact that a man charged with participating in the murder of two journalists in the department of Jutiapa in 2013 had been captured and brought to trial. According to the information received by the Commission, on June 30, 2014, the PNC allegedly captured Byron Amílcar Vásquez following a warrant for his arrest by the Criminal Court in Guatemala City. Amílcar Vásquez reportedly is a member of a gang of hired assassins charged with having participated, inter alia,<sup>499</sup> in the murder of Jaime Napoleón Duarte, a correspondent for *Nuestro Diario*, on March 20, 2013 in the city of Pedro de Alvarado, and in the murder, on April 7, 2013, of Luis Alberto Lemus Ruano, a former governor of Jutiapa, director of *Radio Stereo Café*, owner of the *Café TV* cable channel, and Vice President of the Jutiapa Journalists' Association.<sup>500</sup>

## ii. Threats, detention, harassment, and assaults on journalists and media outlets

288. Dozens of journalists and media outlets were subjected to attacks, threats, and harassment of various kinds in a context of elections and political turmoil. Given the difficulties surrounding their work, some journalists are said to have opted in the past year for self-censorship to protect themselves from attacks and threats.<sup>501</sup> The State Attorney's Office for Crimes against Journalists received 81 complaints

<sup>496</sup> *Prensa Libre*, [Capturan a dos agentes de PNC y un civil implicados en crimen contra periodistas](#), June 26, 2015.

<sup>497</sup> *Prensa Libre*, [Juzgado de mayor riesgo conocerá crímenes contra periodistas](#), April 8, 2015.

<sup>498</sup> *Prensa Libre*, [Ligan a proceso detenidos por muerte de periodistas](#), July 1, 2015.

<sup>499</sup> Office of the Director General of the National Civil Police. [Capturado por muerte de periodista y ex gobernador de Jutiapa](#), July 1, 2014.

<sup>500</sup> Center for News Reports on Guatemala (Cerigua) July 1, 2014. [Capturan a presunto responsable de asesinato de dos periodistas](#); *Prensa Libre*. June 30, 2014. [Detienen a sindicado de matar a periodista y exgobernador](#); Lainformacion.com/EFE. July 2, 2014. [Detienen en Guatemala a un sospechoso de asesinar a dos periodistas en 2013](#); Siglo 21. Undated. [Murderer of former governor and journalist arrested](#); IACHR, [Annual report for 2013](#). Report of the Officer 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. 451.

<sup>501</sup> Cerigua. April 8, 2015. [Censura y autocensura en medios escritos de Guatemala](#); Inter-American Press Association. 2015. Mid-year meeting in Panama. [Guatemala](#).



between January and August 2015, more than in any of the previous three years.<sup>502</sup> Following are some of the more egregious cases.

289. Journalist Gustavo Berganza reported in January about a series of attacks that other colleagues and media outlets had been subjected to. "Orchestrated attacks continue against Juan Luis Font and Pedro Trujillo, precisely because of their criticism of Manuel Baldizón", said Berganza<sup>503</sup>. Baldizón was the presidential candidate of the Partido Libertad Democrática Renovada (Lider). Font directs the magazine *Contrapoder* and *Canal Antigua*, both owned by the former Minister of Energy and Mines, Erick Archila. Font and his colleague Pedro Trujillo were singled out by media allegedly linked to Lider, such as *La Nación*, *Es Primicia*, and *NTV*, and by a cloned version of the *Prensa Libre* website. In addition, criminal charges were brought against both journalists for alleged crimes.<sup>504</sup> The magazine *Contrapoder* had been critical of Baldizón and in 2014 had published several investigations claiming that the politician had plagiarized parts of a book published under his name as well as his doctoral thesis.<sup>505</sup>
290. Another journalist they tried to intimidate because of her work was Susana Morazán, of the local channel *Azteca Guatemala*. She was beaten and robbed on January 20. Morazán said: "[The robber] told me that if I continued to talk and say the things I did on the newscast and in my reports against the Government, worse things would happen to me."<sup>506</sup> Erick Archila resigned from his position as Minister of Energy and Mines in May 2015 after charges of corruption were brought against him by an organization associated with Lider.<sup>507</sup> In his speech on

<sup>502</sup> Sistema de Protección al Ejercicio Periodístico en Guatemala [System for Protecting the Practice of Journalism in Guatemala]. August 2015 Avances en la propuesta [Progress made with the proposal]. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Cerigua. August 2015 Avance del Informe sobre la situación de la libertad de expresión y de prensa [Progress with the report on the situation of freedom of expression and the press]. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>503</sup> *Soy 502* (via YouTube). January 17, 2015. [Entrevista Gustavo Berganza](#).

<sup>504</sup> *La Nación*. August 10, 2014. [Los históricos vínculos de Juan Luis Font con el oficialismo](#); *NTV*. August 11, 2015. [Los históricos vínculos de Juan Luis Font con el oficialismo](#); *La Nación*. January 6, 2015. [¿Pertenece Juan Luis Font a estructuras de corrupción?](#); Juan Luis Font (via Twitter). July 15, 2015. [Baldizón manda a sus vasallos a denunciarme \(7ma vez\) por lavado y testaferrato. Sabe q no prosperará, pero le da materia para desprestigiar](#); *NTV* (via YouTube). July 16, 2015. [Denuncian a Juan Luis Font por lavado de dinero y otros ilícitos](#); *Soy 502*. July 15, 2015. [Una vez más intentan coaccionar contra periodista Juan Luis Font](#); *Prensa Libre*. July 20, 2015. [Identificado autor de falsificación de sitio de Prensa Libre](#); *República GT*. September 26, 2014. [Un consorcio de medios para un líder](#); *Es Primicia*. June 19, 2015. [Pedro Trujillo acusado de defraudación tributaria](#); *La Nación*. June 9, 2015. [Denuncian a Pedro Trujillo por lavar Q13,8 millones](#); *República GT*. June 1, 2015. [Pedro Trujillo habla sobre las acusaciones en su contra](#).

<sup>505</sup> *Contrapoder*. Undated. [Copy/Paste de Baldizón](#); *Contrapoder*. Undated. [Karen Fischer denuncia a Baldizón por su libro](#); *Contrapoder*. Undated. [¿La tesis también, doctor?](#); *Contrapoder*. Undated. [El plagio que la Usac no quiso ver \(y que Baldizón no quiere admitir\)](#); *Plaza Pública*. February 4, 2015. [2015, un año complicado para la Libertad de Expresión](#).

<sup>506</sup> *Soy 502* (via YouTube). January 20, 2015. [Comunicadora es agredida y amenazada en asalto](#); *Azteca Guatemala* (via Twitter). January 20, 2015. ["@susanamorazan víctima de amenaza y agresión física hace unos minutos. Se presentarán denuncias #LibertadDeExpresión"](#); *Siglo 21*. January 20, 2015. [Susana Morazán denuncia agresión y amenazas](#).

<sup>507</sup> *La Nación*. May 16, 2015 [Ministro del MEM Erick Archila renuncia y es arraigado](#); *La Hora*. May 15, 2015. [Piden arraigo del exministro Erick Archila](#).



leaving office, Archila said he was the victim of "political persecution" designed "to silence freedom of expression in the media" in which he had shares.<sup>508</sup>

291. Enrique Paredes, of *Prensa Libre* and Aroldo Calderón, of *Nuestro Diario*, were detained on July 11 by security guards of the Jaguar Energy electricity company when they were covering a protest against alleged contamination of a river.<sup>509</sup> During a police anti-smuggling operation on July 24 in Quetzaltenango, reporter Carlos Ventura, of *Prensa Libre*, was beaten by a group of vendors, who stole his camera. They also attacked his colleague Byron Bravo, of *Nuestro Diario*, and poured gasoline over him.<sup>510</sup>
292. The Guatemala Press Association complained of attacks on colleagues as they were covering political demonstrations organized by the Lider party toward the end of July. The Public Prosecutor's office said later that a 43-year-old man had been charged with the offense of coercion because of that attack. The press association also reported threats and attacks against Antonio Chitop, of *Nuestro Diario*, Héctor Ramírez and Fernando Requena, of *Canal Antigua*, and Alberto Cardona and Víctor Velásquez, of *Guatavisión*.<sup>511</sup> Journalist Oswaldo Ical Jóm complained to the Police on July 30 that a group of people had beaten him and demanded that he stop his radio reporting. In 2014, Ical Jóm had been attacked and held for several hours by the inhabitants of the village of Uspantán, in Quiché when he investigating a kidnapping.<sup>512</sup>
293. Numerous journalists and cameramen were attacked on various occasions when they covered news relating to the judicial proceedings faced by former Vice President Roxana Baldetti, when she entered jail, and during her hearing before the judge. Journalists complained that they were beaten on those occasions and that the PNC used pepper spray against them. Following those incidents, the Attorney General of Guatemala ordered an investigation ex officio.<sup>513</sup> Journalist

<sup>508</sup> *Canal Antigua* (via YouTube). May 18, 2015. [15 05 15 CA, Erick Archila renuncia a su cargo de Ministro de Energía y Minas](#).

<sup>509</sup> *Prensa Libre*. July 11, 2015. [Liberan a periodistas que fueron retenidos por seguridad de empresa Jaguar Energy](#); *Diario Digital*. July 11, 2015. [Seguridad de Jaguar Energy retiene a dos periodistas](#); *La Hora*. July 11, 2015. [Periodistas fueron retenidos por seguridad de Jaguar Energy](#).

<sup>510</sup> *Prensa Libre*. July 24, 2014. [Agreden a corresponsal de Prensa Libre en Quetzaltenango](#); *Soy 502*. July 24, 2015. [Agreden a periodistas y los rocían de gasolina en Quetzaltenango](#).

<sup>511</sup> *Emisoras Unidas*. July 24, 2015. [Gremio periodístico denuncia aumento de agresiones en su contra](#); *Publinews* (via YouTube). July 23, 2015. [Momento en que la seguridad de Barquín se enfrenta con periodistas](#); *EFE* (via *La Tribuna de Tegucigalpa*). July 24, 2015. [Periodistas de Guatemala denuncian aumento de agresiones](#); Public Prosecution Service [*Ministerio Público*] of Guatemala. July 24, 2015. [Ligado a proceso por agredir a periodista](#).

<sup>512</sup> Centro Civitas (via the Editorial Staff's Facebook account). August 3, 2015. [Pretenden criminalizar y desprestigiar a periodista Oswaldo Ical Jóm](#); IACHR, Annual report for 2014. Report of the Officer of the Special Rapporteur for Freedom of Expression. OEA/Ser.L/V/II Doc. 13. March 9, 2015. Chapter II, para. 549.

<sup>513</sup> *República GT*. August 21, 2015. [Agreden a periodistas durante traslado de Baldetti](#); Sergio Osegueda (via Twitter). August 21, 2015. ["PNC lanzó gas pimienta a periodistas que cubrían ingreso de Roxana Baldetti a Matamoros. @CanalAntigua"](#); Sergio Osegueda (via Twitter). August 21, 2015. ["Periodista Daniela Alvarez de radio Punto afectada por gas pimienta lanzado por PNC. @CanalAntigua"](#); Sergio Osegueda (via Twitter). August 21, 2015. ["#CoberturaBaldetti Durante el traslado de Roxana Baldetti a Matamoros, policías rociaron gas pimienta a la prensa"](#); *Prensa Libre*. August 24, 2015. [Roxana Baldetti enfrenta primer día de audiencia](#); *EFE* (via *La Razón*). August 25, 2015. [Periodistas denuncian agresiones después de audiencia de](#)

Ana Verónica Sandoval, of the Centro de Medios Independientes, said she had been detained by police on September 6, when she was recording the capture of two men, and that a police officer took away her camera. After she was forced to delete the photos she had taken, she was released. On another occasion, journalist Rolando Hernández, a correspondent of Prensa Libre in Jalapa, was attacked by people who appeared to be followers of the Unión del Cambio Nacional political party while he was covering a demonstration. In that incident, an alleged bodyguard of the local mayor snatched his camera.<sup>514</sup>

294. The IACHR notes that the Unit for Crimes against Journalists in the Public Prosecution Service, has been a welcome improved in terms of investigation and the arrest of aggressors, only has five attorneys to investigate, crimes, attacks, and threats against media personnel, with more than 100 cases still awaiting clarification.<sup>515</sup>
295. All types of threats, attacks, or harassment directed against journalists, media personnel, or media outlets themselves must be investigated by the justice system and the authorities should not proceed to discard the practice of journalism as the motive for criminal acts before an investigation is over. States have an obligation to take effective steps to prevent attacks against journalists and others exercising their right to freedom of expression and to combat impunity, specifically by vehemently condemning such attacks when they occur, through prompt and effective investigation, in order to duly punish perpetrators and make reparation to victims, as appropriate. States also have an obligation to provide protection to journalists and others exercising their right to freedom of expression, who run a grave risk of being attacked.<sup>516</sup>
296. Principle 9 of the Declaration of Principles on Freedom of Expression provides that:

"[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation".

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exvicepresidenta de Guatemala; Siglo 21. August 26, 2015. Baldetti queda ligada a proceso por tres delitos; Public Prosecution Service.. August 25, 2015. Fiscal General ordena investigación de oficio por agresiones contra periodistas.

<sup>514</sup> Cerigua. September 9, 2015. Simpatizantes de alcalde intentaron agredir a periodista; guardaespaldas roba su cámara.

<sup>515</sup> Contrapoder. April 13, 2015. Cinco fiscales para atender 130 denuncias de periodistas.

<sup>516</sup> United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Representative for Freedom of the Media of the Organization for Security and Cooperation in Europe, the Special Rapporteur for Freedom of Expression of the Organization of American States, and the Special Rapporteur for Freedom of Expression and Access to Information of the African Commission on Human and Peoples' Rights, May 4, 2015. Joint Declaration on Freedom of Expression and responses to conflict situations.

### iii. Program to protect journalists and social communicators

297. During the Universal Periodic Review of October 2012, Guatemala committed to establishing a Program for the Protection of Journalists, a commitment reiterated by former President of the Republic, Otto Pérez Molina, on November 28, 2013.<sup>517</sup> On February 4, 2014, a high-level round table and a technical group were installed to coordinate the process of constructing a Program for the Protection of Journalists. In April 2015, several press associations called upon the State to meet its commitment of implementing a Program for the Protection of Journalists and Social Communicators before the end of President Otto Pérez Molina's term in office, and to include journalists and social communicators in the process.<sup>518</sup>
298. The IACHR has been told that, in 2015, workshops have been conducted to disseminate and discuss the preliminary proposed mechanism for the protection of journalists. They were convened by the Ministry of the Interior (MINGOB), the Presidential Commission coordinating the Executive's Policy on Human Rights (COPREDEH), and the Public Prosecution Service (MP), with the backing of the Social Communication Secretariat of the office of the President of the Republic (SCSPR), the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the United Nations Educational, Scientific and Cultural Organization (UNESCO).<sup>519</sup>
299. On the other hand, information received by the IACHR in 2014 indicated that the mechanism had not been allocated a budget that would allow it to operate.<sup>520</sup> The IACHR appreciates the efforts by the State of Guatemala to establish a Program for the Protection of Journalists. At the same time, it reiterates the need for it to follow international parameters in consultation with civil society and journalists' and media personnel organizations, whose participation in the implementation and operation of that program must also be assured.
300. Along those lines, the IACHR and its Special Rapporteurship for Freedom of Expression have developed some guidelines worth taking into account in the design and workings of programs to protect journalists, including: (1) the political commitment of the State, which must include: an appropriate legal framework; sufficient well-trained staff, who inspire confidence in the beneficiaries of the protection provided; the budgetary resources needed to cover the personnel costs

<sup>517</sup> The Commitment was signed in the presence of the Vice President, the Minister of the Interior, the President of the Presidential Commission coordinating the Executive's Policy on Human Rights (COPREDEH), along with representatives of the Ombudsperson's Office and the Public Prosecution Service. Acting as witness of honor were the Resident Coordinator of the United Nations and the Representative of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

<sup>518</sup> IFEX. *La Red. Global. Asociaciones de periodistas en Guatemala exigen implementación de programa de protección a periodistas*, April 15, 2015.

<sup>519</sup> Design of the *Programa Protección a Periodistas*. Technical Group. Notice of convocation.

<sup>520</sup> IACHR, 153rd regular session, Hearing on the Situation of Human Rights Defenders in Guatemala; *El Periódico*. October 1, 2014. [Gobierno sin destinar presupuesto para programa de periodistas](#); Centro de Reportes Informativos sobre Guatemala [Center for News Reports on Guatemala]. October 9, 2014. [Señalan deficiencias en proceso de construcción del Programa de Protección a Periodistas](#).

of those working under the program, as well as the costs of the protection measures themselves; the adoption of rules clearly demarcating the spheres of competence and responsibilities of the authorities intervening in the implementation and oversight of the protection measures; (2) appropriate identification of the potential beneficiaries and the criteria for a potential beneficiary being able to seek protection; (3) appropriate risk analysis with a gender perspective, that enables the State to discern the most effective way it can meet its protection obligation, taking specific and contextual circumstances into account and providing for active participation by the beneficiary; (4) the provision of suitable and effective protection measures to safeguard the life and integrity of the beneficiaries and that match the professional needs of journalists and allow them to continue their work; (5) clear criteria and procedures for monitoring the danger faced by the beneficiary and for monitoring the effectiveness of the measures selected and, if they are not effective, for tailoring them to the specific circumstances of the beneficiary; (6) the performance of a risk assessment to decide when to lift the protection measures, a decision that must be made with the participation of the beneficiary, so as to ascertain his or her opinion about their being lifted; and (7) exhaustive and independent investigations by the competent authorities, in addition to the material protection measures, with a view to preventing or reducing the underlying sources of risk.<sup>521</sup>

#### iv. Community radio broadcasting

301. No progress has been noted with respect to the obligation, acknowledged by the State on numerous occasions, to legally recognize the community radio broadcasting sector and grant the permits needed for its use of frequencies. On the contrary, radio broadcasters continue to be arrested and their equipment confiscated.
302. The Commission was informed of the arrest, on February 27, 2014, of radio broadcaster Andony Godínez Pérez by officials from the Public Prosecution Service and the PNC in the course of a raid on the installations of *Radio San José*, in the village of San José Cabene in the municipality of San Pedro Sacatepéquez. Godínez was reportedly taken to the detention center in the city of Quetzaltenán. In reaction, the community reportedly took two policemen hostage. According to the information received by the Commission, the communicator was free and the authorities undertook not to conduct more raids on the radio station. However, it is said that criminal proceedings were then brought against Godínez.<sup>522</sup> The IACHR

<sup>521</sup> IACHR, Annual report for 2013. Report of the Officer 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.

<sup>522</sup> Videoconference between Special Rapporteur Catalina Botero and representatives of community radio broadcasters in Guatemala. March 14, 2014. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Alberto Recinos. March 11, 2014. of the Muj'ab'l yol Association. E-mail sent to the Office of the Special Rapporteur for Freedom of Expression. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Mark Camp. March 12, 2014. Raid on Radio San José in Guatemala. E-

was also notified that, on April 21, 2014, two community radio stations had been raided in the municipality of Ixcán, in the department of Quiché, in which the authorities reportedly confiscated transmission equipment and arrested one individual. Public Prosecution Service agents are said to have gone into the *Estéreo Luz* with their guns pointing at women there and seized equipment worth 30,000 Quetzals (approximately US\$3,800). *La Voz de Sonora* station is also said to have been raided. One man was allegedly arrested and equipment seized that was worth 60,000 Quetzals (about US\$7,700).<sup>523</sup>

303. Since 2000, the IACHR and its Special Rapporteurship for Freedom of Expression have been issuing recommendations to the State of Guatemala regarding two issues in particular: the need for a fairer legal framework that includes radio broadcasting and decriminalization of unlicensed radio broadcasting.<sup>524</sup> Likewise, on a number of occasions, the Office of the Special Rapporteur has pointed out that using criminal law to punish violations of radio broadcasting rules may turn out to be problematic from the standpoint of the American Convention on Human Rights. Accordingly, the IACHR issues a reminder to the effect that imposing criminal sanctions for conduct relating to the irregular or unauthorized practice of commercial or community radio broadcasting is disproportionate.<sup>525</sup>

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mail sent to the Office of the Special Rapporteur for Freedom of Expression. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Centro de Reportes Informativos sobre Guatemala (Cerigua). February 28, 2014. [Denuncian cierre de radio comunitaria en San Marcos](#); Pedrovisión Noticias. February 27, 2014. [LA NOTA CHAPINA: Reportan incidentes en cierre de “radio pirata”](#).

<sup>523</sup> Centro de Reportes Informativos sobre Guatemala [Center for News Reports on Guatemala] (Cerigua) April 27, 2014. [Reportan el cierre de dos radios comunitarias en el occidente del país](#); Reporters Without Borders (RWB). June 27, 2014. [CIERRAN DOS RADIOS COMUNITARIAS EN GUATEMALA](#).

<sup>524</sup> IACHR, Special Rapporteurship for Freedom of Expression. April 18, 2000. [Press release 24/00. Preliminary Assessment of Freedom of Expression in Guatemala](#); IACHR, [Annual report for 2001. Report of the Officer of the Special Rapporteur for Freedom of Expression](#). Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. April 16, 2002, paras. 114-117; IACHR, [Annual report for 2002. Report of the Officer of the Special Rapporteur for Freedom of Expression](#). Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. March 7, 2003, paras. 139 to 141; IACHR, March 29, 2003. [Press release of the Inter-American Commission on Human Rights 08-03](#); IACHR, [Report on the Situation of Human ... Justice and Social Inclusion: The Challenges of Democracy in Guatemala](#). Chapter VII (The Situation of Freedom of Expression). December 29, 2003, paras. 412-414; IACHR, [Annual report for 2005. Report of the Officer of the Special Rapporteur for Freedom of Expression](#). Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. February 27, 2006, paras. 91; IACHR, [Annual report for 2007. Report of the Officer of the Special Rapporteur for Freedom of Expression](#). Chapter II: Situation of Freedom of Expression in the Region. March 8, 2008, paras. 152; IACHR, [Annual report for 2008. Report of the Officer of the Special Rapporteur for Freedom of Expression](#). Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. February 25, 2009, paras. 133 and 134; IACHR, [Annual report for 2009. Report of the Officer of the Special Rapporteur for Freedom of Expression](#). Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. December 30, 2009, paras. 237 and 238; IACHR, [Annual report for 2010. Report of the Officer of the Special Rapporteur for Freedom of Expression](#). Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. March 7, 2011, paras. 281-285; IACHR, [Annual report for 2011. Report of the Officer of the Special Rapporteur for Freedom of Expression](#). Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. December 30, 2011, paras. 281-283; IACHR, [Annual report for 2012. Report of the Officer of the Special Rapporteur for Freedom of Expression](#). Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. March 5, 2013, paras. 275-281; IACHR, [Annual report for 2013. Report of the Officer of the Special Rapporteur for Freedom of Expression](#). Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. December 31, 2013, para. 483.

<sup>525</sup> IACHR, [Annual report for 2013. Report of the Officer of the Special Rapporteur for Freedom of Expression](#). Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. December 31, 2013. Pars.

304. For the Commission, it is a matter of great concern that, despite the judgment of March 14, 2012 handed down by Guatemala's Constitutional Court, in which it urged the Guatemalan Congress to design a specialized legal framework,<sup>526</sup> and despite the Agreement on Identity and Rights of Indigenous Peoples,<sup>527</sup> Congress has still not solved the legal lacuna preventing recognition of community radio stations. Accordingly, the Commission reiterates its recommendation that "the State must promote different groups' access to radio and television frequencies and licenses under conditions of equality and non-discrimination, no matter their technology."<sup>528</sup>
305. In addition, information was received of harassment against the *Snuq' Jolom Konob' community radio station* of the municipality of Santa Eulalia, which was closed down by the local authorities on January 20, 2015<sup>529</sup>. An attempt was made to reopen it on March 20, but, apparently in the midst of violent incidents, the mayor prohibited the reopening.<sup>530</sup>
306. As regards community radio stations, the State indicates that, as a member of the International Telecommunications Union and the Inter-American Telecommunication Commission, they must regulate the use and operation of radiofrequencies uniformly and efficiently, without one use prejudicing or interfering with others. Thus the issue should not be seen as a conflict between the freedom of expression of the indigenous peoples as a human rights and the use of radiofrequencies.<sup>531</sup> The State of Guatemala also pointed out that, since 2003, it had granted "at least" 18 radio frequencies to Maya and indigenous community associations and that only two take advantage of this opportunity. "In the country

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129; IACHR, *Annual report for 2011. Report of the Officer 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.

<sup>526</sup> Constitutional Court of the Republic of Guatemala. Judgment of March 14, 2012. Partial General Unconstitutionality. *Case file 4238-2011*; IACHR, *Annual report for 2012. Report of the Officer of the Special Rapporteur for Freedom of Expression*. Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. March 5, 2013, para. 483.

<sup>527</sup> *Agreement on the Identity and Rights of Indigenous Peoples*. March 31, 1995. Mexico City. Section H(2)(b) of Chapter III establishes that the Guatemala State should "[p]romote before the Congress of the Republic the necessary reforms in the present Law on Radio-broadcasting with the objective of facilitating frequencies for indigenous projects and of assuring the importance of the principle of non-discrimination in the use of the communications media. Also promote the abolition of any provision within the legal framework that obstructs the right of the indigenous people to use the communications media for the development of their identity."

<sup>528</sup> IACHR, *Annual report for 2010. Report of the Officer of the Special Rapporteur for Freedom of Expression*. Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. March 7, 2011, para. 284.

<sup>529</sup> *El Periódico*. March 20, 2015. *Comunicadores piden a la Fiscal General que acelere investigación; Reporteros sin Fronteras*. March 26, 2015. *Reprimen a la radio comunitaria Snuq Jolom Konob en Guatemala; Periodismo Humano*. February 12, 2015. *Guatemala: Firma por la libertad de expresión para una Radio Comunitaria; Global Voices*. March 23, 2015. *Denuncian agresiones contra radio comunitaria en Guatemala; Prensa Libre*. January 24, 2015. *Jolom konob'*

<sup>530</sup> *El Periódico*. 20 de marzo de 2015. *Comunicadores piden a la Fiscal General que acelere investigación; Reporteros sin Fronteras*. March 26, 2015. *Reprimen a la radio comunitaria Snuq Jolom Konob en Guatemala; Periodismo Humano*. February 12, 2015. *Guatemala: Firma por la libertad de expresión para una Radio Comunitaria; Global Voices*. March 23, 2015. *Denuncian agresiones contra radio comunitaria en Guatemala; Prensa Libre*. January 24, 2015. *Jolom konob'*

<sup>531</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2014," October 6, 2015.



there are about 50 authorized radio stations that could be called 'community radios' out of the 550 operating on an FM frequency. In contrast, there are about 2,000 community radios operating without having met the legal requirements for their operation."<sup>532</sup>

## v. Disproportionate use of force during protest demonstrations

307. The interest and presence of companies on traditional indigenous lands and territories has led to serious unrest in several parts of Guatemala, generating social protests and sometimes triggering violent incidents. In some communities there have been Civilian Police and Army operations designed to intimidate and silence social protests and force the implementation of extractive industry projects.<sup>533</sup>
308. The IACHR received information of a series of alleged violent evictions by the PNC directed against persons demonstrating against the construction of mega-projects in various parts of the country. For instance, the IACHR was notified that on Friday, May 23, 2014, some 500 PNC officers had allegedly used violence to remove a stand kept by the Peaceful Resistance Movement of La Puya opposite a mining project's facilities between the municipalities of San José del Golfo and San Pedro Ayampuc. The demonstrators, who had been given permission by the Governor's Office to demonstrate at the entrance to the mining project, reportedly tried to no avail to talk to the police officers guarding the entry of machinery. Reportedly, in the afternoon anti-riot police used tear gas, pepper gas, smoke grenades, rubber bullets, sticks, and stones against the demonstrators in an attempt to evict them.

<sup>532</sup> Observations by the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015.

<sup>533</sup> A fairly typical instance of this is what happened to the communities of San Juan Cotzal, and Nebaj, in the Ixil region, El Quiché, which defended their territorial rights against construction, without prior consultation, of the Palo Viejo hydroelectric plant. On February 14, 2010, allegedly more than 1,000 police and soldiers turned up "masked as they had been when the Army committed massacres during the internal war." In addition, similar police and army operations were reportedly carried on on February 23 and March 18 of that same year, designed to intimidate the communities. In 2011, hundreds of policemen and soldiers were sent in and three helicopters flew over the Cotzal communities "sowing," according to an indigenous mayor, "tremendous fear among the communities, who remembered the genocide." Under those circumstances, they had to initiate talks with the company and State authorities, "under pressure from 700 policemen and soldiers drawn in from all over the country to be stationed in the Municipality of Nebaj. Indigenous mayors in the Ixil region. Demands of the indigenous communities and ancestral authorities of Cotzal to the Italian corporation ENEL. June 30, 2011.

Another case was the Army's violent suppression of a demonstration by K'iche indigenous people in the 48 cantons of Totonicapán of October 4, 2012. Six indigenous people were killed: "When the people see the soldiers getting down from their vehicles, they approach them and begin to be hostile. Then the military tried to withdraw. At some point they felt unsafe and began tossing tear gas and shooting indiscriminately at the people. [...] They were using heavy weapons, weapons of war, against the population [...] They forced more than 300 bullets. Apart from the six people killed, 33 community members and 13 soldiers were wounded. The Commission lamented and condemned these events. The IACHR was informed that Congress allocated 20 million Quetzals for reparation for the victims and that, in February 2014, President Pérez Molina had delivered 6.55 million Quetzals (US\$841,161) to the families of the six people killed and more than 30 wounded. The criminal proceedings are continuing. OACNUDH-Guatemala. [Totonican: presentacion de los hallazgos](#), October 4, 2012; IACHR, Press release 127/12: IACHR Deeply Regrets Killings of K'iche's Indigenous Persons in Totonicapán, Guatemala. Washington, D.C., October 23, 2012. Deguate, [Estado entrega ayuda humanitaria a afectados por disturbios en Totonicapan](#), February 20, 2014.

