

## CHAPTER V

# FOLLOW-UP OF RECOMMENDATIONS ISSUED BY THE IACHR IN ITS COUNTRY OR THEMATIC REPORTS

### REPORT ON FOLLOW-UP OF RECOMMENDATIONS ISSUED BY THE IACHR IN ITS REPORT ON THE HUMAN RIGHTS SITUATION IN GUATEMALA

#### I. INTRODUCTION

1. The purpose of this Chapter is to follow-up on the recommendations issued in the report entitled "Situation of Human Rights in Guatemala," adopted on December 31, 2017 by the Inter-American Commission on Human Rights ("the Commission," "the Inter-American Commission," or "the IACHR") pursuant to Article 59.9 of its Rules of Procedure. Under that provision, by means of Chapter V of its Annual Report, the Commission shall follow-up on measures adopted to comply with the recommendations issued in the country report.

2. Invited by the Republic of Guatemala ("Guatemala," "State of Guatemala," or "Guatemalan State"), the IACHR paid an on-site visit to the country from July 31 to August 4, 2017. The IACHR wrote the Report on the Situation of Human Rights in Guatemala, along with a series of recommendations to the Guatemalan State, based on findings and information obtained before, during, and after the on-site visit. The report was approved on December 31 2017. During its on-site visit, the IACHR observed on the ground the situation of human rights in the country in connection with issues of justice, citizen security, inequality, discrimination, the legacy left by the internal armed conflict, and freedom of expression. The Commission also received information regarding the situation of indigenous peoples, human rights defenders and justice operators, as well as persons deprived of liberty in State institutions.

3. Ever since it began operating, the IACHR has kept close track of the human rights situation in Guatemala, especially in response to the grave human rights violations perpetrated during the internal armed conflict between the 1960s and 1996. That period was marked by systematic executions, massacres, forced disappearances, rape, and scorched-earth operations designed to eliminate, at least in part, the Mayan population. During that internal armed conflict women were singled out for specific forms of gender-based violence, in which rape was a generalized, massive, and systematic practice used by State agents as part of counter-insurgency policy. The Commission for Historical Clarification (CEH) concluded in its report that Guatemalan history, especially during the armed conflict, records how "the violence was fundamentally directed by the State against the excluded, the poor and above all, the Mayan people, as well as against those who fought for justice and greater social equality."<sup>1</sup>

4. In the country report, the Commission pointed out that the information it had consistently received during its visit indicated that, in essence, more than 20 after the signing of the Peace Accords, several of the ground that gave rise to the internal armed conflict persist to this day: the economy is still based on a concentration of economic power in the hands of a few, and a weak, poorly endowed, State structure due to scant tax revenue and high levels of corruption. Ongoing structural problems include racial discrimination, social inequality, widespread poverty and exclusion, chronic child malnutrition, low levels of education, and a lack of access to justice, all of which stand as roadblocks to full respect for human rights in Guatemala. Likewise, the IACHR was repeatedly told about the persistence of parallel power structures that thwart efforts to fight impunity and corruption and to strengthen the rule of law.

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<sup>1</sup> CEH, Guatemala Memory of Silence. Conclusions and Recommendations.

5. In its conclusions, the IACHR stated that it was essential for the State to redouble its commitment to continue efforts to combat impunity, violence, intolerance, and corruption, through prevention and pro- human rights policies and programs and the forging of a more robust, independent, and impartial justice system. In particular, the Commission stressed the importance of ensuring the conditions for the Commission against Impunity in Guatemala (CICIG) and the Office of the Public Prosecutor to be able to efficiently perform their jobs, as well as approve a reform to the Constitution in the field of justice in keeping with the highest human rights standards. The Commission likewise urged the State to make further efforts to adopt laws, policies and programs to close the persistent inequality and exclusion gap. Finally, the Commission expressed its will and willingness to contribute and collaborate with the State of Guatemala in the implementation of a human rights agenda aimed at ensuring and protecting the rights of its inhabitants.

6. In a communication dated March 26, 2018, the IACHR asked the State of Guatemala to submit information on compliance regarding the recommendations contained in the Country Report within six months. Also, on September 27, 2018, the IACHR asked the State to provide information on compliance with the recommendations of the Country Report approved by the IACHR on December 31, 2017. The State's response was received on Friday, October 26, 2018. On February 13, 2019, the IACHR forwarded to the State of Guatemala a copy of the preliminary draft of this Chapter V of its Annual Report of 2018, in accordance with its Regulations, and requested to the State to submit its observations within a period of three weeks. On February 28, 2019, the State requested an extension that was granted by the Commission for an additional week. On March 14, 2019, the State presented its observations, which, as pertinent, were incorporated into this final version approved by the Commission on March 14, 2019.<sup>2</sup> The Commission appreciates and thanks the information received, which, where applicable, was included in the present report. The IACHR would also like to thank civil society organizations and the Human Rights Ombudsman (PDH) for the information they provided.

7. The present follow-up report is divided into five sections devoted to consideration of the measures adopted by the State to comply with the Commission's recommendations and of still pending challenges. It follows the structure of the IACHR Report containing the aforementioned recommendations. Each section recapitulates the recommendations issued by the IACHR in the respective chapters and analyzes the principal advances and challenges identified by the IACHR on the basis of the information provided by the State and by civil society organizations, as well as the information culled by the Commission thanks to its monitoring of the overall human rights situation in the country. For that, the Commission has relied on information received from the State during public hearings, ex officio investigations, input from the system of individual petitions and cases, applications for precautionary measures, and requests for information under Article 41 of the American Convention on Human Rights, in addition to information available from other public sources and decisions and recommendations of specialized international agencies, among others. Finally, the IACHR offers its conclusions and recommendations.

8. The IACHR reiterates the importance of Guatemala fully complying with the recommendations out forwards in the report. The IACHR also reconfirms its readiness to work with the Guatemalan State, within the framework of its mandate and functions, to ensure effective enjoyment of human rights for everyone.

## **II. FOLLOW-UP OF RECOMMENDATIONS**

### **A. General recommendations**

- Create, together with the IACHR, a Follow-Up Mechanism to the Recommendations of the instant report.

<sup>2</sup> Estado de Guatemala, [Observaciones del Estado de Guatemala al Proyecto del Informe del Capítulo V Seguimiento de Recomendaciones Formuladas por la CIDH en el informe "Situación de Derechos Humanos en Guatemala"](#), 14 de marzo de 2019, pág. 1.

- Make sure that the CICIG, under the direction of its Commissioner, Iván Velásquez, is able to fulfill its mandate with the proper protections, without harassment, threats or undue interference, in accordance with the Agreement creating it.
- Endow COPREDEH and the Office of the Human Rights Ombudsman with sufficient human and budgetary resources to be able to fully comply with their mandates.
- Ratify the Inter-American Convention against All Forms of Discrimination and Intolerance, the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, the Inter-American Convention on Protecting the Rights of Older Persons and the Additional Protocol to the American Convention on Human Rights to Abolish the Death Penalty.
- Continue with efforts to eradicate extreme poverty and hunger, especially, to adopt emergency measures to eliminate the serious issue of child malnutrition, such as programs and policies to prevent maternal and infant mortality in the country.
- Adopt urgent measures to ensure the economic, social, cultural and environmental rights of the population, in particular, the persons living in a situation of major exclusion described in the instant report.

9. With respect to the recommendation to **create, together with the IACHR, a Follow-Up Mechanism to the Recommendations of the instant report**, the State has kept in contact with the IACHR in that regard. The Commission takes note of the intention expressed by the State in its observations to get in contact with the IACHR in 2019, through the Presidential Coordinating Commission for Executive Policy on Human Rights (COPREDEH), to arrange for implementation of the Commission's recommendations, to which end the State offered to remain at the Commission's disposal and provide all pertinent information.<sup>3</sup> The Guatemalan State also told the Government of Paraguay that it was interested in forming part of the Technical Cooperation Program for implementing a system for following up on international recommendations regarding human rights --the SIMORE Paraguay Program -- with a view to keeping track of recommendations made to the Guatemalan State derived from international commitments. For his part, the Human Rights Ombudsman (PDH) recalled that, even though between 2009-2010 Guatemala had pioneered preparation of a system for keeping track of the recommendations made to the State by international mechanisms, the country still lacks a follow-up tool of that nature.<sup>4</sup> That being so, compliance with this recommendation is still pending.

10. In its observations on the draft of this report, the State of Guatemala reported that since 2018 it has available the electronic tool System for Monitoring Recommendations for Guatemala of the International Protection of Human Rights Systems (SIMOREG) updated by the different United Nations monitoring mechanisms. It also reiterated its willingness to implement, in coordination with the IACHR, the SIMORE IACHR.<sup>5</sup>

11. Regarding the recommendation to **make sure that the CICIG, under the direction of its Commissioner, Iván Velásquez, is able to fulfill its mandate with the proper protections, without harassment, threats or undue interference, in accordance with the Agreement creating it**, the State of Guatemala expressly stated that it would not comply with the recommendation. In its comments on the draft version of this report, the State indicated that "it considered the recommendation inappropriate and as meddling in internal affairs, because it does not respect a sovereign decision, namely that the Constitutional President of the Republic, in his capacity as Head of State had declared the aforementioned Commission

<sup>3</sup> Guatemalan State, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, October 25, 2018.

<sup>4</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman]

<sup>5</sup> Estado de Guatemala, [Observaciones del Estado de Guatemala al Proyecto del Informe del Capítulo V Seguimiento de Recomendaciones Formuladas por la CIDH en el informe "Situación de Derechos Humanos en Guatemala."](#), 14 de marzo de 2019, pág. 1.

persona non grata."<sup>6</sup> In its observations, submitted on March 14, 2019, the State of Guatemala reiterated that it will not comply with this recommendation.<sup>7</sup>

12. In this regard, over the past two years, the Government of Guatemala, including its most senior authorities, haven taken a number of steps to erode the capabilities of CICIG. The Government of Guatemala declared an end to CICIG's mandate, which was due to expire on September 3, 2019. By way of background, on August 27, 2017, the IACHR had already expressed its alarm and concern at the decision taken by the President of the Republic of Guatemala to declare Iván Velásquez persona non grata and order his expulsion from the country. On that occasion, the Constitutional Court ruled definitively in favor of Mr. Velásquez, setting aside the Executive's decision. At the time, the IACHR urged Guatemala to allow the head of CICIG to continue his work and noted that the decision to expel the Commissioner occurred just days after a report was published on another corruption case involving senior officials, including the President of the Republic himself.

13. On August 31, 2018, at a press conference where he was surrounded by three ministers and a group of military and police personnel, President Morales announced his decision not to renew CICIG's mandate due to alleged "selective criminal prosecution on ideological grounds, using a distorted interpretation of national norms and of its own mandate." That same day, according to information in the public domain, military vehicles were deployed to various parts of the city in the vicinity of CICIG and the embassy of the United States of America. On September 4, 2018, the IACHR issued a press release expressing its deep concern at the Guatemalan Government's decision.<sup>8</sup>

14. On December 18, 2018, the Government revoked the courtesy visa of 11 members of CICIG staff and their families, while the Constitutional Court granted a provisional protection order (*amparo provisional*) suspending the Executive's decision. Nevertheless, in January 2019, a CICIG investigator, Ylsen Osorio, was held for 23 hours by authorities at the La Aurora international airport, when he attempted to return to the country. Mr. Osorio managed to enter the country after the Constitutional Court, backed by the Public Prosecutors' Office (*Ministerio Público*), intervened.<sup>9</sup>

15. According to information in the public domain, CICIG's work has also been hampered by other decisions of the Executive designed to curtail its staffing. In March 2018, 11 Civilian Intelligence Directorate agents assigned to CICIG were withdrawn. In June 2018, the Civilian National Police (PNC) denied a request to assign 26 new police officers and in July 2018 the PNC ordered 20 of the 45 of its officers assigned to CICIG security to return to their Division.<sup>10</sup> On September 5, 2018, Augusto Jordán Rodas Andrade, in his capacity as Human Rights Ombudsman in Guatemala requested precautionary measures to the IACHR on behalf of the magistrates of the Constitutional Court. According to the application, the pressures to which the members of the Court were potentially being subjected could amount not only to possible interference with their judicial independence, but also a threat against their lives and personal integrity.

16. Ever since CICIG started its activities in 2007, the IACHR expressed its support and recognized the important role it plays in combating corruption in Guatemala, alongside the Public Prosecutors' Office, by dismantling criminal networks and organized crime, supporting training, and promoting legal reforms geared, as its mandate requires, to achieving more effective administration of justice. In its resolution "Human Rights and combating impunity and corruption," of September 12, 2017, the IACHR decided to urge the State of Guatemala to take steps to ensure compliance with the ruling of the

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<sup>6</sup> Guatemalan State, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, October 25, 2018, p. 3.

<sup>7</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 2.

<sup>8</sup> IACHR, Press Release No. 007/19, [IACHR Expresses Concern over Measures That May Hamper the Fight against Impunity and Corruption in Guatemala](#), January 10, 2019.

<sup>9</sup> IACHR, Press Release No. 007/19, [IACHR Expresses Concern over Measures That May Hamper the Fight against Impunity and Corruption in Guatemala](#), January 10, 2019.

<sup>10</sup> IACHR, Press Release No. 007/19, [IACHR Expresses Concern over Measures That May Hamper the Fight against Impunity and Corruption in Guatemala](#), January 10, 2019.

Constitutional Court and, consequently, to allow the head of the CICIG, Iván Velásquez, to continue to go about his work with all due guarantees. Moreover, after its on-site visit to Guatemala, the IACHR urged the State to work with the CICIG.<sup>11</sup> For all of the above reasons, the Commission views with the utmost concern the repeated interferences of the Guatemalan Government with the CICIG, aimed at undermining its operational capacity and autonomy. For that reason, there has been no compliance with the present recommendation.

17. With regard to the recommendation to **endow COPREDEH and the Office of the Human Rights Ombudsman with sufficient human and budgetary resources to be able to fully comply with their mandates**, the State did not provide up-to-date information regarding the PDH's human and budgetary resources.<sup>12</sup> For its part, the PDH stated that "for 2019, the PDH requested a budget of Q 145 million," but Congress approved only "Q 100 million, a reduction of 17% from the previous budget" that "seriously impairs ability to perform the PDH's functions."<sup>13</sup> In 2017 and 2018 the annual budget had remained steady at Q 130 million. Along the same lines, in an official communique,<sup>14</sup> the PDH stated that said cut was "clearly intended" to "destabilize and undermine our independence, to erode our capacity to verify compliance with constitutional guarantees nationwide and in a number of different areas." In that communique, the PDH added that "if Congress does not set matters straight, we will close the institution down in October 2019 [...]."