Several people are said to have been poisoned by the gas, others dragged, beaten, threatened, and arrested.<sup>534</sup> In addition, some members of national and international human rights organizations accompanying the demonstrators were reportedly beaten and required to show their documents to show their migration status. The clashes allegedly ended with at least 23 demonstrators injured. There were also reports that some policemen were also wounded.<sup>535</sup> On July 31, 2014 there was, reportedly, another attempt to bring machinery into the territory in an operation involving 200 member of the PNC's anti-riot policy, who allegedly threatened to once again evict the population if it tried to prevent equipment from entering or leaving the area.<sup>536</sup>

309. According to OHCHR-Guatemala, violent incidents were registered during police operations, essentially due to the lack of appropriate operational protocols, equipment and training. In May 2014, in San José del Golfo, Guatemala, 11 demonstrators were injured, the majority by tear gas projectiles, while police cleared the entrance to the El Tambor mine. In August 2014, in Samacoch, Alta Verapaz, three indigenous people were killed by gunfire and eight were wounded, allegedly by police agents, during the clearing of a road block. In November 2014, in Sanarate, El Progreso, a community member was injured during protest and subsequently died. In those situations, some police officers were also victims of violence — nine police officers were injured in San José del Golfo, six in Samacoch and seven in Sanarate.<sup>537</sup>
310. It further transpired that on June 26, 2014, two International Peace Brigade volunteers, one Spanish and the other Chilean, who had accompanied the activities in La Puya on May 23, received written notification that they should present themselves to the General Directorate of Immigration in order "to provide information regarding their temporary residence." Later, on July 1, 2014, the Office of the Assistant Director for Immigration Operations in the General Directorate of Immigration allegedly issued written orders canceling those two volunteers' temporary residence permits. Apparently those orders gave no grounds for the decision but were allegedly based on Article 92 of the Immigration Law, which provides that: "The General Directorate of Immigration may prevent entry or suspend temporary residence for reasons of public law and order, the national interest, or State security." The volunteers were also allegedly told that they had 10 days to leave the country.<sup>538</sup>
311. Regarding these incidents, according to information received, the Minister of the Interior, Mauricio López Bonilla, said he had evidence showing that members of

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<sup>534</sup> On June 10, 2014, under the powers granted it by Article 41 of the American Convention on Human Rights, the Commission requested the State for information about these incidents but has so far received no answer.

<sup>535</sup> Peace Brigades International (PBI), Desalojo Violento de la resistencia pacífica de la Puya, June 3, 2014.; See also: *Prensa Libre*, Desalojo violento en La Puya deja 26 lesionados, May 23, 2014.

<sup>536</sup> CERIGUA, Denuncian nueva agresión contra Resistencia Pacífica de "La Puya", July 31, 2014.

<sup>537</sup> OHCHR-Guatemala. Informe sobre las actividades de la oficina en Guatemala, year 2014, January 12, 2015, para. 40.

<sup>538</sup> FIDH, Guatemala: Cancelación de la residencia temporal a dos voluntarios de PBI, July 7, 2014.



the International Peace Brigade had thrown stones at PNC officers.<sup>539</sup> Apparently, the Minister of the Interior had already that foreign nationals entering Guatemala with a tourist visa, regardless of whether or not they were ecologists or human rights defenders, would be expelled from the country if they incited disturbances of the peace. The Office of the United Nations High Commissioner issued a communiqué on this matter, expressing concern at the decision by the General Directorate of Immigration to cancel the temporary residence permit of the two human rights defenders and urging the Guatemalan authorities to revisit the decision to cancel the temporary residence permits of the members of the Peace Brigade.<sup>540</sup> Later, it transpired that the Minister of the Interior did revoke the order to cancel the temporary residence permit of the two International Peace Brigade volunteers.<sup>541</sup>

### e. Migrants, refugees, internally displaced and trafficking in persons

312. For many years, the Inter-American Commission monitored the situation of people displaced internally or forced to flee Guatemala for other countries in the region, especially Mexico, during the armed conflict. In recent years, the Commission has observed how the various forms of violence in Guatemala today are again forcing tens of thousands of people to migrate, either as internally displaced persons or as emigrants. Nevertheless, this impact of violence in terms of forced migration has not been widely publicized or even quantified due to the fact that those forced to flee in order to protect themselves generally do not denounce their plight to the authorities and in many cases the displacements are not massive but piecemeal, i.e. involving individuals or families.<sup>542</sup>
313. For migrants and others, Guatemala is, in terms of human mobility, a country of destination, origin, transit, and return. Because of its geographical location, it is a major transit country for people heading for countries like Mexico, but mostly for those trying to reach the United States and, to a less extent, Canada. In mid-2013, Guatemala's international migrants numbered 1,050,904, while the number of international migrants staying in Guatemala was 72,764.<sup>543</sup>
314. The most worrying development in 2013-2014 was the drastic increase in the numbers of unaccompanied migrant children and family members of Guatemala origin reaching the southern border of the United States. According to official

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<sup>539</sup> *Prensa Libre*, Migración regula situación migratoria de extranjeros, July 10, 2014.

<sup>540</sup> OHCHR-Guatemala, ONU derechos humanos manifiesta su preocupación por vulnerabilidad que afrontan defensoras y defensores de derechos humanos, July 7, 2014.

<sup>541</sup> OHCHR-Guatemala, ONU derechos humanos valora la decisión del Ministro de Gobernación de revocar la cancelación de residencia temporal a dos defensores de derechos humanos, July 10, 2014.

<sup>542</sup> Assessment Capacities Project (ACAPS), *Other Situations of Violence in the Northern Triangle of Central America: The Humanitarian Impact*. May 2014, p. 7. [<http://acaps.org/en/news/other-situations-of-violence-in-the-northern-triangle-of-central-america/1>]

<sup>543</sup> United Nations Population Division, Department of Economic and Social Affairs, *Trends in International Migrant Stock: Migrants by Destination and Origin*. Table10 (September 2013).

figures gathered by U.S. Customs and Border Protection, by August 31 in fiscal year 2014 (beginning on October 1, 2013 and ending on September 30, 2014), 16,528 unaccompanied Guatemalan children would have arrived.<sup>544</sup> The number of Guatemalan family members arriving was 11,433. This was a stark increase compared to fiscal year 2013, when (between October 2012 and August 2013) 8,068 unaccompanied children from Guatemala arrived, together with a total of 12,098 family members from all countries.<sup>545</sup>

## **i. Refugees and asylum-seekers**

315. Violence and persecution have caused the number of asylum-seekers and refugees to skyrocket. By end-2014, UNHCR listed 7,483 Guatemalan refugees and 15,806 Guatemalan asylum seekers,<sup>546</sup> compared with 6,615 and 8,442, respectively, at end-2013,<sup>547</sup> showing a huge increase in the number of Guatemalans having to flee their country in order to seek international protection. The Commission notes with concern this 13% increase in the number of refugees and 87% increase in the number of asylum seekers between 2013 and 2014.<sup>548</sup>

## **ii. Internally displaced persons**

316. According to the Internal Displacement Monitoring Center (IDMC), in December 2014, 248,500 people remained internally displaced within Guatemala, most as a result of the armed conflict. In addition to them, as we have seen, there has been displacement as a result of the activities of criminal organizations, gangs and *maras*, including, specifically, drug trafficking, illegal exploitation of natural resources, and illicit land expropriations. According to the IDMC, as a result of the turf wars among drug-trafficking cartels and moves by the gangs to obtain control over the palm oil business and smuggle merchandise across the country's northern borders at least 1,770 families were displaced between 2011 and 2014. Of those, 350 families, or about 1,400 people, fled their homes in 2014.<sup>549</sup> The International Center for the Human Rights of Migrants (CIDEHUM) has noted that, when faced with violent organized crime, the two options are forced recruitment or to leave. Under the second option, people move within the country in such of other areas or lands, but if they are identified by criminal groups they find themselves forced to

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<sup>544</sup> Department of Homeland Security: Customs and Border Protection, Southwest border unaccompanied alien children, USA.

<sup>545</sup> Department of Homeland Security. Customs and Border Protection, Southwest border unaccompanied alien children, USA.

<sup>546</sup> UNHCR Global Trends: Forced Displacement in 2014. 2015, p. 50.

<sup>547</sup> UNHCR Global Trends in 2013: War's Human Cost. 2014, p. 46.

<sup>548</sup> "War's human cost": UNHCR Global Trends 2013, p. 41 (available at <http://www.unhcr.org/5399a14f9.html>) and "World at war": UNHCR Global Appeal 2014, p. 45 (available at: <http://unhcr.org/556725e69.html>)

<sup>549</sup> Internal Displacement Monitoring Centre, Global Overview 2015: People internally displaced by conflict and violence, May 2015, pp. 16-17.

emigrate to the north, mainly Mexico or the United States.<sup>550</sup> In addition, according to the IDMC at least 10,400 people were internally displaced due to natural disasters in 2014.<sup>551</sup>

317. The IACHR observes that the issue of internally displaced persons in Guatemala is not being addressed adequately or comprehensively due to the fact that the Guatemalan Government allegedly does not acknowledge the dimension that the problem has changed and persisted beyond the internal armed conflict.<sup>552</sup> The Commission notes the lack of a comprehensive diagnostic assessment of this problem and the lack of official figures regarding the real extent of internal displacement in Guatemala.

### iii. Deported or "returned" migrants

318. Data garnered by the National Council for Assisting Guatemalan Migrants (CONAMIGUA), Mexico's Secretariat of the Interior (SEGOB), and the United States' Department of Homeland Security (DHS) show an increase in the number of Guatemalans deported from the United States and Mexico, including a significant increase in the number of child and adolescent deportees.<sup>553</sup>

YEAR	NUMBER OF GUATEMALAN NATIONALS DEPORTED FROM USA	NUMBER OF GUATEMALAN NATIONALS DEPORTED FROM MEXICO
2012	40.365	33.239 (*enero-noviembre)
2013	50.221	30.005
2014	51.157	42.808
*2015	18.888 (*enero-julio)	36.084 (*enero-22 de junio)

<sup>550</sup> CIDEHUM, *Diagnostico: "Forced Displacement and Protection Needs*, produced by new forms of Violence and Criminality in Central America" (May 2012), p. 18.

<sup>551</sup> [IDMC, Guatemala](#)

<sup>552</sup> See: Government of Mexico, Secretariat for Foreign Affairs; Office of the United Nations Secretary-General's Representative on Internally Displaced Persons; and the Brookings Institution-Johns Hopkins SAIS Project on Internal Displacement, "A Framework for Action on Internal Displacement in the Americas (February 18-20, 2014), p. 1. [<http://www.brookings.edu/fp/projects/idp/conferences/mexreport.pdf>]

<sup>553</sup> [CONAMIGUA Noticias](#); SEGOB, Office of the Undersecretary for Population, Migration, and Religious Affairs, Migration Policy Unit, Center for Migration Studies, National Institute of Migration, Migration Statistics, Annual editions 2012, 2013, and 2014; DHS, Immigration and Customs Enforcement (ICE), Immigration Enforcement Report, 2012, 2013, and 2014 annual editions. \*Note: In the United States, the fiscal year runs from October 1 through September 30. For that reason, the numbers of deportations carried out may vary from those collected by Mexican and Guatemalan officials. For example, in fiscal year 2013, 47,769 Guatemalan nationals were deported. In fiscal year 2014, the number was 54,423.

319. The deportations of Guatemalans, including children and adolescents, from countries like Mexico and the United States create serious difficulties with respect to care, protection, and their reintegration into their country. In 2013, Guatemala was the country with the second largest number of migrants detained in Mexican migration centers (31,664).<sup>554</sup> That same year, undocumented migrants from Guatemala were the second largest contingent in the United States, after Mexicans (38,450 Guatemalans detained in migrant detention centers in the United States).<sup>555</sup> Likewise, in fiscal year 2013, undocumented Guatemalan migrants were the second largest group of deportees from the United States (47,769).<sup>556</sup> The State appears to have done very little to integrate these people into either society or the labor market.

320. Although Guatemala has ratified several human rights treaties,<sup>557</sup> the Commission has been told that migration rules have taken a national security approach. The Commission notes the lack of comprehensive regulations on migration matters in accordance with the country's human rights obligations. Accordingly, Guatemala's Ombudsperson has urged the Guatemala State to amend the regulatory framework governing migration to include fundamental human rights principles and to eschew the predominantly national security-oriented approach.<sup>558</sup> According to civil society organizations, this situation has led to a lack of coordination among the various State institutions responsible for migration matters and has hampered compliance with the existing provisions in applicable laws.<sup>559</sup>

321. As regards repatriated Guatemalan children and adolescents, the Commission observes that the Comprehensive Protection of Childhood and Adolescence Law of 2003 (the "PINA" law) establishes certain guarantees for their protection. Specifically, Article 58 thereof provides as follows:

Guarantees. Children and adolescents who request or have refugee, returned, or relocated status pursuant to applicable domestic or international procedures are entitled to receive, if they are alone or accompanied by their parents, any relative or other person, protection and appropriate humanitarian assistance so that they can enjoy the rights

<sup>554</sup> National Migration Institute. Boletín mensual de estadísticas migratorias 2013. [Monthly Bulletin of Migration Statistics, 2013] Mexico.

<sup>555</sup> Department of Homeland Security, Immigration Enforcement Actions, USA, 2012.

<sup>556</sup> Department of Homeland Security, FY 2013 ICE Immigration Removal, USA.

<sup>557</sup> Guatemala has signed bilateral and regional agreements setting migration parameters: Memorandum of Understanding on the Human Rights of Migrants, Mexico-Guatemala (2002); Memorandum of Understanding on the protection of women and children from people-trafficking and -smuggling on the border between Mexico and Guatemala (2004); Memorandum of Understanding between the Government of the United Mexican States, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras, and the Republic of Nicaragua, for the Dignified, Orderly, Swift, and Safe Repatriation of Central American Migrants by Land, signed on May 5, 2006.

<sup>558</sup> Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges, February 2015 Coordinated and edited by Karen Musalo and Pablo Ceriani Cernadas, p. 186. [[http://cgrs.uchastings.edu/sites/default/files/Childhood\\_Migration\\_HumanRights\\_FullBook\\_English.pdf](http://cgrs.uchastings.edu/sites/default/files/Childhood_Migration_HumanRights_FullBook_English.pdf)]

<sup>559</sup> University of California Hastings Center for Gender & Refugee Studies; Migration and Asylum Program of the Justice and Human Rights Center of the National University of Lanús, Argentina; Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges, p. 179.

established in the Political Constitution of the Republic, domestic legislation, and the agreements, treaties, covenants and other international human rights instruments accepted and ratified by Guatemala.

322. According to this law, the Social Welfare Secretariat (SBS) is responsible for receiving and handing over children and adolescents deported by air and by land from, for the most part, the United States and Mexico, as part of the "Migrant Program."<sup>560</sup> According to the law, the Attorney General's Office (PGN) is the legal representative of the unaccompanied children and adolescents and is responsible for receiving them and handing them over to the most suitable family members, while the SBS provides support to the PGN representative for the transportation of the deportees from the border at El Carmen, San Marcos to the city of Quetzaltenango. In both cases, the SBS is supposed to expedite the immigration control process in coordination with the General Directorate of Immigration.<sup>561</sup>
323. Regarding this, the Commission has received information regarding failings in implementation of the PINA law and lacunae in the protection and human rights guarantees provided for in Guatemala's immigration rules.<sup>562</sup> One is that, when the PGN fails to appear or does not comply, it is the SBS that often undertakes the procedure of locating a suitable family member for handing over the children and adolescents.

324. A study carried out by the International Organization for Migration (IOM), the International Labour Organization, and the United Nations Children's Fund (UNICEF) found that many children and adolescents returned to their country of origin make as many as three attempts to emigrate again, which means that the factors driving them to emigrate are still there, forcing them to emigrate.<sup>563</sup> The IACHR also calls upon the State to establish a comprehensive policy to ensure the effective enjoyment of human rights and to attend to the needs of returned children and adolescents, by clearly demarcating institutional responsibilities (including the assignment of an oversight agency) and allocating it appropriate resources. In the Commission's view, it is vital that this policy be implemented along with others that directly address the expulsion factors driving Guatemalan children and adolescents to emigrate.

325. It is worth noting, with regard to adults repatriated to Guatemala that, according to public sources of information, they do not receive any social services or individual attention when they arrive back in the country. For instance, if someone urgently needs medical care, it is the Red Cross that will provide that kind of service. Even phoning and locating family members may be difficult for those who have spent a long time abroad. On this, the IACHR recommends that the State adopt the measures needed to improve the reception given to returning migrants and have

<sup>560</sup> Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges, pp. 183-84.

<sup>561</sup> Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges, pp. 184. [[http://cgrs.uchastings.edu/sites/default/files/Childhood\\_Migration\\_HumanRights\\_FullBook\\_English.pdf](http://cgrs.uchastings.edu/sites/default/files/Childhood_Migration_HumanRights_FullBook_English.pdf)]

<sup>562</sup> Childhood and Migration in Central and North America: Causes, Policies, Practices and Challenges, pp. 182.

<sup>563</sup> IOM, UNICEF, ILO. Migrant children and adolescents. Central America and Mexico, 2013, p. 74.

access to the services they need upon their return. In addition, the State should open more facilities or safe shelters where repatriated persons can stay until they locate family members, and it should establish programs to assist with the reintegration process, including medical and psychological services, and access to education and training program to facilitate reinsertion into the job market.

#### iv. Trafficking in Persons

326. As Guatemala is a country which migrants come from, go through, go to, and return to, combined with the socioeconomic and political conditions in the country and high levels of impunity, means that Guatemala is fertile ground for the crime of human trafficking. Many who decide to migrate, mostly to northern countries such as Mexico and the United States, get caught up in trafficking networks.
327. Because of the movements of migrants in Guatemala, most of the international trafficking in persons takes place along the country's borders with Belize, El Salvador, Honduras, and Mexico.
328. The expulsion and attraction factors affecting migration in Guatemala are numerous and complex. Many of those who emigrate come from a situation of inter-sectoral discrimination resulting from various forms of violence, poverty, and economic and gender inequality, as well as the effects of natural disasters. In the Guatemalan case, the attraction factors are often the better opportunities abroad to find work and/or have access to education, family reunification, and higher levels of human security. The multiple causes of migration mean that there is a wide variety of types of human mobility all along the migration corridors, especially for undocumented migrants, including victims of human trafficking.

329. As the Commission has previously pointed out, within those mixed movements, there are several groups of persons who are more at risk of becoming victims of trafficking, including children and adolescents, women, LGBT persons, and indigenous persons. It is estimated that many cases of trafficking in Guatemala involve networks operating in the interior of the country, who recruit children and adolescents and then take them to urban areas where they are sold to brothels for commercial sexual exploitation.<sup>564</sup>

330. During a thematic hearing of the Commission at its 154th period of sessions,<sup>565</sup> the organizations requesting the hearing explained that, according to records kept by the Office of the Ombudsperson, there had been an "alarming" increase of 44.4% in the number of human trafficking victims between 2012 and 2013. Women continue to be the main victims (66% of the total), almost half of whom are girls.

<sup>564</sup> The Association for the Elimination of Sexual Exploitation, Pornography, Sex Tourism, and Trafficking in Children and Adolescents (EPCAT/Guatemala), *La Explotación Sexual Comercial de Niños y Adolescentes Varones en Guatemala* (2010), p. 6.

<sup>565</sup> IACHR, 154th session, Hearing on "Reports of Trafficking of Women and Children in Guatemala," March 19, 2015.

The Commission notes that Guatemala has ratified international treaties on trafficking,<sup>566</sup> and that, internally, it has passed laws to implement those treaties, in addition to several other efforts to combat and eradicate trafficking in persons. Laws adopted include the Comprehensive Protection of Childhood and Adolescence Law; the 2009 Law on Sexual Violence, Exploitation, and Trafficking in Persons; and the Alba-Keneth Warning System Law of 2010. The Commission likewise notes that trafficking in persons was defined as a crime in Article 202 of the Criminal Code and that, in 2011, an Inter-Agency Protocol was adopted for the Repatriation of Victims of Trafficking in Persons: children and adolescents. That protocol established two procedures for assisting with the repatriation of trafficking victims: one for children and the other for adults.

331. As regards other efforts to prevent and combat trafficking in persons, the State reported adopting the following measures: (a) prioritization of a strategy and plan against trafficking in persons adopted by the PNC in 2008; (b) participation in a regional plan to combat trafficking in persons and related crimes (known as Regional Freedom Plan I and II), a process headed by the INTERPOL office in El Salvador, in August 2013;<sup>567</sup> (c) the implementation of courts specializing in trafficking in persons cases; the establishment of a Government Attorneys office in the Public Prosecution Service specializing in trafficking in persons and a division of the PNC specializing in criminal investigations into human trafficking; the training of 70 police academy investigators for specialization in human trafficking; and activation of the Inter-Agency Commission against Trafficking in Persons, all of which were accomplished in 2012; (d) the setting up, in 2013, of courts specializing in trafficking in new parts of the country and the establishment of three shelter homes for child and adolescent victims of trafficking and exploitation; (e) the training, in 2014, of more than 61,657 children and adolescents and 1,628 state school teachers in preventive aspects of combating these crimes; and (f) the implementation, in February 2015, of three joint departmental divisions to oversee all areas of competence in this field.<sup>568</sup>
332. The Commission appreciates the actions taken by the State to prevent and fight trafficking in persons. However, it notes with concern that serious deficiencies persist with regard to access to justice and care for victims. Along those lines, the Commission has received worrying information suggesting that, as far as prevention is concerned, the general public and officials are still widely uninformed as to what trafficking in persons is, the different forms it takes, its

<sup>566</sup> Namely: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime ("Palermo Convention"); the Convention on the Rights of the Child; the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women ("Convention of Belém do Pará"); and the Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime.

<sup>567</sup> Thanks to execution of Freedom Plan I and II, eleven criminal organizations devoted to trafficking in persons were dismantled and 68 individuals were arrested in 2013, followed by 94 arrests in 2014. In 2014, 109 children and adolescents were also rescued from various forms of human trafficking. The rescue operations were ongoing in March 2015.

<sup>568</sup> IACHR, 154th session, Hearing on "Reports of Trafficking of Women and Children in Guatemala," March 19, 2015.



causes, effects, and recruitment mechanisms, and preventive measures available for individuals. Civil society organizations have also pointed out that the State is not addressing the root causes or the social, political, economic, and cultural factors that render people vulnerable to trafficking.

333. With respect to the comprehensive system for protecting children and adolescents, civil society organizations have pointed out the dispersed nature of access to the system, whereby several bodies may be processing one and the same case, without coordinating with each other. The lack of training for the personnel involved hampers identification of different victims' needs, which can result in victims being sent to institutions that are not specialized in human trafficking cases and lack appropriate care facilities and psychological and social services. This may also result in children and adolescents being institutionalized for long periods of time, next to other kinds of victims, and receiving inappropriate treatment, and so on. According to Public Prosecution Service figures, between January and August 2014, only 34% of victims received care and protection in some institution. Civil society organizations have also stressed that there is no proper follow-up to precautionary reparation or restitution measures, or with respect to the victims' reintegration into their homes and communities.
334. As for investigations and punishment of the perpetrators of human trafficking only 390 (30%) of the 1,285 cases reported to the Public Prosecution Service between 2010 and 2014 were brought to trial. Of those cases, only 23% ended in a conviction. That is, from the total of complaints, only 7% of cases reported ended with a judgment being handed down by a judicial body. These figures clearly demonstrate the flaws in applying the criminal definition of trafficking, due to a series of limitations in the investigations conducted by the Public Prosecution Service, namely: the lack of training of justice system officials and operators;<sup>569</sup> the lack of directives regarding criminal investigation of human trafficking offenses; and the failure to include all types of trafficking in instructions guiding investigations (investigations are restricted to just three types of trafficking: sexual exploitation; financial exploitation, and illegal adoptions).

## **v. Disappeared migrants: Forensic database**

335. In response to the large numbers of migrants who have disappeared in recent years en route to the United States, organizations and committees of family members of disappeared migrants have been formed in countries like El Salvador, Honduras and Guatemala. In the past two years, the Commission has also noted that, based on an initiative by civil society organizations, forensic databases have been constructed of migrants who have disappeared in El Salvador, Honduras, the state of Chiapas, in Mexico, and Guatemala. The purpose of these databases is to identify disappeared migrants by cross-comparing the data with information on

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<sup>569</sup> In March 2015, the Guatemalan State reported that altogether 68 officials (judges and magistrates) were specialized in, and made aware of, sexual violence, violence against women, human trafficking, and femicide. IACHR, 154th session, Hearing on "Reports of Trafficking of Women and Children in Guatemala," March 19, 2015.



- the remains of migrants found all along the migration routes. The databases contain background information on each disappearance (date of departure, date and place of the last phone call, route taken, and so on), *ante mortem* data (physical information corresponding to when the person was alive) and samples and genetic profiles of family members.
336. Currently, the forensic databases for migrants who have not been located or who have disappeared contain information for 449 cases of migrants whose family members have reported them as missing in Mexico, the United States, and Central America. As of late September 2012, a total of 1,253 family members of disappeared migrants had supplied their genetic samples to the forensic databases. In El Salvador, there are currently 168 cases of disappeared migrants with 456 samples from family members; in Honduras there are 168 cases and 78 samples from family members; in Guatemala, 80 cases with 297 samples from family members; and in the state of Chiapas, 25 cases with 78 samples.<sup>570</sup>
337. There are no data or estimates of how many people disappear and/or die en route to the United States. Thus, "(...) the greatest risk to which migrants are exposed is violence against them by organized crime while they cross Mexico, which includes extortion, kidnappings, and even murder."<sup>571</sup>When persons disappear during migration, the impact on their families is grave. Apart from the absence of their disappeared loved ones, family members have to confront legal, financial, social, and emotional issues that urgently need to be taken care of and addressed by the Government and civil society as a whole.<sup>572</sup>
338. In April 2015, the Ministry of Foreign Affairs and Fundación de Antropología Forense de Guatemala (Forensic Anthropology Foundation of Guatemala—FAFG) signed a technical and scientific cooperation agreement aimed at helping the family members of disappeared Guatemalan migrants, through DNA tests, fingerprint comparisons, and other measures.<sup>573</sup> The FAFG has been performing these tasks for several years, through various campaigns and actions focused on "identifying disappeared migrants, giving priority to cases of disappeared children, women, and indigenous persons, given their greater vulnerability. The FAFG plans to establish a genetic database of family members of unidentified disappeared migrants that will have access to samples or genetic profiles of the bodies of unidentified migrants so as to compare them with the family members' genetic database."<sup>574</sup>The Commission values the efforts aimed at understanding this grave problem.

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<sup>570</sup> IACHR, Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico, para. 200.

<sup>571</sup> Fundación de Antropología Forense de Guatemala (FAFG) [Forensic Anthropology Foundation of Guatemala]. Contextos de desaparición [Contexts of Disappearance], quoting Rodríguez, Ernesto; 2011.

<sup>572</sup> Fundación de Antropología Forense de Guatemala (FAFG) [Forensic Anthropology Foundation of Guatemala]. Contextos de desaparición [Contexts of Disappearance].

<sup>573</sup> AGN, "Cancillería y FAFG firman convenio para identificar migrantes guatemaltecos desaparecidos", April 20, 2015.

<sup>574</sup> Fundación de Antropología Forense de Guatemala (FAFG) [Forensic Anthropology Foundation of Guatemala]. Contextos de desaparición [Contexts of Disappearance].

## f. Lesbian, gay, bisexual and transgender persons (LGBT)

339. During 2015, the IACHR continued to receive information regarding the grave situation of violence and discrimination against lesbian, gay, bisexual and transgender (LGBT) persons,<sup>575</sup> in Guatemala, despite the progress shown in particular by the Sexual Diversity Ombudsperson's Office.
340. The IACHR also welcomes the progress made in this field in Guatemala in recent years, including the establishment of the Sexual Diversity Ombudsperson's Office, as a dependency of the Ombudsperson's Office;<sup>576</sup> the signing of an agreement to develop training materials for the School of Penitentiary Studies and to promote separate facilities for LGBT persons in prison;<sup>577</sup> talks on the human rights of LGBT prison inmates;<sup>578</sup> inclusion of the LGBTI category on forms for submitting complaints to the PNC;<sup>579</sup> and the State's activities designed to monitor the care administered to LGBTI persons with sexually transmitted infections.<sup>580</sup> Regarding the inclusion of the LGBTI box in the form for filing complaints with the police, the IACHR was also told of a series of training courses given in first quarter 2015 to the staff of the 53 Care for Victims offices of the PNC on how to receive complaints and attend to victims in cases involving LGBTI persons. The courses were facilitated by LGBT persons and the Defender for Sexual Diversity.<sup>581</sup>
341. As regards the LGTBI population, the State mentioned that in Guatemala there is no express recognition of the rights of the LGTBI community.<sup>582</sup>
342. On June 4, 2015 the murder of Sandra Caal Morán, a trans woman in San Cristóbal, was reported.<sup>583</sup> According to the Observatory on Murdered Trans Persons in absolute numbers, Guatemala ranks 6th, with 39 cases recorded<sup>584</sup> (The Top 5 are Brazil with 689, Mexico with 194, Colombia with 85, Venezuela with 85, and Honduras with 77). Guatemala likewise ranks in second place in relative terms (% of trans persons murdered per 1,000,000 inhabitants), averaging 2.83 per every

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<sup>575</sup> The IACHR received no information regarding the rights situation of intersex persons.

<sup>576</sup> The Sexual Diversity Ombudsperson's Office was established in 2014. See Buendiaro.com, "[Guatemala crea 'Defensoría de la Diversidad Sexual'](#)", April 13, 2014. See also Ombudsperson, "[Defensoría de la Diversidad Sexual genera confianza en la población LGBTI'](#)", October 7, 2014.

<sup>577</sup> Carlos Romero Prieto. [Hacia el respeto de los derechos de la diversidad sexual en las prisiones guatemaltecas](#), February 18, 2015.

<sup>578</sup> PDH, [Imparten charla sobre derechos humanos de las personas LGBTI en cárceles](#), August 28, 2014.

<sup>579</sup> Gayguatemala.com, [¿Para qué sirve la casilla de la comunidad LGTBI en las boletas de denuncia de la PNC?](#), December 18, 2014.

<sup>580</sup> PDH, [Supervisan atención a personas LGBTI en Centro de Atención de ITS](#), August 29, 2014.

<sup>581</sup> PDH, [Concluye capacitación para enlaces de las oficinas de Atención a la Víctima de la PNC](#), February 19, 2015.

<sup>582</sup> Observations by the State of Guatemala regarding the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015.

<sup>583</sup> Gayguatemala.com, "[La sangre derramada en nombre de la discriminación](#)", June 4, 2015.

<sup>584</sup> TyT, IDAHOT 2015: [Cifras Alarmanes: Más de 1,700 de Personas Trans Asesinadas en los últimos siete años](#), 2015.

million inhabitants (In Honduras the average is 5.12, in Puerto Rico 2.43, in Brazil 2.35, in Colombia 1.41, and in Mexico 0.94).<sup>585</sup>

343. In August 2014, civil society organizations told the IACHR that LGBT persons or individuals perceived as such continue to be assaulted and harassed, including raids on their organizations.<sup>586</sup> During that hearing, the State reported that it had established an Inter-Agency Technical Round table Committee to guarantee their rights.
344. OHCHR-Guatemala reported that in 2014 there were several instances of discrimination against LGBTI persons, in addition to cases of domestic violence and sexual and workplace harassment.<sup>587</sup> The IACHR reported that between January 2013 and March 2014, according to the Register of Violence against LGBTI Persons in America, under Attacks on Life and Bodily Integrity, three trans women were murdered in Guatemala (two cases in 2013 and one in 2014).<sup>588</sup>

### **g. Persons with disabilities**

345. The situation of persons with disabilities in Guatemala has been kept out of the limelight for many years. In fact the only time a survey was conducted to elicit data on persons with disabilities was in 2005. Notwithstanding the accuracy of the 2005 Survey, it is essential to update the statistical data with a view to fostering appropriate public policies of benefit to persons with disabilities. The State submitted its first report to the Committee on the Rights of persons with Disabilities in which it acknowledged the serious difficulties encountered with implementing key provisions in this field, such as the Law on Attending to persons with Disabilities and National Disability Policy, due to insufficient budget allocations, the lack of social awareness, and the absence of specific data, as well as other deficiencies.<sup>589</sup>
346. In his report to the United Nations Committee against Torture, in connection with the sixth periodic review of the State of Guatemala, the Ombudsperson reported that in 2012 he had received 135 complaints affecting persons with disabilities: 27.41% of the complaints involved some form of discrimination; 33.33% had to do with mistreatment and physical and psychological violence; and 29.63% involved lack of access to health care.<sup>590</sup> These three reasons account for 90.37% of all complaints received. At the same time, the Initial Report of the State of Guatemala under the Convention on the Rights of Persons with Disabilities states that the

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<sup>585</sup> Laura Corcuera. [Más de 1.100 personas trans asesinadas en los últimos cinco años](#), February 19, 2013.

<sup>586</sup> IACHR, “[IACHR Wraps Up its 152nd special session](#)”, August 15, 2014.

<sup>587</sup> OHCHR-Guatemala. [Report of the United Nations High Commissioner for Human Rights on the activities of the office in Guatemala](#), in 2014, 12 January 2014, para. 12.

<sup>588</sup> IACHR, Register of violence against LGBTI person in America: attacks on life and bodily integrity.

<sup>589</sup> OHCHR-Guatemala. [Report on the activities of the office in Guatemala](#), 2013; January 13, 2014, p. 92.

<sup>590</sup> PDH-Guatemala, [Informe al Comité contra la Tortura de la Organización de las Naciones Unidas en el Marco del VI Examen Periódico al Estado de Guatemala \(Actualización\)](#), April 2013.

Ombudsperson's Office took cognizance between January and October 2011, 58 complaints involving possible violations of the rights of persons with disabilities, in connection with different types of violence.<sup>591</sup>

347. As regards legislation addressing violence against women and girls with disabilities, the Guatemalan Ombudsperson reported that

"the domestic legal system includes a series of laws that define crimes and some of them take into account the special conditions of victims with disabilities, [such as] the Child and Adolescent Comprehensive Protection Law, Legislative Decree 27-2003; the Law against Sexual Violence, Exploitation, and Trafficking in Persons, Legislative Decree 9-2009; the Law on Care for Persons with Disabilities, Decree 135-96; the Law against Femicide and Other Forms of Violence against Women, Legislative Decree 22-2008; the Law on Care for persons with Disabilities, Legislative Decree 35-96." Nevertheless, "no information is available regarding policies specifically crafted to prevent and address violence against women and girls with disabilities, and detrimental practices that may result in disabilities."<sup>592</sup>

348. One of the measures taken to protect their rights was the establishment of the Office for the Defense of Persons with Disabilities of the PDH (Ombudsperson's Office), which is located at PDH headquarters and coordinates its work with departmental, ambulatory, and municipal agencies.<sup>593</sup> The State also reported the establishment of Departmental Commissions for Disabilities (Comisiones Departamentales de Discapacidad—CODEDIS), with 18 Commissions in 2013 pursuing the goal of facilitating access to health, education, work, sports, culture, security, and justice for persons with disabilities.<sup>594</sup> To the above must be added the establishment of a Specific Commission on Disability Affairs, on the basis of Agreement No. 6-2014 of the Congress of the Republic, which has been set up as technical body for conducting studies and reviews.<sup>595</sup>

349. One illustration of the scant protection afforded persons with disabilities in Guatemala is the precautionary measure that the IACHR had to grant on behalf of patients at the Federico Mora Mental Health Hospital (PM 370/12). The IACHR had been advised that all inpatients at the Federico Mora Hospital were at grave risk. The specific reason was that the 334 inpatients at the time of the request, which included children, were sharing the same facilities as mentally ill patients who had been tried and convicted of a number of crimes. The request added that the medical care provided was negligent and that PNC and Penitentiary System

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<sup>591</sup> [Initial Report of the State of Guatemala under the Convention on the Rights of Persons with Disabilities](#), 17 October 2013.

<sup>592</sup> PDH-Guatemala, [Replies to the Questionnaire for the Preparation of the Analytical Study on Violence against Women and Girls \(A/HRC/RES/17/10\)](#).

<sup>593</sup> PDH- Guatemala, Informe Anual Circunstanciado 2014. Situación de los Derechos Humanos y Memoria de Labores, p. 102.

<sup>594</sup> Observations by the State of Guatemala regarding the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015.

<sup>595</sup> Observations by the State of Guatemala regarding the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015.

personnel, responsible for guarding the hospital, used threats, harassment, and acts of violence against the patients, including prolonged periods of solitary confinement. In addition, the request alleged physical and sexual abuse against women and children. In addition, the requesters reported that, according to a study conducted with the help of medical staff, 74% of the inpatients did not need to remain in the institution "for psychiatric or behavioral reasons; they were there basically for lack of social support."

350. On November 20, 2012, the ISCHR granted precautionary measure 370/12 on behalf of 334 patients at the Federico Mora Hospital and requested that the Government of Guatemala take a series of steps to guarantee the life and personal integrity of the inpatients at the aforementioned Hospital. Those steps included, in particular: providing appropriate medical care to the inpatients, based on each individual's pathologies; separating the children from the adults and adopting special measures on their behalf, in accordance with the principle of the child's best interests; separating tried and convicted inpatients, who had been served prison sentences, from the other patients in the Hospital, and that the latter be cared for by unarmed personnel; restricting the use of solitary confinement rooms to situations and under conditions established in international standards for persons with mental disabilities; implementing immediate measures to prevent all patients, especially women and children, from being subjected to physical, psychological, or sexual violence at the hands of other patients, security personnel or hospital staff. The IACHR further requested that agreement be reached with the beneficiaries of the precautionary measures and their representatives on the measures to be adopted.<sup>596</sup>

351. Since 2013, both the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Committee against Torture (CAT) had been voicing their concern at the alarming conditions reportedly found at the Federico Mora Hospital, including negligent medical care, deficient nutrition for the patients, and the "lack of proper security."<sup>597</sup> Specifically, the CAT urged Guatemala to take effective measures to guarantee full and prompt compliance with [...] PM 370/12."<sup>598</sup> For its part, for over 10 years, the Ombudspersons Office of Guatemala (PDH) complained of the worrisome conditions found at the Federico

<sup>596</sup> On November 7, 2014, in follow-up on the working meetings held at the 153rd session, the Executive Secretariat send a letter to the State reiterating the Country Rapporteur's interest in visiting Guatemala for the purpose of continuing to monitor the situation of the Hospital Federico Mora Hospital. On February 22, 2015, the State voiced its interest in holding a working meeting and informed that it would consider a suitable date, which IACHR would be informed of. Subsequently, the State did not mention again the working visit as proposed by the Commissioner.

<sup>597</sup> OHCHR-Guatemala. Report of the United Nations High Commissioner for Human Rights on the activities of the office in Guatemala, 2013; January 13, 2014 page 40. Committee against Torture (CAT), Concluding Observations on the Fifth and Sixth Periodic Reports of Guatemala, Session No. 50, May 2013.

<sup>598</sup> Committee against Torture (CAT), Concluding Observations on the Fifth and Sixth Periodic Reports of Guatemala, para. 22.

Mora Hospital.<sup>599</sup> In particular, in its Detailed Annual Report for 2013, it referred to "situations amounting to abuse and cruel, inhumane and degrading treatment" endured by patients at the aforementioned institution.<sup>600</sup> OHCHR-Guatemala issued a press release on December 7, 2014<sup>601</sup> in which it called upon Guatemala to expedite implementation of the precautionary measures on behalf of the patients at the Federico Mora Hospital, who were allegedly in "dire" straits.<sup>602</sup>

352. In the framework of the precautionary measure granted for the benefit of patients of the Federico Mora Hospital, the State of Guatemala stated that it had taken various measures aimed at enforcing the precautionary measure, among which: (i) a series of working meetings had been organized with the petitioners, where various actions had been agreed upon to tackle the situation of persons with mental disabilities in general and in the above-mentioned hospital; (ii) a wall had been erected to separate patients admitted with criminal charges from the other patients of the Hospital, wards IV and V had been refurbished, and a new ward had been built; (iii) follow-up is being conducted on the case files of patients who should no longer be in the hospital and alternatives are being evaluated to establish residential centers as part of the pilot plan to decentralize mental healthcare, with priority being given to six departments strategically located in the country's inland region; (iv) two health centers would be built up in each one of the departments of Quiché, Petén, Jutiapa, Santa Rosa, Sololá, and Chimaltenango; (v) elderly patients had been released and transferred to the facilities of a home for the elderly in the Department of Zacapa; (vi) a report about the actions that had been taken was presented to the Congress of the Republic; (vii) an Inter-institutional Agreement for Integral Services for persons subject to criminal proceedings and with mental disorders or retardation and persons with these conditions who are subject to Security Measures or Confinement in Special Care Centers has been entered into, on the basis of which the Institute for Public Criminal Defense had requested the release of a large number of patients who had successfully been reinserted into the community, whereas others were being called to court hearings for the review of their legal situation; and (viii) four seminars on Forensic Psychiatry had been planned for judges in the year 2015.<sup>603</sup>

<sup>599</sup> PDH-Guatemala, Recomendación EIO-GUA-106-2002/DR May 13, 2002, "Diligencias Practicadas e Informes Recibidos."; Office for the Defense of Persons with Disabilities of the PDH, Informe de Monitoreo al Hospital Nacional de Salud Mental, Guatemala (2007), p. 5; PDH, Recomendación REF.EXP.ORD.GUA. 2595-2009/DE January 27, 2012, "Resultados de la Investigación."

<sup>600</sup> PDH-Guatemala, Informe Anual Circunstanciado, 2013, pp. 245-255.

<sup>601</sup> BBC, BBC, *Inside the world's most dangerous hospital*, December 2014; Emisoras Unidas, *Federico Mora es el peor hospital psiquiátrico de América, según BBC*, December 5, 2014.

<sup>602</sup> OHCHR-Guatemala, Press Release, *OACNUDH llama a garantizar los derechos humanos de pacientes del Hospital Federico Mora*, December 7, 2014.

<sup>603</sup> Information provided in the contexts of the precautionary measures and the Observations by the State of Guatemala regarding the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015.

## h. Persons deprived of their liberty

353. In regard to people deprived from their liberty, historically, the Inter-American Commission has observed that the Guatemalan penitentiary system has typically been overcrowded, with high levels of violence among the inmates, corruption, a lack of even minimum dignity for satisfaction of inmates' basic needs, a lack of effective oversight by the authorities on the inside of detention centers, and the absence of opportunities for either education or work for the inmates.<sup>604</sup> In his 2015 Report to the United Nations Committee against Torture, the Guatemalan Ombudsperson reported that the State had neglected the penitentiary system; that it had generated a situation in which the human rights of persons deprived of their liberty are constantly violated; that there have been delays in expanding and improving the infrastructure, exacerbating the overcrowding which gets worse by the year. He also pointed to lack of oversight and security inside detention centers; to violation of the right to health within the penitentiary system because both medical care and access to medicines are very restricted; to signs of corruption on the part of prison authorities, as well as of crimes being committed by inmates from inside the prisons.<sup>605</sup>
354. Guatemala has 22 detention centers, 5 of which are for pre-trial detention, 5 for convicts, and 2 maximum security prisons, the rest is mix.<sup>606</sup> According to the International Centre for Prison Studies, the prison population in May 2015 comprised 19,021 inmates, 9,232 of whom (48.6%) were being held in pre-trial detention.. There were 1,709 female inmates (9%).<sup>607</sup>
355. As regards female inmates, cases have been reported of their being subjected to maltreatment, such as being beaten, having plastic bags put over their heads to cause suffocation, being bitten by guards, and threats of reprisals against their families for reporting such incidents.<sup>608</sup> With respect to women inmates, the IACHR notes the practice of body-searching continues, during which women have to strip naked, sometimes in the presence of male wardens, while women wardens search vaginas for drugs and weapons. The situation of indigenous women inmates

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<sup>604</sup> IACHR, Hearing on the human rights situation of persons deprived of their liberty in Guatemala, 141st regular session, March 29, 2011. IACHR, Hearing on the situation in the penitentiary system in Guatemala, 124th regular session, March 6, 2006, IACHR Annual Report 2002, March 7, 2003, Chapter V: Guatemala, IACHR, Fifth Report on the Situation of Human Rights in Guatemala, April 6, 2001, Chapter VII.

<sup>605</sup> PDH-Guatemala, Contributions of the Ombudsman for the adoption, at the 54th session of the Committee against Torture, of the list of issues prior to the presentation by the State of Guatemala of its seventh periodic report, February 5, 2015, para. 88.

<sup>606</sup> PDH-Guatemala, Report to the United Nations Committee against Torture in the framework of the Sixth Periodic Review of the State of Guatemala (Update), April 2013.

<sup>607</sup> International Centre for Prison Studies, World Prison Brief – Guatemala.

<sup>608</sup> UDEFEGUA and World Organization against Torture, Información para la elaboración de la Lista de cuestiones previa al examen del séptimo informe periódico de Guatemala ante el Comité contra la Tortura (55º periodo de sesiones del Comité contra la Tortura), February 9, 2015, p. 10.



is especially worrying, because they are also victims of other forms of discrimination.<sup>609</sup>

356. Regarding the situation of adolescents deprived of their liberty, information which is a matter of public record indicates that there has been a rise in the number of cases of adolescent criminal lawbreakers, because in 2012, there were 746 adolescents deprived of their liberty, whereas in 2014 the figure amounted to 867 and in 2014 the figure had risen to 1,117.<sup>610</sup> The IACHR highlights its concern about the conditions of adolescents deprived of their liberty, because it has received information that would indicate that there are conditions of overcrowding, poor sanitation, and absence of security, as well as acts of violence, cruel, inhumane, and degrading treatment, and torture in detention centers.<sup>611</sup> In addition, according to UNICEF, adolescents in Guatemala find that their right to procedural guarantees is not respected when they are subject to court proceedings, although there is a Law for the Comprehensive Protection of Children and Adolescents.<sup>612</sup> In that law, there are specific criminal proceedings enshrined for adolescent criminal lawbreakers, and attempts are being made to make detention an exceptional measure. In that respect, the IACHR notes that, in October 2015, the Public Prosecution Service of Guatemala shall present a Model for Specialized Services and Prosecution of Adolescent Criminal Lawbreakers.<sup>613</sup>
357. The IACHR also received information regarding the situation of LGBT persons in the penitentiary and prison system, contained in a report by a civil society organization, published in 2015.<sup>614</sup> According to that report, in interviews with LGBT persons deprived of their liberty, 43% declared that they had been physically and verbally assaulted because of their sexual orientation, and 50% said they were treated differently because of their sexual orientation and gender identity; 20% said they had been segregated because of their sexual orientation and gender (most in solitary confinement); 85% considered that LGBT inmates are discriminated against; all (110%) said they had not complained of the acts of discrimination for fear of repercussions and assault; 96% said they were not granted the right to intimacy with visitors in the same way as heterosexual inmates; and 88% was unaware of any mechanisms for attending to LGBT persons. As for the interviews with prison personnel, 90% did not know the difference

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<sup>609</sup> UDEFEGUA and World Organization against Torture, [Information for preparation of the list of issues prior to the review of the seventh periodic report of Guatemala to the Committee against Torture \(55<sup>o</sup> session of the Committee against Torture\)](#), February 9, 2015.

<sup>610</sup> Newspaper article of February 27, 2015 published in *Prensa Libre*, [Aumentan casos de menores en conflicto con la ley penal](#).

<sup>611</sup> Newspaper article of July 7, 2015 published in *El Debate*, [Guatemala: Motín en prisión de menores deja 2 muertos](#); Newspaper article of July 7, 2015 published in *Informador.mx*, [Motín en cárcel de Guatemala deja dos muertos](#); Newspaper article of July 7, 2015 published in *SDP Noticias*, [Mueren 2 custodios durante motín en correccional de menores en Guatemala](#).

<sup>612</sup> UNICEF, Guatemala, [Adolescents](#).

<sup>613</sup> Newspaper article of October 23, 2015 published in *Prensa Libre*, [Lanzan modelo para adolescentes en conflicto con la Ley](#).

<sup>614</sup> The investigation involved interviews with 54 LGBT inmates in 3 penitentiaries and 62 staff (directors, deputy directors, and multidisciplinary teams) in 7 penitentiaries. REDNADS. Primer diagnóstico: Necesidades de la Población LGBTI Privadas de la Libertad, 2015.



between sexual orientation and gender identity; all (100%) were unaware of standards of differentiated treatment of trans persons and of protocols for dealing with LGBT persons; 90% acknowledge bans on certain personal items, such as clothing, accessories, haircuts, and others; and 70% said they had not received training in non-discrimination against LGBT persons.

358. The prison system has the capacity to accommodate 6,700 inmates, with the current prison population being 270%<sup>615</sup> higher than that, a regression from the already serious overcrowding in 2010, when there was room for 6,610 and an actual population of 10,512 persons deprived of their liberty.<sup>616</sup> According to the Ombudsman, overcrowding in some prisons (actual population vis-a-vis capacity) reached 527%, as with the “Santa Teresita” women’s prison, and 514%, as in the Detention Center for Men (Annex B, zone 18).<sup>617</sup>

359. In its Concluding Observations on the combined fifth and sixth periodic reports of Guatemala, the CAT expressed its concern at the large numbers of people in pre-trial detention (51% of all those deprived of their liberty).<sup>618</sup> One aspect pointed out by the Ombudsperson in his February 2015 Report to the United Nations Committee against Torture was the failure to separate convicts from persons in pre-trial detention. Here, it is worth stressing that very little is being done to seek alternatives to pre-trial incarceration, which is conducive, among other things, to the overcrowding in prisons.<sup>619</sup>

360. The Commission has considered the arbitrary and illegal use of pre-trial detention to be a chronic problem in numerous countries in the region. In its Report on the Human Rights of Persons Deprived of Their Liberty in the Americas, the IACHR pointed to the excessive use of pre-trial detention as one of the most serious and widespread problems in the region; and it stressed that this dysfunctional aspect of the criminal justice system leads to other problems, such as overcrowding and the failure to separate convicts from those awaiting trial.<sup>620</sup>

<sup>615</sup> Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG) [Institute of Comparative Criminal Science Studies of Guatemala], figures updated to February 5, 2015.

<sup>616</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, December 31, 2011, par. 450.

<sup>617</sup> PDH-Guatemala, Contributions of the Ombudsman for the adoption, at the 54th session of the Committee against Torture, of the list of issues prior to the presentation by the State of Guatemala of its seventh periodic report, February 5, 2015, par. 91.

<sup>618</sup> United Nations Committee against Torture, Concluding Observations on the combined fifth and sixth periodic reports of Guatemala, adopted by the Committee at its 50th session (6–31 May 2013), CAT/C/GTM/CO/5-6, 24 June 2013, para. 17.

<sup>619</sup> UDEFEGUA and World Organization against Torture, Information for preparation of the list of issues prior to the review of the seventh periodic report of Guatemala to the Committee against Torture (55<sup>th</sup> session of the Committee against Torture), February 9, 2015.

<sup>620</sup> IACHR, Report on the Use of Pretrial Detention in the Americas, 2013.

## i. Acts of violence that have occurred in detention centers or prisons

361. The IACHR has received information regarding the ongoing high levels of violence in detention centers. For its part, the Committee against Torture has also expressed concern at this state of affairs, as it allegedly reflects the existence of organized groups of inmates who control prisons and, with the acquiescence of the authorities, force other inmates, to make payments either not to be harmed or to be freed from tasks. This practice is known in Guatemala as "talacha," and it means that those who cannot pay are assaulted and sometimes those assaults result in their death. Thus the Committee highlighted the deaths of Víctor Rojas and Efraín Pérez in 2012 from the beating they received for not paying the "talacha."<sup>621</sup> The press, too, has carried reports of deaths allegedly due to the "talacha." In June 2012, for instance, Oscar Martínez Ramos, an inmate at the Jutiapa prison, died as a result of being beaten on the kidneys.<sup>622</sup> In June 2015, there was another report of a person being beaten to death: this time was José Sánchez Gabriel, an inmate at the Pre-Trial Detention Center for Men in Huehuetenango.<sup>623</sup> In July 2015, youths at the Las Gaviotas correctional center rioted, used firearms, killing two wardens and wounding others.<sup>624</sup> According to available information, adolescents detained in this center had had access to firearms, encountered conditions of overcrowding and deficient infrastructure. Likewise, the IACHR was informed that there was inadequate nutrition, as well as mistreatment and aggression by the staff towards adolescents deprived of their liberty. In August 2015, the bloodied and beaten bodies of Geovany Yumán, Anderson Orleo Gaitán Arévalo, and Kevin Fernando Véliz were found in the bathroom of a cell at the El Boquerón, Pre-Trial Detention Center.<sup>625</sup>

362. On November 29, 2015, at least 16 persons died during the prison riot in the penitentiary Granja Penal Canadá, allegedly during a clash between rival groups.<sup>626</sup> Also, complaints and investigations continue into involvement by State authorities in acts of corruption and violence associated with detention centers. Thus, on September 3, 2014, in a joint operation by the Public Prosecution Service, the Ministry of the Interior, and the CICIG, members of a criminal group were captured involving the then Director of the Penitentiary System, Edgar Camargo L. According to the head of the CICIG, Iván Velásquez Gómez, "this investigation revolves around the discovery of those parallel powers and their relations with individuals, whereby mention is made of intermediaries or go-betweens inside the penitentiary authorities themselves." In the course of 15 raids, seven people were captured, including government officials, inmates, and private individuals, for

<sup>621</sup> United Nations, Committee against Torture, Concluding Observations on the combined fifth and sixth periodic reports of Guatemala, adopted by the Committee at its 50th session (6–31 May 2013), CAT/C/GTM/CO/5-6, 24 June 2013, para. 18.

<sup>622</sup> *Prensa Libre*, Recluso muere a causa de golpiza, June 19, 2014.

<sup>623</sup> *Prensa Libre*, Autoridades investigan muerte de reo, June 23, 2015.

<sup>624</sup> *Prensa Libre*, Dos muertos en motín en Las Gaviotas, July 7, 2015; El Universal, Guatemala: Motín en prisión de menores deja 2 muertos, July 7, 2015.

<sup>625</sup> *El Periódico*, Descubren cuatro reos muertos en dos prisiones, August 9, 2015.

<sup>626</sup> *CNN*, Motín en una cárcel de Guatemala deja varios muertos, November 30, 2015.

crimes such as money laundering and influence peddling. At the heart of this criminal network was the inmate Byron Lima Oliva, a former army captain convicted of murdering Monsignor Juan José Gerardi. The CICIG investigation ascertained, among other things, that:

[I]nmates, directly or indirectly, went to [Byron] Lima Oliva to request their transfers [...] or to obtain favors and privileges within the Penitentiary System in exchange for considerable sums of money. Those sums were collected by Byron Lima [Oliva], who, it transpired, also controlled the inmates' conduct and put pressure on them to take part in activities that he himself organized, as if he were the principal authority in the detention center (of Pavoncito).<sup>627</sup>

363. With regard to the existence of criminal groups controlled by inmates, the IACHR reminds the State of Guatemala that the principal duty of the public administration with respect to managing the prisons is to ensure control over them. Without exercising effective control, it is impossible for the State to even minimally perform its functions as the guarantor of the human rights of those it has deprived of their liberty. Hence it is totally unacceptable that there be inmates or criminal groups inside prisons who amount to uncontrolled parallel authorities alongside of those legally appointed, and even more unacceptable that those *de facto* powers that be devote themselves to committing illicit acts within and from the prisons, and with complete impunity.<sup>628</sup>

364. The duty of the State to protect the life and personal integrity of all those deprived of their liberty includes the positive obligation to adopt every preventive measure needed to protect inmates from attacks or assaults from either State actors themselves or third parties, including other inmates. Indeed, given that prison is a place where the State has total control over the lives of inmates, it is duty-bound to protect them from acts of violence, regardless where they come from. When the State fails to exercise effective control over prisons, grave situations arise that endanger the lives and personal integrity of the inmates and even of third parties. Such situations include: "uncontrolled-self-government" systems, a product of the corruption endemic to many systems; high levels of prison violence; and the organization and directing of criminal acts from inside the prisons.<sup>629</sup>

365. In this context, it bears stressing that on June 6, 2014, the Criminal Court in Geneva, Switzerland condemned Erwin Sperisen, former Director of the PNC (who had joint Swiss and Guatemalan nationality) to life in prison for being the actual perpetrator of the murder of inmate Abraham Tiniguar Guevara and co-perpetrator of the extrajudicial execution of six more inmates (Luis Alfonso Zepeda G., Jorge Eduardo Batres P., Mario Misael C., Carlos René Barrientos V., Gustavo

<sup>627</sup> CICIG, Report of the International Commission against Impunity in Guatemala on the occasion of its seventh year or activities *séptimo año de labores*, Chapter II: Cases Processed, 6. Case of Corruption in the Penitentiary System, p. 30, published on October 23, 2010.

<sup>628</sup> IACHR, *Report on the Rights of Persons Deprived of Their Liberty in the Americas*, December 31, 2011, pars. 76-78.

<sup>629</sup> IACHR, *Report on the Rights of Persons Deprived of Their Liberty in the Americas*, December 31, 2011, paras. 73-79.

Correa S., and Erick Estuardo Mayorga G.), during "Operation Peacock,"<sup>630</sup> carried out in the prison at Pavón on September 25, 2006.<sup>631</sup> Here, the Inter-American Commission concurs with the statement by the CICIG that it considered that the judgment handed down by the Swiss court constituted "a major contribution to the upholding of rights. it sends a resounding message that no one is beyond the reach of the law, much less in the case of government officials [...]."<sup>632</sup>

366. Likewise, and in connection, too, with this case in the Pavón prison, on October 13, 2014, the Appeals and Impeachment Division of the Supreme Court of Justice issued a decision upholding the judgment handed down by the Higher Risk Group B Criminal Court on August 8, 2013, sentencing the former head of the Criminal Investigation Directorate of the PNC, Víctor Hugo Soto Diéguez, to 33 years in prison for the crime of extrajudicial execution.<sup>633</sup> The IACHR values the efforts of the administration of Justice in order to fight impunity.

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<sup>630</sup> Report by PDH-Guatemala: ¿Estado de Derecho o Impunidad?-Hechos acaecidos en la Granja Modelo de Rehabilitación Pavón. [Rule of Law or Impunity? Incidents at the Granja Modelo de Rehabilitación Pavón].

<sup>631</sup> Prensa Libre.com, Erwin Sperisen es condenado a cadena perpetua en Suiza, June 6, 2014 El País, Suiza condena a cadena perpetua al exjefe de la policía de Guatemala, June 6, 2014.

<sup>632</sup> CICIG, Press Release 023, Avances en la justicia condena en caso contra Erwin Sperisen, Guatemala, June 6, 2014.

<sup>633</sup> CICIG, Informe de la Comisión Internacional contra la Impunidad en Guatemala con ocasión de su séptimo año de labores, Chapter II: casos judicializados, 1. Caso Pavón, p. 25, published on October 23, 2010.

CHAPTER 5  
ADMINISTRATION  
OF JUSTICE



## ADMINISTRATION OF JUSTICE

367. The effective observance of rights and freedoms in a democracy requires a legal and institutional order, in which the laws prevail over the will of the rulers, and in which there is judicial review for the constitutionality and legality of the acts of the authorities, i.e. it presupposes respect for the rule of law.
368. The judicial branch has been established to ensure compliance with the laws and its role is fundamental for protecting human rights. In the inter-American human rights system, designed for a hemisphere of democratic countries, the adequate functioning of the judiciary is an essential element for preventing abuse of power by another organ of the state, and therefore for the protection of human rights. The existence of an independent judicial branch is essential for the effective observance, in practice, of human rights and democracy, and constitutes a right that the member states of the OAS are obligated to respect and ensure for all persons under their jurisdiction.<sup>634</sup>
369. The efforts carried out in Guatemala to achieve the independence and efficiency of the administration of justice has not been sufficient. The IACHR observes that there are severe problems in administering justice, among which structural impunity covering both human rights violations in the past and present conducts punishable by law, the absence of independence and impartiality of some judges, the politicization of justice, and the lack of access to justice for many sectors of society. Regarding this, the IACHR reiterates to the State the need to adopt all the necessary measures to ensure implementation of the recommendations and judgments pending in respect of justice handed down by the organs of the inter-American human rights system, such as those in the cases: Human Rights Defender; Veliz Franco et al.; García and Family Members; Gudiel Álvarez et al. ("Diario Militar"); Río Negro Massacre; Chitay Nech et al.; The Dos Erres Massacre; Tiu Tojín; Molina Theissen; Plan de Sánchez Massacre; Maritza Urrutia; and Myrna Mack Chang, among others.<sup>635</sup>

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<sup>634</sup> Second Report on the Situation of Human Rights in Peru, June 2, 2000, Chapter II, paras. 1-5.

<sup>635</sup> 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 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 Dos Erres Massacre v. Guatemala*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211; *Case of Tiu Tojín v. Guatemala*. Merits, Reparations and Costs. Judgment of November 26, 2008. Series C No. 190; *Case*

370. Implementation of the recommendations and judgments of the bodies of the Inter-American Human Rights System is not only an obligation of the State it is also an opportunity to build up the justice administration system in Guatemala, for the purpose of providing its citizens with an efficient, independent, and autonomous system, which all can gain access to without any discrimination or obstacles. Building democracy and ensuring the rule of law require concrete actions and measures in terms of justice. In this context, the following section addresses the situation of judicial independence in relation to the processes for selecting and retaining judicial officers; access to justice and impunity; and the legacy of the internal armed conflict.