18. As for COPREDEH, the State reported that the budget initially allocated to that body held steady from 2016 to 2018, at Q 25,700,000.00. However, thanks to moves made by COPREDEH in Congress, that allocation was de facto increased to Q 34,600,000.00 in 2016, Q 30,900,000.00 in 2017, and Q 32,700,000.00 in 2018. The State also made mention of the budget allocation of Q141,352,081.00 in 2018 specifically to comply with the Public Policy of Reparation for Communities Affected by the construction of the Chixoy hydroelectric plant.

19. In light of the above, the IACHR considers that there was partial compliance with the present recommendation inasmuch as COPREDEH has managed to hold on to its funding. However, in 2019, the PDH budget cut may severely curtail operations. That being so, the Commission urges the Guatemalan State to guarantee sufficient human and financial resources to enable the PDH to effectively fulfill its mandate.

20. As regards **ratification of still pending inter-American instruments**, especially the Inter-American Convention against All Forms of Discrimination and Intolerance, the State reported that it was "one of the vast majority of international human rights instruments being incorporated into domestic law, via procedures contemplated in the Constitution [...]." As for the Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance, the State indicated that "it is part of the International Convention on the Elimination of All Forms of Racial Discrimination" and "for that reason it has participated in a series of regional and international forums."<sup>15</sup> In that respect, therefore, this recommendation has not been complied with.

21. As for the Additional Protocol to the American Convention on Human Rights to Abolish the Death Penalty, the State asserted that "the death penalty is contemplated in our legislation for such crimes as murder, parricide, kidnapping, extrajudicial execution, forced disappearance, crimes covered in the Law against Drug Trafficking, and others." The State recalled that in 1978 it had ratified the American Convention on Human Rights (Pact of San José) so that it could "not, after that date, apply the death penalty to crimes for which it had been ordained, namely kidnapping, extrajudicial execution, forced disappearance, parricide, and

<sup>11</sup> IACHR, Situation of Human Rights in Guatemala, December 31, 2017.

<sup>12</sup> The State reported that the allocation for the Office of the Human Rights Ombudsman increased by 14 million quetzales between 2001 and 2016, and stayed at that higher level in fiscal year 2017, Guatemalan State, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, October 25, 2018, p. 3.

<sup>13</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman]

<sup>14</sup> PDH, [La Procuraduría de los Derechos Humanos no claudicará, a pesar del boicot financiero de los diputados](#), November 21, 2018.

<sup>15</sup> Guatemalan State, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, October 25, 2018.

the killing of presidents of State agencies (*muerte de Presidentes de Organismo de Estado*)." The State also informed the IACHR that the Constitutional Court had declared that consideration of the dangerousness of the perpetrator of a crime as one of the factors enabling judges to apply the death penalty was unconstitutional and that the Supreme Court of Justice had revoked the death penalty in specific cases and annulled it in the case of 53 convicts, whose sentences had been converted to 50 years in prison.<sup>16</sup> Therefore, compliance with the present recommendation is still pending.

22. **Regarding the recommendations aimed at continuing with efforts to eradicate extreme poverty and hunger and guaranteeing economic, social, and cultural rights**, the IACHR observes that general indicators show that inequality is an ongoing, pervasive problem in Guatemala. According to Banco de Guatemala data, 59.28% of the population lives in poverty and 23.36% in extreme poverty.<sup>17</sup>

23. The State also mentioned a series of social programs under way, coordinated by the Ministry of Social Development, to cater to vulnerable segments of the population.<sup>18</sup> The "Mi bono seguro" social program is a State subsidy delivered as a "conditional cash transfer" (CCT) source of income to enable beneficiary families to cover some of their basic, short-term health and education needs. That transfer is conditional upon attendance at health care and educational facilities for children and adolescents.<sup>19</sup> The second program is called "VIDA" [LIFE]. It is a CCT, consisting of the periodic delivery of financial assistance for pregnant girls and adolescents or mothers under 14 years of age who are victims of sexual violence and whose cases have been handled by the courts.<sup>20</sup>

24. In its observations on the draft of this report, the Guatemalan State indicated that as part of the "My Safe Bonus Program", in 2018, 152,650 families in 170 municipalities benefited with a total investment of Q 231, 910, 000.00 equivalent to \$30,157,347.20 American dollars.<sup>21</sup>

25. The State also mentioned the "Beca Superior" [Higher Education Scholarship] social program, directed at young people (between the ages of 16 and 28) living in poverty, who have completed secondary school but have problems continuing on to higher education.<sup>22</sup> To help with basic education there is a program called "Mi beca segura educacion media" [My secure secondary school scholarship], directed at children and adolescents aged 11 to 24 living in poverty in urban and rural areas, who have problems with competing and continuing their education. For its part, the "Young Protagonists" program is designed to promote the participation of adolescents and young people living in poverty and socially at-risk and vulnerable situations in various non-formal education and "voluntary integration" courses. Finally, the "Mi Bolsa Segura" (My Safe Grant) program is a CCT mechanism via periodic bank transfers to ensure access to the essential items in the family food basket.<sup>23</sup>

<sup>16</sup> Guatemalan State, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, October 25, 2018.

<sup>17</sup> Banco de Guatemala, *Guatemala en Cifras 2018*, p. 16.

<sup>18</sup> Guatemalan State, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, October 25, 2018, p. 5.

<sup>19</sup> Guatemalan State, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, October 25, 2018, p. 5-6

<sup>20</sup> Guatemalan State, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, October 25, 2018, p. 6.

<sup>21</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report *Situation of Human Rights in Guatemala*, March 14, 2019, p. 3.

<sup>22</sup> Guatemalan State, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, October 25, 2018, p. 6.

<sup>23</sup> Guatemalan State, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, October 25, 2018, p. 6.

26. In its observations on the draft of this chapter, the State stated that during 2018 it delivered food rations to rural families in conditions of vulnerability, benefiting 3,814,726 people.<sup>24</sup> Although the State mentions that an effort is being made to eradicate poverty, budget execution is reportedly too low to ensure a sustained effort in that regard. According to the State Integrated Accounting System (Sicoin), through July 2018 the Ministry of Development had invested 41.95% of the Q362 million allocated to it for CCTs in 2018 (formerly, "Bono Seguro" or secure grants). In the food grant component, only 18.20% of the budget allocation of Q.124 million has been executed. Total execution in those two programs failed to reach the 50% target set by the Ministry of Development (MIDES) for the first six months of the year.<sup>25</sup> In its observations on the draft of this report, the State indicated that during 2018, 152,650 families from 170 municipalities in 10 departments were benefited with a social investment equivalent to US \$30,157,347.20.<sup>26</sup>

27. Two-thirds (66%) of the population living in poverty suffers from chronic malnutrition.<sup>27</sup> Nearly half (46.5%) of children in the country suffer from stunted growth: the highest rate recorded in Central and South America.<sup>28</sup> Guatemala also has the highest stunted growth rate in the region for children under five years of age. The rate is worse in rural areas, where 53% of children are stunted.<sup>29</sup> Through May 26, 2018, the Ministry of Health of Guatemala had registered the deaths, from severe malnutrition, of 25 children under five years of age, up 79% from the figure (14) for the same period in 2017.<sup>30</sup>

28. Article 12 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (also known as the Protocol of San Salvador) mentions the core aspects of the Right to Food. It states in this regard: Everyone has the right to adequate nutrition which guarantees the possibility of enjoying the highest level of physical, emotional and intellectual development. Likewise, General Comment No. 12 of the United Nations Committee on Economic, Social and Cultural Rights (CESCR) considers that the core content of the right to adequate food implies: "[t]he availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given" and "[t]he accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights."<sup>31</sup> The IACHR notes, too, that the levels of malnutrition in the State of Guatemala have not been mitigated, despite the existence of school food programs under the Zero Hunger Pact, such as those mentioned by the State, which seek to provide incentives for school attendance and prevent child and adolescent malnutrition. According to the IACHR, the State of Guatemala is the State hardest hit by chronic malnutrition<sup>32</sup> in Latin America and the statistics are not getting better, despite the efforts that the State mentions.<sup>33</sup>

29. In its observations on the draft of this report, the State stated that by 2019, it is expected to reduce chronic malnutrition in children under two years old from 41.7% to 31.7%, prioritizing indigenous children and rural areas. The State also reported that the National Strategy for the prevention of chronic malnutrition 2016-2020 was prioritized, which aims to reduce the indicator of chronic malnutrition in the seven departments in which there is a higher prevalence of malnutrition.<sup>34</sup>

<sup>24</sup> Guatemalan State, [Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019](#), p. 3.

<sup>25</sup> El Periódico, [Baja ejecución de programas persiste en el MIDES](#), July 12, 2018.

<sup>26</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 3.

<sup>27</sup> PAHO, [Inequality exacerbates hunger, malnutrition, and obesity in Latin America and the Caribbean](#), November 7, 2018; Prensa Libre, [Desnutrición crónica en Guatemala afecta al 66% de los más pobres](#), November 7, 2018.

<sup>28</sup> FAO, [Panorama of Food and Nutrition Security in Latin America and the Caribbean 2018](#), p. 9.

<sup>29</sup> FAO, [Panorama of Food and Nutrition Security in Latin America and the Caribbean 2018](#), p. 20.

<sup>30</sup> Prensa libre, [Muertes por desnutrición aguda suben 79%](#), July 14, 2018.

<sup>31</sup> CESCR, General Comment No. 12, E/C.12/1999/5, para 8.

<sup>32</sup> IACHR, The Human Rights Situation in Guatemala, OEA/Ser.L/V/II., December 31, 2017, par. 4.

<sup>33</sup> Protocol of San Salvador Working Group. Examination of the Reports presented by States Parties on the first group of rights: Concluding observations to the Republic of Guatemala, September 2018, par. 50.

<sup>34</sup> Guatemalan State, [Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019](#), p. 4.

30. For the IACHR, it is appropriate to examine the effectiveness of measures adopted bearing in mind the principle of progressiveness of the Economic, Social, Cultural and Environmental Rights (ESCER). From that standpoint, the policies being pursued by the State are insufficient to close the existing social gap and address the country's nutritional emergency. It worries the Commission that, despite the efforts undertaken, deaths from malnutrition have increased, which makes it imperative that the State adopt drastic measures to deal with the situation in the country, particularly when the most vulnerable segments of society are involved. Accordingly, compliance with these recommendations is still pending.

#### **B. Recommendations regarding administration of justice.**

- Approve constitutional reform on justice as soon as possible while ensuring compliance with international standards on the subject matter, in order to strengthen the judicial career service. For this purpose, it must be ensured that the processes of selection and appointment of the operators of justice are carried out in keeping with Inter-American standards, under merit and professional qualification-based criteria, free of any improper political interference.
- Examine the factors limiting expeditious and effective access to justice and take corrective measures. For example, ensure that the amparo appeal mechanism and the application thereof in Guatemala meet Inter-American standards on the subject.

31. Regarding the recommendation **to approve constitutional reform on justice as soon as possible**, the IACHR regrets not having received information from the State of Guatemala. According to information in the public domain, the reform process initiated in 2015 is reportedly stalled in Congress, and, according to Guatemalan civil society organizations, there is little inclination in Congress to see it prosper. In December 2018, CICIG Commissioner Iván Velásquez stated that the draft "had stalled in Congress, with no move yet made to decide on it."<sup>35</sup>

32. The PDH, for its part, states that "in April 2016, amendments to the Political Constitution of the Republic of Guatemala were put forward and a round table panel to discuss it was installed, but no agreements were reached, so that the amendments never materialized." The PDH added that "under the initiative of the Public Prosecutors' Office and CICIG, work is under way on a proposed amendment to the Code of Criminal Procedure, with UNHCHR and PDH participation, aimed at ensuring that the reforms implicitly embody international human right standards."<sup>36</sup>

33. As it pointed out in its country report, the IACHR reiterated that, on paper, the current process for selecting justice operators in Guatemala appears to be sound, pluralistic, and objective. Nevertheless, for several years now the IACHR has been receiving information, supplemented during its visit, indicating that in practice this process had been misused and distorted, above all by political influence peddling in the composition of the Nominating Commissions and by deficient vetting of qualifications. Repeated questioning of the process points to defective selection and appointment procedures that are supposed to abide by, and safeguard, the principles of autonomy and independence of judges and magistrates.

34. The IACHR reiterates that the reform process represents a major opportunity for boosting the independence of justice operators in Guatemala. It therefore urges the Guatemalan State to forge ahead with the constitutional reform on justice, and to adopt it as soon as possible, while making sure that it abides by international standards in that field. The IACHR will also continue to keep close track of upcoming selection and appointment processes, particularly in order to ensure that they meet the suitability, capability, and integrity requirements established in Article 113 of the Constitution of the Republic of Guatemala, as well

<sup>35</sup> Agencia EFE, [El jefe de la Cicig advierte del reparto político de la Corte Suprema en Guatemala](#), December 7, 2018; Prensa Libre, [Iván Velásquez advierte de reparto político de la Corte Suprema de Justicia](#), December 7, 2018.

<sup>36</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman]

as international standards. In light of the above, the IACHR considers that compliance with this recommendation is still pending.

35. As regards the recommendation to **examine the factors limiting expeditious and effective access to justice and take corrective measures**, the State acknowledged the sluggishness of judicial proceedings but cited no action or efforts to overcome it. The State recognized that, currently, "despite efforts undertaken by the justice system, there are delays related to a backlog of cases in a number of jurisdictions which pose a challenge to State efforts to provide prompt access to justice."<sup>37</sup>

36. During its on-site visit to Guatemala in 2017, the IACHR noted the existence of numerous factors persistently contributing to impunity. For example, the Commission was told about the deliberate misuse of "amparo" (constitutional protection appeals) as a delaying tactic in certain criminal proceedings, and amnesty requests and prescription claims also used as delaying tactics to protect the accused. Other major factors are budget cuts and the poor conditions in which justice operators are forced to work. The Public Criminal Defense Institute (IDPP) and the Attorney General (*Fiscal General*) of Guatemala both reported a decline in their coverage nationwide and limited capacity to effectively address the large number of cases assigned to them.

37. According to the PDH, "no progress has been made with amending the Law on Amparo, even though it is one of the recommendations repeatedly put to the Guatemalan State, including in judgments handed down by the Inter-American Court of Human Rights."<sup>38</sup> That being so, the IACHR considers that compliance with this recommendation is still pending.

### C. Recommendations regarding Transitional Justice and Reparation to Victims of the Internal Armed Conflict

- Approve Law 35-90 to create the National Commission to Search for Victims of Forced Disappearance and to push forward the search for missing persons in accordance with international standards on the subject.
- Approve Law 3551 to provide solidity and certainty to the National Reparations Program (PNR).
- Reinforce actions to combat impunity for human rights violations committed during the internal armed conflict, through prompt, thorough and impartial investigations, punish the perpetrators and masterminds and provide reparation to the victims
- Earmark sufficient resources to the Archive of the National Civilian Police.