## ***A. Judicial Independence: Judicial officers, selection processes, retaining one's position***

371. The IACHR has highlighted the basic role performed by justice operators to uphold the rule of law, make it possible for all complaints to be processed adequately on the basis of the jurisdictional mechanisms provided by the State, and in cases of human rights violations, make it possible to investigate, effectively punish those responsible, and provide reparations, while guaranteeing due process of law for all persons who are subject to the State's exercise of its punitive powers.<sup>636</sup> Because of that, the IACHR as the Inter-American Court have indicated that, even when the states may create various procedures for designating judges<sup>637</sup>, not every procedure for designating them satisfies the conditions demanded by the American Convention for implementing a true independent regime.<sup>638</sup> Only a transparent designation process, based on objective criteria and that guarantees the equality of all the candidates, is a fundamental guarantee for the independence of the judiciary.<sup>639</sup> Precisely in light of the important function performed by the organs entrusted with the processes of appointment, promotion, and disciplinary sanctions, and the objectivity required for their activity, the Commission has considered that it is advisable for the states to establish an independent organ whose functions include the appointment, promotion, and removal of judges.<sup>640</sup>

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*of Molina Theissen v. Guatemala*. Merits. Judgment of May 4, 2004. Series C No. 106; *Case of Plan de Sánchez Massacre v. Guatemala*. Merits. Judgment of April 29, 2004. Series C No. 105; *Case of Maritza Urrutia v. Guatemala*. Merits, Reparations and Costs. Judgment of November 27, 2003. Series C No. 103; *Case of Myrna Mack Chang v. Guatemala*. Merits, Reparations and Costs. Judgment of November 25, 2003. Series C No. 101.

<sup>636</sup> IACHR, Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas, 2013, para. 1.

<sup>637</sup> I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 74.

<sup>638</sup> I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 74.

<sup>639</sup> IACHR, Democracy and Human Rights in Venezuela, para. 187.

<sup>640</sup> See, IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2012, para. 374. See also, along these lines, Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, CCPR/CO/84/TKJ, June 18, 2005, para. 17.



372. In 2014, there were processes carried out in Guatemala to select and appoint justices to the Supreme Court of Justice, the Court of Appeals, and the Supreme Electoral Court, in addition to Attorney General. In Guatemala, the justices of the Supreme Court of Justice, the Courts of Appeal, and the Electoral Court are chosen by the Congress of the Republic from a list of candidates proposed by a Nominations Committee.<sup>641</sup> The Attorney General of the Republic is appointed by the President of the Republic from a list of six candidates proposed as well by a Nominations Committee.
373. With regard to the said process of selection the IACHR received consistent information about the presumed lack of consistencies in the designation and selection process which could have an impact on the independence of the judiciary<sup>642</sup>.
374. With regard to the appointment process of the members of the Supreme Electoral Tribunal in March 2014, the IACHR manifested its concern<sup>643</sup> for information received which that questioned the designation process for not offering sufficient guarantees to ensure the capacity and suitability of those nominated since the Congress had elected, by lists arrived at by consensus based on political quotas among the blocs, without any formal discussion on the merits of capacity, suitability, honesty, and reputation of each candidate.<sup>644</sup>
375. Regarding the process of selecting the candidates to be justices of the Supreme Court of Justice (Corte Suprema de Justicia—CSJ) and the Court of Appeals, prior to selection and appointment, the CICIG stressed that candidates had to comply with the merits of qualifications, ability and honesty set out in Article 113 of the Constitution of the Republic.<sup>645</sup> CICIG also handed over to representatives of the postuladors for selection of judges to the Supreme Court and Court of Appeals, the Guide to Good Practice for ethical and procedural Nominating Committees.<sup>646</sup> In September 2014, CICIG expressed concern about the process of selecting candidates for Court of Appeals and Supreme Court by the nominating committees indicating: "We do it with the greatest respect for the country's institutions with the sole purpose of contributing to the construction of a system of independent,

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<sup>641</sup> The Nominations Committees are governed by the Political Constitution and the Law on Nominations Committees (Legislative Decree No. 19-2009) and are aimed at proposing and submitting nominations or lists of persons who will have to be elected or appointed by the President of the Republic or parliament for the performance or exercise of high-level offices of the State.

<sup>642</sup> IACHR, Hearing on the Situation of Judiciary Independence in Guatemala. 153rd session, and IACHR, Hearing on the Process of Designation of Justice Operators in Guatemala, 150th session.

<sup>643</sup> IACHR, Press release 41/14. IACHR Urges Guatemala to Ensure Transparency and Meet Minimum Standards in the Appointment of Justice Operators, April 21, 2014.

<sup>644</sup> *Prensa Libre*, *Organizaciones rechazan elección de magistrados por cuotas políticas*, March 10, 2014.

<sup>645</sup> CICIG, *Magistrados a la CSJ y Apelaciones deben ser idóneos* [Judges to the Supreme Court of Justice and Court of Appeals must be qualified], June 12, 2014.

<sup>646</sup> CICIG, *Guía de buenas prácticas éticas y procedimentales para postuladoras* [Guide for Best Ethical and Procedural Practices for Candidates], July 7, 2014.

impartial, suitable, suitable justice to face the ever rising increase in organized crime”.<sup>647</sup>

376. With respect to the process for selecting members of the courts of appeals (*Salas de Apelaciones*) and of the Supreme Court of Justice that ended in October 2014, the IACHR received information according to which members of the Nomination Committees were also candidates to serve on the courts of appeals and the Supreme Court, impairing the transparency of the process.<sup>648</sup> On April 21, 2014, the IACHR issued a press release urging Guatemala to ensure that the processes were carried out transparently, ensuring the independence of the judicial officers elected.<sup>649</sup> On September 27, the IACHR issued another press release reiterating its concern for the processes of selecting and nominating judges for the Court of Appeals and the Supreme Court of Justice, and urged the Congress of the Republic of Guatemala to select judges for the Courts of Appeals based on their merits, capacity, suitability, and honesty, as stipulated by Article 113 of the Constitution of Guatemala, and to observe the minimum standards established by international human rights law to ensure judicial independence.<sup>650</sup> In this context, as mentioned in the section on justice operators, judges were subject to intimidation and reprisals for denouncing irregularities in this process of electing members of the Supreme Court of Justice and the chambers of the Court of Appeals, to the point that the IACHR issued precautionary measures to protect one of the persons negatively impacted.
377. Once the selections were made by the Congress of the Republic, civil society organizations and private citizens challenged them before the Constitutional Court, considering that in these designations both the Nomination Committees and the Congress of the Republic had engaged in a number of vices such as conflicts of interest, influence peddling, and lack of objective criteria for selection and appointment.<sup>651</sup> The International Association of Judges alleged that the selection took place without debate and without taking into account the Law on the Judicial Career Service and its regulation; as a result many judges designated did not meet the requirements of the law and were not part of the judicial career service. Of the

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<sup>647</sup> CICIG, Preocupación sobre Procesos de Selección de Candidatos para Corte de Apelaciones y Corte Suprema de Justicia [Concern over the Processes to Select Candidates for the Court of Appeals and the Supreme Court of Justice], September 16, 2014.

<sup>648</sup> Press article published in [emisorasunidas.com](http://emisorasunidas.com) on August 29, 2014. [Diputada critica a comisionados que se postularon para una magistratura.](#)

<sup>649</sup> IACHR, Press release 41/14. IACHR Urges Guatemala to Ensure Transparency and Meet Minimum Standards in the Appointment of Justice Operators, April 21, 2014.

<sup>650</sup> IACHR, Press release 108/14. IACHR Reiterates its Concern about the Processes to Select and Appoint Judges to Guatemala’s Appeals Court and Supreme Court, September 27, 2014.

<sup>651</sup> Civil society organizations and private persons performed the valuable work of a social audit with the accompaniment of the Office of the Human Rights Ombudsman, the CICIG, and OHCHR-Guatemala. Approximately 100 challenges were filed as well as *amparo* actions against the decisions adopted by the Nominations Committees and the Congress. OHCHR-Guatemala. Report of the United Nations High Commissioner for Human Rights on the Activities of Her Office in Guatemala, 2014. January 12, 2014. paras. 18-22.

judges chosen, it is said that only 33% had any prior judicial experience, and of these only 10% were in the judicial career service.<sup>652</sup>

378. For his part, the Human Rights Ombudsman asked the Constitutional Court to annul the election of judges in response to the deteriorating rule of law and the violation of republican constitutional principles, and to repeat the process to ensure its legality. On October 9 the Congress made the list of judges official; the same day the Constitutional Court suspended that election, granting a provisional *amparo* remedy in response to an action brought by several social organizations. As of that date, several challenges were presented, until on November 19 the Court ordered that the 13 judges elected by the Congress for the Supreme Court and the 126 elected for the 42 Courts of Appeals should take their positions.<sup>653</sup>
379. On November 24, 2014 the members of both the Supreme Court of Justice and the Courts of Appeals took office after the Constitutional Court dismissed those challenges.
380. In its decision of November 19, 2014, the Constitutional Court considered that Congress elected them in keeping with the law, since prior to the election the speaker of the Congress consulted the plenary as to whether it considered that the aspirants met the legal requirements, and then the election took place. In addition, the Court underscored that the Congress is not competent to review the activities of the Nomination Committees, where most of the irregularities said to have impaired the process were purportedly committed.<sup>654</sup> A dissenting vote indicated that, the *amparo* should have been granted because the process in the Nomination Committee was vitiated and the Congress failed to meet its duty to verify that the list of aspirants resulted from a process in keeping with the constitutional mandate.<sup>655</sup>
381. In October 2015 the State affirmed that there has been compliance with the terms of the Constitution and the Law on Nominations Committees as regards the procedure for electing members of the Supreme Court and the Court of Appeals. The State indicated that "with the incorporation the Nomination Committees within the legal system the main purpose is to eliminate arbitrariness and subjectivity in the election of aspirants that comprise or lead those courts and other state bodies."<sup>656</sup>

382. The various questions that were raised about how the process of nominating and selecting judges unfolded in the country led to calls from both civil society and the judicial branch itself to carry out the reforms needed to strengthen the independence of judicial officers. In this regard, the decision of the Constitutional

<sup>652</sup> Statement by the International Association of Judges with respect to the situation in Guatemala, 2014.

<sup>653</sup> Contribution of the Human Rights Ombudsman to the report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

<sup>654</sup> Constitutional Court, Case 4639-2014 and those joined to it (November 19, 2014).

<sup>655</sup> Constitutional Court, Separate vote in Case 4639-2014 and those joined to it (November 19, 2014).

<sup>656</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and on the IACHR Communication of August 14, 2015," October 6, 2015.

Court urges the Congress of the Republic to convene an open dialogue to discuss possible constitutional and statutory reforms to guarantee the quality and independence of the judiciary. According to information available to the public, the Roundtable on Security and Justice (Mesa de Seguridad y Justicia), coordinated by the chairperson of the Committee on Legislation and Constitutional Points of the Congress of the Republic<sup>657</sup>, has proposed an initiative to amend the Law on Nominations Committees, which will be submitted in 2015 to the leaders of the blocs in Congress to consider its inclusion in the legislative agenda.<sup>658</sup> In addition, the CICIG has convened a national dialogue to promote justice sector reforms in 2015.<sup>659</sup> The IACHR calls on the State to strengthen the efforts so as to adopt these essential reforms.

383. In this respect, the OHCHR-Guatemala indicated that an extensive analysis of the current model for selecting and appointing officers of the judicial system is essential for ensuring judicial independence. This process will require a comprehensive review of the legal framework, including, among others, the Constitution, the Law on Nomination Committees, the Law on Judicial Career Service, and the Law on the Judicial Branch.<sup>660</sup> The Commission urges the State of Guatemala to adopt the legislative measures and develop the practices necessary for ensuring the independence of judicial officers. This implies, as indicated by the IACHR in its report on Guarantees for the Independence of Justice Operators, an adequate and transparent process of election and appointment, conditions that enable them to perform their work independently and impartially in those cases they decide, bring, or defend, as well as disciplinary procedures that offer the appropriate guarantees.<sup>661</sup>
384. With regard to the term of then-Attorney General of the Republic Claudia Paz y Paz, who was appointed on December 9, 2010, to serve a four-year term, the IACHR was informed that the Constitutional Court decided on February 5, 2014, that she had to exit from the post seven months before completing her term of office, because her post had been so as to complete the term of an earlier attorney general. On this matter, the OHCHR-Guatemala indicated that the Constitutional Court had set the term of the former attorney general as ending in May and not in December, and her name was not included in the short list sent by the Committee on Nominations to the President, even though she had the second highest score among the candidates.<sup>662</sup> Regarding this, the IACHR states its concern because the change in the term of office that was originally set could lead to undermining the guarantee of job stability.

<sup>657</sup> April 23, 2014, [Presidente del Congreso instala oficialmente Mesa de Seguridad y Justicia](#).

<sup>658</sup> Press article published in [prensalibre.com](#) on December 4, 2014. [Demandan cambios a ley de postuladoras](#).

<sup>659</sup> Press release 043, [CICIG llama a diálogo nacional para reforma de la justicia](#), Guatemala City, November 17, 2014; and Press release 045, [Se pospone evento](#), Guatemala City, November 25, 2014.

<sup>660</sup> OHCHR-Guatemala. Report of the United Nations High Commissioner on Human Rights on the Activities of her Office in Guatemala, 2014. January 12, 2014. paras. 18-22.

<sup>661</sup> IACHR, Guarantees for the Independence of Justice Operators, OEA/Ser.L/V/II. Doc. 44, adopted on December 5, 2013, para. 34.

<sup>662</sup> OHCHR-Guatemala. Report of the United Nations High Commissioner for Human Rights on the Activities of her Office in Guatemala, 2014. January 12, 2014. paras. 18-22.

385. In the exercise of the power contained in Article 41 of the American Convention, on February 18, 2014 the IACHR requested information from the State with respect to the conditions of her appointment, among other matters. Three days later, the State answered that the decision of the Constitutional Court did not violate the independence of the Attorney General's Office. At the same time, it considered it inappropriate for the Commission to call into question the decisions of the Constitutional Court.
386. The IACHR recalls that the duration and stability of the appointment of a judicial officer is a corollary of his or her independence. Such independence is essential for ensuring transparent investigations and eliminating barriers to access to justice in the case of human rights violations. Accordingly, it is essential to ensure and respect the time for which a judicial officer has been appointed.
387. At the same time, the Commission learned of a decision by the Association of Lawyers and Notaries (Colegio de Abogados y Notarios de Guatemala) of January 9, 2014, that decided to sanction with a one-year suspension from the exercise of the profession Judge Iris Yazmín Barrios, the beneficiary of precautionary measures granted by the IACHR, for the way in which she is said to have treated the counsel for defendant Efraín Ríos Montt in the oral and public hearing for the crime of genocide. According to what some organizations reported to the IACHR, that sanction was imposed by an organ without jurisdiction, since that power would correspond to the Disciplinary Board of the Judicial Branch. In addition, that decision was apparently aimed at intimidating and de-legitimizing the work of Judge Barrios.<sup>663</sup> For this reason, on April 9, 2014, based on Article 41 of the American Convention, the IACHR requested information from the State of Guatemala with respect to the authority of the Honor Tribunal to impose sanctions, the resolution approving the sanction, and the judicial remedies that would be available to the judge.
388. On April 23, 2014, in its response, the State indicated that the Honor Tribunal does have jurisdiction to impose the sanction, pursuant to the domestic legislation, and that it was imposed because the judge would have committed an ethical breach which would have had affected the honor and prestige of her profession by a morally incorrect practice in the performance of her duties, also resulting in a statutory violation, which is why the Attorney General's Office acted accordingly. It also indicated that the decision on the appeal filed by the judge against that decision is pending. Subsequently the Commission learned that in the appeal the Assembly of Presidents of the Professional Associations (Asamblea de Presidentes de los Colegios Profesionales) affirmed the alleged breach committed by Judge Barrios and modified the sanction, establishing only a private reprimand and not the suspension from the exercise of the legal profession for one year, as the Association of Attorneys and Notaries decreed.<sup>664</sup> Judge Barrios filed an appeal

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<sup>663</sup> CEJIL, [Persiste afectación a la independencia judicial en Guatemala](#), May 5, 2014; Press article published by the International Commission of Jurists, April 5, 2014.

<sup>664</sup> CEJIL, [Persiste afectación a la independencia judicial en Guatemala](#), May 2, 2014.

against that decision before the Constitutional Court<sup>665</sup>, which ruled in her favor, and on March 10, 2015 it struck down the decision by the Honor Tribunal of the Association of Attorneys and Notaries of Guatemala.

389. The Inter-American Commission reiterates that the independence of the judiciary and its clear separation from the other branches of government must be respected by both the executive branch and the legislative branch; and that said respect begins with the normative recognition of its independence and the non-interference of other branches of government. For the IACHR this guarantee, in addition to being established in the normative framework through recognition of the principle of separation of powers, should be expressed in practice, for example by avoiding financial dependence on the budgetary allocations made by the legislature; in the timely designation, in proper form, and with respect for an adequate and transparent process of electing and appointing the judges of the high courts, and for the independence of judges in their deliberation, decision, and operations of the judiciary in general, and in disciplinary proceedings that offer guarantees of due process.<sup>666</sup>

## ***B. Access to justice***

390. The access to justice in Guatemala has been a priority issue for the IACHR throughout the years. In various reports it has observed the severe violations of this right because of the Guatemalan State's inability to provide an adequate and efficient system for the administration of justice or independent and impartial justice. Among the severest problems identified by the IACHR, there is structural impunity which covers both severe human rights violations perpetrated during the domestic armed conflict and subsequent offenses punishable by law.<sup>667</sup> According to a report from the CICIG of November 2015, the impunity rate for the crime of homicide fluctuated from 2008 and 2014 between 99.1% and 98.4%, with certain drops depending on the year and the subject.<sup>668</sup> To this must be added that most of the incidents taking place during the armed conflict (1960 to 1996) have gone unpunished.
391. Impunity is one of the severe problems concerning the administration of justice in the Hemisphere and is one of obstacles for definitively building up the rule of law

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<sup>665</sup> [Organizaciones internacionales exigen anular la sanción a Yassmin Barrios, Jueza Principal en el Juicio Histórico sobre Genocidio en Guatemala](#), November 10, 2014.

<sup>666</sup> IACHR, *Guarantees for the Independence of Justice Operators*, 2013, para. 34.

<sup>667</sup> IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, 2003, Chapter I; IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, 2001, Chapter IV.

<sup>668</sup> CICIG defines impunity as the failure to report, investigation, arrest, try, find positive solutions for the victims and/or convict those responsible for crimes classified as such in Guatemalan law and focuses its report on the subject of judgments of conviction. CICIG, Press release 091, [Sistema de Medición de Impunidad en Guatemala](#), November 27, 2015.

in various States of the region.<sup>669</sup> In addition, the Inter-American Court has established that:

[T]he State that leaves human rights violations unpunished would also be failing to comply with its general obligation to ensure the free and full exercise of the rights of the persons subject to its jurisdiction. [T]his Court has referred to the right of the next of kin of the victims to know what happened and the identity of the State agents responsible for the acts. “[W]henver there has been a human rights violation, the State has a duty to investigate the facts and punish those responsible, [...] and this obligation must be complied with seriously and not as a mere formality.” Moreover, this Court has indicated that the State “is obliged to combat [impunity] by all available legal means, because [impunity] encourages the chronic repetition of human rights violation and the total defenselessness of the victims and their next of kin.”<sup>670</sup>

392. The IACHR observes that the failure of justice to effectively respond to crimes perpetrated in Guatemala both in the past and the present tend to establish a situation of structural impunity.

According to the OHCHR-Guatemala, and the Commission<sup>671</sup> in recent years some gains were made in the fight against impunity. To this respect, there were verdicts in organized crime cases, including cases of corruption, extortion, kidnapping, rape, and murder, with a major social impact:

Coordination among State institutions in criminal investigation and prosecution led to the dismantlement of several corruption networks, including one involving the mayor of La Antigua and members of the municipal council; the arrest of the alleged perpetrators of the above-mentioned massacres of Nacahuil and Salcajá; and the arrest of alleged drug traffickers, among others.

High-risk courts have played a crucial role in combating impunity for past and present human rights violations. In 2013 and 2014, they had a high rate of effectiveness and reduced the backlog of cases. In 2013, 60 cases were presented and 67 judgments handed down; 42 cases were presented and 78 judgments were handed down in 2014.

The new Attorney General and her Office maintained coordination and cooperation with CICIG in high-impact cases, such as the one related to a corruption network in the prison system, in which both prison officials and detainees were implicated; the case of a corruption network in the judiciary, made up of public officials and private citizens; and the case of an organized criminal network operating in the Petén and Izabal departments. In

<sup>669</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*, OEA/Ser.L/V/II.106, Doc. 59 rev, June 2, 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.

<sup>670</sup> I/A Court H.R., *Case of the "Street Children" (Villagrán-Morales et al. v. Guatemala)*, Judgment on reparations, May 26, 2001, paras. 99 and 100. See also I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, para. 177.

<sup>671</sup> IACHR, Press release 33/12 IACHR Hails Progress Against Impunity in Guatemala and Expresses Concern About the Human Rights Situation of Indigenous Peoples and Women. Washington, D.C., March 27, 2012.



October, a contract killer was sentenced to 90 years in prison for the 2013 murder of lawyer Lea de León. In June, a Swiss court convicted the former Director of the National Civil Police and sentenced him to life in prison for extrajudicial executions at the Pavón penitentiary.<sup>672</sup>

393. In the area of justice, special mention should also be made of the increase in requests for scientific evidence from the Attorney General's Office:
394. "In comparison to 2010, there was a 15 per cent increase in scientific evidence requests from the Attorney General's Office to INACIF in the investigative phase, resulting in accusations that were no longer based primarily on witness testimony. This contributed to a 6.47 per cent increase in the number of accusations as compared to 2012, as well as to an increase of 9.4 per cent in the number of convictions. A positive development was the establishment, in January, of the Criminal Analysis Unit in the Attorney General's Office, with the mandate to advise prosecutors on strategic decisions related to criminal proceedings."<sup>673</sup>
395. It is also very significant that the new management model adopted by the judiciary has contributed to reducing judicial backlog. In addition, there has been progress in infrastructure and the drafting of proposed statutory or regulatory reforms aimed at reducing judicial delay in the non-criminal jurisdictions (civil, family, labor, children and adolescents). Mention should also be made of the establishment of the Center for Family Justice (Centro de Justicia de Familia) in Guatemala City, which includes changes in the infrastructure and the creation of a judicial body with special jurisdiction to hear family violence cases.<sup>674</sup> In addition, the OHCHR-Guatemala has observed that there was little progress in implementing the Law on the General Bureau of Criminal Investigation, which would help ensure the sustainability of inter-institutional coordination and that it was not possible to make gains in the vetting of the Attorney General's Office.<sup>675</sup>
396. In this scenario, the IACHR values the gains made in the fight against impunity, which includes the actions targeting corruption and urges the State to move forward toward resolving all those cases that continue to go unpunished.
397. As has been indicated, corruption in the administration of justice is another serious problem besetting Guatemala; it is one of the causes of the high rates of impunity. A short time after the end of the armed conflict, in the year 2000, it was noted that corruption in the administration of justice and its very real impact on criminal proceedings was one of the main mechanisms of impunity. Along with

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<sup>672</sup> OHCHR-Guatemala. [Report on the activities of the office in Guatemala](#), 2013 and 2014.

<sup>673</sup> OHCHR-Guatemala. [Report on the activities of the office in Guatemala](#), 2013 and 2014.

<sup>674</sup> For example, in Guatemala City the improvement in the resolution of cases (whether by judgment or other forms of termination) from 2010 to 2013 was 48% in criminal courts of first instance and 62% in the courts of criminal sentencing. OHCHR-Guatemala. Informe sobre las Actividades de su Oficina en Guatemala, 2013 and 2014. January 12, 2014.

<sup>675</sup> The Congress continued to fail to appoint the members of the Council of the Attorney General's Office – the competent organ for taking stock, on appeal, of the disciplinary proceeding – and therefore in 87% of the cases the sanctions could not be enforced because the decision was being appealed. OHCHR-Guatemala. Informe sobre las Actividades de su Oficina en Guatemala, 2013 and 2014.



other obstructions, or “bottlenecks,” such as the intimidation of judicial officials and the arbitrary use of state secrecy to hide information, corruption affected judicial proceedings systematically; independent of whether they concerned human rights violations, organized crime, or common crime.<sup>676</sup>

Corruption is one of the main problems besetting the administration of justice in Guatemala; it is a fundamental mechanism in the process of generating impunity and the conditions of fragility, deficiency, and atrophy, all of which are characteristics of the judicial system.<sup>677</sup>

398. As the IACHR has said in several reports, it is undeniable that from 2000 to date important measures have been taken to fight corruption in Guatemala, with both civil society and international cooperation playing fundamental roles in this struggle. Nonetheless, there are clearly many tasks pending, as shown by the persistence of high rates of impunity.
399. The CICIG denounced 16 officials, including several judges, for the crime of breach of public duty (*prevaricato*) and presented the report *Los jueces de la impunidad* in which it indicates the transgressions committed by 19 judges of the Guatemalan judicial system in their rulings.<sup>678</sup> In addition, in 2014 and 2015 the CICIG has pursued criminal charges in several matters involving judges, among them against Erick Gustavo Santiago de León, judge (Magistrado Vocal II) of the Third Chamber of the Court of Appeals; Adrián Rodríguez Arana, Jisela Yadel Reinoso Trujillo, and Marta Josefina Sierra González de Stalling, judges of first instance; and Carol Patricia Flores Polanco, judge of High Risk Court A. In all the cases the charges were for the criminal conduct of accepting bribes (*cohecho pasivo*) and breach of public duty (*prevaricato*).<sup>679</sup>
400. In September 2015 the CICIG and the Attorney General’s Office coordinated with the PNC the arrests of judges Jisela Yadel Reinoso Trujillo and Marta Josefina Sierra González de Stalling, and of Erick Gustavo Santiago de León, president of the Mixed Regional Chamber of the Court of Appeals of the Civil branch for Quiché, all tied to corruption.

Erick Gustavo Santiago de León: President of the Mixed Regional Chamber of the Court of Appeals, Civil branch for Quiché, is accused of accepting bribes for attempting to collect a commission of some Q10 millions in charge for a favorable ruling for a company.<sup>680</sup> Jisela Yadel Reinoso Trujillo: Accused of the possible crimes of laundering money or other assets; illicit enrichment; breach of the duty to present a sworn statement on assets; and

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<sup>676</sup> *Revista Probidad, Corrupción en la administración de justicia*. Helen Mack, 2000.

<sup>677</sup> *Revista Probidad, Corrupción en la administración de justicia*. Helen Mack, 2000.

<sup>678</sup> Contribution by the Human Rights Ombudsman to the report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

<sup>679</sup> Contribution by the Human Rights Ombudsman to the report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

<sup>680</sup> CICIG, Press release 065, Magistrado de Corte de Apelaciones ligado a proceso [Appeals Court Judge implicated in the process], September 25, 2015.

obstruction of a criminal action. Arrested at her residence.<sup>681</sup>Judge Marta Josefina Sierra González de Stalling: Accused of the crimes of accepting bribes and breach of public duty. Arrested at her office. She may have made illegal agreements with six persons from network set up to defraud the customs administration known as “la línea,” who are said to have benefited from bond so as to be able to go free.<sup>682</sup>

401. In the month of July 2015, the Supreme Court of Justice unanimously allowing criminal proceedings to go forward against the judge of the high impact court Carol Patricia Flores and stripped her of immunity. This resulted from the complaint filed by the Attorney General’s Office and the CICIG for illicit enrichment. Judge Carol Patricia Flores has had well-known cases such as the trial for genocide, the Alaska Massacre, the criminalization of defenders of the water Rigoberto Juárez, Domingo Baltazar de Santa Eulalia, Arturo Pablo, Adalberto Villatoro, and Francisco Juan de Barillas, all cases in which it is alleged that injustices and irregularities were committed.<sup>683</sup>

“With the commitment we have assumed along the with Attorney General’s Office to struggle against corruption, we can say that no one is above the law, and that the criminal investigation reaches all persons independent of the position they have hold in society or the State. It is also consistent with the need to regain trust when one observes an Attorney General’s Office that is strengthened, active, with initiative, persistent, and bold, despite the pressure entailed in furthering investigations against powers of the State.”<sup>684</sup>

402. In this scenario, the IACHR recognizes those prosecutors, defenders, and judges, including those of the high courts, who have performed their work with dignity, commitment, and professionalism, several of them suffering threats, reprisals, and even losing their lives in the endeavor against impunity and corruption, and the protection also to guarantee judicial independence.

## 1. Difficulties in effective access to justice and the role of the State institutions

403. Access to justice should be understood from a perspective that includes the physical possibility of filing judicial actions and of obtaining a response in the short term in keeping with the legislation and the subject matter at hand.<sup>685</sup>

<sup>681</sup> CICIG, Press release 064, Jueza Jisela Reinoso Ligada a proceso [Judge Jisela Reinoso implicated in the process], September 24, 2015.

<sup>682</sup> CICIG, Press release 062, Jueza Marta Sierra de Stalling ligada a proceso y enviada a prisión [Judge Marta Sierra de Stalling implicated in the process and sentenced to prison], September 23, 2015.

<sup>683</sup> *Prensa Comunitaria*, Retiran inmunidad de jueza Carol Patricia Flores, July 30, 2015.

<sup>684</sup> CICIG, Comisionado exhorta a una cultura de legalidad [Commissioner urges a culture of legality], September 2, 2015.

<sup>685</sup> IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, June 28, 2007, para. 55.

404. The very act of gaining access to justice requires overcoming obstacles for most Guatemalans; and only a few are able to obtain an effective response. The high rate of impunity in Guatemala reflects this situation and the gap between the inhabitants of Guatemala and access to justice. In a country where more than half the population lives in poverty and a high percentage in extreme poverty one must consider the relationship between this reality and access to justice. According to the Guiding Principles on Extreme Poverty and Human Rights, persons living in poverty face a series of obstacles when it comes to accessing justice:

Persons living in poverty are often unable to access justice or to seek redress for actions and omissions that adversely affect them. They encounter a variety of obstacles, from being unable to successfully register initial complaints owing to costs or legal illiteracy, to court decisions in their favour remaining unimplemented. Power imbalances and the lack of independent, accessible and effective complaint mechanisms often prevent them from challenging administrative decisions that adversely affect them. Without effective access to justice, they are unable to seek and obtain a remedy for breaches of domestic and international human rights law, exacerbating their vulnerability, insecurity and isolation, and perpetuating their impoverishment.<sup>686</sup>

405. In addition to the condition of poverty, the vast majority is unable to access to the administration of justice given the lack of state presence throughout the territory, the insufficient infrastructure and training of members of the judiciary, and the lack of interpreters and members of the institutions for the administration of justice who are familiar with the indigenous languages and culture, among other factors.

406. In an eminently rural country, several factors persist that influence the real possibility of accessing to the judicial system in the rural areas. These include major geographic barriers, determined by the long distances persons must travel from their communities to the urban centers to lodge or follow up on their complaints; economic barriers given the costs required to make such trips or to pursue the actions entailed in a judicial proceeding. Specifically, in relation to indigenous peoples and communities, linguistic and cultural barriers persist as matters are handled by officials who do not speak the indigenous language and there is a lack of trained interpreters, as well as the lack of sensitivity towards and understanding of the country's ethnic diversity by those in charge of the administration of justice.<sup>687</sup>

407. In relation to access to justice for the indigenous peoples in Guatemala, the IACHR notes with satisfaction some gains in the institutional sphere, such as the establishment of a Unit on Indigenous Matters of the judiciary and the SCJ, which

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<sup>686</sup> United Nations, Guiding Principles on Extreme Poverty and Human Rights, prepared by Magdalena Sepúlveda, Special Rapporteur on extreme poverty and human rights, and approved by the Human Rights Council September 27, 2012, para. 67.

<sup>687</sup> Along similar lines, see ASIES and OHCHR. Acceso de los pueblos indígenas a la justicia desde el enfoque de derechos humanos: perspectivas en el derecho indígena y en el sistema de justicia oficial. Guatemala, 2008, p. 96 and OHCHR-Central America. Diagnóstico sobre la Situación de los Derechos Humanos de los Pueblos Indígenas en América Central. Volume I. 2011. p. 220.

began its activities in March 2012 and whose objective is “to promote and advise on the implementation of public policies to foster access to justice for the indigenous population.”<sup>688</sup> Similarly, on July 9, 2012, the Attorney General’s Office created the Department of Indigenous Affairs of the Secretariat for Criminal Justice Policy with the aim of strengthening the institution’s actions to benefit indigenous peoples. In the area of training, it was reported that both institutions have undertaken activities to train judges and prosecutors on indigenous rights, though the efforts appear to be limited, considering the generalized lack of awareness of indigenous peoples’ rights that the IACHR has found.<sup>689</sup> The Commission values the creation of the Centers for the Administration of Justice in predominantly indigenous areas made up of officials of the PNC, the Attorney General’s Office, the Office of the Public Defender, and legal clinics known as Bufetes Populares; however, there is a perception a lack of human and material resources.<sup>690</sup> With respect to the justices of the peace, the IACHR has found that they have a very weak institutional framework, do not receive support from the police to handle their cases, and do not have the capacity to foster state actions for containment, prevention, and immediate resolution of the problem upon arriving at the place in question.<sup>691</sup> This situation is of special concern when it refers to the situation of the Justice of the Peace Courts.

408. In a country with a large indigenous population, one of the key issues for the Commission is bilingual access to justice, which presupposes ensuring that in the state justice system indigenous persons can be heard in their own language and can express themselves fluently in the criminal proceeding, in accordance to the right recognized in Article 8(2)(a) of the American Convention<sup>692</sup> and Article 12 of ILO Convention 169.<sup>693</sup> The IACHR is pleased to learn that major steps have been taken in this regard and in particular that the system of interpreters in the country includes 89 official interpreters from 13 of the 22 Maya linguistic communities. In addition, videoconferences are held to bolster the capabilities of the interpreters<sup>694</sup> and the Center for Indigenous Interpretation and Translation was inaugurated with offices in Huehuetenango, Chimaltenango, Quiché, Sololá, and Cobán, Alta Verapaz.<sup>695</sup> The Department of Indigenous Peoples of the Attorney General’s Office, as of 2013, had 54 interpreters of 13 Maya languages and

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<sup>688</sup> Decision 112-2009. Judicial Branch of Guatemala. Indigenous Affairs Unit. Primer Informe Anual de Actividades 2012-2013. Guatemala City, March 2013. Judicial Branch of Guatemala. Indigenous Affairs Unit.

<sup>689</sup> Information received by the IACHR during August 2013 visit.

<sup>690</sup> IACHR, Justice and Social Inclusion: The Challenges of Democracy in Guatemala, 2003, para. 237. RIDH, Derechos de los pueblos indígenas en Guatemala, 14 de julio de 2015.

<sup>691</sup> Information received by the IACHR during visit in August 2013.

<sup>692</sup> Article 8(2)(a) of the ACHR.- right of the accused to be assisted at no cost by a translator or interpreter if he or she does not understand or does not speak the language of the court.

<sup>693</sup> Article 12 of ILO Convention 169: “... Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.”

<sup>694</sup> Information received by the IACHR during visit in August 2013.

<sup>695</sup> Judicial Branch of Guatemala. Presidente del Organismo Judicial inauguró el Centro de Interpretación y Traducción Indígena.

Garifuna.<sup>696</sup>On this point, indigenous organizations told the IACHR that there are not enough translators and interpreters, and an even more dire shortage of judges who speak and/or understand the indigenous languages. They added that cases have come up of legal interpreters who do not have mastery of the specific Maya language for which they were contracted.<sup>697</sup>

409. In this regard, the Ombudsman notes that in April 2014 the Attorney General's Office created the Office for Attention to Indigenous Peoples in coordination with indigenous authorities from Sololá, Totonicapán, Quiché, and Alta Verapaz and that meetings have been organized to share experiences in the application of indigenous law, bringing together indigenous authorities and Attorney General's Office prosecutors. In addition, the Attorney General's Office established the Prosecutorial Unit for Crimes of Discrimination and for the Protection of Indigenous Peoples (*Unidad Fiscal contra Delitos de Discriminación y Protección de Derechos de los Pueblos Indígenas*) in order to effectively pursue and bring criminal actions in response to crimes of discrimination and related crimes committed against of an indigenous person or group of persons, or indigenous associations. It should be highlighted that the Attorney General's Office has no legal interpreters. Nonetheless, it appeals to indigenous personnel in some offices to support this function. He notes progress by the Unit for Indigenous Affairs' launching of the first edition of the Bilingual Glossary of Legal Terminology (*Glosario Jurídico Bilingüe*) in 22 Maya languages; it also prepared the Guide for the Attention of Indigenous Women and Children for Access to Justice (*Guía para la Atención a Mujeres y Niñez Indígena en el Acceso a la Justicia*). He adds that in August 2013 the judicial branch established the Center for Indigenous Interpretation and Translation, which coordinates the official interpreters of the different regions of the country, and the Institute of Public Criminal Defense which has public defenders in the various language communities through 15 offices that cover 11 Maya languages, Garifuna, and Xinka.<sup>698</sup> Nonetheless, despite the gains, the proposed Law on Jurisdiction of the Ancestral Community Authorities, a law that would allow for a timely intervention of the ancestral authorities in the judicial proceedings in favor of the indigenous peoples, has not been approved yet by Congress.
410. In relation to access to justice for the LGTBI population, the Attorney General issued General Instruction No. 2-2014, which establishes guidelines for the criminal prosecution of crimes of discrimination, where the motives of discrimination include sexual orientation and general identity. This instruction represents a significant gain for giving visibility to criminal acts that constitute attacks on the integrity of the lesbian, gay, bisexual, trans, and intersex (LGBTI) population, which have remained in impunity for many years given the lack of

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<sup>696</sup> Attorney General's Office of Guatemala. Fiscal General presentó Informe de Tercer Año de Gestión. December 12, 2013.

<sup>697</sup> Complaint lodged by the Q'eqchi', Poqomchi', and Achi' peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received by the IACHR during visit in August 2013.

<sup>698</sup> The program of the Office of the Indigenous Public Defender began in three departments in November 2001. From then until June 2015, a total of 13,917 cases have been handled. Contribution by the Human Rights Ombudsman to the report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

guidelines in the institutions entrusted with the obligation of ensuring criminal prosecution.<sup>699</sup>

411. The Ombudsman reports that the lack of economic resources for the Child's Division of the Procuraduría General de la Nación hinders the defense, protection, and restitution of the rights of children and adolescents. The New Rules for the provision of Child and Adolescent Protective Services by the Procuraduría General de la Nación constitutes a significant step forward.<sup>700</sup>
412. Given the persistent obstacles referred above, the Commission urges the State to allocate the human and material resources needed to implement measures that effectively facilitate access to justice for the entire population. In particular, it is necessary to adopt measures that alleviate the excessive workload of the courts; expand the use of systems to modernize case file management; reduce delay in the resolution of cases and corruption in the processing of cases; allocate a sufficient budget to the judiciary; and ensure that provisions are adopted to ensure access to justice for indigenous peoples.

## 2. Right to defense and the use and abuse of procedural motions

413. The IACHR has found that structural impunity in Guatemala is fostered by the processing of notoriously frivolous or abusive motions whose objective is to obstruct justice.<sup>701</sup> While every person has the right to file motions in the proper exercise of the right to defense and due process, the Commission has learned that defense counsel for persons accused of committing human rights violations in Guatemala use such motions to delay decisions from the local courts, without the judges, as the stewards of the judicial process, taking the measures necessary to avoid denials of justice in practice.<sup>702</sup>
414. As will be indicated, since 2003 the Commission has documented that some judges allow the abusive use of such motions, delaying final decisions in several cases. The remedy most often used to this end is the *amparo* remedy, or writ of *amparo*.<sup>703</sup> In this regard, the then-Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, in his mission to Guatemala in 2009, also made reference to the "abusive use of the *amparo* ... [which] has turned it into a weapon

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<sup>699</sup> Contribution by the Human Rights Ombudsman to the report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

<sup>700</sup> Contribution by the Human Rights Ombudsman to the report of the IACHR on the Situation of Human Rights in Guatemala, September 2015.

<sup>701</sup> IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, 2003, para. 28.

<sup>702</sup> IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, 2003, para. 28.

<sup>703</sup> The improper processing of the writ of *amparo* has been evidenced in cases of serious human rights violations such as the massacres of Xaman and Dos Erres, and also in the proceedings for the assassinations of Monsignor Gerardi and Myrna Mack Chang. IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, 2003.

for obstructing and delaying justice, without the judges, as the stewards of the judicial process, having adopted the necessary measures to prevent it”.<sup>704</sup>

415. On December 9, 2013, the Constitutional Court issued regulatory provisions for and provisions supplemental to the Law on *Amparo*, *Habeas Corpus*, and Constitutionality by Decree 1-2013, with the aim of “expediting the administration of justice, reducing the times for responses, and improving the channels of communication [...]”<sup>705</sup> Article 72 of that Decree authorizes the courts to impose fines on those lawyers when an action filed “turns out to be frivolous or notoriously out of order.” Without prejudice to the progress that could represent as a measure aimed at limited abuse of the remedy, the IACHR hopes that the law is reformed and that it is guaranteed that the *amparo* remedy meets inter-American standards. Likewise, the IACHR stresses the importance of having those justice operators who are called to rule on these remedies to do so within reasonable time-limits, in conformity with Articles 8 and 25 of the American Convention.
416. The State shares the concern as to the use and abuse of the writ of *amparo* to delay the administration of justice.<sup>706</sup>

### 3. CICIG

417. The Commission highlights the work of the CICIG<sup>707</sup> and values the renewal of their mandate. Also it values the collaboration with the Attorney General’s Office and other institutions of the State to fight impunity of crimes committed by illegal bodies and clandestine apparatuses that operate in Guatemala.
418. In the area of justice, the work of the CICIG has been significant, both its investigative work and its support in the form of training and promotion of legal reforms aimed at making the justice system work more effectively. For example, on September 3, 2014, in a joint operation involving the Attorney General’s Office, the Ministry of Interior, and the CICIG, members of a criminal structure were arrested, which included Edgar Camargo Liere, director of the prison system, –and Byron Miguel Lima Oliva, who had been deprived of liberty for the assassination of Bishop Gerardi. Both were accused of running a system of illegal payments in the

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<sup>704</sup> United Nations. Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Mission to Guatemala, October 1, 2009, para. 89.

<sup>705</sup> Constitutional Court, Decision 1-2013, December 9, 2013.

<sup>706</sup> Report of the State of Guatemala on the “Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015,” October 6, 2015.

<sup>707</sup> The CICIG was created in 2007 as an independent international body whose aim is to support the Attorney General’s Office, the PNC, and other institutions of the State both in the investigation of the crimes committed by members of illegal security groups and clandestine security apparatuses, and in general in the actions aimed at dismantling these groups. This is to be done by supporting the investigation and criminal prosecution of a limited number of complex cases, and through other actions within its mandate aimed at strengthening the institutions of the justice sector so that they can continue confronting illegal groups in the future. The term of the CICIG has been extended until September 4, 2015.



prisons. According to information provided to the press, this investigation revolves around the discovery of parallel power structures and their relationships with particular individuals, including among intermediaries and managers of the prison authorities. Seven people were arrested in that operation, including public officials, prisoners, and private persons.

419. As a result of the cooperation between the CICIG and the Attorney General's Office, which eventually included the participation of other state agents, according to Guatemalan civil society organizations, it was possible in less than two years:

- To identify judicial officers who are purportedly part of networks of corruption and structures that give rise to impunity.
- To identify and criminally prosecute key figures in organized crime structures who were assassinating large numbers of persons who impaired or thwarted their criminal interests, causing widespread terror.
- To act forcefully against criminal structures which, from within the State, for example in the Prison System and the police forces, engage in criminal conduct and terrorize the defenseless population; and that help consolidate intricate networks of corruption in the State.
- To propose a general outline of new initiatives to pursue in the area of legislative reform and, eventually, constitutional reform.<sup>708</sup>

420. In this regard, the State also indicated that it values the gains made by the CICIG and the Attorney General's Office in dismantling criminal networks, such as the one allegedly led by Byron Lima Oliva.<sup>709</sup>

421. In addition, the work of the CICIG with the Attorney General's Office in "La Línea" case made it possible to investigate and prosecute the members of one of the corruption networks that has been responsible for defrauding the national treasury and where are accused for their involvement high-level authorities of the Guatemalan government, including the former President and Vice President of the Republic. Accordingly, the Commission values the extension of the CICIG's mandate.

### ***C. Impunity and the legacy of the internal armed conflict***

422. With respect to the post-armed conflict situation in Guatemala, the IACHR recalls that in the peace agreements signed by the State, the latter affirmed:

It is a right of the people of Guatemala to learn the full truth about the human rights violations and acts of violence that occurred in the context of

<sup>708</sup> Movimiento Pro Justicia, Pautas para la renovación del mandato de la Comisión internacional contra la impunidad en Guatemala, 2015.

<sup>709</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015.



the internal armed confrontation. Objectively and impartially clarifying what happened will contribute to strengthening the process of national reconciliation and democratization in the country.<sup>710</sup>

423. The IACHR has highlighted major gains in the area of human rights in Guatemala, especially as regards the investigations of some of the serious crimes against humanity committed during the internal armed conflict. In this respect, it reiterates its recognition of the Criminal Chamber of the Supreme Court of Justice for declaring the self-executing nature of judgments of cases referred by the IACHR to the Inter-American Court of Human Rights of grave violations of human rights, including “Street Children (Villagrán Morales et al.)”; “Panel Blanca (Paniagua Morales et al.)”; “Bámaca Velásquez”; “Carpio Nicolle et al.”; and “The Dos Erres Massacre”; and ordering the Attorney General’s Office to conduct new investigations to determine the direct perpetrators and masterminds responsible for the violations of human rights established by the Inter-American Court in the respective judgments.
424. In addition, progress has been seen in the search for investigation and prosecution of human rights violations committed during the internal armed conflict. As noted by the OHCHR-Guatemala, in 2012 a fifth person was convicted in different trials for the Dos Erres massacre occurred in 1982; five persons were convicted for their participation in the 1982 Plan de Sánchez massacre; and one former police chief was convicted for his participation in the forced disappearance of the student Edgar Sáenz Calito in 1981. In addition, investigations were begun in the case of rape and sexual slavery of 15 women at a military base in Izabal, from 1982 to 1986.
425. On January 26, Efraín Ríos Montt was bound over for genocide and crimes against humanity presumably committed in the area of Ixil in 1982 and 1983. On May 21, he was also linked to the Dos Erres massacre. In February, exhumations begun in Cobán military premises (Alta Verapaz). In October, remains of 466 victims had been exhumed, including at least 75 corresponding to minors; many showed possible signs of torture. The OHCHR-Guatemala recognized that these processes, as well as the identification of three persons buried in the former military detachment in San Juan Comalapa (Chimaltenango) whose names apparently appear in the *Diario Militar*, are the result of the efforts of civil society and the Attorney General’s Office to investigate and prosecute human rights violations of the past.<sup>711</sup>
426. In 2013, former military commissioner Isidro Cardona Osorio was convicted in the forced disappearance of Edgar Leonel Paredes Chegüén in 1982. Two former high-level leaders of the former National Police were convicted as well for the forced disappearance of student Edgar Fernando García in 1984. In addition, a high-level commander of a non-state armed group was indicted for assassination and crimes against humanity, committed in 1998 against the population of the village of El Aguacate (Chimaltenango). In 2014 the trial began in the case of sexual violence

<sup>710</sup> Firm and Lasting Peace Agreement, Guatemala City, December 29, 1996, point 4.

<sup>711</sup> OHCHR-Guatemala. Informe sobre las Actividades de su Oficina en Guatemala, 2012, 2013, and 2014.

against a group of indigenous women in the military detachment of Sepur Zarco in 1982-1983. Furthermore, in January 2015 Pedro García Arredondo was convicted; he directed the squad of the National Police known as "Comando Seis" ("Command Six"), an elite response corps considered to be responsible for hundreds of forced disappearances and assassinations of unionists as well as university students and professors. The trial of García Arredondo was for the death of 37 persons that occurred in the takeover and burning of the Spanish embassy in 1981. The Criminal Court (*Tribunal de Sentencia Penal*) of Chimaltenango condemned a member of a non-state combatant force for the massacre of 22 persons in the community of El Aguacate, which occurred in 1988. In other cases, including the Panzós massacre of 1978 and the case of the Diario Militar, testimonies were given before the trial began given the advanced age of the witnesses. Nonetheless, many cases remain unpunished. In July, the Criminal Court of Cobán absolved those who were accused in the 1983 forced disappearance of two brothers in Tactic (Baja Verapaz). According to the OHCHR-Guatemala, the delivery of the declassified military documents to the General Archive of Central America (*Archivo General de Centroamérica*) is an important precedent for the exercise of the victims' rights to truth and justice. Guaranteeing institutional safeguarding of the historical archives is necessary and it should be done through an appropriate legal framework.<sup>712</sup>

## 1. Trial for genocide and other crimes against humanity

427. In 2013, an encouraging step forward was taken with the filing of a criminal complaint for the atrocities committed in the Ixil region in 1982 and 1983 against Efraín Ríos Montt, José Mauricio Rodríguez Sánchez, and other high-level military commanders, for the crimes of genocide and crimes against humanity allegedly committed in the Ixil region in 1982 and 1983. The trial began on March 19, 2013.
428. This trial represented a milestone in transitional justice, as it was the first time in history that a former Head of State was accused on charges of genocide before a national court. Nonetheless, in the course of the year, information was received about intimidations and death threats received by the judges of the First High Risk Court A, who were entrusted with the proceeding against Ríos Montt. As a result, on June 28, 2013, the IACHR granted precautionary measures on behalf of three members of that court.<sup>713</sup> In addition, the information received suggests that during the Ríos Montt trial one protected witness testified that ex President Otto Pérez Molina had participated in serious crimes against indigenous persons such as acts of torture and extrajudicial executions, after which there was no more witness testimony. It should be noted that Pérez Molina, being a general at the time was the commander of a barracks in Nebaj during the armed conflict, one of the areas where serious violations were committed against the Ixil Maya people.<sup>714</sup>

<sup>712</sup> OHCHR-Guatemala. Informe sobre las Actividades de su Oficina en Guatemala, 2012, 2013, and 2014.

<sup>713</sup> IACHR, MC 125/13 – Iris Yassmin Barrios Aguilar et al.

<sup>714</sup> *Radio Canadá Internacional*, [En Guatemala el juicio a ex dictador Ríos Montt salpica al actual Presidente Otto Pérez Molina](#), April 10, 2013.

429. On May 10, 2013, the First High Risk Court A convicted Ríos Montt and sentenced him to 50 years in prison for genocide, and 30 years more for crimes against humanity. In this judgment, for the first time the racial nature of the violence suffered during the armed conflict was acknowledged. Nonetheless, on May 20, 2013, the Constitutional Court, the highest judicial body, annulled the judgment and ordered a retrial. According to public information, the trial was to be resumed in January 2015. Nevertheless, the proceeding was suspended once again after the High Risk Court B accepted the recusal brought by counsel for Ríos Montt against the chief judge of the Court, Jeanette Valdés, an appeal which, according to civil society organizations, was filed after the time period established in the law had elapsed.<sup>715</sup>
430. In August 2015, the High Risk Court B, presided over by Judge María Eugenia Castellanos, ruled that due to the “proven mental incapacity” of the accused Ríos Montt to appear in a public oral trial, one shall only be held behind closed doors for “the exclusive application of measures of security and correction”<sup>716</sup> in January 2016. Ríos Montt is accused of the assassination and torture of 1,771 Ixil Maya indigenous people and for the forced displacement of thousands of other victims when he was president and commander of the Guatemalan Army (1982-1983). Several human rights organizations criticized the decision and noted flaws in the proceeding.<sup>717</sup> In December 2015, the Constitutional Court turned down an appeal on constitutional grounds (*amparo*) filed by the defense attorneys of Ríos Montt, requesting an end to criminal prosecution proceedings against the former general.<sup>718</sup> As indicated by the State, “the Constitutional Court ruled that amnesty for the former general José Efraín Ríos Montt was not admissible and that therefore he had to be investigated and tried, with the trial scheduled for the beginning of 2016.”<sup>719</sup>
431. On the trial of former generals José Efraín Ríos Montt and José Mauricio Rodríguez Sánchez on charges of genocide, the State reports the procedural history of the case in detail and notes that whether criminal sanctions will be imposed depends on what is resolved by the Criminal Court, respecting procedural guarantees such as the presumption of innocence as well as due consideration of the grounds for extinction of criminal liability such as amnesty and prescription, which cannot be considered contrary to international law. It adds that the mechanisms of

<sup>715</sup> Press release from the organizations Washington Office on Latin America (WOLA), Center for Justice and International Law (CEJIL), Plataforma Internacional contra la Impunidad, Due Process of Law Foundation (DPLF), Guatemalan Human Rights Commission (GHRC), Organizaciones internacionales se pronuncian frente a la suspensión del proceso por genocidio en Guatemala [International Organizations make a Statement about the Suspension of the Trial for Genocide in Guatemala], January 9, 2015.

<sup>716</sup> *BBC*, “Guatemala: Ríos Montt enfrentará juicio pero no habrá condena” [Guatemala: Ríos Montt shall fall trial but will not be convicted].

<sup>717</sup> *Adital*, “Organizaciones de derechos humanos cuestionan juicio del ex dictador de Guatemala” [Human Rights Organizations Question Trial of Former Dictator of Guatemala], September 23, 2015.

<sup>718</sup> *El Periódico*, CC confirma nuevo juicio por genocidio contra el general José Efraín Ríos Montt, December 8, 2015.

<sup>719</sup> Additional observations from the State of Guatemala on the “Draft General Report on the Situation of Human Rights in Guatemala. Ref. Note P-925-2015/AFAP/hm of December 9, 2015 received at the Secretariat on December 11, 2015, p. 4.

protection and guarantee of human rights are important and necessary mechanisms, so long as those who direct such mechanisms perform their functions objectively and with diligence, but that they should not and cannot become supra-national mechanisms.<sup>720</sup>

## 2. Amnesty laws

432. On repeated occasions, the IACHR and the Inter-American Court of Human Rights have established that provisions of any nature—legislative, administrative, or otherwise—that impede the investigation and punishment of those responsible for serious human rights violations are incompatible with human rights obligations. For this reason, they have indicated that in the event that a person accused of a crime in this context asks that an amnesty law be applied, the court has the obligation to investigate and clarify the situation, because pursuant to State obligations, amnesty laws or similar measures cannot be applied to serious human rights violations. Along these lines, the Inter-American Court has repeatedly established that, amnesty provisions, limitations periods, and the establishment of grounds for excluding liability that aim to impede the investigation and punishment of those responsible for serious human rights violations such as torture, summary, illegal, or arbitrary executions, and forced disappearances, are prohibited for violating non-derogable rights recognized by international human rights law.

433. Additionally, the inter-American human rights system has emphasized that:

“States, ... may not invoke existing provisions of domestic law, such as the Amnesty Law in this case, to avoid complying with their obligations under international law [...] in the Court’s judgment, the Amnesty Law enacted by [the State] precludes the obligation to investigate and prevents access to justice. For these reasons, [the State’s] argument that it cannot comply with the duty to investigate the facts that gave rise to the present Case must be rejected.”<sup>721</sup>

In practice, the application of amnesty laws has obstructed the clarification of the facts and the prosecution and punishment of the persons responsible for serious human rights violations, leaving them in impunity. Accordingly, based on the obligations of the inter-American system, several States of the region have had to review and strike down amnesty laws.

434. In Guatemala, the Law on National Reconciliation (Decree No. 145-1996 of December 27, 1996), whose purpose was to decree the total extinction of criminal liability for the political crimes committed in the internal armed confrontation,

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<sup>720</sup> Report of the State of Guatemala on the “Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015,” October 6, 2015.

<sup>721</sup> I/A Court H.R., *Case of Loayza Tamayo v. Peru*. Judgment of September 17, 1997. Series C No. 33, para. 168. See also: IACHR, 14/10: IACHR shows concern for the Amnesty Decree passed in Honduras. Washington, D.C., February 3, 2010.

expressly excluded the crimes of genocide, torture, and forced disappearance, among others.

The extinction of criminal liability to which this law refers shall not be applicable to the crimes of genocide, torture, and forced disappearance, or those offenses that are imprescriptible or that do not allow for the extinction of criminal liability as per domestic law or the international treaties ratified by Guatemala.<sup>722</sup>

435. There have been efforts to apply the law on national reconciliation at trials for serious human rights violations committed during the internal armed conflict, where some of crimes prosecuted are expressly excluded from that law. In that regard, the United Nations High Commissioner for Human Rights welcomed the incorporation of this principle by the Supreme Court in its decision of August 8 on cassation in the Dos Erres case and declared she hoped that the motions pending on the non-application of amnesties are resolved in keeping with the State's obligations under international law.<sup>723</sup>
436. In addition, in the trial against Efraín Ríos Montt, José Mauricio Rodríguez Sánchez and other high-level military commanders for the crimes of genocide and crimes against humanity, there were several efforts by defense counsel to apply the amnesty provided for in the Law on National Reconciliation of 1996.<sup>724</sup> While on June 22, 2012, the Fourth Chamber of the Court of Appeals ordered that the judicial proceeding be suspended by granting them a provisional *amparo*, considering that said statute did apply to them, the high courts of Guatemala have repeatedly rejected that claim.<sup>725</sup> The last time it rejected it that the IACHR learned of was October 8, 2015, on which occasion the First Chamber of the Court of Appeals of the criminal branch dismissed ("*resolvió sin lugar*") the motion filed, which was an effort by the moving parties to avail themselves of the amnesty law and avoid a criminal trial.<sup>726</sup>

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<sup>722</sup> Article 8 of the Law on National Reconciliation (Decree number 145-1996 of December 27, 1996).

<sup>723</sup> OHCHR-Guatemala. Informe sobre las Actividades de su Oficina en Guatemala, 2012. January 7, 2013. para. 39.

<sup>724</sup> One sign of the degree of tension generated by the debate on the applicability of the amnesties is shown with more than 50% of the judges on the Court of Appeals recusing themselves from hearing an *amparo* ruling handed down by the Constitutional Court in which it was asked to argue on the application to Efraín Ríos Montt of Decree Law 8-86, which grants an amnesty for political and related common crimes.

<sup>725</sup> In this regard, the Constitutional Court recognized that the case-law of the Inter-American Court of Human Rights is binding and is part of the core content of the Constitution. It also reiterated that the extinction of criminal liability by prescription or by due obedience is not applicable, and that the states cannot invoke provisions of domestic law that impede the prosecution of serious human rights violations. It also recognized the imprescriptible nature of the crime against the duties of humanity in the Criminal Code (Article 378 of the Criminal Code), pursuant to the duty of the state to apply the rules of *jus cogens*. OHCHR-Guatemala. Informe sobre las Actividades de su Oficina en Guatemala, 2014. January 17, 2012. para. 27.

<sup>726</sup> CALDH, third party complainant in the genocide case, indicated that "We consider the resolution to be of great importance," since it came after "two years, five months, 18 days, and more than 100 recusals to hear the matter" by the court. The organization asserted that the judicial decision "sets one more precedent" with respect to the struggle to end "impunity in serious human rights violations committed during the internal armed conflict in Guatemala." *Público*, Rechazada la solicitud de amnistía al dictador Ríos Montt, October 9, 2015.

### 3. State's position regarding the decisions of the inter-American system - Genocide Denial

437. During the administration of Former President Pérez Molina, the government refused to characterize the incidents of the conflict, with its devastating impact on indigenous communities, as genocide. In the State response of October 6, 2015, it reiterates that what occurred in the internal armed conflict does not fit the definition of genocide as an international crime because it took place in the context of the Cold War and its origin was not inter-ethnic. It also finds offensive and unacceptable to state that there was genocide in Guatemala because no court or tribunal has ruled it in a firm.<sup>727</sup>
438. The genocide denial in Guatemala was the subject of a pronouncement by the Guatemalan Congress. On May 13, 2014, the Congress of the Republic adopted a declaration by which some recommendations were made regarding the scope of the Law on National Reconciliation and the Peace Accords. According to Operative Point 3-2014, the Congress stated that “notwithstanding that the legislation in force indicates that it is not viable for the elements that make up the criminal definitions indicated to occur in Guatemala, mainly as regards the existence of a genocide on Guatemalan soil during the internal armed conflict,” and it noted that investigating and punishing the serious human rights violations committed during that conflict would foster “conditions contrary to peace” and “would impede definitive national reconciliation.”<sup>728</sup> At the same time, it makes explicit reference, in the first line of its text, to the trial begun one year earlier against retired military officers Efraín Ríos Montt and Mauricio Rodríguez Sánchez, and it directly urges the judicial branch to administer justice “such that said justice may produce peace.” It is important to note that this Operative Point was approved the same week as the succession in the Attorney General’s Office.
439. In response to this situation, the IACHR issued Press Release No. 58, in which it observed with concern that the Operative Point makes specific reference to a criminal proceeding on charges of genocide with respect to which it notes that the terms of the respective statutory language are not met, and seeks to offer guidance as to how the judicial branch should decide such cases. In this respect, the Commission urged the State to preserve the principle of separation of powers as an essential condition for judicial independence.<sup>729</sup> The IACHR stated as follows:

The Inter-American Commission considers that a declaration of this nature, in the current context does not constitute a constructive step, in contrast

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<sup>727</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015.