38. Regarding the recommendation to **approve Law 35-90 to create the National Commission to Search for Victims of Forced Disappearance and to push forward the search for missing persons in accordance with international standards on the subject**, in its observations the State asserted that "no progress has been reported since 2011, when an expert opinion in favor was issued by the Congressional Commission on Legislation and Constitutional Matters." According to experts in this field and civil society organizations,<sup>39</sup> there is little likelihood of this law being passed in the near future. According to the PDH, in August 2018, some deputies in Congress presented a new bill on the Search for Disappeared Person, "which does not take either an international humanitarian law or human rights approach."<sup>40</sup>

<sup>37</sup> Guatemalan State, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, October 25, 2018, p. 11.

<sup>38</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman]

<sup>39</sup> El Tiempo, [La solitaria búsqueda de los desaparecidos en la guerra de Guatemala](#), August 30, 2018; Federación Guatemalteca de Escuelas Radiofónicas, [Estado continua en deuda con las y los desaparecidos](#), August 30, 2017.

<sup>40</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman]

39. In its Country Report, the IACHR pointed out that, since 2017, civil society has been urging Congress to pass Law 35-90 establishing the National Commission to Search for Victims of Forced Disappearance and Other Forms of Disappearance, aimed at throwing light on the whereabouts of 45,000 victims of forced disappearance and other forms of disappearance during the internal armed conflict. Given the information received regarding the lack of progress in this area, the IACHR concludes that compliance with this recommendation is still pending. The IACHR urges the State to take all necessary measures to comply with this recommendation and, in particular, to proceed to search for the missing persons as a priority, pursuant to inter-American standards in this matter.

40. With respect to the recommendation to **pass Law 3551 to provide solidity and certainty to the National Reparations Program (PNR)**, the State reported that said law had not yet been passed. According to the State, the Law 3551 Initiative "is currently at the second round of debate phase and has received an expert opinion in favor from the Congressional Peace and Demining Commission."<sup>41</sup> The State likewise reported that, according to Governmental Agreement 228-2003 and the amendments to it contained in Governmental Agreement 539-2013, the National Reparations Program is in effect until 2023.<sup>42</sup>

41. In its observations on the draft of this report, the State asserted that a new bill was prepared on the National Search Commission and that it was discussed in November 2018. Likewise, it mentioned that there has been an increase in the general budget assigned to the National Reparations Program, with Q. 40,581,603.31 assigned for 2018 and Q. 42,116,312.00 for 2019.<sup>43</sup>

42. The IACHR has conducted several public hearings on the National Reparations Program (PNR) established in 2003. As the State acknowledged to the IACHR, the PNR has never actually received the full budget allocation assigned to it in its founding agreement based on the Peace Accords. According to information received during the on-site visit, civil society organizations consider that the PNR is still culturally inadequate and pays too little attention to the special situation of women and of indigenous children and adolescents. According to information in the public domain, the 2018 budget allocation was by all accounts insufficient.<sup>44</sup>

43. For its part, the PDH reported that civilian organizations had pushed for the 3551 Initiative in order to endow the PNR with legal certainty and independence. However, Congress has made no headway with debating the bill. Regarding the need to endow the PNR with the resources it needs to function properly, the PDH stated that, instead of increasing funding, the State "has gradually reduced the budget assigned to the Program."<sup>45</sup> The IACHR therefore considers that compliance with this recommendation is still pending and urges the State to do what it takes to pass Law 3551.

44. Concerning the recommendation to **reinforce actions to combat impunity for human rights violations committed during the internal armed conflict**, the State provided no information in its observations to the IACHR.

45. According to information in the public domain, in May 2018 four former members of the military were sentenced to 58 years in prison, and one acquitted, of the crimes of forced disappearance, rape, and crimes against humanity in the case of Emma Molina Theissen. Emma Molina Theissen was arrested in September 1981 in Guatemala City and taken to a military facility in Quetzaltenango, west of Guatemala City,

<sup>41</sup> Guatemalan State, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, October 25, 2018, p. 11.

<sup>42</sup> Guatemalan State, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, October 25, 2018, p. 11.

<sup>43</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 5.

<sup>44</sup> El Periódico, [Programa Nacional de Resarcimiento continúa desfinanciado, May 9, 2018](#); La Vanguardia, [El Estado de Guatemala está en deuda con las víctimas olvidadas de la guerra](#), February 1, 2018.

<sup>45</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman]

where she was tortured and raped. She managed to escape but, as they searched for her, plain clothed police officers arrived at her house and, since they did not find her, took away her 14 year-old brother, Marco Antonio Molina Theissen, who is missing to this day.<sup>46</sup>

46. In connection with the judgment handed down in the Theissen case, High Risk Tribunal C ordered the Government to erect a monument to Emma Guadalupe Molina Theissen in the facilities in which she had been detained; instructed the President of the Republic to decree October 6 as the National Day of Missing Children; ordered a documentary to be made on the Molina Theissen case and published in the media; requested that the judgment be translated into the principal Mayan languages used in the departments of Guatemala and Quetzaltenango so that they could be included in the judicial file on the case; required a special Molina Theissen medal to be made to be awarded to army officers for humanitarian work or for excelling in their observance of human rights; order the Guatemala Congress to pass Law 35-90 creating the National Commission to Locate Victims of Forced Disappearance and Other Forms of Disappearance; and, finally, ordered that a financial reward be established for anyone providing true information regarding the location of clandestine cemeteries containing the remains of victims of the internal armed conflict.<sup>47</sup>

47. For its part, on September 26, 2018, High Risk Tribunal B unanimously ruled that there had been genocide in Guatemala. In that same judgment, for lack of evidence it acquitted the only accused in that trial, José Mauricio Rodríguez Sánchez, former Military Head of Intelligence during the Efraín Ríos Montt dictatorship.<sup>48</sup> The trial had begun in March 2016, three years after the Constitutional Court had ordered the debate to be repeated.<sup>49</sup>

48. In addition, according to information in the public domain, in November 2018, retired soldier Santos López Alonzo was convicted of taking part in the Massacre of the Dos Erres Community in December 1982.<sup>50</sup> The former soldier was found guilty of murdering 171 people and sentenced to 5,160 years in jail, 30 years for each victim and 30 additional years for crimes against humanity. Santos López Alonzo was a member of the elite Army Special Forces and intelligence unit known as "Los Kaibiles". The Tribunal also ordered reparation measures, including protection and psychological counseling for surviving witnesses and commemorative acts for survivors and the victims' next of kin. The Tribunal concluded that the attack had been ordered by military High Command and ordered the authorities to make a resolute effort to detain the other members of the military accused in the case who are still at large. It also ordered Congress to promulgate legal reforms to prevent cases like this being unlawfully procrastinated, thereby impairing the victims' right to access to justice.<sup>51</sup>

49. Two years after judgment was handed down in the case of Sepur Zarco, involving crimes against humanity in the form of sexual violence, in which for the first time Guatemala recognized sexual slavery as a war crime, the State reportedly had still not adopted the necessary measures to comply with the judgments, particularly with respect to honorable and transformative reparation measures for women victims.<sup>52</sup> In February 2018, in connection with this case and as part of the follow-up on reparation measures

<sup>46</sup> CEJIL, [The history of Guatemala is rewritten, thanks to the struggle of the Molina Theissen family](#), May 24, 2018; Excelsior, [Justicia de Guatemala condena a militares por crímenes durante guerra civil](#), May 23, 2018; Europapress, [Guatemala condena a cuatro militares por crímenes contra una joven y un menor durante la guerra civil](#), May 24, 2018.

<sup>47</sup> EFE, [Tribunal de Guatemala ordena crear la Comisión de búsqueda de desaparecidos](#), May 29, 2018.

<sup>48</sup> Elsa Coronado, [Por segunda vez una jueza sentencia que sí hubo genocidio en Guatemala](#), El Faro, September 27, 2018; El Periódico, [Tribunal absuelve a Mauricio Rodríguez Sánchez en caso por genocidio](#), September 26, 2018.

<sup>49</sup> Elsa Coronado, [Por segunda vez una jueza sentencia que sí hubo genocidio en Guatemala](#), El Faro, September 27, 2018, <https://elfaro.net/es/201809/centroamerica/22491/Por-segunda-vez-una-jueza-sentencia-que-s%C3%AD-hubo-genocidio-en-Guatemala.htm>; El Periódico, [Tribunal absuelve a Mauricio Rodríguez Sánchez en caso por genocidio](#), September 26, 2018, <https://elperiodico.com.gt/nacion/2018/09/26/tribunal-absuelve-a-mauricio-rodriguez-sanchez-en-caso-por-genocidio/>

<sup>50</sup> The New York Times, [Ex-Soldier Gets 5,160 Years in Prison for Guatemala Massacre](#), November 22, 2018; BBC News, [5,160 años de cárcel en Guatemala para el exmilitar Santos López Alonzo por la masacre de Dos Erres](#), November 22, 2018.

<sup>51</sup> International Justice Monitor, [Ex-Special Forces Soldier Sentenced to 5,160 Years for Role in Las Dos Erres Massacre](#), November 26, 2016.

<sup>52</sup> IACHR, [Country Report. Guatemala](#), 2017, p. 72-79.

granted in the Sepur Zarco judgment, civil society groups asked Congress to pass bill 5223, which would make February 26 the "Day of Victims of Sexual Violence and Sexual and Domestic Slavery."<sup>53</sup> In its observations on the draft of this report, the State confirmed that the necessary measures have not yet been taken to comply with the provisions of the judgment, especially the reparation measures for women victims.<sup>54</sup>

50. For its part, according to the PDH, the Public Prosecutors' Office has stepped up its investigation of armed conflict cases, but "most judges who have convicted former military for human rights violations committed during the internal armed conflict are constantly harassed, discredited, threatened, and intimidated." The PDH added that "although progress has been made with convictions in some cases, they bear no relation to the quantity of crimes committed during the conflict."<sup>55</sup>

51. While not denying progress made in certain specific cases, the Commission draws attention to the unwarranted delays in judicial proceedings, ongoing impunity for perpetrators, particularly those at the highest levels in the hierarchy, and the inadequacy of reparation measures for victims. For those reasons, it considers that compliance with this recommendation is still pending.

52. Regarding the recommendation to  **earmark sufficient resources to the Archive of the National Police, the State provided no information**. According to information received from national and international civil society organizations, the Historical Archive of the National Police (AHPN) of Guatemala has been undergoing a series of changes to its functional and administrative structure as well as facing difficulties with maintaining its technical team and the financial resources it needs to keep operating. Those organizations have publicly voiced their concern at the possibly negative repercussions of these developments on the proper handling of the archives and on the safety and integrity of the collection of documents archived and of the installations housing them.<sup>56</sup> On this matter, the IACHR requested information from the State of Guatemala under powers vested in it by American Convention. However, as of the day this report was approved, the IACHR had received no information. regarding that matter

53. According to information the IACHR did receive, the AHPN has been having the aforementioned problems ever since the end of 2017, when the Ministry of Culture and Sport decided to suspend the project's activities indefinitely, alleging that first some administrative snags had to be sorted out. According to the organizations, that decision entailed the also indefinite suspension of the contracts of all personnel performing technical and security tasks. In addition, in early August 2018m the United Nations Development Programme (UNDP - Guatemala) was put in charge of managing coordination of the AHPN, one result of which was that limits were set on extending the contracts of personnel conducting research into highly important matters.

54. For its part, the PDH reported that the State had made no arrangements for government funding for the AHPN<sup>57</sup>.

55. With its more than 80 million documents, the AHPN is a vital source of data for throwing light on the grave human rights violations committed during the armed conflict, especially in relation to security forces operations. It therefore plays a key part for ensuring the rights of the victims of the conflict to historical Memory, Truth, Justice, and Comprehensive Reparation. The IACHR considers that compliance with

<sup>53</sup> CERIGUA, [Mujeres piden al Congreso aprobar iniciativa de ley 5223](#), February 19, 2018.

<sup>54</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 6.

<sup>55</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman]

<sup>56</sup> Prensa Comunitaria, [Ante la situación del Archivo Histórico de la Policía Nacional](#) August 7, 2018.

<sup>57</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman]

the recommendation is still pending and urges the State to allocate resources and take steps to guarantee that the AHPN can function properly.

#### D. Citizen Security

- Draft and implement public prevention policies, based on the root causes of violence and the high crime rates, in order to continue to bring these rates down substantially, and to ensure that Guatemalans live in a country free of violence.
- Continue with efforts to strengthen the PNC and withdraw the armed forces from duties of citizen security.
- Ensure the regulation and effective oversight of private security firms and their agents, registration and punishment of those who do not comply with requirements; as well as carry out strict gun control.
- Adopt specific measures to address the issue of lynching in the country.

56. Regarding the recommendation to the State **to draft and implement public prevention policies, in order to continue to bring these rates down**, in the observations it sent to the IACHR, the State of Guatemala provided no information for 2018.

57. The State did report the following actions taken pursuant to the National Policy for Preventing Violence and Crime, Citizen Security, and Peaceful Coexistence (2014-2034): a) Launching of the Policy Nationwide (2014); b) Visit by seven mayors to Medellín, Colombia, to familiarize themselves with Municipal Observatories (2014); c) Launching of the Policy Action Plan (2015); d) Sharing of the Policy with 336 municipal mayors (2014-2015); and e) Establishment of the National Commission for the Policy, comprised of Vice-Ministers (2015); e) Establishment of the Group of Cooperators with the Policy (*Mesa de Cooperantes*); g) Implementation of the Policy in the Annual Operating Plans of 308 municipalities (2015); h) Sharing of the Policy with 50 new mayors elected to serve from 2016-2020; and i) Sharing of the Policy with 21 departmental governors (2016).<sup>58</sup>

58. Regarding the National Policy for Preventing Violence and Crime, Citizen Security, and Peaceful Coexistence (2014-2034), the PDH stated that effective tools for implementing it were still lacking. Also lacking was a clear strategy for endowing the Policy with the financial resources needed to implement it. The PDH also reported that no action plan for the Policy, and hence no monitoring and evaluation system, had been developed. An inter-agency coordination plan was lacking and local authorities had not been strengthened enough to organize the community action that would be needed to supplement efforts to achieve the Policy's goals.<sup>59</sup>

59. Both Civilian National Police (PNC) data and data produced by the National Institute of Forensic Sciences (INACIF) show a steady reduction of the homicide rate in Guatemala over the past nine years. Compared to the peak year levels of 2009, the number of homicides in the country has fallen by more than 50%, according to the PNC, or more than 40% according to INACIF.<sup>60</sup> Thus, according to PNC data, a homicide rate of 47.6 per 100,000 inhabitants in April 2009 fell to 31.3 in April 2014, and 23.5 in June 2018.