<sup>728</sup> Operative Point 3-2014 of the Congress of the Republic, approved May 13, 2013; see also, *La Nación Mundo*, "Congreso de Guatemala niega genocidio en ese país [Congress of Guatemala denies genocide in that country], May 14, 2014; *Prensa Libre*, "Aprueban punto resolutivo que niega genocidio en Guatemala" [Resolution denying genocide in Guatemala is adopted], May 13, 2014; *Prensa Libre*, "Se oficializa punto resolutivo que niega genocidio" [Resolution denying genocide is formalized]. May 29, 2014.

<sup>729</sup> IACHR, Press release 58/14: IACHR Urges Guatemala to Continue Complying with its International Obligations and Fighting against Impunity. Washington, D.C., May 16, 2014.

with the efforts made by various State institutions to investigate and punish grave human rights violations and to fight against impunity.

The Inter-American Commission also notes with concern that this Resolution makes specific reference to the Rios Montt genocide trial, and indicates that the required elements of that crime have not been met in Guatemala. Further, it provides indications as to how the judiciary should rule in such cases. In this regard, the Commission urges the State to respect the principle of separation of powers, an essential condition of judicial independence. It recalls that the Constitution of Guatemala itself establishes, in Article 46, the general principle according to which human rights treaties and conventions that have been accepted and ratified by Guatemala take precedence over domestic law.

440. In the same press release, the IACHR referred to the lack of compliance of various sentences ordered by the Inter-American Court:

The IACHR recalls that Article 68 of the American Convention establishes the obligation to comply with the judgments of the Inter-American Court. In this regard, the Inter-American Court holds today, May 16th, during its 103rd Regular Session, a hearing to monitor compliance by Guatemala with eleven judgments (Blake, "Street Children" (Villagrán Morales), Bámaca Velásquez, Mack Chang, Maritza Urrutia, Plan de Sánchez Massacre, Molina Thiessen, Carpio Nicolle et al., Tiu Tojín, "Las Dos Erres" Massacre and Chitay cases). The purpose of this hearing, as the Court has announced, is to receive updated and detailed information on reparations and the obligation to investigate, establish the facts, prosecute, and, if necessary, punish those responsible. Despite the emblematic nature of these cases and the time passed since the various judgments, the obligation to investigate, prosecute, and punish those responsible has not been fulfilled. It is imperative that the State take the concrete and critical measures necessary to comply with its fundamental obligations under international law.

441. Faced with the State's position to challenge the mandatory compliance, the Inter-American Court, by order of August 21, 2014, regarding the supervision of the implementation of the judgments in 11 cases against Guatemala with respect to the obligation to investigate, prosecute, and, if necessary punish those responsible for human rights violations, ruled as follows:

That the position assumed by Guatemala during the private hearing on supervision of compliance with judgments held May 16, 2014, before the plenary of this Court constitutes a clear act of contempt by the State with respect to the binding nature of the judgments handed down by this Court, contrary to the international principle of carrying out treaty obligations in good faith and a breach of the duty to inform the Court, in the terms set forth in considering paragraphs 5 to 18 of this order.

Call on the State to adopt, finally and as soon as possible, all measures necessary to effectively and promptly carry out the judgments of the cases addressed by this Order, in keeping with the considerations set forth



therein and with what is stipulated in Article 68(1) of the American Convention on Human Rights.<sup>730</sup>

442. In addition, in its press release upon the culmination of the 153<sup>rd</sup> period of sessions, issued on November 7, 2014, the Commission expressed its profound concern over the denial of the genocide by the authorities, and the position adopted by the delegation of the State in the hearings, which defended the application of amnesties to serious human rights violations.<sup>731</sup>The IACHR, in the said hearing, also rejected the statements by the delegation of the State on access to justice and the legacy of the internal armed conflict. The Commission urged the State of Guatemala to abide by the judgments of the Inter-American Court and all the decisions of the inter-American system, and to adopt the measures required to identify, prosecute, and punish of perpetrators and masterminds of the genocide and for other serious human rights violations committed during the armed conflict.<sup>732</sup>
443. In response to that press release, the State of Guatemala sent a communication to the IACHR in which it “expressed its total repudiation of and disagreement with the enunciated by that international body against the State, and categorically affirming the inexistence of the crime of genocide in Guatemala. In the words of the State, “the pronouncement was made [...] since in reality the State of Guatemala is the only entity that takes cognizance of the causes of the armed confrontation in the country.”<sup>733</sup> In its response of October 2015 the State referred to that relevant “Historical Clarification Commission of Guatemala indicating that such Commission ” distinguish between a policy of genocide and acts of genocide. [ In view of this distinction ] The State of Guatemala considers that any event during the internal armed conflict is a crime of genocide<sup>734</sup>
444. The existence of the armed conflict, with the massive and serious human rights violations it caused, and the existence of the genocide as one part of it, have been analyzed extensively by the Commission for Historical Clarification, the IACHR, the Inter-American Court and multiple mechanism of the UN, among other organs competent to look into it; what remains is to carry out the obligations of justice and reparation, in consonance with the international obligations of the State, which freely assumed as a State party to the American Convention.

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<sup>730</sup> I/A Court H.R., Resolution of the Inter-American Court of Human Rights of August 21, 2014. Supervision of compliance with the judgment in 11 cases against Guatemala with respect to the obligation to investigate, prosecute, and, if appropriate, punish those responsible for the violations of human rights.

<sup>731</sup> IACHR, Press release 131/14: IACHR Wraps Up its 153<sup>rd</sup> Session, Washington, D.C., November 7, 2014. 131A/14—Report on the 153<sup>rd</sup> Session of the IACHR.

<sup>732</sup> IACHR, Press release 131/14: IACHR Wraps Up its 153<sup>rd</sup> Session. Washington, D.C., November 7, 2014. 131A/14—Report on the 153<sup>rd</sup> Session of the IACHR.

<sup>733</sup> State of Guatemala. Response from the State of Guatemala on the Communiqué released by the Inter-American Commission on Human Rights at the 153<sup>rd</sup> Regular Session on November 7, 2014, November 25, 2014, Ref. P-829-2014/AFAF/RVS.

<sup>734</sup> Response of the State of Guatemala regarding the “Draft General Report on the Situation of Human Rights in Guatemala and communication of August 14, 2015 of the Commission”, October 6, 2015, p. 39.



#### 4. Reparations for violations committed during the armed conflict

445. As regards reparations for the violations committed during the armed conflict, the IACHR received information on the policy of the administration of Otto Pérez Molina in the hearing held during the 150<sup>th</sup> period of sessions. In particular, it was informed once again of the scarce, limited coverage and delays of the Guatemalan State to make reparation to victims of the internal armed conflict. As a result of the Peace Accords, in 2003 the full legislature approved Executive Decree 258-2003, creating the National Reparations Program (PNR, for its acronym in Spanish) as an agency responsible for providing redress to the victims of the armed conflict.
446. More than 10 years after the PNR was established, the State has reported that it has invested approximately 720 million quetzals (approximately 94,200 millions of dollars), the largest share focused on economic compensation.<sup>735</sup> The State added that 54,756 applications have been submitted that sum a total of 75,674 victims, of whom nearly 33,000 individuals have received economic compensation and approximately 20,000 have been the beneficiaries of projects for material reparation (productive projects). It affirms that in 10 years the State, albeit with limited resources for reparation, has made efforts for reparation to reach the population affected. Then, it details the cases recorded in the data base of the PNR.<sup>736</sup> Nonetheless, in 2014 the IACHR was informed of the minimal gains in terms of services for the victims. Civil society organizations stated that there is no political will on the part of the State, that there is a lack of capacity to carry out the plan of the PNR, and that there were drastic budget cuts. They indicated that in carrying out pilot plans as part of the project agreements are reached with the victims, projects are started up, and they tend to stagnate without being completed. In particular, the communities that were assigned for pilot plans are communities where most of the victims are dying as they wait for some reparation. In the case of the women victims of the conflict, they indicated that they have not received psychosocial assistance, and that despite the years that have elapsed, they continue to be invisible as regards their legitimate claims.
447. At an IACHR hearing held on the subject in March 2014, the requesters indicated that on the new executive decree was published on December 30, 2013; it extends the life of the PNR for 10 years through the governmental agreement 539-2013.<sup>737</sup> They added that the new regulation of the PNR had several modifications, including the aim of the program is to compensate victims of human rights violations committed during the internal conflict, eliminating the specific reference to certain violations as massacres, sexual violence, crimes against humanity, among other, as well as eliminating the category of civilian victims. According to

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<sup>735</sup> IACHR, Hearing No. 23, National Reparations Program, March 25, 2014. Available at: [www.cidh.org](http://www.cidh.org) and Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015, pages 45-53.

<sup>736</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015," October 6, 2015, pages 45-53.

<sup>737</sup> IACHR, Hearing No. 23, National Reparations Program, March 25, 2014. Available at: [www.cidh.org](http://www.cidh.org)

the civil society which participated in the hearing, with this, the PNR has lost its *raison d'être* because its main purpose is to make reparation to the civilian victims who suffered serious human rights violations during the internal armed conflict.

448. At that hearing the State indicated that the reparations policy is a necessary commitment that cannot be ignored to guarantee a firm and lasting peace and national reconciliation. It affirmed the political will to strengthen the institutional framework of the PNR, to give impetus to measures of reparation in keeping with the financial possibilities of the State to guarantee the objectives of restoring dignity, historic truth, construction of citizenship and productivity for the victims individually and as communities affected by the internal armed conflict and with that make development and well-being feasible, and ensure that the past of confrontation never be repeated.

449. With respect to the reform of the PNR, the State indicated before the IACHR that the conduct that leads to human rights violations is not being done away with:

“the thing is that such conduct is situated in its real dimension. We know that there were massacres, we know that there were a series of elements, events that produced those violations. The right to life, the right to liberty, all the human rights that were violated, involved that conduct. What use is it to have reformed it? To be able to identify priorities and areas of attention.”<sup>738</sup>

450. More than ten years after the establishment of the PNR, it is still noted a lack of certainty regarding the selection criteria, delays of up to seven years in processing applications for reparation, as well as the lack of measures to guarantee that victims receive full reparation.

451. The Commission is concerned about the long time elapsed since the signing of the Peace Accords and the absence of effective reparation to the victims of the armed conflict, individually and collectively, especially to the members of the indigenous peoples; and that in the past year the State has taken measures to limit the scope of the PNR and to distort the characterization of the violations that occurred in the context of genocide. The IACHR will continue monitoring the PNR.

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<sup>738</sup> IACHR, Hearing No. 23, National Reparations Program, March 25, 2014. Available at: [www.cidh.org](http://www.cidh.org).

CHAPTER 6  
RIGHT TO PROPERTY AND  
CONSULTATION OF  
INDIGENOUS PEOPLES



## RIGHT TO PROPERTY AND CONSULTATION OF INDIGENOUS PEOPLES

### A. *Right to property*

452. With respect to the right and enjoyment of property is one of the challenges that indigenous peoples and communities face in Guatemala. In general terms, the situation of indigenous property rights is characterized by the lack of legal recognition of the lands and territories historically occupied; the extreme inequality in land distribution; juridical insecurity over their tenure; the lack of a cadastral system that recognizes ancestral territory and makes it possible to protect the lands belonging to the indigenous peoples; and the titling and registration of community lands by third persons anomalously and illegally, and the fact that the State considers that it is the owner of natural resources, among other considerations. In its response to the draft report, the State of Guatemala asserted that, according to the Constitution, natural resources belong to the State and not to any individual, specific person or community.<sup>739</sup> The IACHR observes that this situation responds to various historical factors, for from colonial times and throughout its republican life the history of Guatemala has been marked by decades of inequitable distribution and dispossession of the territories of the indigenous peoples and communities, exacerbated during the armed conflict by the displacements and scorched earth operations. The land issue also stems from many causes, as it reflects structural problems and short-term situations that affect the availability and distribution of land, poverty, and economic access to means of subsistence.
453. In addition to long-standing cases of territorial dispossession (conquest, colony, and independence) was added the dispossession on occasion of the armed conflict. When the communities were displaced inside or outside the country or in communities of resistance, their lands were nationalized and recorded in the name of the State by mechanisms ranging from measures legal in appearance to direct violence, harassment, and threats directed against authorities competent to assign community lands. As of 1982, through an interpretation of the Law of the INTA, the Government declared the lands of the displaced families to be in a “state of abandonment” and justified the conveyance to new occupants, affirming that the communities had voluntarily abandoned their lands.<sup>740</sup> During the military

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<sup>739</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015], October 6, 2015.

<sup>740</sup> OHCHR-Central America. *Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central*, 2011. Volume I.

regimes of the 1980s the main beneficiaries of the land programs were landowners, owners of large estates (*latifundistas*), and military officers.<sup>741</sup>

454. There were numerous irregular appropriations by the Army of *ejidos municipales* that were in the name of the municipal government and the residents, as well as registrations of unregistered lands in favor of third persons, even though there were communities that occupied them historically. In certain cases these actions were associated with the interest of landowners in ending the occupation of their farms by members of peasant and indigenous communities.<sup>742</sup> One illustrative case identified by the Commission for Historical Clarification is the Panzós massacre, committed in 1978 by the Army against Maya Q'eqchi communities in the Polochic Valley, department of Alta Verapaz. It was not until the mid-1990s, with the signing of the Peace Accords, that the indigenous peoples of Guatemala were recognized to have rights to the land, in both the *Agreement on Identity and Rights of Indigenous Peoples* and the *Agreement on Socioeconomic Aspects and Agrarian Situation* of May 6, 1996. In this last-mentioned agreement Guatemala recognized that the legal framework for agriculture and for institutional development in the rural area was in need of reform so as to put an end to the lack of protection and dispossession that have affected the peasants, especially the indigenous peoples; to make possible the full integration of the peasant population to the national economy; and to regulate the efficient and ecologically sustainable use of the land in keeping with the needs of development. In addition, it undertook to take a series of measures to attain that goal.<sup>743</sup>
455. One of Guatemala's main problems continues to be the major inequality in land distribution. According to the Gini index, Guatemala has the second highest concentration of land ownership in Latin America.<sup>744</sup> As the OHCHR notes, the 2003 agricultural census found that 92% of small producers occupied 22% of the available land, while a small group of large producers controlled the remaining 78%.<sup>745</sup> Land concentration has increased, mainly as the result of the purchase of vast areas in the zone planted in single-crop agriculture. The inequality in land tenure preserves characteristics similar to those that gave rise to social and political conflicts in the past.<sup>746</sup>

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<sup>741</sup> Barrios, Mayra (coordinator). *Rupturas, reconstrucción y continuidad en cinco comunidades q'eqchi': Las mujeres y el acceso a la tierra* [Breakups, Rebuilding, and Continuity in Five Q'eqchi' Communities: Women and Access to Land]. Universidad Rafael Landívar, 2007. p. 15.

<sup>742</sup> OHCHR-Central America. *Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central*, 2011. Volume I.

<sup>743</sup> *Agreement on socioeconomic aspects and agrarian situation*. III. Agrarian situation and rural development. E. Legal Framework and juridical security. Point 37. May 6, 1996.

<sup>744</sup> Information received at meeting with indigenous leaders, communities, and organizations, August 21, 2013 in Guatemala City.

<sup>745</sup> OHCHR-Central America. *Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central*, 2011. Volume I.

<sup>746</sup> Centro para la Acción Legal en Derechos Humanos and Coordinadora Nacional Indígena y Campesina [Center for Legal Action in Human Rights and National Indigenous and Campesino Coordination]. *Conflictividad de la Tierra. Evidencias de violaciones a los Derechos Humanos en Guatemala* [Land Conflicts: Evidence of Human Rights Violations in Guatemala]. 2009, p. 15. Cited by: OHCHR- Central America. *Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central*, 2011. Volume I.

456. The situation of indigenous property rights in Guatemala is marked by the failure to recognize historic rights to the land; the lack of legal certainty and guarantees such as titling, delimitation, and demarcation; the failure to resolve long-standing legal actions relating to the land; inconclusive and inefficient adjudication procedures that have resulted in debts for the communities; involuntary losses of lands due to causes associated with the armed conflict; evictions and forced displacements associated with development projects; and the impact on the enjoyment of their rights due to the creation of protected natural areas.

## 1. Legal and institutional framework relevant to indigenous property rights in Guatemala

457. The section referring to “Indigenous Communities” in the 1985 Constitution of Guatemala has two provisions<sup>747</sup> that are relevant to indigenous property rights and that set forth obligations related to the state duty to provide “special protection” to “the lands of the cooperatives, indigenous communities, or any other form of communal or collective tenure over agrarian property”; to the State duty to maintain as the property of the indigenous communities the lands they have historically occupied, as well as their administration; and the obligation to provide “state lands” (“*tierras estatales*”) to those indigenous communities that need them for their development. In its response of 6 October 2015, the State indicated that

“the agreement ( Peace ) on Identity and Rights of Indigenous Peoples of 31 March 1995 , reaffirms the rights of indigenous peoples referred to in the Constitution of the Republic of Guatemala and international instruments on human rights. Consequently , says the participation of indigenous peoples in the process decision making in various areas of national life”.<sup>748</sup>

458. As regards the domestic legislation, the Commission notes that legal mechanisms have not been established to enforce Article 67 of the Constitution on the collective or community nature of indigenous lands and territories, and the special protection they require. Beyond the constitutional provision, only some legal provisions recognize communal indigenous lands, and the translation of “special protection” into domestic provisions is very limited. It is also notes the failure to adopt specific legislation that allows for effectively ensure respect for and the guarantee of the right to collective property, even though Article 70 of the Constitution provides: “A statute shall regulate the matters addressed in this

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<sup>747</sup> Article 67. Protection of the Indigenous Agricultural Lands and Cooperatives. The lands of the cooperatives, the indigenous communities, and any other forms of communal or collective possession of agrarian ownership, as well as the family patrimony and low-cost housing shall enjoy special protection by the State, and preferential credit and technical assistance that guarantee their possession and development, in order to assure an improved quality of life for all inhabitants.

The indigenous communities and others who hold lands that historically belong to them and which they have traditionally administered in special form, shall maintain that system.

Article 68. Lands for Indigenous Communities. Through special programs and adequate legislation, the State shall provide state lands to the indigenous communities that need them for their development.

<sup>748</sup> Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015], October 6, 2015, p. 104.

section.” Nor were other legal mandates carried out, such as the one directed to the Supreme Court to create “agrarian courts” and present to the Congress of the Republic “in the shortest time possible, [...] a legislative initiative with the substantive and procedural legislation for its implementation.”<sup>749</sup> And so Guatemala does not have legal instruments that put the indigenous peoples and communities in a position to be able to channel their demands for rights to ancestral lands and territories based on their ancestral occupation. To the contrary, one finds numerous provisions contrary to the constitutional duties in the domestic law in such key legal texts as the Civil Code, which does not include any article that refers to this form of property, and also bodies of law that contain provisions incompatible with that obligation such as the Mining Code or the Law on Hydrocarbons, which the Commission will refer to later.

459. In the institutional realm, the entity entrusted with access to the land is the FONTIERRAS, created in 1999 by Decree 24-99 of the Congress of the Republic, pursuant to the Peace Accords<sup>750</sup> for they recognize that “large sectors of the Guatemalan population, particularly the indigenous peoples, are made up of landless peasants or peasants with insufficient lands.”<sup>751</sup> Its work is focused on reducing the lack of legal certainty, which is associated with *regularizing* the inconclusive proceedings for the adjudication of state lands; ensuring access to the land by *purchasing and leasing* from communities who have demanded it for years; and, *agrarian debt* as a result of loans to communities not in a position to pay them.<sup>752</sup> It is estimated that FONTIERRAS inherited 89,000 cases from the former INTA that had not been concluded.<sup>753</sup>
460. Another relevant institution is the Secretariat for Agrarian Affairs of the Presidency of the Republic (SAA, for its acronym in Spanish), responsible for carrying out commitments of the Executive on agrarian matters and rural development, contained in the Peace Accords, government policies, and the Constitution.<sup>754</sup> It has an Office of the Undersecretary for Conflict Resolution that engages in mediation and conflict resolution to facilitate the peace process on issues of access to land.<sup>755</sup> In cases of *ejidos municipales*, the municipal governments perform important functions, regulated by the Municipal Code.<sup>756</sup> The Registry of Cadastral Information (RIC, for its acronym in Spanish) and the General Property Registry (RGP, for its acronym in Spanish) are also key institutions in charge of technical, administrative, and legal activities for the purpose of establishing, maintaining, and updating the property registry and the cadastre at the national level.

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<sup>749</sup> Law on Registration of Cadastral Information. Article 91.

<sup>750</sup> Considering paragraph three of the FONTIERRAS Law, Decree 24-99.

<sup>751</sup> Considering paragraph two of the FONTIERRAS Law, Decree 24-99.

<sup>752</sup> Information received in meeting with FONTIERRAS, SAA, RGP, and RIC, August 21, 2013 in Guatemala City.

<sup>753</sup> OHCHR-Central America. Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central, 2011. Volume I.

<sup>754</sup> Executive Decree No. 136-2002.

<sup>755</sup> Information received in meeting with FONTIERRAS, SAA, RGP, and RIC, August 21, 2013 in Guatemala City.

<sup>756</sup> Municipal Code, Decree 12-2002 of the Congress of the Republic, Articles 63-66, 108-109.



## 2. Failure to recognize historical rights

461. The main obstacle to respecting and ensuring indigenous property rights in Guatemala is the failure to recognize historical use and occupation as the basis of indigenous peoples' and communities' collective rights to the land, territory, and natural resources.
462. The IACHR does not observe, in the FONTIERRAS Law, clear mechanisms for recognizing the historical occupation by the communities that do not have title or whose ancestral lands are registered to third persons, including the State. The IACHR takes note that according to the FONTIERRAS Law, the beneficiaries of the adjudication of lands by *regularization* are communities and individuals who were beneficiaries of the “policy of agrarian transformation” directed by the former INTA, which adjudicated them lands but did not grant them a title in the General Property Registry.<sup>757</sup> Accordingly, lands are adjudicated based on certain normative regimes, but not based on historical occupation by the communities. In addition, it notes that the institution has promoted titling through loans for its purchase or access to land through lease arrangements.
463. As regards the SAA, when faced with disputes over property rights, its process is to hold meetings with the indigenous communities and the record owners or possessors of the lands, in which the SAA acts as mediator and, if an agreement is reached, the communities can get an option to buy the lands. In this mechanism, ancestral use or occupation by the community does not appear to determine ownership of the property.
464. Given the noted non-existence of any legal instrument upholding the recognition of or protecting indigenous property rights, the different claims are being resolved on a case-by-case basis in the judicial branch and the Constitutional Court, leaving it to the discretion and knowledge of the judicial officer to resolve such a fundamental issue. In the judicial procedures for recovery and recognition of indigenous lands, it is noted the formalist application of the principle of “first in time first in right” according to which one who holds title is the owner and the title is proven if it is recorded. Accordingly, judicial decisions tend to be based on the existence of a title recorded to the one who claims the property, applying a civil law and formalist logic. Accordingly, if an indigenous community lacks a title recognizing its property rights, then despite having occupied the land historically—which is common in Guatemala—it will not have its right recognized, which is contrary to international law on the matter.

465. The IACHR is pleased to learn that judicial decisions have been handed down which, incorporating international standards, protect indigenous property rights. Specifically, one encouraging gain was in the case of the Maya Kaqchikel

<sup>757</sup> According to Article 42 of the FONTIERRAS Law, regularization includes those “conveyed or in the process of being conveyed by the State to determine compliance with Decrees 1551 [Law on Agrarian Transformation], 60-70 [Declaration of public interest and national urgency for establishing agrarian development zones as indicated], and 38-71 [Law on Adjudication, Tenure, and Use of the Land in Petén], all of the Congress of the Republic, and their amendments.” Article 42 of the FONTIERRAS Law.

community of *Chuatutuy* or Chuarrancho, which in 2012 filed a writ of *amparo* requesting recognition of their ancestral lands, of which they were dispossessed in 2001 by the RGP through its entry in the name of the municipality, even though the community had a title granted in 1897. The same Chamber granted protection in response to a writ of *amparo* filed by eight Q'eqch'í communities of Sierra Santa Cruz in El Estor, Izabal, against the RGP in response to an anomalous entry that blocked the granting of title.<sup>758</sup>

466. The inter-American case-law has determined that indigenous property rights are based on the historical use and possession of the lands and resources, and not on the official recognition of the State. In the words of the Inter-American Court: “As a result of customary practices, possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration.”<sup>759</sup> In addition, the Commission wishes to emphasize that in Guatemala one finds different collective systems of tenure over the land and territory that have resulted from the differentiated impacts and particular histories over the centuries, giving rise to distinct structures. For example, communal lands belong directly to the indigenous communities; they are used by the communities but recorded as *ejido municipal*<sup>760</sup>; there are those that are held undivided by some communities, having been formed through family ties, known as *parcialidades*; and those that have formed as a condition for gaining access to the land and management of the natural resources, such as cooperatives, community forestry concessions, collective agrarian properties, and associative peasant enterprises, among others.<sup>761</sup> In each region, the forms of social organization and government also vary around collective land tenure. All these systems require special protection, taking into consideration their specific particularities, such that the State should guarantee recognition of the land and rights of the indigenous peoples through their different forms of tenure and organization.
467. The IACHR notes that in general, the State of Guatemala has not implemented the obligation to develop laws and institutions which, in keeping with international standards, ensure respect for and guarantees of the rights of indigenous peoples and communities to their ancestral lands and territories in all the state agencies involved. The IACHR also notes that Guatemala has voluminous historical documentation that can serve as the foundation for the communities’ claims to

<sup>758</sup> GAMAZO, Carolina. *La batalla por la tierra. La registradora de la propiedad y la certeza de que nadie pueda reclamar Tikal*. Plaza Pública. December 2, 2013.

<sup>759</sup> I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, para. 151. I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 127.

<sup>760</sup> For example, according to the information received, in the Ixil area, made up of Nebaj, Chajul, and Cotzaj, very few communities have collective titles; rather, most of the lands are *ejidos municipales*. Information received in meeting with FONTIERRAS and SAA, August 25, 2013 in Nebaj, Quiché.

<sup>761</sup> Grupo Promotor de Tierras Comunales. Resumen del Diagnóstico y Estrategia Nacional para el Manejo y Conservación de Recursos Naturales en Tierras Comunales. October 5, 2006. Information received at meeting with indigenous leaders and organizations, August 26, 2013 in Huehuetenango, Huehuetenango, Guatemala. Information received in meeting with FONTIERRAS and SAA, August 25, 2013 in Nebaj, Quiché.

territorial rights. Nonetheless, national initiatives have not been established that make it possible, on the one hand, to protect and compile this information, and on the other hand to identify the connections between those historical documents and the current situation in terms of property rights.

468. Regarding this, the IACHR appreciates that, in a recent judgment, the Constitutional Court ruled null and void the titling of three farms that were being claimed by the Q'eqchi' indigenous communities of Sierra Santa Cruz. For more than 20 years, the communities had been claiming ancestral ownership of their community land, which had been anomalously and illegally registered for the benefit of third parties. As a result of the decision of the Constitutional Court, the farms were transferred back to State ownership, and now communities can continue to process regularizing land titles with the Land Fund (Fondo de Tierras).<sup>762</sup>

### 3. Lack of legal certainty, titling, delimitation, and demarcation of indigenous lands and territories

469. The various sources available to the IACHR indicate that in Guatemala the high degree of juridical insecurity is one of the main problems related to property rights in general and indigenous property rights in particular. Guatemala also has a high rate of unregistered lands, and in general the spaces are not demarcated or delimited, nor is there a cadastral registry of the national territories. According to the FONTIERRAS, there were 86,000 families demanding legal certainty<sup>763</sup> and there are as many as 800,000 landless families, based on the 285,000 requests to access and lease land.<sup>764</sup> According to the SAA, from 1997 to 2010, there were 5,243 cases of land disputes nationally, 1,379 of which have yet to be resolved.<sup>765</sup> As of August 2013, there were 1,293 cases on record that involve 1,059,873 persons (81% of them indigenous), 66% of which are in the departments of Alta Verapaz, Huehuetenango, Petén, and Quiché.<sup>766</sup> This overall situation has created situations of considerable unrest among indigenous peoples and communities, owners of landed estates, and peasant farmers.
470. There is no census of all the communal lands so as to determine their status with respect to legal certainty, titling, delimitation, and demarcation. Nor is it possible to find official and comprehensive sources on all the communities in possession of lands who do not enjoy legal certainty or those that are claiming the right to

<sup>762</sup> *El Periódico*, *CC ampara a comunidades q'eqchi's*, December 8, 2015.

<sup>763</sup> Information received at meeting with FONTIERRAS, SAA, RGP, and RIC, August 21, 2013 in Guatemala City.

<sup>764</sup> OHCHR-Guatemala. *Los desalojos en el Valle del Polochic. Una mirada a la problemática agraria y a la defensa de los derechos humanos de las comunidades q'eqchi's* [A Look at the Agrarian Problems and Human Rights Defense of the Q'eqchi' Communities]. United Nations. Guatemala City: 2013, p. 11.

<sup>765</sup> Secretariat for Agrarian Affairs. *Memoria de Labores* [Report on Activities]. Guatemala, 2010. pp. 5-6. Available at: <http://portal.saa.gob.gt>. Secretariat of Agrarian Affairs. *Memoria de labores 2013-2014* [Report on Activities]. Available at: <http://portal.saa.gob.gt>. p. 6.