60. On the other hand, in its observations on the draft of this report the State pointed out that the homicide rate for 2016 was reduced to 27.3% and for 2018 it was reduced to 22.48%. It also stated that

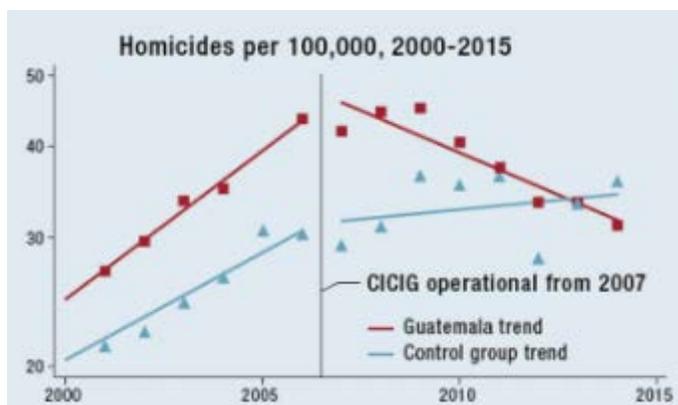
<sup>58</sup> Guatemalan Government. Response to the request for information on the status of attention to the recommendations made in the 2017 Country Report.

<sup>59</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman]

<sup>60</sup> Sources: Report on homicidal violence in Guatemala. Diálogos Observatory of Homicidal Violence. July 1, 2017 to June 30, 2018 / AGN : « Guatemala reduce a la mitad su tasa de homicidios en nueve años; hecho histórico » (<https://agn.com.gt/guatemala-reduce-a-la-mitad-su-tasa-de-homicidios-en-nueve-anos-hecho-historico/>). Washington Post : [https://www.washingtonpost.com/news/monkey-cage/wp/2018/11/13/central-americans-are-fleeing-violence-guatemalas-judicial-reform-model-could-help/?noredirect=on&utm\\_term=.2c8c5c4d5612](https://www.washingtonpost.com/news/monkey-cage/wp/2018/11/13/central-americans-are-fleeing-violence-guatemalas-judicial-reform-model-could-help/?noredirect=on&utm_term=.2c8c5c4d5612).

the National Policy for the Prevention of Violence and Crime, Citizen Security and Peaceful Coexistence 2014-2034 represents an important advance in the subject of violence and crime prevention. Likewise, it highlighted the elaboration of the National Strategy for the Prevention of Violence and Crime, which seeks to contribute to the reduction of violence.<sup>61</sup>

61. Research suggests that much of this substantial decline was due to the work done by CICIG. A study done by the *International Crisis Group*,<sup>62</sup> using econometric techniques to compare changes in homicide rates in Guatemala against a "synthetic control group" comprised of other countries in the region shows that homicides declined sharply in Guatemala after CICIG came on stream, while homicide rates continued to rise in the control group.



Source: International Crisis Group, [Saving Guatemala's Fight against Crime and Impunity](#), October 24 2018.

62. The same study also shows that the decline in homicide rates occurred while other major variables remained unchanged, such as gross domestic product per capita, infant mortality, and household consumption, a finding that strengthens the evidence that the work done by CICIG played a key part in the reduction observed. According to International Crisis Group researchers, impunity rates declined sharply: since CICIG was established, some 80 murderous criminal groups have been dismantled. The study concluded that "in general, the fact that streets have been safer since 2007 may be attributed, at least partly, to better investigation methods, enhanced inter-agency cooperation, and the belief, fostered by the presence of CICIG, that criminals can be found and convicted."<sup>63</sup> Nevertheless, despite the major part that CICIG plays in combating impunity, the Guatemalan State opted, as noted above, to prematurely end its mandate.

63. That being so, and despite its acknowledgment of progress made with reducing violence in Guatemala, the Commission considers that compliance with this recommendation is still pending.

64. As regards the recommendation to continue with efforts to **strengthen the PNC and withdraw the armed forces from citizen security duties**, the State provided information about training courses delivered on sexual violence and child sexual violence. The State referred back to actions taken in previous years, such as: a 10,000 officer increase in the active-duty police force between 2012 and 2014; the purchase of equipment, such as patrol cars and pick-ups in 2017; a 5,319 increase in the number of employees from 2016 to 2017; and other promotional, awareness-raising, care-related and personnel training activities,

65. Pursuant to the State's commitment to withdraw the armed forces from involvement in citizen security duties, the IACHR notes that in March 2018, the Guatemalan State announced that it was

<sup>61</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 6.

<sup>62</sup> Available at <https://www.crisisgroup.org/latin-america-caribbean/central-america/guatemala/70-saving-guatemalas-fight-against-crime-and-impunity>.

<sup>63</sup> International Crisis Group, [Saving Guatemala's Fight Against Crime and Impunity](#), October 24, 2018.

taking the army off the streets, which would henceforth be guarded by the PNC.<sup>64</sup> In the observations it remitted to the IACHR, the State asserted that "the President of the Republic [...] has set March 31, 2018 as the date on which joint operations between the Army and the PNC will end. Consequently, Army units are being located in a number of military brigades whose mission is to protect strategic areas and critical infrastructure and to contribute to national development and to combating transnational organized crime."

66. Nevertheless, according to the PDH, "in August 2018 armored vehicles pertaining to the Army were observed in major avenues in the capital, along with military vehicles circulating in parts of the city and large contingents of the "Kaibiles" special services outside the Congress of the Republic; the Ministry of the Interior stated that that was part of a normal citizen security strategy." The PDH went on to say that "strengthening the PNC has been neglected due to the constant practice of Army participation in citizen security, thanks to a significant budgetary allocation that could well have been devoted to strengthening the PNC, especially with respect to the Police Reform, which was formally initiated in 2010 but was never consolidated."<sup>65</sup>

67. In light of the information received, the IACHR urges the State to comply with the commitments it entered into in this regard and will continue monitoring the process of withdrawing the army from public security duties. The IACHR therefore considers that compliance with this recommendation has been partial.

68. As for the recommendation to **ensure the regulation and effective oversight of private security firms and their agents**, the IACHR notes that the State did not report any measures adopted in 2018 in that regard. The State reported on already existing norms. In particular, the State made reference to Decree 52-2010, Government Decision (*Acuerdo Gobernante*) 417-2013, Decree 15-2009, and the PNC Law.<sup>66</sup>

69. In its Report on the Situation of Human Rights in Guatemala, published in December 2017, the IACHR documented the fact that, in 2016, the General Directorate of Private Security Services (DIGESSP) adopted resolution No. 370-2016 on misapplication of the Law Regulating Private Security Services (Decree Number 52-2010), which grants operating licenses to provide private security services through private security agents, such as private escorts. According to the DIGESSP, there are 181 private security firms currently in compliance or in the process of bringing themselves into compliance with the Law Regulating Private Security Services. Nonetheless, 37% of the firms continue to be out of compliance with the law. During its country visit, the IACHR received information suggesting that, despite some measures adopted by the DIGESSP, challenges to State control over private security companies persist, in particular with regard to gun control, illegal arms trafficking and control over working conditions of private security agents.

70. In its observations on the draft of this report, the State stated that the Directorate General of Private Security Services has registered 128 companies that provide private security services, of which 128 have complied with the requirements contemplated in the law, 45 remain with Ministerial Agreement and 13 with Governmental Agreement. The State also mentioned that during 2018, 98 supervisions were carried out and that 23,638 accredited agents were registered.<sup>67</sup>

71. In light of the information presented by the State, the Commission considers that this recommendation is partially complied with.

<sup>64</sup> Europapress, [Morales anuncia la retirada del Ejército de las calles de Guatemala](#), March 8, 2018; Notimérica, [Morales anuncia la retirada del Ejército de las calles de Guatemala](#), March 8, 2018.

<sup>65</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman]

<sup>66</sup> Guatemalan Government. Response to the request for information on the status of attention to the recommendations made in the 2017 Country Report, pp. 14-17.

<sup>67</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 6.

72. As regards the recommendation urging the State to **adopt specific measures to address the issue of lynching in the country**, the State reported that the National Commission to Prevent Lynching is currently drafting the Lynching Prevention Policy with support from the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and studying the time frame parameter for projecting results (*el estudio del parámetro de temporalidad para proyectar resultados*). This action is due to come on stream in 2019.

73. Meanwhile, according to the PDH, the State has not addressed the issue in a consistent manner and the issue is not dealt with in connection with citizen security policies and strategies. Again according to the PDH, "the Judiciary is coordinating the National Commission to Support the Lynching Prevention Program, but it has not had either the impact or attention needed. Nor has the Ministry of the Interior implemented strategies for looking into and dealing with lynchings." Counting both those wounded and those killed, the PDH reported that there were 64 victims of lynchings in 2005, 131 in 2008, 529 in 2013, 303 in 2014, 170 in 2015, 115 in 2016, and 125 in 2017. Through October 2018, according to the PDG, 65 cases were registered.<sup>68</sup>

74. In light of the above, the IACHR considers that compliance with this recommendation is still pending and urges the State to strengthen existing actions and take all necessary steps to promote a sharper reduction in the number of lynchings in Guatemala.

## E. Specific segments of the population

### Women

- Take decisive action to ensure for all women victims of violence and discrimination access to justice at all stages (complaint, investigation and trial proceedings) through accessible information in terms of language and culture, staff training, specialized legal assistance and through outreach services for victim assistance.
- Promote political participation of women and, in particular, indigenous and Afrodescendent women, in decision-making positions through the design and implementation of affirmative action measures.
- Include sexual crimes in all reparation and justice policies for victims of the armed conflict, especially with regard to implementation of the National Reparation Plan, and to take the necessary measures for the PNR to seriously address without discrimination complaints of sexual violence. These measures must include clarification of the criteria to gain access to justice and to the mechanisms of reparation, as well as the design of reparation measures that meet the specific needs of the women.

75. Regarding the recommendation **to take decisive action to ensure access to justice for all women victims of violence and discrimination**, the Commission has recognized regulatory and institutional development efforts designed to enhance protection and justice for women, and indigenous women in particular.<sup>69</sup> Indeed, the State of Guatemala has a number of instruments regulating protection of women's rights and prohibiting all forms of violence against them. Likewise, there are three public policy instruments addressing violence against women: the National Policy for the Advancement and Integral Development of Women (PNPDIM); the National Policy for Preventing Violence and Crime, Citizen Security, and Peaceful Coexistence; and the Public Policy against Trafficking in Persons and for Comprehensive Protection for Victims.

<sup>68</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman]

<sup>69</sup> IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 2017, par. 95 The IACHR likewise acknowledges the Law against Femicide and adoption of the "Institutional Policy of the Judiciary on Gender Equality and Promotion of Women's Human Rights," including the Tool for analyzing judgments from a gender perspective and a human rights approach, with a view to drafting judgments with a gender perspective and organizing training activities.

76. Likewise the Commission takes note of the adoption of the Organic Law of the Institute for Assisting and Caring for Victims of Crime, coordinated by the National Coordinating Office for the Prevention of Domestic Violence and Violence against Women (CONAPREVI); of the efforts made to include an allocation in the 2017 budget for Integral Support Centers for Women Survivors of Violence (CAIMUS); of the inclusion of the specific needs of women victims of crimes in the 2015-2019 Strategic Plan of the Public Prosecutors' Office; and of the work under way to validate the Protocol for Assisting Indigenous Women, promoted by the Indigenous Peoples Secretariat of the Public Prosecutors' Office.<sup>70</sup>

77. The IACHR likewise observes the availability in 2018 of 19 Public Prosecutor's Offices for Women in a number of different departments, open 24 hours a day, every day of the year<sup>71</sup>; the establishment of courts and public prosecutor's offices specializing in crimes of violence against women; the inauguration in 2018 of the Second Appeals Division for cases of femicide<sup>72</sup>; and the approval of the National Coordinating Office of the Mechanism for Immediate Searches for Missing Women<sup>73</sup> with the launching on August 6, 2018 of the Isabel Claudina alert to search for missing women.<sup>74</sup>

78. Nevertheless, while the Commission acknowledges the major institutional efforts made to expedite criminal prosecution and investigation into violence against women, and the regulatory and institutional frameworks in place, the information received by the IACHR points to persisting high indices of violence against women, girls, and adolescents in the country and the widespread immunity surrounding it. In its concluding observations on the fourth periodic report of Guatemala the United Nations Human Rights Committee expressed concern at the "steady increase" in this violence, especially the large number of gender-based murders (femicides), the degree of viciousness against the victim's bodies, and the small number of trials and convictions despite the increase in the number of specialized courts.<sup>75</sup>

79. The 2018 figures show 9,924 registered denunciations of sexual crimes between January [TR. ADD to Spanish original] and November<sup>76</sup> and 307 femicides in 2018.<sup>77</sup> Likewise, the Commission is aware of worrying acts of violence perpetrated against female human rights defenders in Guatemala,<sup>78</sup> including the sexual violence inflicted on Ximena Ramos<sup>79</sup>; the attack on Stacy Velázquez, a defender of the rights of LGBTI persons<sup>80</sup>; and the murder of indigenous leader Juana Ramírez Santiago.<sup>81</sup>

<sup>70</sup> Government of the Republic of Guatemala, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, Communication to the IACHR No. NV-OEAM12-No.338-2018, October 29, 2018; Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, November 2018.

<sup>71</sup> Government of the Republic of Guatemala, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, Communication to the IACHR No. NV-OEAM12-No.338-2018, October 29, 2018

<sup>72</sup> United Nations - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Concluding observations on the seventh periodic report of Guatemala, Committee Against Torture, CAT/C/GTM/CO/7, November 23, 2018, para. 4.

<sup>73</sup> According to information obtained by the Commission, the Coordinating Body is made up of the following institutions: The Public Prosecutors' Office (*Ministerio Público*), the Ministry of Foreign Affairs, the National Civilian Police, the Directorate General of Migration, the Office of the Counsel General of the Nation - PGN (through the Unit for the Protection of Women's Rights), the Media Secretariat (*Secretaría de Comunicación Social*) of the Office of the President of the Republic, the Secretariat against Sexual Violence, Exploitation, and Trafficking in Persons, the Presidential Commission to Address Femicide; and three nongovernmental organizations. (Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, November 2018.)

<sup>74</sup> Secretariat against Sexual Violence, Exploitation, and Trafficking in Persons, [Mecanismo de Búsqueda de Mujeres Desaparecidas Alerta Isabel – Claudina](#), August 10, 2018.

<sup>75</sup> United Nations - International Covenant on Civil and Political Rights, [Concluding Observations on the fourth periodic report of Guatemala](#), Human Rights Committee, CCPR/C/GTM/CO/4, 7 May 2018, para.12.

<sup>76</sup> Secretariat against Sexual Violence, Exploitation, and Trafficking in Persons, [Denuncias recibidas por el Ministerio Público entre enero y noviembre de 2018](#), Statistics Section.

<sup>77</sup> United Nations - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Concluding observations on the seventh periodic report of Guatemala, Committee Against Torture, CAT/C/GTM/CO/7, November 23, 2018, para. 36.

<sup>78</sup> IACHR, Press Release No. 230/2018, [IACHR Expresses Alarm over the Increase in Murders and Aggressions against Human Rights Defenders in Guatemala](#), October 31, 2018.

<sup>79</sup> Publinews, [Defensora de los Derechos Humanos: "Acabo de ser víctima de abuso sexual"](#), April 13, 2018.

<sup>80</sup> IM-Defensoras, [Agreden a Stacy Velázquez, defensora de los derechos LGBTI, durante protesta por la revocación del mandato de la CICIG](#), September 17, 2018.

80. According to information received, the numerous roadblocks to women's access to justice observed by the IACHR during its on-site visit continue to this day, especially the limited coverage of the justice system itself, particularly in remote areas in which poverty and linguistic barriers may dissuade victims from lodging complaints; the lack of reparation to victims; the dearth of funds allocated to the (CAIMUS) Support Centers; the shortage of local points of entry for accessing the justice system, such as police stations, health care centers, schools, and churches; and failure to renew the National Plan for the Prevention of Domestic Violence and Violence against Women, which expired in 2014.<sup>82</sup>

81. The Commission was also advised of the judgment handed down by the Constitutional Court of Guatemala on July 3, 2018 declaring part of Article 6 of the Law against Femicide and Other Forms of Violence against Women unconstitutional,<sup>83</sup> thereby rendering the words "on no grounds may the sentence be reduced" null and void in the Guatemalan justice system. Since that judgment lowers sentences from the crime of femicide, and given concerns at the impact that might have on access to justice for the [next of kin of] victims of femicide,<sup>84</sup> the IACHR asked the State of Guatemala to provide information regarding steps taken to guarantee punishment of femicide.<sup>85</sup> In its reply, the State referred to the juridical status of the aforementioned words; the judicial appeals that had been filed; data relating to criminal investigations and sentences handed down in femicide cases; and information regarding mandatory training programs for public servants on gender issues.<sup>86</sup>

82. In its observations on the draft of this report, the State reported having followed up on 609 cases of violence against women and presented an initiative before the Congress of the Republic to reform some articles of the Law against Sexual Violence, Exploitation and Trafficking of Persons, typifying crimes such as sexual harassment, sexting and grooming.<sup>87</sup>

83. The Commission notes that this information points to the ongoing difficulties the Guatemala State is having with respect to preventing and punishing gender-based violence against women,<sup>88</sup> due to the persistence, within the judicial system, of stereotypes that discriminate against them, and against indigenous women in particular.<sup>89</sup> On this, the IAVHR has pointed out that stereotypes impair the objectivity of government officials responsible for investigating the complaints lodged with them, biasing their perception

<sup>81</sup> El Periódico, [PDH y organizaciones condenan asesinato de la lideresa Juana Ramírez Santiago](#), September 22, 2018.

<sup>82</sup> United Nations - Committee on the Elimination of All Forms of Discrimination against Women, Concluding observations on the combined eighth and ninth periodic reports of Guatemala, Committee for the Elimination of Discrimination against Women, CEDAW/C/GTM/CO/8-9, November 22, 2017, Paragraph 12. United Nations - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Concluding observations on the seventh periodic report of Guatemala, Committee Against Torture, CAT/C/GTM/CO/7, November 23, 2018, para. Par. 36. (Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, November 2018.)

<sup>83</sup> Constitutional Court, Resolution 1749-2017 (Unconstitutional aspects of the Law against Femicide), July 3, 2018.

<sup>84</sup> UN Women, Press Release, [UN Women expresses its concern regarding the judgment of the Constitutional Court of Guatemala - File 1749-2017- which declares part of Article 6 of the Law against Femicide and Other Forms of Violence against Women unconstitutional](#), June 29, 2018.

<sup>85</sup> IACHR, Letter requesting information regarding the Law against Femicide and Other Forms of Violence against Women in Guatemala. Ref. IACHR- ES-Article 41\_09-2018/63, September 7, 2018.

<sup>86</sup> Government of the Republic of Guatemala,, Reply by the State of Guatemala regarding the status of the general unconstitutionality suit brought against part of Article 6 of the Law against Femicide and Other Forms of Violence against Women, NV-OEA-M12-No.497-2018, October 10, 2018.

<sup>87</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 6.

<sup>88</sup> Human Rights Ombudsman, Informe Anual Circunstanciado de Actividades y Situación de Derechos Humanos 2017, January 2018, p. 145.

<sup>89</sup> United Nations - Committee on the Elimination of All Forms of Discrimination against Women, Concluding observations on the combined eighth and ninth periodic reports of Guatemala, Committee for the Elimination of Discrimination against Women, CEDAW/C/GTM/CO/8-9, 22 November 2017, para 12.

of whether or not an act of violence was committed, their assessment of the credibility of the witnesses and of the victim herself, and their appraisal of evidence.<sup>90</sup>

84. In the particular case of indigenous women, discriminatory stereotypes against them tend to make it easier for perpetrators to assume that violence against them will not be investigated and for the security forces and society in general to consider that requests for help and complaints filed by them are not serious or valid.<sup>91</sup> For that reason, the IACHR deems it essential to push for changes in the structural conditions, social norms, and cultural patterns that serve to legitimize and reproduce forms of violence and discrimination against them; to guarantee effective enforcement of current laws on the subject; and to combat the high levels of impunity surrounding crimes against their personal integrity that send a message to society that such behavior is tolerated and thereby contribute to its perpetuation.<sup>92</sup> In light of all of the above, the IACHR observes that compliance with this recommendation is still pending.

85. **Regarding the recommendation to promote political participation of women and, in particular, indigenous and Afrodescendent women, in decision-making positions through the design and implementation of affirmative action measures**, the State reported that women's participation is to be found in several State decision-making and coordinating bodies, such as in Secretariats; in the Congress of the Republic; in the Judiciary; in the Public Prosecutors' Office, where there is gender parity; and in the foreign service sections of the Ministry of Foreign Affairs, in which women abound.<sup>93</sup> The State also reported on women's participation in municipal corporations and governments (as mayoresses, trustees, and councilors) and departmental Governor's Offices,<sup>94</sup> and pointed to progress made toward achieving gender parity in the judiciary.<sup>95</sup>

86. The State told the IACHR about measures adopted in previous years, but not about actions taken in 2018.<sup>96</sup> In its observations on the draft of this chapter, the State mentioned that the Electoral Tribunal organizes the diploma course "Citizenship and political leadership of women" with the aim of promoting and strengthening the political leadership of women.<sup>97</sup>

87. Despite the presence of women in a number of State institutions, the Commission reiterates its concern at the ongoing gaps between women's right to political participation without discrimination and

<sup>90</sup> I/A Court H.R. Case of Gutiérrez Hernández et al. v. Guatemala (Preliminary Objections, Merits, Reparations, and Costs). Judgment of Thursday, August 24, 2017. Series C No. 339, par. 147; I/A Court H.R. Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of Monday, May 19, 2014, par. 173.

<sup>91</sup> IACHR, Missing and Murdered Indigenous Women in British Columbia, Canada, OEA/Ser.L/V/II, December 21, 2014, par. 98 and 139-140. IACHR, Indigenous Women and Their Human Rights in the Americas. OEA/Ser.L/V/II. Doc. 44/17. Monday, April 17, 2017, par. 82.

<sup>92</sup> IACHR, Towards the Effective Fulfillment of Children's Rights: National Protection Systems, par. 183 and 516.

<sup>93</sup> Of the 16 Secretariats, 4 are headed by women; in Congress, of the 158 elective seats, 28 are held by women; in the Judiciary, half the 12 magistrates are women; in the foreign service units of the Ministry of Foreign Affairs, there are 258 diplomatic positions, 132 (51%) of which are held by men and 126 (49%) by women. Government of the Republic of Guatemala, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, Communication to the IACHR No. NV-OEAM12-No.338-2018, October 29, 2018

<sup>94</sup> In municipal governments in 2015, in the 338 corporations, there were 10 mayoresses ; of 3,722 municipal government positions, 94 were held by women (mayoresses, trustees, and councilors); 5 of the 22 departmental Governor's Offices were headed by women. Government of the Republic of Guatemala, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, Communication to the IACHR No. NV-OEAM12-No.338-2018, October 29, 2018

<sup>95</sup> Women account for 41% (182) of justices of the peace; for 46% (147) of lower court judges; 38% (191) of trial court judges; 39% (123) of trial and appeals chamber judges; 54% (456) of judges in all types of court. (Government of the Republic of Guatemala, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, Communication to the IACHR No. NV-OEAM12-No.338-2018, October 29, 2018.)

<sup>96</sup> According to the State, measures adopted to increase electoral participation depend on the Supreme Electoral Tribunal (TSE), which came up with the 2014-2020 Institutional Strategic Plan, in which actions to increase the civic participation and representation of Mayan, Garifuna, Xinca, and mestizo women in electoral processes and political organizations in line with the Committee's recommendations were adopted as one of the Plan's explicit policies. The State also recalled the Supreme Electoral Tribunal's Gender Equity Policy of 2016. Government of the Republic of Guatemala, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, Communication to the IACHR No. NV-OEAM12-No.338-2018, October 29, 2018

<sup>97</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 10.

on an equal footing with men and their actual role and presence in decision-making bodies, particularly with respect to the participation of indigenous and Afro-descendent women.<sup>98</sup>

88. According to information elicited by the Commission, women account for only 27% of the heads of diplomatic missions abroad, 16% of members of Congress, and less than 3% of mayors.<sup>99</sup> The Commission likewise observes that the principles of gender equality, parity, and alternation of men and women in political party lists of candidates were not included in the amendments made to the Electoral and Political Party Law, despite two rulings in favor thereof by the Constitutional Court.<sup>100</sup> For its part, the PDH pointed out that, even though women account for 51% of the population, they only make up 30% of political party membership.<sup>101</sup> Regarding these figures, the IACHR notes a lack of breakdown by ethnic and racial origin of the women participating in decision-making and coordination units.<sup>102</sup>

89. The Commission likewise observes the lack of special temporary measures designed to expedite the achievement of substantive equality between women and men, particularly equality in political participation. The Commission reiterates that, pursuant to the Convention on the Elimination of All Forms of Discrimination against Women, the State is called upon to establish specific goals and deadlines for expediting equality between women and men in all spheres in which women, including indigenous women, women of African descent, and women with disabilities, are still at a disadvantage or insufficiently represented, such as political and public life, education, and employment.<sup>103</sup>

90. At the same time, the IACHR observes with concern the persistence of discriminatory patterns of behavior and stereotypes regarding the functions and responsibilities of women and men vis-a-vis the family and society, in which women are usually considered subordinate to men: a notion that perpetuates discrimination and violence against women, including in the area of political participation.<sup>104</sup> The Commission has observed that the numerous obstacles that Afrodescendent and indigenous women continue to face to their access to political positions include laws, regulations, and practices that, directly or indirectly, foster discrimination and prevent or curtail their participation in political processes; gender-based stereotypes that assign specific roles to men and women; ethnic and racial prejudices regarding their ability to hold public office; and party-political roadblocks to the participation of women, persons of African descent, and other historically marginalized groups.<sup>105</sup>

91. Accordingly, the IACHR concludes that compliance with this recommendation is still pending and reiterates its recommendation to the State to promote political participation of all women and, in particular, indigenous and Afrodescendent women, through special temporary measures that foster gender

<sup>98</sup> In Latin America, Guatemala and Brazil have the lowest women's representation indices at every level. According to the World Economic Forum's 2016 Global Gender Gap index, Guatemala ranks number 105 out of the 144 countries included in the Gender Gap Ranking, with a gap of 66%, the widest in the Americas. (UNDP Guatemala, [Si somos más de la mitad ¿Por qué no tenemos paridad?](#), July 11, 2018.)

<sup>99</sup> United Nations - Committee on the Elimination of All Forms of Discrimination against Women, Concluding observations on the combined eighth and ninth periodic reports of Guatemala, Committee for the Elimination of Discrimination against Women, CEDAW/C/GTM/CO/8-9, November 22, 2017, Par. 26. El Periódico, [Guatemala es el segundo país de América Latina con menos legisladoras](#), May 3, 2018.

<sup>100</sup> El Periódico, [TSE propone paridad, reducción del número de diputados y revocatoria de mandato, entre otros aspectos](#), November 23, 2017. (Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, November 2018.)

<sup>101</sup> (Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, November 2018.)

<sup>102</sup> United Nations - International Covenant on Civil and Political Rights, [Concluding Observations on the fourth periodic report of Guatemala](#), Human Rights Committee, CCPR/C/GTM/CO/4, 7 May 2018, para. 8.

<sup>103</sup> United Nations - Committee on the Elimination of All Forms of Discrimination against Women, Concluding observations on the combined eighth and ninth periodic reports of Guatemala, Committee for the Elimination of Discrimination against Women, CEDAW/C/GTM/CO/8-9, 22 November 2017, paras. 16 and 17.

<sup>104</sup> United Nations - Committee on the Elimination of All Forms of Discrimination against Women, Concluding observations on the combined eighth and ninth periodic reports of Guatemala, Committee for the Elimination of Discrimination against Women, CEDAW/C/GTM/CO/8-9, November 22, 2017, paras. 18 and 19.

<sup>105</sup> IACHR, Press Release No.161/2018, [On International Afro-Latin American, Afro-Caribbean and Diaspora Women's Day, the IACHR calls on States to encourage and strengthen their political participation](#), July 25, 2018.

and ethnic and racial balance in decision-making spheres, along with appropriate measures to encourage political parties to ensure that women have fair and equitable opportunities to compete for and be elected to, political positions.