<sup>766</sup> Information received in meeting with FONTIERRAS, SAA, RGP, and RIC, August 21, 2013 in Guatemala City.

restitution of communal lands, having lost possession of them due to causes beyond their control. Some specific research studies provide valuable information, such as that carried out by the Promoters Groups for Communal Lands (*Grupo Promotor de Tierras Comunales*) in October 2006. According to that research, there are 1,213 cases of communal lands – without indicating whether they have legal certainty – that extend in all to 15,771 km<sup>2</sup>, equivalent to 14.48% of the national territory, and in all the departments and socio-linguistic communities.<sup>767</sup>

471. The IACHR considers that the Government has not brought significant changes about in the situation of property rights in Guatemala, nor in recognizing and granting legal certainty to the historical rights of the indigenous peoples and communities to their lands and territories. The IACHR observes that this situation reflects multiple factors, among which special mention should be made of the lack of an adequate budget, which expresses the absence of political will despite the crucial work that has been entrusted. The lack of an adequate response to the demands for recognition and protection of property rights explains the degree of conflict around project approval and implementation, and the worsening violence affecting numerous indigenous communities throughout the country. In addition, the lack of juridical security and legal certainty over the land poses more difficulties to the indigenous communities threatened by extractive projects.<sup>768</sup>
472. One of the relevant processes unfolding is the survey of cadastral information by the RIC for the purpose of determining possessors of land and those who are entered in the RGP. The cadastral process is under way in more than 60 prioritized zones in 41 municipalities situated in eight departments; it is estimated that the national cadastre will be completed in 2025. As of 2013, of the 275,080 properties measured, 85,719 had record titleholders. The IACHR considers it positive that the Law of the RIC establishes the obligation of that institution to identify and declare the lands in possession or the property of indigenous communities, contains a broad definition of “communal lands,” and guarantees that the rights can be supported with historical documents. In addition, that law indicates: “In any event, the RIC shall be subject to the regulations in the Constitution ... and [ILO] Convention 169.”<sup>769</sup> There is also a *Specific Regulation for Recognition and Declaration of Communal Lands in the Registry of Cadastral Information*.<sup>770</sup>

473. The IACHR considers that the survey is an opportunity to reduce juridical insecurity in Guatemala and may be crucial for moving forward in recognizing the historic rights of indigenous communities and peoples, and calls on the competent

<sup>767</sup> Grupo Promotor de Tierras Comunales. Resumen del Diagnóstico y Estrategia Nacional para el Manejo y Conservación de Recursos Naturales en Tierras Comunales. October 5, 2006.

<sup>768</sup> It was reported, for example, that the 32 communities of the municipality of Ixcán threatened by the Xalalá hydroelectric project have recently had to register and obtain juridical personality as “indigenous communities” so as to begin a legal action to have the State recognize their right to historic possession of the land, which has delayed their ability to put forward their legal case. Information received at meeting with indigenous communities and organizations in Cobán, Alta Verapaz, August 23, 2013.

<sup>769</sup> Law of the RIC, Articles 23(y) and 65.

<sup>770</sup> RIC. *Specific Regulation for the Recognition and Declaration of Communal Lands*. Approved May 18, 2009 by Resolution No. 123-001-2009, published July 29, 2009.

institutions to overcome the shortcomings identified, correct the mistakes made, and avoid their repetition. This should be done abiding by the relevant standards and mindful that the obligation to delimit, demarcate, title, and register the territorial property rights of the indigenous peoples should be discharged through special procedures in which full and effective participation must be guaranteed.<sup>771</sup> In addition, the State has the obligation to refrain from performing acts contrary to indigenous property rights, such as dividing collective property into individual holdings, or titling it to third persons.

474. One matter of special concern refers to the spiritual relationship of indigenous peoples and communities with the territory and access to sacred sites, the Commission has been informed of the impediment to access and even the destruction of sacred sites. One example is the destruction of the sacred place called Tulam Tzu or El Rosario-Naranjo to build a housing project. The IACHR issued a statement on the impairment of this site, which is sacred for the spirituality of the Maya people, by granting a precautionary measure, on July 14, 2006, in favor of the Maya Sitio Community of El Rosario/Naranjo. Even though the Commission asked the State to adopt the measures necessary for its protection, that site was destroyed.<sup>772</sup> As observed by the IDMC, years later it was discovered that many of the victims of forced displacement were not included in the report of the Commission for Historical Clarification thus their real number may be much greater than estimated: “The number of people displaced in the conflict, and the number of IDPs remaining ... are far from clear.”<sup>773</sup>
475. Carrying out the obligations associated with the right to restitution of their ancestral lands is crucial for the internally displaced communities in Guatemala. As the IACHR has indicated, so long as the fundamental relationship with their ancestral territory subsists, indigenous peoples have a right to restitution of their ancestral lands, and when it is not materially possible due to objective and well-founded causes, they have a right to be given alternative lands of at least the same size and quality and/or to receive payment of fair and prompt compensation. It is also an important provision of the *Agreement for the Resettlement of the Populations Uprooted by the Armed Confrontation*, in which Guatemala undertook to “promote ... the return of the lands to the original possessors and/or seek ... adequate compensatory solutions.”<sup>774</sup> Nonetheless, the information available suggests that years after the conclusion of the conflict there are still displaced communities who have not been able to return to their ancestral lands; as well as communities that have not had their property rights legally restored. The IACHR does not note any public policy aimed at carrying out those obligations and making restitution of the ancestral lands that were dispossessed. It was not until 2012 that the PNR and the FONTIERRAS signed an Agreement “to facilitate and expedite the

<sup>771</sup> IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources*, 2009, Chapter VI.

<sup>772</sup> IACHR, *Maya-Sitio Community of El Rosario-Naranjo*.

<sup>773</sup> International Displacement Monitoring Centre. *Guatemala: Violence and inequality still blocking solutions for IDPs*. 2009. Citing Amnesty International, 2009 Report, Guatemala.

<sup>774</sup> *Agreement for the Resettlement of the Populations Uprooted by the Armed Confrontation*. Signed in Oslo, June 17, 1994. Point 9.

purchase and granting of land to the victims and survivors who lost it due to the internal armed confrontation”<sup>775</sup>; nonetheless, the Commission has not been informed of specific gains in this regard.

476. The Commission considers that in order to overcome the lack of recognition and lack of protection for indigenous peoples’ property rights a specific, clear, and comprehensive public policy is needed aimed at conferring legal certainty on indigenous lands and territories through their recognition, titling, demarcation, delimitation, and warranty of title. In addition, the IACHR considers that the public institutions need to coordinate among themselves and improve their capacity to implement the policies and legal provisions effectively and efficiently. This can be attained, among other measures, by establishing a center for handling complaints and consultations for the population that is culturally appropriate, holding social audits with the accompaniment of civil society, and creating integrated information systems in the different institutions, including the registry and the cadastre. Sufficient financing and political will are also needed to carry out these changes.

#### 4. Forced evictions of indigenous peoples and communities

477. One especially worrisome aspect for the IACHR refers to forced evictions of indigenous communities in several zones of the country. According to the information available, from 2004 to 2007 there were 72 violent evictions; 44 are on record from 2007 alone.<sup>776</sup> In the following years these have continued to be a key concern of indigenous organizations and communities. Although the Commission does not have information on the total number of forced evictions, it is known to be a practice that has continued to affect hundreds of persons and communities in Guatemala.<sup>777</sup> Other international human rights bodies, such as the UN Special Rapporteur on the right to food, have also observed this phenomenon with concern.<sup>778</sup> The information received suggests that many times such evictions are related to the expansion of extensive single-crop agriculture, taking control of areas for pasture, or implementing development and infrastructure projects.

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<sup>775</sup> PNR. Memoria de labores 2012-2013. Guatemala City: 2013, p. 28.

<sup>776</sup> International Displacement Monitoring Centre. Guatemala: Violence and inequality still blocking solutions for IDPs. 2009. Citing Amnesty International. 2009 Report, Guatemala.

<sup>777</sup> The OHCHR in Guatemala observed evictions carried out in the Polochic Valley (Alta Verapaz), which affected 732 Q’eqchi’ families (March 15); the one in Retalhuleu, which affected 139 peasants (July 28); and the one in the Sierra “El Lacandón” Park, in Petén, which affected 69 families (August 24). OHCHR-Guatemala. Report on the activities of the office in Guatemala, 2011, January 30, 2012, para. 76. In 2012, the OHCHR observed the violent eviction of 325 persons in Cahabón, Alta Verapaz, OHCHR-Guatemala. Report on the activities of the office in Guatemala, 2012, January 12, 2013, para. 80.

<sup>778</sup> United Nations. Special Rapporteur on the right to food, Mr. Olivier De Schutter, Report on Mission to Guatemala. January 26, 2010, para. 20. Amnesty International has stated that “Eviction effectively [became] the *first* rather than *last* resort to remove a ‘problem.’” Amnesty International. Guatemala: Land of Injustice? 2006. p. 33. Cited by: OHCHR-Central America. Diagnóstico sobre la Situación de los Derechos Humanos de los Pueblos Indígenas en América Central [Assessment of the Situation of Human Rights of the Indigenous Peoples in Central America]. Volume I. 2011.

478. According it was informed, one situation that has drawn the special attention of the IACHR refers to 14 Maya Q'eqchi communities in the Polochic Valley, forcibly evicted in March 2011 and beneficiaries of precautionary measures issued by the IACHR since June 2011. The eviction was ordered pursuant to a criminal proceeding for allegations of usurpation and aggravated usurpation brought by the company Chabil Utzaj. In the criminal proceeding, shortcomings were identified, such as the lack of investigative steps by the Attorney General's Office to show ownership of the farms, holding a hearing in which there is no record of the participation of the communities or organizations that work with them; failure to give notice to the community members or the opportunity to put on a defense or present evidence, who did not find out about the eviction until the security forces appeared in the Polochic Valley.<sup>779</sup> Simultaneously, there was a dialogue with the SAA, the FONTIERRAS, and the National System of Permanent Dialogue, which held its last meeting one day before the evictions, and that several years prior to the arrival of the company Chabil Utzaj, thousands of Q'eqchi families spent years applying to the FONTIERRAS for adjudication of lands.<sup>780</sup> In 2011, the Attorney General's Office, to avoid similar events, put out a general instruction indicating the criteria for investigating a report of the crime of usurpation<sup>781</sup> because "such conflicts [often] occur between a person who has a right recorded over the lands, and indigenous communities who have historically occupied the lands but do not have recorded title."<sup>782</sup>
479. It should be noted that, in the framework of the precautionary measure for the 14 Q'eqchi' communities of the municipality of Panzós del Valle del Polochic, the State has informed the IACHR of a series of measures implemented to address the alleged situation of risk for beneficiaries, among which: (i) settlement plan where the Secretariat for Agrarian Affairs had relocated 31 families to the San Valentín farm, which is now called the Comunidad Los Luchadores, San Esteban; (ii) provision of building materials for provisional housing; (iii) supply of food by the Ministry of Agriculture, Livestock, and Food; (iv) provision of public security and first aid; (v) supplies for sleeping, such as sheets, bed planks, and mattresses; (vi) tanks for storing safe drinking water; (vii) nixtamal mills; among other actions

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<sup>779</sup> OHCHR-Guatemala. *Los desalojos en el Valle del Polochic*. Una mirada a la problemática agraria y a la defensa de los derechos humanos de las comunidades q'eqchi's [A Look at the Agrarian Problems and Human Rights Defense of the Q'eqchi' Communities]. United Nations. Guatemala City: 2013, pp. 14-15.

<sup>780</sup> Instituto de Estudios Agrarios y Rurales de la Coordinación de ONG y Cooperativas de Guatemala [Institute of Agrarian and Rural Studies of the Coordination of NGOs and Cooperatives of Guatemala]. *Aj Ral Ch'och. Despojo y resistencia en la Guatemala del siglo XXI [Plundering and Resistance in Guatemala in the 21st Century]*. Caracol Producciones. Information received during visit to Guatemala in Cobán, Alta Verapaz. August 23, 2013.

<sup>781</sup> Attorney General's Office. General Instruction for the Investigation of the Crime of Usurpation and Request and Processing of Eviction Orders. Decree 7-2011; which was derogated by General Instruction No. 03-2012, General Instruction for the Investigation of the Crime of Usurpation and Request and Processing of Eviction Orders, May 8, 2012.

<sup>782</sup> Information received at a meeting with the Attorney General's Office on August 22, 2013 in Guatemala City.



aimed at addressing the situation and enforcing the IACHR's precautionary measures<sup>783</sup>.

480. The IACHR considers that legal and inter-institutional instruments should be reframed in accordance to international legal provisions and standards, and States should refrain from carrying out forced evictions and are obligated to adopt measures to protect against the evictions of persons and communities under its jurisdiction.<sup>784</sup> In this respect, the Committee on Economic, Social and Cultural Rights has said that “instances of forced eviction are prima facie incompatible with the requirements of the [International] Covenant [on Economic, Social and Cultural Rights] and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”<sup>785</sup> As noted in the *United Nations Basic Principles and Guidelines on Development-based Evictions and Displacement* (Basic Principles and Guidelines on Evictions and Displacement), such acts constitute “gross violations of a range of internationally recognized human rights,” such as the right to property, the right to security in the home, and the right to adequate housing, among others.<sup>786</sup>
481. In light of the international legal provisions and standards, an order for the forced eviction of indigenous communities or peoples requires of the Attorney General’s Office and judicial branch their determination, through a strict and exhaustive scrutiny that takes into account, as fundamental aspects, not only the existence of a registered title, but also the broadest and most complete registry and cadastral information possible, the determination of the existence of a proceeding on the land currently before a judicial or administrative authority, and historical and anthropological considerations regarding occupation of the land, among others. In the event that it is determined that the lands in question may be lands traditionally used and occupied by indigenous communities that were acquired unlawfully, no eviction should be ordered without the communities’ prior consent. In addition, the IACHR considers it fundamental that all the institutions involved, including the Ministry of Interior and the PNC, act decisively to implement the obligation to refrain from carrying out forced evictions, and provide protection against them,

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<sup>783</sup> Responses of the State of Guatemala in the context of the precautionary measure and Report of the State of Guatemala on the “Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015], October 6, 2015.

<sup>784</sup> These obligations are based on various international instruments that protect the right to property, the right to protection from arbitrary or illegal intrusions in the home, and the right to adequate housing, among other related rights. These include the American Convention (Articles 21 and 17.2), the American Declaration (Articles IX and XXIII), and the International Covenant on Economic, Social and Cultural Rights (Article 11). There are several pronouncements and instruments along these lines, such as General Comments No. 4 (1991) and No. 7 (1997) of the Committee on Economic, Social and Cultural Rights, the Guiding Principles on Forced Displacement, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, approved by the General Assembly in its resolution 60/147, the Principles on Housing and Property Restitution for Refugees and Displaced Persons, and the UN Basic Principles and Guidelines on Development-based Evictions and Displacement.

<sup>785</sup> United Nations. Committee on ESC Rights. General Comment No. 4 (1991), para. 18.

<sup>786</sup> United Nations. *Basic Principles and Guidelines on Development-based Evictions and Displacement*. Annex I of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, para. 6.



which in the case of the indigenous peoples and communities is bound up with the obligation of special protection under both the Constitution of Guatemala and international law.

482. The Commission also has a series of concerns regarding the execution of eviction orders. According to the information received, the authorities in charge, both the PNC and the Attorney General's Office, would have carried out evictions without respecting protocols on the use of force, leading in some cases to the deaths of indigenous persons. There have been unlawful and arbitrary arrests of authorities, leaders, and members of indigenous communities, and the destruction and burning of their goods, crops, and housing, without the communities being allowed them to recover them. In addition, soldiers have participated in these actions, along with agents of private security companies, in violation of international standards.<sup>787</sup> The Ministry of Interior has a Protocol for Police Action for evictions.<sup>788</sup> It is observed that said instrument does not translate into clear guidelines the requirements that must be respected in any procedure, such as those contained in the *Basic Principles and Guidelines on Evictions and Displacement*<sup>789</sup> and it observes that the Protocol for Police Action considers the possibility of "the participation of members of the National Army through the Liaison Office,"<sup>790</sup> and it is also possible to apply Decree 40-2000, the Law in Support of the Civilian Security Forces, which authorizes the Army to provide support to the police if asked to do so.
483. The IACHR reiterates the appeal made to the State to effectively and fully comply with its international duties, mindful that according to the international standards on forced evictions, in cases of lands and territories that do not belong or are not claimed by indigenous peoples and communities, States should provide sufficient alternative shelter that meets certain minimum requirements such as essential food, drinking water, basic shelter and housing; fair and impartial compensation for any harm caused; and restitution and return, when feasible, immediately after the eviction, except in cases of *force majeure*.<sup>791</sup> The Commission notes that in the case of the ancestral lands of indigenous peoples or communities, States should adopt all measures necessary to allow for the return of indigenous peoples to their traditional territories safely and with dignity, which in the case of the forced displacements provoked by contexts of violence includes the duty of the State to

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<sup>787</sup> Complaint by the Q'eqchi, Poqomchi', and Achi' peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received on August 23, 2013, in Cobán, Alta Verapaz.

<sup>788</sup> Ministry of Interior. General Directorate of the PNC. Protocol for Police Action – Eviction. No. 01-2012. Guatemala City, October 2012.

<sup>789</sup> United Nations. *Basic Principles and Guidelines on Development-based Evictions and Displacement*. Annex I to the Report of the Special Rapporteur on adequate housing as part of the right to an adequate standard of living, paras. 45-51.

<sup>790</sup> Ministry of Interior. General Directorate of the PNC. Protocol for Police Action – Eviction. No. 01-2012. Point 7. Guatemala City, October 2012.

<sup>791</sup> United Nations. *Basic Principles and Guidelines on Development-based Evictions and Displacement*. Annex I of the Report of the Special Rapporteur on adequate housing as part of the right to an adequate standard of living, para. 52.

take measures to fight the impunity enjoyed by those who are responsible for that violence.<sup>792</sup>

## 5. Establishment and management of protected natural areas

484. Several indigenous peoples and communities have historically conserved territories with natural ecosystems as part of their way of life. Since the 1990s, some of these lands have been declared to be protected areas and at present make up the Guatemalan System of Protected Areas (SIGAP, for its acronym in Spanish). By the Law on Protected Areas of 1989, adopted by Legislative Decree 4-89, the National Council of Protected Areas (CONAP, for its acronym in Spanish) was established as the highest-level management and coordination body of the SIGAP, directly under the Presidency of the Republic. According to the information available, as of December 2013 the SIGAP included 322 areas declared as protected areas, corresponding to 31.06% of the surface area of Guatemala.<sup>793</sup>
485. The information received by the Commission indicates that since this system was established, numerous protected areas have been created on lands and territories historically occupied by indigenous communities without respect for or recognition of their rights.
486. The IACHR takes note that according to the legal framework of the SIGAP, constituted by that statute and its regulation, the executive decree of 1990, within the protected areas there may be state and private property. Regarding private property it provides that private owners “fully maintain their rights to it and shall manage it in keeping with the applicable laws and regulations.”<sup>794</sup> Although no specific provisions are established aimed at recognizing and protecting indigenous property that coincides with a protected natural area, in some cases the excerpt cited has been applied so that the communities who were in the zone prior to the declaration of protected areas can remain and regularize their occupation. In addition, the CONAP adopted the “Policy on Human Settlements in Protected Areas of the Petén,” which contemplates the possibility of regularization of the property of communities existing prior to the moment of the creation of the protected area and at the same time establishes, among its objectives, “to promote the relocation, with accompaniment, of former settlements” and “to promote the voluntary departure and eventual eviction of recent settlements.”<sup>795</sup> One additional problem is that the FONTIERRAS Law is interpreted to mean that once an area has been declared protected, the FONTIERRAS would not have jurisdiction to regularize

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<sup>792</sup> IACHR, *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, 2009, para. 152. See also, I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005, Series C No. 124, para. 120.

<sup>793</sup> SIGAP. [List of protected areas as of January 2015](#)

<sup>794</sup> Article 10 of Decree 4-89, Law on Protected Areas.

<sup>795</sup> Bufete Jurídico de Derechos Humanos de Guatemala. Situation of communities in Petén. Information received by the IACHR in August 2013 visit.

land tenure or to grant titles to indigenous communities.<sup>796</sup> Nonetheless, a rectification was observed when in February 2013 the FONTIERRAS Law conveyed legal title to 14 communities in the Sierra de Chinajá, given that the institution found that they had occupied ancestrally lands that had been declared a protected area.<sup>797</sup> In addition, there are cases of communities which, as a result of the declaration of protected areas, were being forcibly evicted from the lands they had occupied historically, even by violent acts such as the destruction of their crops and physical assaults. At the same time, extractive and hydroelectric projects were authorized in protected areas.

487. One of the communities' demands in cases of overlap with protected areas is that the management categories do not reflect their own systems for collective management of natural goods. In this regard, there is a *National Strategy for the Management and Conservation of Natural Resources on Communal Lands*, under the responsibility of the CONAP, whose objectives include strengthening the "full recognition by the State and civil society of historical rights to communal lands."<sup>798</sup> The Commission welcomes this initiative and makes an appeal to guarantee the right to consultation of the indigenous peoples and communities throughout the process.

## **B. Consultation**

### **1. Situation of the exploration and exploitation of natural resources that affect indigenous lands and territories, and main concerns in connection with the activity of the Guatemalan State**

488. The IACHR observes that the main concern of the communities, organizations, authorities, and leaders refers to the implementation of plans and projects on their ancestral lands and territories and the natural resources located there. The information available to the IACHR suggests that since the late 1990s and more intensely since 2000, the dispute began to grow more acute around mining, infrastructure, hydroelectric, and single-crop agricultural projects, among others, as they were being implemented in violation of the rights of indigenous peoples and communities. The lack of procedures for consultation with the communities, the repudiation of the results of the community consultations convened by the

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<sup>796</sup> Information received at a meeting with the MARN, MEM, and CONAP, August 21, 2013 in Guatemala City. FONTIERRAS Law, Article 45. Exceptions, protected areas, and territorial reserves. This law does not apply to the following lands: in private possession of any type, of the Indigenous Communities, protected areas, and territorial reserves, in keeping with what is established by the Constitution of the Republic and the specific laws of each subject matter. The protected areas are subject to their own regime. In no case may there be availability in core zones or their multiple use zones designated by the Law on Protected Areas.

<sup>797</sup> Information received in meeting with FONTIERRAS, SAA, RGP, and RIC, August 21, 2013, in Guatemala City.

<sup>798</sup> Grupo Promotor de Tierras Comunales. Resumen del Diagnóstico y Estrategia Nacional para el Manejo y Conservación de Recursos Naturales en Tierras Comunales. October 5, 2006.

communities, the lack of respect for the communities' positions, the lack of attention to reports of assaults or threats, and the lack of attention or presence of public authorities who the communities have asked to guarantee protection for their members, have all been identified as factors that contribute to bringing about, feeding, or sharpening social conflicts.<sup>799</sup> In its response of October 6, 2015 the State indicated that "effectively, the right to prior consultation for indigenous peoples is a pending issue to be resolved by the State and therefore, as the Constitutional Court held, it is unquestionable the right of indigenous peoples to be consulted."<sup>800</sup>

489. Guatemala, as a state party to human rights treaties, is obligated by the duties that stem from those instruments in relation to indigenous peoples' right to consultation.<sup>801</sup> On June 5, 1996, Guatemala ratified ILO Convention 169;<sup>802</sup> it also voted in favor of adopting the UN Declaration on the Rights of Indigenous Peoples on September 13, 2007. While the state duty to consult does not appear to be regulated in the Constitution, Article 46 provides that "the treaties and conventions accepted and ratified by Guatemala prevail over domestic law." On the basis of this provision, the Constitutional Court has found that consultation is "a fundamental right collective in nature," and part of the core content of the Constitution.<sup>803</sup>

490. Domestically, the *Agreement on Identity and Rights of Indigenous Peoples*, elevated to a state commitment by Decree 52-2005, stipulates the need "to obtain the favorable opinion of the indigenous communities prior to exploiting the natural resources that may affect the subsistence and way of life of the communities...."<sup>804</sup> It also incorporated as an objective "to promote legal and institutional reforms that facilitate, regulate, and guarantee said participation," "with the participation of representatives of the indigenous organizations," including the establishment of "compulsory mechanisms of consultation with the indigenous peoples every time that legislative and administrative measures" are being considered that may affect them.<sup>805</sup>

491. ILO Convention 169 and the Peace Accords were the basis for the decentralization laws. In particular, Article 65 of the Municipal Code, entitled "consultations with the indigenous communities or authorities of the municipality," establishes:

<sup>799</sup> Peace Brigades International. Monthly Information Package on Guatemala. No. 124—January 2014.

<sup>800</sup> Responses of the State of Guatemala in the context of the precautionary measure and Report of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala and the IACHR Communication of August 14, 2015], October 6, 2015, p. 106.

<sup>801</sup> In addition to the American Convention, it has ratified the International Covenant on Civil and Political Rights (May 5, 1992), the International Covenant on Economic, Social and Cultural Rights (May 19, 1988); and the International Convention on the Elimination of All Forms of Racial Discrimination (January 18, 1983).

<sup>802</sup> Pursuant to Decree 9-96, it became a provision of domestic law.

<sup>803</sup> Constitutional Court of Guatemala. Case No. 3878-2007. Judgment of December 21, 2009. Considering paragraph V.

<sup>804</sup> Agreement on the Identity and Rights of the Indigenous Peoples. Article 6(c).

<sup>805</sup> Peace Agreement on Identity and Rights of the Indigenous Peoples (Mexico City, March 31, 1995), elevated to the rank of statute by the Framework Law of the Peace Accords, Decree 52-2005 of the Congress of the Republic, ch. IV, sec. D, para. 4. and ch. IV, sec. E, para. 5(a).

“When the nature of a matter affects in particular the rights and interests of the indigenous communities of the municipality or of their own authorities, the Municipal Council shall engage in consultations at the request of the indigenous communities or authorities, even applying criteria particular to the customs and traditions of the indigenous communities.”<sup>806</sup>

In addition, the Law on Urban and Rural Development Council provides: “Until the law is issued that regulates consultation with the indigenous peoples, the consultations of the Maya, Xinka, and Garifuna peoples on the development measures promoted by the Executive branch and that directly affect these peoples may be done through their representatives on the development councils.”<sup>807</sup> In addition, Article 18 of the General Law on Decentralization provides: “The community organizations recognized in keeping with the law may also participate in the works, programs, and public services of their community, in coordination with the municipal authorities.”<sup>808</sup>

492. In the sphere of the constitutional jurisdiction, in 1995 the Constitutional Court, by advisory opinion, determined the constitutionality of the provisions contained in ILO Convention 169 and recognized the consultation as a fundamental right that must be respected. The Court has also held that “the right of the interested peoples to be consulted is unquestionable”<sup>809</sup> and it has recognized that this right is part of the core principles in the Constitution. These provisions and pronouncements evidence the domestic recognition of this state obligation and provide mechanisms for the exercise of the right to consultation, even though there is not an adequate legal and institutional framework, since provisions are maintained that are openly contrary to this right. In effect, the Law on Mining of 1997, Decree 48-97, does not contain provisions for the indigenous peoples to be consulted before the approval of licenses for the exploration or exploitation of mining projects.<sup>810</sup> In addition, the Regulation on Evaluation, Control, and Environmental Monitoring, approved by Executive Decree 431-2007 of September 17, 2007,<sup>811</sup> contains a procedure for “public participation” prior to the approval of the social and environmental impact studies for granting licenses.<sup>812</sup> Nonetheless, these are “interviews, surveys,

<sup>806</sup> Municipal Code, Decree 12-2002 of the Congress of the Republic. Article 65.

<sup>807</sup> Law on Urban and Rural Development Councils, Decree 11-2002 of the Congress of the Republic, Article 26.

<sup>808</sup> General Law on Decentralization, Decree No. 14-2002 of the Congress of the Republic, Article 18.

<sup>809</sup> Constitutional Court. Judgment of May 18, 2007, Case No. 1179-2005, Considering para. VI.

<sup>810</sup> The Regulation on Evaluation, Control, and Environmental Monitoring, which determines the procedure for approving the social and environmental impact studies required by the Law on Mining before granting licenses for mining production, requires the participation of the communities affected be ensured through “interviews, surveys, workshops, assemblies, and/or working meetings.” With which this mechanism is far from carrying out Guatemala’s international obligations in this area. Regulation on Evaluation, Control, and Environmental Monitoring, Executive Decree 431-2007 and its amendments, Article 74.

<sup>811</sup> Nor do the Forestry Law, the Law on Hydrocarbons, or the General Law on Electricity, *inter alia*, have suitable and effective mechanisms for engaging in consultations with the indigenous peoples. Decree No. 101-96 of the Congress of the Republic; Decree-Law No. 109-83; Decree No. 93-96 of the Congress of the Republic. General Law on Electricity, its Regulation and the Regulation of the Administrator of the Wholesale Market. Along similar lines, United Nations. Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. June 7, 2011, para. 23. OHCHR-Central America. Diagnóstico sobre la Situación de los derechos humanos de los pueblos indígenas de América Central, 2011. Volume I.

<sup>812</sup> Title VIII of the Regulation on Evaluation, Control, and Environmental Monitoring, Executive Decree 431-2007.

workshops, assemblies, and/or working meetings” that the proposing company must carry out, with nothing that could guarantee the participation of the indigenous peoples in decisions that affect their ancestral territories, as the Constitutional Court has recognized.<sup>813</sup>

493. There are many human rights bodies that have urged Guatemala to establish a legal and institutional framework in keeping with this right, such as the UN Special Rapporteur for the rights of indigenous peoples, the ILO Committee of Experts on the Application of Conventions and Recommendations, the Committee on the Elimination of Racial Discrimination, and the UN Human Rights Council. In addition, on numerous occasions the Constitutional Court has urged Congress to implement the domestic provisions on the right to consult and to adapt the Municipal Code and the Law on Urban and Rural Development Councils along the same lines.<sup>814</sup> In 2004 the IACHR noted that the indigenous peoples were suffering the consequences of development and infrastructure projects.<sup>815</sup> It regrets to note that 10 years later no specific steps forward can be identified, and it is worrisome that one argument cited by state authorities and officials for eluding the duty to consult is precisely the lack of any specific body of law.
494. The Guatemalan State has authorized many plans and projects for exploration and exploitation, development, or infrastructure without their technical, administrative, and legal mechanisms respecting or guaranteeing the right to consultation, or the requirement to secure the prior consent of the indigenous peoples. In recent years, nearly 200 mining licenses have been issued for exploration and exploitation without prior consultation, and a similar number of permits for implementing hydroelectric projects in different parts of the country.<sup>816</sup> In addition, one of the main concerns is the accelerated implementation of single-crop agriculture, such as sugar cane and African palm, on lands and territories claimed by indigenous communities. There are many cases in which projects implemented have impacted areas on which there were legal actions or requests for recognition of indigenous property rights. The Commission observes that in certain cases processes have been carried out for the “socialization” or “participation” of the communities; such processes have been delegated to the companies responsible for carrying out the projects, without proper state supervision. The Commission would like to emphasize that

“the obligation to consult is the responsibility of the State; therefore the planning and executing of the consultation process is not an obligation that

<sup>813</sup> Constitutional Court of Guatemala. Case No. 3878-2007. Judgment of December 21, 2009. Considering paragraph IV. Point h.

<sup>814</sup> Constitutional Court of Guatemala. Case No. 878-2007 of 2009. Judgment of December 21, 2009; File No. 1179-2005. Judgment of May 8, 2007; Case No. 4419-2011. Judgment of February 5, 2013, Case No. 2376-2007. Judgment April 9, 2008; and Case No. 1008-2012. Judgment of February 28, 2013.

<sup>815</sup> IACHR, *Annual Report for the Inter-American Commission on Human Rights, 2004*. Chapter V. First Follow-up Report on the Compliance of the State of Guatemala with the Recommendations made by the IACHR in its report entitled “Justice and Social Inclusion: The Challenges of Democracy in Guatemala”. IV. para.79.

<sup>816</sup> Information received at a meeting with the MARN, MEM, and CONAP, August 21, 2013 in Guatemala City; at a meeting with the Governor of Huehuetenango and the Inter-institutional Commission, August 26, 2013 in Huehuetenango; at a meeting with indigenous leaders and organizations, August 25, 2013 in Nebaj, Quiché; and on August 26, 2013 in Huehuetenango.

can be avoided by delegating it to a private company or to third parties, much less delegating it to the very company that is interested in exploiting the resources in the territory of the community that must be consulted.”<sup>817</sup>

495. The IACHR recalls that as the Inter-American Court has stated, “the requirement of prior consultation means that this must take place before taking the measure or implementing the project that may affect the communities, including legislative measures....”<sup>818</sup> In this last case, it has said: “In the case of consultation prior to the adoption of a legislative measure, the indigenous peoples must be consulted in advance during all stages of the process of the producing the legislation, and these consultations must not be restricted to proposals.”<sup>819</sup> The IACHR considers that identifying the measure that is to be the subject of consultation is fundamental in the process of consultation and consent, thus it should be endowed with the greatest possible guarantees, reducing discretion in the decision and applying, in non-restrictive terms, the concept of impairment or negative impact (“*afectación*”).
496. Moreover, States have a duty to ensure that the restrictions on the use and enjoyment of the lands and natural resources of the indigenous peoples do not imply a denial of their physical and cultural survival as peoples in keeping with the ancestral ways of life<sup>820</sup>, the IACHR observes with concern that various kinds of projects are being implemented even though they entail the denial of the physical and cultural existence of indigenous communities. Among these situations is that of dozens of Q’eqchi communities threatened by the implementation of the Xalalá hydroelectric plant on the Chixoy and Copón rivers, in the departments of Quiché and Alta Verapaz. According to the information received, this project would entail relocation of the communities and the flooding of their ancestral lands without consultation and without addressing the results of the community consultations organized at the communities’ initiative in which their rejection of the project was expressed.<sup>821</sup>

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<sup>817</sup> 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.

<sup>818</sup> 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.

<sup>819</sup> 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.

<sup>820</sup> “[A]nother crucial factor to be considered is whether the restriction amounts to a denial of their traditions and customs in a way that endangers the very survival of the group and of its members.” I/A Court H.R., *Case of the Saramaka People v. Suriname*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172. para. 128. 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. 156.

<sup>821</sup> Information received at meeting with indigenous communities and organizations in Cobán, Alta Verapaz, August 23, 2013. Complaint by the Q’eqchi’, Poqomchi’, and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received August 23, 2013, in Cobán, Alta Verapaz.



## 2. Specific guarantees of the consultation

497. According to the case-law of the Inter-American Commission and the Inter-American Court, to be consistent with inter-American human rights law a consultation of indigenous peoples must provide for certain guarantees. It must be prior, informed, free, and conducted for the purpose of obtaining consent. In certain cases consent is required. One of the most important specific guarantees refers to the moment when the consultation is held, and assumes that it could be carried out “from the first stages of the planning or preparation of the proposed measure, so that the indigenous peoples can truly participate in and influence the decision-making process.”<sup>822</sup> As the Inter-American Court has said:

communities “must be consulted, in accordance with their own traditions, at the early stages of a development or investment plan, not only when the need arises to obtain approval from the community, if such is the case. Early notice provides time for internal discussion within communities and for proper feedback to the State.”<sup>823</sup>

498. In Guatemala the current legislation and institutional framework authorize the granting of licenses without the communities even learning of the possible approval of a measure that may affect them. In effect, according to the current environmental laws, once the environmental impact study is prepared by the proposing company, that instrument must be published “through the means of communication that the proponent and the Ministry of Environment and Natural Resources (MARN, for its acronym in Spanish) agree upon.”<sup>824</sup> One has 20 days to file an opposition “that is technical, scientifically, or legally founded,”<sup>825</sup> which is included in the record for MARN’s analysis. The legislation considers the possibility of publication in a language other than Spanish if there is an indigenous language “predominant among the majority in the region.” The copy of the environmental impact study may found in a hard copy, in Spanish, at the MARN or in the municipalities where the project is located. In the case of mining licenses, according to the Law on Mining, the public information consists of “the publication of edicts, one time only, in the official gazette and in another major circulation daily newspaper in the country,” and third persons may file an opposition within a 30-day window, before the Ministry rules on the application.<sup>826</sup>
499. Such mechanisms of information are insufficient and inadequate in light of international standards and constitute clear obstacles for the communities to

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<sup>822</sup> 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. 167 and paras. 180-182. I/A Court H.R., *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, para. 133.

<sup>823</sup> I/A Court H.R., *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs, para. 134.

<sup>824</sup> Article 75 of the Regulation on Evaluation, Control, and Environmental Monitoring, Executive Decree 431-2007.

<sup>825</sup> Article 78 of the Regulation on Evaluation, Control, and Environmental Monitoring, Executive Decree 431-2007.

<sup>826</sup> Articles 45 and 46 of the Law on Mining.



become fully informed. Moreover, the IACHR notes that they present impediments related to the relevant project information not being available in indigenous languages, the insufficient time for preparing and filing motions, as well as problems filing them due to geographic distances, and the lack of economic resources and technical assistance.<sup>827</sup>

500. In general the communities do not get information about the implementation of a project in their ancestral lands and territories until the moment at which actual construction begins, and even then the information is insufficient, scarce, and culturally inappropriate. At the same time, the Commission observes that constant requests for information by the communities or indigenous authorities put to state authorities generally go unanswered. Neither the communities affected nor in some cases the local authorities receive complete and formal information from the central government on the most elemental aspects of the project, such as an indication of the communities within the zone of influence of the project, or how that has been determined.<sup>828</sup> Guaranteeing that the consultation is informed requires that from the first moment of the process full and precise information be provided on the nature and consequences of the measure in the communities consulted.<sup>829</sup> In the words of the Inter-American Court, “the consultation must be informed, in the sense that the indigenous peoples must be aware of the potential risks of the proposed development or investment plan, including the environmental and health risks. Thus, prior consultation requires that the State receive and provide information, and involves constant communication between the parties.”<sup>830</sup>
501. With respect to the requirement of free consultation, the information indicates that the implementation of projects and processes of dialogue, if they take place, unfold many times, in the context of threats, militarization of communities, intimidating presence of private security guards, criminalization of community members, and strong pressures on and intimidation of the communities and their leaders.<sup>831</sup>

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<sup>827</sup> In the words of ancestral authorities of the Ixil people in: “The people found out two months after it was published in the official gazette, because they find out in the capital and the gazette does not reach here. In addition, it is only in Spanish and not in Ixil. By the time it gets here the 30 days have already gone by, and it can no longer be challenged.” Information received in meeting with municipal authorities, August 25, 2013 in Nebaj, Quiché.

<sup>828</sup> “On repeated occasions since 2006 we have asked the MEM [Ministry of Energy and Mines] and INDE [National Electrification Institute] for precise and specific information on the plans to build the dam and they have refused to give it to us or they refer us to information published in media outlets.” CIFCA. Informe de investigación sobre Guatemala. Proyecto Xalala ¿Desarrollo para todos? [Investigation Report on Guatemala: Xalala Project on Development for All?], December 2008. Information received during visit to Guatemala in Cobán, Alta Verapaz. August 23, 2013.

<sup>829</sup> IACHR, Report No. 40/04, Case 12,053, *Maya Indigenous Community of the Toledo District (Belize)*, October 12, 2004, para. 142. I/A Court H.R., *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, para. 133. IACHR, *Report on the Situation of Human Rights in Ecuador, 1997*. IACHR, Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia, 2007, para. 248.

<sup>830</sup> 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. 208.

<sup>831</sup> Indigenous Mayors’ Offices of the Ixil Region. Planteamiento de las Comunidades indígenas y autoridades ancestrales de Cotzal a la empresa italiana ENEL [Proposal made by the Indigenous Communities and

According to the testimony received from authorities of the Ixil people, they had to begin the dialogue with the company and state authorities on implementation of the Palo Viejo hydroelectric project, “under the pressure of 700 police and soldiers from all departments of the country stationed in the municipality of Nebaj.”

502. As regards the objective of obtaining consent, the IACHR observes that in Guatemala under the current legislation, in the various processes for approving projects that may have negative impacts on indigenous communities and peoples, the decisions are made at the central level, between the ministries involved and the proposing company. When “socialization” processes take place, the communities perceive that “they don’t consult us, they tell us” about the projects to be implemented, which coincides with the statements by the authorities, whose understand that their duty is “to go to the communities to tell them what projects are going to be implemented.”<sup>832</sup>
503. As for the good-faith requirement, the information available indicates that the mechanisms of participation or dialogue, when they have been implemented, have used practices totally at odds with the guarantee of good faith. “The leaders and communities have constantly received visits from persons who speak in the name of the company, frightening and intimidating them, making death threats, and offering them money in exchange for convincing the communities to allow them in.”<sup>833</sup> Many reports have been received on “intimidation through anonymous phone calls, the presence of armed persons in the communities ..., trailing of and threats against the leaders.”<sup>834</sup> In addition, the lack of prior consultation with the indigenous peoples and communities, as well as the strong pressures from the community leaders promoted by outside actors, has produced divisions and fragmentation within the communities, tearing the social fabric and eroding ancestral authority. The mechanisms used include paying off leaders and co-opting the positions of representation in the community.<sup>835</sup> In addition, in the schools the indigenous children are influenced by practices aimed at harassing the children of

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Ancestral Authorities of Cotzal to the Italian Corporation ENEL]. June 30, 2011. Information received during visit to Guatemala in Nebaj, El Quiché. August 25, 2013.

<sup>832</sup> In words of the representatives of the MARN, “public participation” under the existing regulation, consists of “indicating to the population what it is that we are going to do, how it is going to be done, report whether they have concerns or doubts, but it is only informing, it is not binding. What is done is that their considerations are taken into account if it is something that they consider and that had not been taken into account by the developer, and they improve the project.... The methodologies of participation are informational workshops, surveys, different methodologies that seek to inform people what it is that is going to be done. That is included in the environmental study and it is part of the evaluation done by the MARN. With that approved, the opinion is issued as to whether it is or is not viable to grant the project.” Information received in meeting with the MARN, MEM, and CONAP, August 21, 2013 in Guatemala City.

<sup>833</sup> Complaint of the Q’eqchi’, Poqomchi’, and Achi’ peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received on August 23, 2013, in Cobán, Alta Verapaz.

<sup>834</sup> Assembly of Peoples of Huehuetenango. Informe Q’an B’alam Cataratas de Encuentros y Discordia: Santa Cruz Barillas. Information received during visit to Guatemala in Huehuetenango, August 26, 2013.

<sup>835</sup> Coordinadora Nacional de Organizaciones Campesinas [National Coordination for Campesino Organizations]. Letter to the President of the Board of Officers of the Congress of the Republic of Guatemala, August 21, 2013. Information received by the IACHR during its August 2013 visit. Information received at meeting with municipal authorities, August 25, 2013 in Nebaj, Quiché.

families that are not in favor of the company, or families who oppose the project find that their water supply has been cut off.<sup>836</sup>

504. The Commission also observes that the scant mechanisms of participation and information that exist in Guatemalan domestic law do not answer to the criteria of cultural appropriateness, among others, as the publication of key instruments for the issuance of a given license is in written media to which the communities have no access, that are not distributed in the zone of impact of the project, in Spanish in a highly technical language, and not in the language of the communities affected or by mechanisms that correspond to their own cultural identity.<sup>837</sup>
505. The preliminary social and environmental impact studies are done by the proponent companies, along with the environmental consultants and without state supervision; these are processes in which the communities do not participate and at times they do not even know that they are being drawn up.<sup>838</sup> Nor does one observe the existence of mechanisms that guarantee the participation of indigenous peoples in the benefits of the exploitation of natural resources or the implementation of development or investment plans in their traditional territories. In this respect, the Commission emphasizes that the indigenous peoples have the right to participate in the benefits that derive from the projects for the exploration and exploitation of natural resources or from development or investment plans in their territories, as well as the commercial application of their traditional knowledge as to the use of those resources.<sup>839</sup>
506. In this context, one fundamental aspect is the adoption of measures to mitigate and make reparation for the negative impacts of the projects currently approved or in the implementation phase in indigenous communities or peoples. In this respect, according to available information, for high-impact projects the Regulation on Evaluation, Control, and Environmental Monitoring establishes a “performance bond” (*fianza de cumplimiento*) such that if the proponent does not meet the “environmental commitments assumed” the MARN may execute that bond to implement mitigation measures. Nonetheless, it is not compulsory and there are no specific mechanisms for implementing mitigation plans, establishing

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<sup>836</sup> Complaint of the Q'eqchi', Poqomchi', and Achi' peoples. Analysis of the situation of racism and discrimination in Alta Verapaz. Information received August 23, 2013, in Cobán, Alta Verapaz.

<sup>837</sup> “That is not the mechanism of the elders of these communities for doing the consultation. The consultation is that they go there in the language, that they share what they are going to do, respecting the customs and traditions of the community members. They come offering a project, they leave a draft, and then have them sign some paper, they don’t even know what it says because there’s a lot of illiteracy. Afterwards they say ‘but you already signed a document.’” Information received in meeting with municipal authorities, August 25, 2013 in Nebaj, Quiché.

<sup>838</sup> “Unknown persons would constantly come to the communities, they would come without the communities’ permission and begin to collect data on the properties without the consent of the owners. Their presence struck fear in women because they molested them, they laughed at them, they harassed them.” Assembly of the Peoples of Huehuetenango. Informe Q’an B’alam Cataratas de Encuentros y Discordia: Santa Cruz Barillas. Information received by the IACHR during its visit in 2013, Huehuetenango, August 26

<sup>839</sup> IACHR, *Democracy and Human Rights in Venezuela*, 2009, para. 1137, Recommendation 6. See also: IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, 2007, para. 297, Recommendation 6. IACHR, *Second Report on the Situation of Human Rights in Peru*, 2000, Chapter X, para. 39, Recommendation 5.

remediation measures for closing projects, or implementing protocols or terms of reference that establish procedures and institutions responsible for carrying them out.<sup>840</sup> As the MEM indicated, the technical closing of a mine is a major concern, since the current legislation lacks important technical considerations.<sup>841</sup>

507. In summary, there is a pressing need to bring the domestic legal order into line with international standards in relation to the right to consultation and prior, free, and informed consent through the adoption of specific provisions. At the same time, the laws in force need to be brought into line with international standards. And those provisions must then be translated into institutional protocols and guidelines that guarantee their effective application. To this end, the Commission considers that it is essential that the consultation be carried out on a priority basis with the utmost guarantees of participation by the indigenous peoples.
508. It should be noted that on September 10, 2015, the Constitutional Court granted *amparo* protection to the Consejos de Principales (Councils of Principals) of Trapichitos, Sumal Chiquito, and Nuevo Amanecer, all three in the municipality of Nebaj, of Quiché, and to the indigenous mayor of the Office of Indigenous Mayor of the same municipality, in case file 1149-2012, for the failure to consult the indigenous communities when a hydroelectric project was established in that municipality. While the Constitutional Court did not suspend the ministerial decree challenged, it is encouraging progress that it ordered the Ministry of Energy and Mines to “take the measures necessary to carry out the consultation of the indigenous communities interested and affected, in keeping with the applicable international standards, with respect to the installation of the La Vega I hydroelectric power plant.”<sup>842</sup>

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<sup>840</sup> Yagenova, Simona Violetta (Coordinator). *La industria extractiva en Guatemala: políticas públicas, derechos humanos, y procesos de resistencia popular en el período 2003-2011* [Extractive Industry in Guatemala: Public Policies, Human Rights, and Grassroots Resistance in 2003-2011], Guatemala, FLACSO, 2012, p. 54.

<sup>841</sup> Information received at meeting with MARN, MEM, and CONAP, August 21, 2013 in Guatemala City.

<sup>842</sup> The judgment indicated that the consultation should conclude within six months and should be designed as an intercultural dialogue in good faith in which one seeks consensus and a mutual accommodation of the parties' legitimate interests. Constitutional Court, CC ordena realizar consultas a comunidades indígenas por proyecto hidroeléctrico, September 14, 2015.

### 3. Community and municipal consultations

509. The lack of mechanisms for consulting the indigenous peoples and communities has led them to carry out, at their own initiative, what are known as “good-faith community consultations,” i.e. self-managed processes in which they have expressed their positions with respect to projects in their ancestral lands and territories. The legal basis has been the rules of the Municipal Code that establish the ability to perform queries, either at the request of the Municipal Council or at the request of indigenous communities or authorities on a matter affecting the rights or interests. Specifically, Article 65 of the Code provides that:

**Article 65.**— Consultations with indigenous communities or municipal authorities. When the nature of a particular matter affects the rights and interests of indigenous communities of the municipality or its own authorities, the Municipal Council will hold consultations at the request of indigenous communities or authorities, including applying criteria of customs and traditions indigenous communities.<sup>843</sup>

510. The first “community consultation” was carried out more than ten years ago, promoted by the Sipakapense Maya communities, in the municipality of Sipacapa, department of San Marcos, in relation to the Marlin Mine project. Since then, more than 110 similar processes have been carried out in approximately 70 different municipalities around the country that has included the participation of communities of the different peoples in Guatemala, who in the vast majority of cases have expressed their rejection of projects.<sup>844</sup> Mining accounts for 88.59 % of all community consultations in Guatemala, which have resulted in a rejection of that activity.<sup>845</sup>

511. The Constitutional Court has issued several rulings on the matter. In a decision issued on January 21, 2015 on file 5229-2013 on a municipal consultation in the municipality of Jalapa following a mining project, the Constitutional Court determined that according to domestic law, the results of the consultations were binding on the municipal authority and that its results should be submitted to the authorities responsible for granting mining licenses, so based on these and to ensure social peace “are indicative at the time of issue resolutions (Licensing)”. The Court also said that

“popular consultations are important mechanisms by which fundamental rights are guaranteed and are the clear expression of a democratic regime and that residents of municipalities have the right to express regarding the use and enjoyment of natural resources found within the territory of the municipality.”

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<sup>843</sup> Municipal Code, Decree 12-2002 of the Congress of the Republic, Articles 64 to 66.

<sup>844</sup> Coordinadora Nacional de Organizaciones Campesinas [National Coordination for Campesino Organizations]. Letter to the President of the Board of Officers of the Congress of the Republic of Guatemala, August 21, 2013. Information received by the IACHR during its August 2013 visit.

<sup>845</sup> AYSSA, *Consultas comunitarias realizadas en Guatemala durante el 2014*, February 6, 2015.

It indicated that the State should ensure the effective participation and benefit of the residents of the municipality corresponding to defend collective interests compatible with the development and welfare of the country. Circumstance that has also been considered by the Inter-American Court of Human Rights in its judgment of 28 November two thousand and seven in the *Saramaka v. Suriname*.<sup>846</sup>

512. The Commission notes the efforts of the indigenous people and communities to find ways that allow them to exercise their rights, using peaceful mechanisms, making it possible to prevent greater or more serious expressions of the social unrest created by implementing projects without consultation. Also, the IACHR considers consultation, as an expression of the indigenous peoples and communities of the exercise of their right and to that extent, reiterates the need to harmonize the domestic laws with international standards on the right to consultation and free, prior and informed consent.

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<sup>846</sup> CC, Expediente 5229-2013, January 21, 2015.

CHAPTER 7  
CONCLUSIONS AND  
RECOMMENDATIONS





## CONCLUSIONS AND RECOMMENDATIONS

### **A. *Conclusions***

513. The serious human rights situation in Guatemala affects all its inhabitants and permeates all spheres of society. The situation of citizen security, the administration of justice, and inequality and exclusion of the indigenous peoples, analyzed in this report, corroborate that assertion. Thousands of Guatemalans die every year because the State has failed to guarantee them a place free of violence. The system for the administration of justice, despite the efforts made, maintains an index of impunity that only reinforces violence and insecurity. And the indigenous peoples continue suffering levels of racism and discrimination of such magnitude that they represent the poorest of the poor, the most excluded of the excluded.
514. The development of a culture of tolerance, of respect for the law and rejection of impunity, requires an effort on the part of all Guatemalans, an endeavor in which they have been and will be accompanied in solidarity by the international community.
515. The IACHR reiterates the importance of the Peace Accords as instruments for advancing in the task of building a more democratic, fair, tolerant country respectful of human rights.
516. Furthermore, the Commission expresses its willingness to contribute and collaborate with the State of Guatemala to implement a human rights agenda, which should be focused on the protection of its inhabitants.

### **B. *General Recommendations***

517. Based on the foregoing analysis and conclusions, the Commission offers the following general recommendations:
1. Restart the agenda of the Peace Accords.
  2. Comply with and implement the recommendations, decisions, and judgments of the inter-American human rights bodies.
  3. Continue to make efforts to eradicate extreme poverty and hunger; particularly, and adopt the necessary measures to eliminate the grave problem of infant malnutrition.

### ***C. Recommendations with respect to the situation of violence and insecurity***

4. Design preventive public policies based on the causes of violence and high levels of crime for the purpose of reducing crime substantially and ensure that Guatemalans can live in peace in a country free of violence.
5. Protect the life and integrity of those who, because of their role in society or their special vulnerability, due to historic discrimination and exclusion, suffer a differential impact, especially those persons who defend human rights, including indigenous authorities and leaders, environmentalists, trade unionists, and judicial officers, as well as women, children and adolescents, migrants and refugees, the LGBTI population, persons with disabilities, and persons deprived of liberty. Massively promote the importance of the work of human rights defenders.
6. Implement a public policy of protection for human rights defenders.
7. Refrain from stigmatizing the work of human rights defenders, journalists and indigenous leaders.
8. Strengthen the legislative norm and give adequate resources for the Analysis of Attacks against Human Rights Defenders in Guatemala. Regarding the protection program for journalists , it reiterates that it is constituted in accordance with international standards and in consultation with civil society organizations , journalists and media workers
9. Adopt all measures that are needed to prevent future acts of human trafficking. For this purpose, the measures adopted by the Guatemalan State must be aimed at tackling the causes that favor and promote human trafficking. To this end, the measures adopted by the Guatemalan State must be aimed at addressing the causes that favor and promote human trafficking, such as situations of special vulnerability for victims and potential victims, the steady demand for goods and services produced on the basis of the work carried out by victims of human trafficking, and the existence of a context where human trafficking actions go unpunished. Likewise, to implement measures aimed at promoting the identification of the victims of human trafficking, especially groups in situations of vulnerability, such as indigenous communities, working children, migrants returnees, persons working in sexual commerce, and children involved in gangs. Also develop measures aimed at training civil servants and the population in general against human trafficking.
10. Strengthen mechanisms for the search of the disappeared persons.
11. Guarantee that the PNC is the agency in charge of internal security in the country. To that end, allocate the material and human resources it needs to do its job and develop training programs in keeping with human rights standards. Guarantee that the police forces are prepared in the face of disturbances of public order by applying measure respectful of human rights.

12. Intensify efforts to investigate and punish human rights violations committed by state agents.
13. Ensure that legislative and administrative initiative and practices are compatible with the prohibition of participation of the armed forces in public security tasks and in particular the control of violence in social protests. Limit budgetary matters relating to national defense allocations.
14. Improve the training of the members of the Armed Forces and the Police Force in human rights.
15. Establish an integrated policy aimed at eradicating the phenomenon of lynching through a comprehensive policy that considers its causes.
16. Limit the states of emergency to the situations that represent a treat to the Nation and; implement the specific guarantees that govern states of emergency under international law.
17. Ensure supervision and effective control of the private security companies and their agents, the registration and punishment of those who do not comply with the rules and regulations; and keep strict tabs on arms and any future process of disarmament.

#### ***D. Recommendations with respect to the administration of justice***

18. Adopt measures to ensure that judicial officers perform their work impartially and independently, respecting the principle of separation of powers and free from any threat or pressure from powerful groups.
19. Ensure that those who are elected judges or members of the high courts are chosen for their merits, capacity, suitability, and honesty, and that they meet the minimum standards established by international human rights law to ensure judicial independence.
20. Adopt effective measures that allow for better and more access to justice for all. With respect to the indigenous peoples, respect their own institutions of representation and decision-making and ensure that they can be heard in their own languages.
21. Adopt effective measures that make it possible for the Public Prosecution Service to continue coordinating actions and collaborating with the CICIG and allocating, for this purpose, the resources that are needed.
22. Bolster the actions to fight impunity in the case of human rights violations through exhaustive and independent investigations, punish the direct perpetrators and masterminds, and make reparation to the victims.

23. Effectively discharge the duty to investigate, prosecute, and punish those responsible for violations of the right to life, humane treatment, and other human rights committed during the armed conflict. In the event that the victims are indigenous peoples, make reparation for the consequences, both individual and collective, in a manner that is integral and culturally appropriate.
24. Ensure that the writ of *amparo* and its application in Guatemala meets the relevant inter-American standards.
25. Respect, and guarantee, the indigenous legal systems without limiting their areas of competence recognized by international law, and establish a procedure for coordination between the regular justice system and the indigenous one, with the participation of the indigenous peoples. Adopt measures to respect, and recover the indigenous legal system, including the traditional indigenous methods of conflict resolution, so that the indigenous peoples can recover the authority that has been weakened by the internal armed conflict and by the lack of state recognition.
26. Implement the measures necessary for the PNR to be an effective and culturally appropriate mechanism to make reparation to the victims of the armed conflict that includes actions to take into due consideration the special situation of indigenous women and children, as well as the participation of the indigenous peoples in the Program's decisions.

### ***E. Recommendations with respect to the situation of inequality and exclusion of the indigenous peoples***

27. Implement the commitments acquired in the Peace Accords in favor of the indigenous peoples and their members, especially those set forth in the Agreements on Identity and Rights of the Indigenous Peoples, on Socioeconomic Aspects and Agrarian Situation; and on Financing of the Civilian Authority and Function of the Army. Give impetus to and adopt legislative or other initiatives to implement ILO Convention 169 on indigenous and tribal peoples in independent countries.
28. Recognize the indigenous peoples and communities as collective subjects with their own authorities and representatives, determined by their customary law.
29. Establish an integral public policy that addresses the situation of discrimination that affects the indigenous peoples and that represents an assault on their ways of life; it should be drafted and implemented with the participation of and in consultation with the indigenous peoples of Guatemala, and respecting their ways of life and development projects in keeping with applicable international law. One should also bear in mind the participation of indigenous women and children throughout the process.

30. Strengthen the State's institutional framework for indigenous peoples, guaranteeing, through affirmative measures, that the indigenous peoples participate in the different levels of government of the State of Guatemala on equal footing with the rest of society; and recognize, respect, and protect their own forms of organization, representation, and decision-making, all with participation of and in consultation with the indigenous peoples.
31. Promote a rural development policy or review the existing one to make sure it is culturally appropriate, sustainable, and inclusive, incorporating integral solutions that enable the indigenous communities to guarantee their food sufficiency and security in keeping with their traditional standards with a view to protecting the ancestral territory and the natural resources. Design, in consultation with the communities affected an integral and culturally appropriate strategy to reduce mortality, morbidity, and malnutrition in indigenous children.
32. Promote respect for the labor rights of the indigenous peoples mindful of the relevant provisions of ILO Convention 169, oversee the implementation of labor legislation, and punish, as provided by law, those employers who violate the established rules. In particular, adopt decisive and immediate measures to put an end to any form of servitude or forced labor; and investigate, prosecute, and punish all those persons or groups of persons who continue keeping persons in such conditions.
33. Ensure the inclusion of ethnicity in all official statistics, censuses, surveys, and administrative and judicial records as a way to strengthen efforts to give visibility to indigenous peoples and ensure ethnicity is considered as a determinant element in defining public policies, plans, and government programs.
34. Establish a public policy in conjunction with the indigenous peoples to ensure effective enjoyment of indigenous peoples' right to collective property, to ensure the effective enjoyment of the right to collective property of indigenous peoples and related rights in their various components, mindful of the relevant inter-American standards. Guarantee that the indigenous peoples can use and enjoy their ancestral lands and territories, which imply that they must be delimited, demarcated, titled, and registered by special procedures and with the participation of and in consultation with the indigenous peoples. Identify and create indicators and systems for inter-institutional monitoring implementation of the legislation and policies aimed at resolving the situation of the indigenous communities and peoples in relation to their rights to their traditional lands and territories.
35. Refrain from authorizing or carrying out measures that have a detrimental impact on the lands and territories of indigenous peoples, and do not allow third persons to carry out such measures. This includes but is not limited to refraining from performing acts such as the declaration of unoccupied lands (*tierras baldías*), individual titling, and pursuing remedies that challenge the juridical personality or historical possession of the communities.
36. Adopt the legislative, administrative, or other measures necessary to fully implement and enforce the right to prior consultation of the indigenous peoples and communities, pursuant to international human rights standards and with the

full participation of the indigenous peoples. Modify the legislative, administrative, or other measures that impede the full and free exercise of the right to prior consultation, for which one should ensure the full participation of the indigenous peoples. Consult the peoples and communities in a manner that is prior, adequate, effective, and fully in keeping with the applicable international standards in the event that any activity or project for the extraction of natural resources in their lands or territories is planned, or an investment or development plan of any other type that implies potential impacts on their territory.

37. With respect to the concessions granted or being implemented, establish a mechanism that makes it possible to evaluate the need for a modification to the terms thereof to preserve the physical and cultural survival of the indigenous communities and peoples. Adopt the measures necessary to ensure that the indigenous peoples and communities that have been suffering the effects of projects with no consultation have access to mechanisms that enable them to mitigate those effects and make adequate reparation for them in a culturally appropriate manner.
38. Prevent and protect the indigenous communities from forced displacement, and seek the return of displaced indigenous communities and families in conditions of safety as soon as possible.