92. **As regards the recommendation to Include sexual crimes in all reparation and justice policies for victims of the armed conflict and to design of reparation measures that meet the specific needs of women**, the State reported to the IACHR on the adoption of Resolution 1325 and subsequent formulation in 2016 of its National Plan of Action<sup>106</sup>; the adoption of Decree 12-2016, approving the establishment of the Institute of the Victim<sup>107</sup>; and the judgment handed down by High Risk Criminal Court A in Guatemala City in favor of 11 q'eqchi' women survivors of various forms of sexual violence in Sepur Zarco. The IACHR has repeatedly welcomed that judgment which provides for honorable, individual and collective, reparation for the women victims.<sup>108</sup> The IACHR likewise welcomed the historic ruling by High Risk Criminal Court C, which convicted four senior military officers of crimes against humanity and rape to the detriment of Emma Molina Theissen. For the Commission, that ruling marked a major step forward in the struggle against impunity for crimes committed during the internal armed conflict in Guatemala and it specifically acknowledges the key value of the victim's testimony in rape cases.<sup>109</sup>

93. However, and despite these efforts, the Commission has continued to receive information regarding ongoing roadblocks to implementation of the National Reparation Plan (PNR), especially as regards reparation for crimes perpetrated against women during the internal conflict.<sup>110</sup> Thus, the IACHR notes with concern the inadequacy of the funds allocated to the Secretariat for Peace and the PNR; the fact that the PNR is still not up and running, the technical incapacity to implement it, and the lack of female or male, preferably indigenous staff, speaking the local languages, to attend to women victims.<sup>111</sup> Likewise, the IACHR obtained information showing that, although it is true that in 2018 the document listing the requirement for accessing each of the reparation measures was finally drawn up, some of those requirements could in practice be difficult to meet and could therefore turn out to be obstacles to victims' access to justice and reparation.<sup>112</sup> For its part, the PDH stated that the "Blue Book" on reparation measures includes sexual violence as one of the violations for which reparation is due, but in respect of which the State had not managed to guarantee a comprehensive response. In light of the above, compliance with this recommendation is still pending.

### Children and adolescents

- With respect to the high rate of child institutionalization, implement measures to do away with institutionalization and review legislation, policies and practices to bring them into line with

<sup>106</sup> According to information provided by the State, in 2016 the National Plan of Action was drawn up and the Inter-Agency Commission on Women, Peace, and Security (MIMPAZ) was established. (Government of the Republic of Guatemala, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, Communication to the IACHR No. NV-OEAM12-No.338-2018, October 29, 2018.)

<sup>107</sup> Government of the Republic of Guatemala, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, Communication to the IACHR No. NV-OEAM12-No.338-2018, October 29, 2018

<sup>108</sup> , Press Release No. 31/2016, [IACHR Welcomes Progress and Urges States to Ensure Favorable Conditions for the Exercise of Women's Rights](#), March 8, 2016. IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 2017, par. 130.

<sup>109</sup> IACHR, [Press Release No.142/2018, IACHR welcomes historic decision in the fight against impunity for crimes committed during the internal armed conflict in Guatemala](#), July 2, 2018.

<sup>110</sup> (Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, November 2018.)

<sup>111</sup> Human Rights Ombudsman, Statement on "Transitional Justice Processes", the Right to Truth, Justice, Reparation and Guarantees of Non-Repetition, 34th session of the Human Rights Council ,Guatemala, February 2017. Asociación Campesina para el Desarrollo Integral Nebajense (ASOCDENE), Coordinadora de Víctimas de Alta Verapaz, (CODEVI), Coordinadora de Víctimas de Petén, (COVIP), Comunidades de Población en Resistencia de la Sierra, (CPR-Sierra), Comunidades de Víctimas de Cotzal, Centro de Análisis Forense y Ciencias Aplicadas, (CAFCA), Reparations in Guatemala and failure to comply with them. Request for a thematic hearing in connection with the 169th period of sessions of the IACHR in Boulder (United States), communication of July 11, 2018

<sup>112</sup> Asociación Campesina para el Desarrollo Integral Nebajense (ASOCDENE), Coordinadora de Víctimas de Alta Verapaz, (CODEVI), Coordinadora de Víctimas de Petén, (COVIP), Comunidades de Población en Resistencia de la Sierra, (CPR-Sierra), Comunidades de Víctimas de Cotzal, Centro de Análisis Forense y Ciencias Aplicadas, (CAFCA), Reparations in Guatemala and failure to comply with them. Request for a thematic hearing in connection with the 169th period of sessions of the IACHR in Boulder (United States), communication of July 11, 2018

international standards, particularly, reinforcing social policies of support to families in order to help them to provide adequate care for their children, as well as social policies aimed at ensuring rights, such as health, education and nutrition, and taking into account the best interests of the child.

- Clearly regulate measures involving the removal of a child from his or her family for reasons of protection, on an exceptional basis and for the shortest length of time possible, and making it applicable only in limited circumstances provided for by the law, and stipulating that the decision must be subject to periodical review, in keeping with international standards.
- Adopt public policies and legislative measures to implement a true model of full implementation of all rights of all children and adolescents, which creates an adequate institutional framework to ensure their rights, with special emphasis on services for children at the local level, endowing the framework with sufficient human, material and economic resources.
- Put an end to the model of residential institutions for children and adolescents, inasmuch as it runs counter to international standards.

94. Regarding the recommendation urging the State to **implement measures to do away with institutionalization and review legislation, policies and practices to bring them into line with international standards**, according to data provided by the State, between January and July, 2018, 4,275 complaints were processed that demanded actions by the Office of the Solicitor General (*Procuraduría General de la Nación*] (PGN) to protect the rights of children and adolescents. Four-fifths (80.7%) of those complaints were processed through administrative channels and 18.1% by the courts. The State also reported a reduction in the percentage of institutionalized children and adolescents from 8% to 2%. Nevertheless, the IACHR notes that in absolute terms the number of institutionalized children and adolescents increased by 13.5%, from 74 in the second half of 2017 to 84 between January and July 2018.<sup>113</sup>

95. The IACHR takes note of the State's initiatives with respect to the new complaints processed annually, in which fewer cases appear to be litigated in court (*por las cuales se observa una menor judicialización de los casos*). However, the Commission regrets that, specifically as regards this recommendation, the State restricted itself to providing information about new complaints and institutional processes, without addressing other aspects required for full compliance with the recommendation. In its observations on the draft of this report, the State indicated that during 2018 Government Agreement No. 056-2018 "Regulation of the Attorney General's Office of the Attorney for Children and Adolescents" was approved. This Regulation foresees that any complaint regarding children and adolescents be sent to the appropriate instance and seeking the best interests of the child. The State mentioned that in 2018, out of a total of 1,686 complaints, 75% were resolved through administrative channels, 22% through judicial channels and 3% institutionalized.<sup>114</sup>

96. The above-mentioned recommendation has three core components: 1) ending institutionalization; 2) reviewing legislation, policies, and practices in line with international standards; and 3) boosting social policies so as to guarantee the rights to health, education, nutrition, and so on. The initiatives aimed at reducing the number of new institutionalizations need to be accompanied by others also aimed at promoting restitution of the right to a family and community life for children and adolescents currently deprived of parental care. Accordingly, the Commission urges the State to adopt measures to restore the rights of children and adolescents currently bereft of family care, with a view to taking them out of institutions.

97. As regards the second component, the IACHR observes that the State did not provide data about possible adjustments of the regulation referring to special protection measures. On the other hand, the State did report that the Office of the Counsel General of the Nation (PGN) did adopt Decision (*Acuerdo*) 056/2018 with the Rules of Procedure on the technical and administrative procedures followed by the Office of the Procurator for Children and Adolescents and its Regional Branches in each of the areas covered by the

<sup>113</sup> Republic of Guatemala, Note SNV-OEA-M12-N°538-2018, October 29, 2018, p. 24.

<sup>114</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 11.

Law for the Comprehensive Protection of Children and Adolescents and that it stresses the best interests of the child.<sup>115</sup> Nevertheless, this initiative applies only to the Office of the Procurator and is therefore limited in scope.

98. Article 18 of the Law for the Comprehensive Protection of Children and Adolescents, Decree No. 27/2003 of the Congress of the Republic of Guatemala establishes the right to a family and Article 112 lists the specific protection measures, which include placing the child temporarily in a substitute family or in a temporary shelter run by a care provider.<sup>116</sup> However, the aforementioned law does not set a time limit for application of the measure. Nor does it require periodic review of the measure in line with Recommendation No. 21 and inter-American standards.

99. The IACHR issues a reminder that the purpose of including deadlines in the Law for the application of special protection measures is to avoid possible periods in which nothing is done or there is a lack of diligence on the part of the authorities with regard to restitution of the child's rights. Setting deadlines also serves as an incentive to review a measure before it expires.<sup>117</sup> The goal of special protection measures is to restore a child's rights as swiftly as possible, which requires periodic review of the measures to see whether they are still necessary and suitable, or whether they need to be adjusted or ended.<sup>118</sup>

100. With regard to social and family-support policies, the State also failed to send detailed information regarding actions that would indicate compliance with this third component of the recommendation. For their part, data from CIPRODENI's Observatory of the Rights of the Child (ODN) suggest that the State is still challenged when it comes to implementing social policies. Based on information culled by the Observatory, every six days a child dies from severe malnutrition, especially children from 0 to 4 years of age. 2018 data collected by the Observatory through July register 34 deaths from that cause.<sup>119</sup> The Observatory was warned that between January and July 2018, an alarmingly large number (58,638) of child and adolescent girls became pregnant, aged 10 to 14,<sup>120</sup> a phenomenon that cries out for a structured and urgent social policy response by the State.

101. The IACHR has reiterated that family support and protection policies help to facilitate the exercise of parental functions as well as prevent families from being overwhelmed by circumstances that limit their ability to provide care and wellbeing to their children.<sup>121</sup> The Commission specifically reminds the State of the obligations referred to in Article 15 of the Protocol of San Salvador, which establishes the right to constitute and protect the family,<sup>122</sup> and it urges that all necessary steps be taken to comply with this third component of the recommendation. Therefore, the IACHR considers that compliance with the recommendation is still pending.

102. As for full compliance with the recommendation to **clearly regulate measures involving the removal of a child from his or her family for reasons of protection, on an exceptional basis and for the shortest length of time possible**, the State mentioned the entry into force of Decision 056/2018, adopted by the Office of the Counsel General of the Nation (PGN),<sup>123</sup> to which the Human Rights Ombudsman

<sup>115</sup> Republic of Guatemala, Note SNV-OEA-M12-N°538-2018, October 29, 2018, p. 25.

<sup>116</sup> See [Law on Comprehensive Protection of Children and Adolescents](#), June 4, 2003, Article 112 g. and h.

<sup>117</sup> CIDH, [The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas](#), OEA/Ser.L/V/II. Doc. 54/13, Thursday, October 17, 2013, par. 173.

<sup>118</sup> CIDH, [The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas](#), OEA/Ser.L/V/II. Doc. 54/13, Thursday, October 17, 2013, par. 243.

<sup>119</sup> CIPRODENI, Un año de sistemático retroceso en materia de Derechos de Niñez y Adolescencia, October 1, 2018, p. 1.

<sup>120</sup> CIPRODENI, Un año de sistemático retroceso en materia de Derechos de Niñez y Adolescencia, October 1, 2018, p. 2.

<sup>121</sup> CIDH, [The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas](#), OEA/Ser.L/V/II. Doc. 54/13, Thursday, October 17, 2013, par. 76.

<sup>122</sup> OEA, [Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights](#), November 17, 1988, Article 15.

<sup>123</sup> Republic of Guatemala, Note SNV-OEA-M12-N°538-2018, October 29, 2018, p. 25.

also refers.<sup>124</sup> However, the point of the recommendation is to ensure that the clarification is made within the ambit of the Protection Law, as required by inter-American standards and international human rights law.<sup>125</sup>

103. The IACHR notes that Article 114 of the Law for the Comprehensive Protection of Children and Adolescents establishes that providing shelter in a public or private facility is exceptional. The Commission also appreciates the fact that the Law requires all child-related procedures to be conducted without delay.<sup>126</sup> However, the content of Article 114 does not cover provisional placement of a child or adolescent in a substitute family, which still requires the legislative clarification referred to in the recommendation, so as to ensure that the principles of exceptionality, temporariness, and diligence apply to all measures. Furthermore, the IACHR considers that the Law should include a specific list of the grounds justifying a decision to separate a child from his or her family. Therefore, the IACHR considers that compliance with this recommendation is still pending.

104. As for the recommendation to **put an end to the model of residential institutions for children and adolescents, inasmuch as it runs counter to international standards**, the State reported that the Office of the Counsel General of the Nation (PGN), together with the Social Welfare Secretariat and the Judiciary, are currently working on a de-institutionalization process, with particular attention to the needs of children and adolescents with disabilities.<sup>127</sup> In addition, the State declared that the PGN has a "De-Institutionalization Road Map" geared to finding a suitable family environment tailored to the social and community context. It likewise reported that the Social Welfare Secretariat is responsible for executing the "Substitute Families" program, to avoid the institutionalization of children and adolescents and provide a new family environment.<sup>128</sup> In the same vein, the Human Rights Ombudsman provided information indicating that the aforementioned program was restructured in 2018 and endowed with new Rules of Procedure. The Ombudsman further reported that, as of October 2018, 59 families had been certified for participation in the program, and that they are supervised by the Family Welfare Secretariat when they take in children.<sup>129</sup> Therefore, the IACHR considers that compliance with this recommendation is still pending. The IACHR reiterates its request to the State to construct a Plan of Action envisage an across-the-board replacement of the current model and to report in due course on the number of units currently following that model, the number of institutionalized children and adolescents, the number of units currently being closed down, and a description of the status of that closure process.

105. Regarding the recommendation to **adopt public policies and legislative measures to implement a true model of full implementation of all rights of all children and adolescents**, the State provided information indicating that in 2016 the Office of the Counsel General of the Nation (PGN) began implementing the Management System for Comprehensive Attention to Children and Adolescents.<sup>130</sup> For his part, the Human Rights Ombudsman reported that in March 2018, the State presented the Public Policy and Plan of Action for Comprehensive Protection of Children and Adolescents (2017-2032), approved by the Nation Commission on Children and Adolescents (CNNA), but it also underscored that there is still no national governing body or lead agency for public policies on children and adolescents in Guatemala.<sup>131</sup> Along those

<sup>124</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2018. [Inputs by the Human Rights Ombudsman], p. 21.

<sup>125</sup> IACHR Report No. 83/10, Case 12.584, Merits, Milagros Fornerón y Leonardo Aníbal Fornerón, Argentina, November 29, 2010, par. 108, and I/A Court H.R., Case of Atala Riffo and Girls. v. Chile. Merits, Reparations and Costs. Judgment of Friday, February 24, 2012. Series C Nº 239, par. 164.

<sup>126</sup> See [Law on Comprehensive Protection of Children and Adolescents](#), June 4, 2003, Article 116.e.

<sup>127</sup> Republic of Guatemala, Note SNV-OEA-M12-Nº538-2018, October 29, 2018, p. 25.

<sup>128</sup> Republic of Guatemala, Note SNV-OEA-M12-Nº538-2018, October 29, 2018, p. 26.

<sup>129</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2018. [Inputs by the Human Rights Ombudsman], pp. 22 and 23.

<sup>130</sup> Republic of Guatemala, Note SNV-OEA-M12-Nº538-2018, October 29, 2018, p. 25.

<sup>131</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2018. [Inputs by the Human Rights Ombudsman], pp. 20 and 22.

same lines, in February 2018, the United Nations Committee on the Rights of the Child recommended that the State allocate the human, technical, and financial resources needed for the protection system to function properly.<sup>132</sup> Civil society has also pointed to the need for the country to forge an institutional framework for effectively providing guarantees with a rights-based approach. On that, CIPRODENI informed the IACHR that on June 6, 2017 a bill on the National System for the Protection of Children and Adolescents was presented to Congress, but was still not being processed in 2018.<sup>133</sup>

106. The IACHR appreciates the State's adoption of a Public Policy and Plan of Action for the Comprehensive Protection of Children and Adolescents for 2017-2032.<sup>134</sup> Nevertheless, the Commission stresses that, along with public policies, legislative measures are needed to implement a true model of full implementation of comprehensive guarantees for all rights of all children and adolescents that creates an appropriate institutional framework for guaranteeing those rights, with particular emphasis on services. As was pointed out in the report entitled "Towards the Effective Fulfillment of Children's Rights: National Protection Systems" (2017), a comprehensive protection system depends on a set of interdependent actions and measures, that can be grouped under three dimensions: regulatory, programmatic, and institutional.<sup>135</sup> Indeed, adopting a public policy is a core component of the programmatic dimension, but it is not the only one.

107. Particularly as regards National Policy, the IACHR points out that it needs to be adopted at the highest regulatory level<sup>136</sup> and ideally take the form of a law.<sup>137</sup> As for its content, the National Policy must include objectives, outcomes, and concrete and reachable targets; provide clear indicators for tracking compliance; and specify in detail the authorities responsible for its implementation.<sup>138</sup> In addition, the National Policy needs to make provision for the funding needed to ensure that the policy is applied, establish a clearly defined, stable, and sufficient funding mechanism.<sup>139</sup> As regards the procedure for forging the National Policy, the State needs to involve the various ministries and institutions with some responsibility for safeguarding children's rights, as well as provide incentives for the indispensable participation of civil society and of children and adolescents themselves, so that they can exercise their right to participate in the taking of decisions that affect them. To ensure that participation, the IACHR reiterates the need for the legal norm creating the Comprehensive Protection System to institutionalize the mechanisms for participation by civil society and by children and adolescents.<sup>140</sup>

108. Along those lines, the Commission recalls that States must adopt systems focusing on the protection of all the rights of children and adolescents and replacing the essentially guardianship-oriented model with one offering comprehensive and sustainable guarantees.<sup>141</sup> Based on that principle, the IACHR urges the State of Guatemala to adopt measures in the three aforementioned dimensions, paying special head to local services and envisaging the existence of a deliberative body that shapes municipal policy and

<sup>132</sup> Committee on the Rights of the Child, [Concluding observations on the combined fifth and sixth periodic reports of Guatemala](#), CRC/C/GTM/CO/5-6, February 28, 2018, para. 5.

<sup>133</sup> CIPRODENI, Un año de sistemático retroceso en materia de Derechos de Niñez y Adolescencia, October 1, 2018, p. 4. See also Republic of Guatemala, Congress of the Republic, [Iniciativa de Ley nº 5285](#), June 6, 2017.

<sup>134</sup> Republic of Guatemala, [Presentan política para protección de niñez y adolescencia](#), March 8, 2018.

<sup>135</sup> IACHR, Report [Towards the Effective Fulfillment of Children's Rights: National Protection Systems](#), OEA/Ser.L/V/II.166. Doc. 206/17, Thursday, November 30, 2017, par. 55.

<sup>136</sup> Committee on the Rights of the Child, [General Comment No.5 "General measures of implementation of the Convention on the Rights of the Child"](#), November 27, 2003, para. 31.

<sup>137</sup> IACHR, Report [Towards the Effective Fulfillment of Children's Rights: National Protection Systems](#), OEA/Ser.L/V/II.166. Doc. 206/17, Thursday, November 30, 2017, par. 71.

<sup>138</sup> IACHR, Report [Towards the Effective Fulfillment of Children's Rights: National Protection Systems](#), OEA/Ser.L/V/II.166. Doc. 206/17, Thursday, November 30, 2017, paras. 61-64

<sup>139</sup> IACHR, Report [Towards the Effective Fulfillment of Children's Rights: National Protection Systems](#), OEA/Ser.L/V/II.166. Doc. 206/17, Thursday, November 30, 2017, par. 72.

<sup>140</sup> IACHR, Report [Towards the Effective Fulfillment of Children's Rights: National Protection Systems](#), OEA/Ser.L/V/II.166. Doc. 206/17, Thursday, November 30, 2017, par. 75-76

<sup>141</sup> IACHR, Report [Towards the Effective Fulfillment of Children's Rights: National Protection Systems](#), OEA/Ser.L/V/II.166. Doc. 206/17, Thursday, November 30, 2017, par. 14.

monitors its implementation and the institutions or services responsible for executing the policies.<sup>142</sup> Therefore, the IACHR considers that compliance with this recommendation is still pending.

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<sup>142</sup> IACHR, Report [Towards the Effective Fulfillment of Children's Rights: National Protection Systems](#), OEA/Ser.L/V/II.166. Doc. 206/17, Thursday, November 30, 2017, par. 158.

## Indigenous peoples

- Prior to granting concessions, licenses or permits for the exploration or exploitation of natural resources that affect the ancestral lands or territories of indigenous peoples and communities, carry out a prior, free and informed consultation, with a view to obtain consent, in keeping with Inter-American standards on the subject, and taking into account the characteristics, practices and customs of the indigenous peoples and communities involved.
- With respect to concessions previously granted or in the process of implementation, establish a mechanism to be able to assess the need for a change in the terms thereof in order to preserve the physical and cultural survival of indigenous communities and peoples. Adopt the 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.
- Adopt immediate measures to protect collective intellectual property of indigenous women with regard to apparel and designs that represent their traditional identity.

109. Regarding the **recommendation to carry out a prior, free and informed consultation prior to granting concessions, licenses or permits for the exploration or exploitation of natural resources that affect the ancestral lands or territories of indigenous peoples and communities**, the State reported that the Constitutional Court ordered the Ministry of Energy and Mines to adopt measures needed to ensure that indigenous communities are consulted, in accordance with applicable international standards. In addition, the State reported that said Ministry had taken a number of actions in response to the Court's order, but did not specify which. The State also reported that Guatemala has Operational Guidelines for conducting consultations with the indigenous peoples, which serve as a toll for the official responsible for such consultation pursuant to International Labour Organization (ILO) Convention No. 169. Finally, the Guatemalan State indicated that Congress is debating legal initiative No. 90-5416, which contains the Bill on Consultation of Indigenous Peoples, which is reportedly in line with the provisions of ILO Convention No. 169.<sup>143</sup>

110. The IACHR underscores the progress made in the case law of the Constitutional Court,<sup>144</sup> as well as the announcement that a bill exists for regulating implementation of prior, free and informed consultation. However, according to information provided by civil society organizations, indigenous peoples have not participated in the drafting of that initiative.<sup>145</sup>

111. The IACHR reiterates the position it took in previous reports,<sup>146</sup> and what the United Nations Special Rapporteur on the Rights of Indigenous Peoples said recently<sup>147</sup>, namely that the root cause of the problems besetting indigenous peoples in Guatemala is the failure to protect their rights to their lands, territories, and natural resources pursuant to international human rights standards. The lack of protection of those rights occurs in a context of extreme inequality in the distribution of land and insecure tenure, with an inadequate land registration system which continues to allow third parties title to indigenous ancestral land, with no proper mechanisms for resolving ownership disputes, which tend to end up in the courts.

<sup>143</sup> Communication of the State of Guatemala. Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, of the Inter-American Commission on Human Rights, October 2018, pp. 26 and 27.

<sup>144</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" [Inputs by the Human Rights Ombudsman], p.23. November 2018 [in IACHR archives].

<sup>145</sup> M4 Movimiento Mesoamericano contra el Modelo extractivo Minero, [Guatemala: La autodeterminación de los pueblos en riesgo con la ley de consulta](#), August 10, 2018; DFL Fundación para el Debido Proceso, [Implementación de la consulta y consentimiento previo, libre e informado. Experiencias comparadas en América Latina y discusiones sobre una ley de consulta en México](#), pp. 31 to 36.

<sup>146</sup> IACHR, [Situation of Human Rights in Guatemala](#), pp. 61ff.

<sup>147</sup> Victoria Tauli-Corpuz, [Dnd of mission statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, on her visit to Guatemala](#), 10 May 2018.

112. In fact, the IACHR has noted that the indigenous peoples are subjected to high levels of social exclusion in Guatemala,<sup>148</sup> in various guises, including lack of access to justice and geographical and cultural barriers to achieving said access. Despite the measures adopted to implement the Peace Accords in Guatemala, the IACHR observes with concern ongoing obstacles to implementation of the rights of indigenous peoples, especially those relating to land and territories. Non-compliance with the Accords impacts numerous areas, including agrarian reform, acknowledgment of indigenous authorities and indigenous justice, political participation, integral development, health, intercultural bilingual education, reparation for the victims of grave human rights violations, and so on.<sup>149</sup>

113. The IACHR urges the State to correct the participatory processes and to discuss the aforementioned regulatory bill following free, prior, and informed consultation with entities representing the indigenous peoples. The IACHR reiterates that the State is duty-bound to conduct free, prior, and informed consultations with the indigenous peoples regarding all legislative and administrative measures capable of affecting them directly.<sup>150</sup>

114. Likewise, the IACHR reiterates the position taken by the Inter-American Court that “one of the fundamental guarantees to ensure the participation of indigenous peoples and communities in decisions regarding measures that affect their rights and, in particular, their right to communal property, is precisely the recognition of their right to consultation.”<sup>151</sup> That being so, compliance with this recommendation is still pending.

115. Regarding the recommendation to **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**, the State reported that the Political Constitution of the Republic of Guatemala establishes that technical and rational exploitation of hydrocarbons, minerals, and other nonrenewable resources is both useful and necessary and in the public interest. The State further pointed out that it is the Ministry of Energy and Mines that is responsible for authorizing prospecting, exploration, production operations. For its part, the Mining Law establishes that the holder of the contract shall be liable to pay compensation for all damages to third parties arising from its operations.<sup>152</sup>

116. The IACHR has received information indicating that the Environmental Impact Assessments (EIAs) do not ensure mitigation of the environmental and social impacts caused by mining companies, and that the Ministry of the Environment and Natural Resources (MARN) has not managed to assert itself as a key player in environmental management taking the rights of indigenous peoples into account.<sup>153</sup> It has also been advised that the areas in which much foreign investment is concentrated coincide with areas with the lowest human development indicators: an indication that indigenous communities do not benefit from those

<sup>148</sup> IACHR, Situation of Human Rights in Guatemala: Diversity, inequality and exclusion, OEA/Ser.L/V/II.Doc. 43/15, Wednesday, December 30, 2015, par. 70. IACHR, Fifth Report on the Situation of Human Rights in Guatemala (2001), Chapter XI. the Rights of Indigenous Peoples. Introduction, par. 4; and Justice and Social Inclusion: The Challenges of Democracy in Guatemala (2003). Chapter IV. Situation of Indigenous Populations. A. Introduction, par. 210.

<sup>149</sup> Victoria Tauli-Corpuz, [Dnd of mission statement by the United Nations Special Rapporteur on the rights of indigenous peoples. Victoria Tauli-Corpuz on her visit to Guatemala](#), 10 May 2018.

<sup>150</sup> I/A Court HR. Kichwa Peoples of the Sarayaku community and its members v. Ecuador. Merits and Reparations. Judgment of Wednesday, June 27, 2012. Series C No. 245, par. 181. I/A Court HR. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs. Judgment of Wednesday, November 28, 2007. Series C No. 172, par. 133 to 137. I/A Court HR. Case of the Saramaka People v. Suriname. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of Tuesday, August 12, 2008, Series C No. 185, par. 17.

<sup>151</sup> I/A Court HR. Kichwa Peoples of the Sarayaku community and its members v. Ecuador. Merits and Reparations. Judgment of Wednesday, June 27, 2012. Series C No. 245, par. 160.

<sup>152</sup> Communication of the State of Guatemala. Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, of the Inter-American Commission on Human Rights, October 2018, pp. 27 and 28

<sup>153</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos “Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala” [Inputs by the Human Rights Ombudsman], p.23. November 2018 [in IACHR archives].

projects. In this connection, the United Nations Special Rapporteur voiced her concern at endless testimony received about hydroelectric, mining, and agro-industrial projects whose licenses and operations have violated the rights of indigenous peoples. Regarding the q'eqchi' community in Sepoc (Alta Verapaz), the IACHR received information about the impact caused by dams on access to water for communities along the Cahabón river and about the persecution unleashed against the community leaders protesting. The definitive licenses authorized for the Oxec I and Oxec II hydroelectric plants were allegedly granted without consulting the communities.<sup>154</sup> Complaints were filed about water restrictions, threats, criminalization, and violence in connection with the Los Manantiales (Chiquimula) mining project and about the failure to respect the title deeds of several of the communities impacted. In its observations on the draft of this report, the State indicated that the Ministry of Energy and Mines achieved a historic agreement with the communities in the area of influence of the Oxec and Oxec II hydroelectric plant in Alta Verapaz. The State did not indicate, however, the date of the agreement.<sup>155</sup> There are also reports that in San Juan Sacatepéquez the communities are still facing similar problems caused by Cementos Progreso operations, despite their efforts to reach a solution.<sup>156</sup>

117. At the same time, the IACHR points out that several indigenous authorities have reported trying to engage in peaceful efforts to settle land conflicts and, in some emblematic cases, have filed legal petitions to assert their rights, some of which even got as far as the Supreme Court. However, in most cases, such petitions have failed due to inaction in the Judiciary. The IACHR also notes that many of the leaders and members of the communities that file suits have been persecuted via criminal charges brought against them that are very quickly processed in the judicial system.<sup>157</sup> This issue is discussed in the section on human rights defenders.

118. The IACHR also reiterates its concern for the rights of the Maya Q'eqchi indigenous families impacted by forced evictions in Guatemala. During the 169th period of sessions of the IACHR, petitioners from the Maya Q'eqchi' people explained that they had lived on their land since time immemorial and yet were having huge difficulty getting their lands recognized and registered, as a result of which some communities had been evicted and displaced and they had to face the uncertainty of that happening again. The petitioning organizations reported human rights violations, such as their crops being burned down; the criminal prosecution of their leaders; the seizure of their women's traditional costumes and the banning of Mayan rituals related to their ancestral lands; and lack of access to schools for their children. On this, the IACHR underscored the seriousness and magnitude of the problem, which it ascertained during its on-site visit to Guatemala from July 31 to August 4, 2017, together with the length of time for which people and communities had been displaced and their vulnerability.<sup>158</sup> In 2018, the IACHR also granted precautionary measures on behalf of indigenous leaders and defenders in Guatemala, because of the threats, harassment, and other acts of violence to which they had been subjected. Those measures included: precautionary measure No. 860-17 on behalf of indigenous families of the Chaab'il Ch'och' community; and precautionary measure No. 872-17 on behalf of evicted and displaced families of the "Nueva Semuy Chaccilla" Maya Q'eqchi community.

119. The IACHR reiterates the position taken by the I/A Court of H.R. that the close ties between indigenous communities and their territory generally include an essential element of cultural identification based on their own world views or cosmic visions, which, in a democratic society, must be especially recognized and respected as those of diverse social and political actors in a multicultural social context. Recognition of the right of indigenous and tribal communities and peoples to be consulted is rooted, inter alia,

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<sup>154</sup> United Nations, [Report of the Special Rapporteur on the rights of indigenous peoples in connection with her visit to Guatemala](#), 2018, para 37.

<sup>155</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 12.

<sup>156</sup> United Nations, [Report of the Special Rapporteur on the rights of indigenous peoples in connection with her visit to Guatemala](#), 2018, para 37.

<sup>157</sup> United Nations, [Report of the Special Rapporteur on the rights of indigenous peoples in connection with her visit to Guatemala](#), 2018, para 52.

<sup>158</sup> IACHR, Press Release 220A/18- [Summaries of Hearings 169th Period of Sessions in Boulder, Colorado Annex to Press Release 220/18](#), October 19, 2018.

in respect for their right to their own culture or cultural identity, which must be specifically safeguarded in a pluralist, multicultural, and democratic society.<sup>159</sup> In light of the above, the IACHR concludes that compliance with this recommendation is still pending.

120. As regards the recommendation to **adopt immediate measures to protect collective intellectual property of indigenous women with regard to apparel and designs that represent their traditional identity**, the State reported that the Constitutional Court had established case law regarding collective property, especially in connection with the right to ancestral property. The Guatemalan State indicated that Article 60 of the Political Constitution of the Republic recognizes cultural heritage. Furthermore, the State pointed out that bill No. 5247 was before Congress, had been presented to the full Congress of the Republic in plenary session, and had already been approved by the congressional Indigenous Peoples Commission on April 5, 2017, so that it was not awaiting its first round of debate by the plenary.<sup>160</sup> The bill seeks recognition of indigenous collective intellectual property.

121. The IACHR has received information that women weavers filed a suit for protection of a constitutional right (*amparo*) with the Supreme Court of Justice, to protect the collective intellectual property of their traditional designs and fabrics, and that the Supreme Court partially backed the applicants' case, urging Congress to look for a mechanism for legislating on the subject. In addition, the IACHR was told that the congressional Indigenous Peoples Commission had convened a technical working group, which managed to come up with a bill aimed at generating a procedure for registering the intellectual property of designs and fabrics.<sup>161</sup>

122. During the 167th period of sessions of the IACHR in 2018, Guatemalan indigenous petitioners complained of the failure to recognize their collective intellectual property rights, mentioning that it was impossible for them to patent their designs and textile works. They said that they were being harmed by companies that usurped their designs and lowered the value of their art. They also alleged that they were victims of dual (racial and patriarchal) discrimination and requested public policies granting them cultural and financial compensation. For its part, the State acknowledged the problem and referred to bills seeking recognition and protection of their rights. On this, the IACHR took note of the legislative initiatives being advanced by the State and asked for expeditious processing of the law recognizing the intellectual property rights of Mayan women leaders in respect of their creations.<sup>162</sup>

123. The IACHR reiterates that indigenous women are known as the guarantors of their culture.<sup>163</sup> Accordingly, States have a duty to respect, protect, and safeguard their traditional knowledge and expressions, regardless of the spheres or activities in which they unfold. Throughout history, indigenous women have faced prejudices toward different facets of their identity. A combination of factors, such as racism, sexism, and poverty, together with the structural and institutional inequalities derived from them, plus human rights violations relating to their territories and the natural resources they contain, exacerbate the risk of human rights violations to which indigenous women are exposed.<sup>164</sup> In light of the above, the IACHR urges the State to adopt affirmative measures to guarantee their individual and collective rights, as women and as members of indigenous peoples. The IACHR therefore considers that compliance with this recommendation has been partial.

<sup>159</sup> I/A Court HR. Kichwa Peoples of the Sarayaku community and its members v. Ecuador. Merits and Reparations. Judgment of Wednesday, June 27, 2012. Series C No. 245, par. 159.

<sup>160</sup> Communication of the State of Guatemala. Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, of the Inter-American Commission on Human Rights, October 2018, pp. 28 and 29.

<sup>161</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" [Inputs by the Human Rights Ombudsman], p.23. November 2018 [in IACHR archives].

<sup>162</sup> IACHR, Press Release 041A/18- [Public Hearings, Working Meetings, Promotional Activities and Bilateral Meetings Annex to Press Release](#) 41/18, April 6, 2018.

<sup>163</sup> IACHR, [\(Booklet\) Indigenous Women](#), 2017, par. 11.

<sup>164</sup> IACHR, [\(Booklet\) Indigenous Women](#), 2017, par. 5.

## Persons deprived of liberty

- Implement in practice a model of juvenile justice that regards deprivation of liberty as a measure of last resort and for the shortest length of time possible, and with a rehabilitative instead of a punitive approach.
- Adopt judicial, legislative, administrative and other types of measures required to correct the excessive use of pre-trial detention, ensuring that this measure is used as an exception and is bound by the principles of legality, presumption of innocence, need and proportionality. In particular, the State must promote, regulate and apply alternative measures to pre-trial detention. Accordingly, it must repeal any legal provisions ordering compulsory use of pre-trial detention for the particular type of offense, and not establish further restrictions on procedural mechanisms and opportunities for release.
- Strengthen public criminal defense systems, attaching priority to coverage and quality of service in order to provide, from the time of arrest, a service aimed at timely and effective protection of fundamental rights.
- Implement judicial and prison information management systems at all detention facilities of the country, in order to provide up-to-date data and ready access on cases and the custody status of persons deprived of liberty in the country, and correct the lack of an automated and unified system of registry of the proceedings of persons deprived of liberty.
- Implement on-premise hearings at prison facilities in the presence of the judicial authorities in order to conduct particular proceedings to deal with the high rates of suspended court hearings and overcome difficulties in transferring inmates to courthouses.
- Take the necessary steps to ensure that persons deprived of liberty are transferred to detention facilities meeting the minimum conditions compatible with the rights of persons deprived of liberty. This is inasmuch as police stations used as permanent detention facilities and military bases do not meet the minimum requirements for the detention to be compatible with international standards on the subject matter.
- Change Guatemalan law against money laundering and the Criminal Code to meet the following requirements: a) that the punishment for money laundering does not amount to de facto imposition of a double sentence of deprivation of liberty, and b) that the law not continue to perpetuate the deprivation of liberty based on the mere material impediment that the persons have to cover the cost of the fine imposed.

124. With regard to the recommendation to **implement in practice a model of juvenile justice that contemplates the deprivation of liberty as a measure of last resort and for the shortest possible time and that does not have a retributive character but a rehabilitator**, the State reported that is implementing the Strategic Inter-institutional Plan for the period 2016-2019.<sup>165</sup> According to the State, the Plan aims to coordinate the actions of all the institutions of the system. On the other hand, despite the fact that the Plan began to be implemented in 2016, the State did not provide information on the specific activities that are directly related to compliance with the recommendation analyzed. Likewise, the State, in its observations on the draft of this report, indicated that the general instruction number 2-2018 on the Model of Specialized Criminal Assistance and Prosecution in the area of Adolescents in Conflict with the Criminal Law was approved.<sup>166</sup>

125. On the other hand, the Human Rights Ombudsperson referred to the fact that the Criminal Chamber of the Judiciary is developing a Model of Comprehensive Care for Adolescents deprived of their liberty, with special concern for the conditions of deprivation of liberty of adolescents and their socio-family reintegration.<sup>167</sup> The Ombudsperson also highlighted the creation of the Secretariat of Protection for Children

<sup>165</sup> Republic of Guatemala, Note NV-OEA-M12-Nº538-2018, 29 October 2018, p. 29.

<sup>166</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 13.

<sup>167</sup> Procurador de los Derechos Humanos, Aportes a la Comisión Interamericana de Derechos Humanos: seguimiento de las recomendaciones del informe sobre situación de derechos humanos en Guatemala, noviembre de 2018, pág. 24.

and Adolescents and Juvenile Criminal Justice of the Judiciary, in line with the principle of specialization. The IACHR reiterates that the recommendation focuses on the adoption of public policies that prioritize alternative measures to deprivation of liberty, in addition to having as a final goal the adequate social reintegration of adolescents. In this regard, the IACHR takes note of the initiatives mentioned by the State and the Human Rights Ombudsperson and considers that the recommendation is still pending compliance.

126. Regarding the recommendation urging the State to **adopt measures required to correct the excessive use of pre-trial detention, promote alternative measures, and repeal any legal provisions ordering compulsory use of pre-trial detention for a particular type of offense**, the State refers to Article 264 of the Criminal Code of Procedure on substitutes for pre-trial detention and to the Law of Implementation of Telecommunication and Information Technology in Criminal Proceedings (Decree No. 49-2016), which regulates the use of electronic monitoring as an alternative to that regime.<sup>168</sup> On this, the Commission notes that the Guatemalan State does not provide recent information and that the provisions it refers to entered into force prior to release of the report containing the recommendation under review.

127. During 2018, both the United Nations Human Rights Committee and the United Nations Committee against Torture (CAT) voiced their concern at the large number of people in pre-trial detention,<sup>169</sup> amounting to 51.58% of the prison population in Guatemala.<sup>170</sup> The CAT especially lamented the fact that many of those on trial are held in pre-trial detention for petty crimes, even after legal deadlines have expired. That Committee likewise stressed that among the cause of "almost systematic" use of pre-trial detention and extensions to it are: the large number of hearings that are suspended, media pressure, and the "social clamor for security."<sup>171</sup> For its part, the Commission against Impunity in Guatemala (CICIG) points out that the situation of people held in pre-trial detention is still unresolved, inasmuch as pre-trial detention is used as advance punishment to justify long-drawn out judicial proceedings and the lack of judgments.<sup>172</sup>

128. Regarding the semi-official use of pre-trial detention, the CAT observed with concern that under the Code of Criminal Procedure that regime is mandatory for repeat offenders and in respect of certain crimes, such as those covered by the Law against Drug-Trafficking-related Activities (*Ley contra la Narcoactividad*)<sup>173</sup> In this context, the IACHR recalls that pursuant to reiterated and constant pronouncements by the organs of the inter-American human rights system, basing application of mandatory pre-trial detention on the type of offense involved not only constitutes a violation of the right to personal liberty upheld in Article 7.3 of the American Convention;<sup>174</sup> it also makes pre-trial detention tantamount to an

<sup>168</sup> Response of Guatemala. Note from the Permanent Mission to the OAS, No. NV-OEA-M12-NO. 538-2018, October 29, 2018, p. 30.

<sup>169</sup> United Nations Committee against Torture, Concluding observations on the seventh periodic report of Guatemala, CAT/C/GTM/CO/7, 23 November 2018, para. 18, and United Nations Human Rights Committee, Concluding observations on the fourth periodic report of Guatemala, CCPR/C/GTM/CO/4, 7 May 2018, para. 28.

<sup>170</sup> United Nations Committee against Torture, Concluding observations on the seventh periodic report of Guatemala, CAT/C/GTM/CO/7, 23 November 2018, para. 18.

<sup>171</sup> United Nations Committee against Torture, Concluding observations on the seventh periodic report of Guatemala, CAT/C/GTM/CO/7, 23 November 2018, para. 18.

<sup>172</sup> CICIG, Boletín Temático: prisión preventiva, July 13, 2018, p. 2.

<sup>173</sup> United Nations Committee against Torture, Concluding observations on the seventh periodic report of Guatemala, CAT/C/GTM/CO/7, 23 November 2018, para. 18.

<sup>174</sup> IACHR, The Human Rights Situation in Honduras, OEA/Ser.L/V/II. Doc. 42/15, December 31, 2015, par. 558; I/A Court H.R. Case of Suárez Rosero v. Ecuador. Judgment of Wednesday, November 12, 1997. Series C No. 35, par. 98; I/A Court H.R. Case of Acosta Calderón v. Ecuador. Judgment of Friday, June 24, 2005. Series C No. 129, par. 135; I/A Court H.R. Case of López Álvarez v. Honduras. Judgment of Wednesday, February 01, 2006. Series C No. 141, par. 81. In a manner similar to the Inter-American system, the European Court has ruled that "[a]ny system of mandatory detention on remand is per se incompatible with Article 5(3) of the [European] Convention." ECHR, Case of Ilijkov v. Bulgaria (Application No. 33977/96), Judgment of July 26, 2001 (Fourth Section), par. 84.

advance punishment,<sup>175</sup> which implies illegitimate interference of the lawmaker in the powers of appraisal for which only the judiciary has competence.<sup>176</sup>

129. Based on its analysis, the IACHR concludes that compliance with this recommendation is still pending and it urges the State to redouble its efforts to curtail pre-trial detention and apply it sparingly in accordance with its characterization as an exceptional measure and pursuant to the principles of legality, proportionality, necessity, and reasonableness.

130. As regards the recommendation to **strengthen public criminal defense systems**, the Commission observes that the State did not provide any information for the year under review (2018) and restricted itself to pointing to actions taken prior to the issuance of this recommendation.<sup>177</sup> On this subject, the IACHR reiterates the position taken by the Inter-American Court in its recent jurisprudence, namely that "'the provision of public legal aid services free of charge makes it possible ... to adequately offset the procedural inequality that affects persons who are facing the punitive power of the state, as well as the situation of vulnerability of persons deprived of liberty, and ensure them effective access to justice on equal terms"<sup>178</sup> In light of the above, the IACHR considers that compliance with this recommendation is still pending.

131. With respect to the recommendation to **implement judicial and prison information management systems at all detention facilities of the country, in order to correct the lack of an automated and unified system of registry of the proceedings of persons deprived of liberty**, the State reports that Central Register of Detainees (RECEDE) will centralize information on transfers and entries - in both *in flagrante delicto* detention and arrest warrant cases -- into detention centers, police cells, or prisons.<sup>179</sup> On this, the Commission points out that the information provided by the State refers to a Register created in 2012 by Decision (*Acuerdo*) 5-2012 of the Supreme Court of Justice. Furthermore, the State did not say whether the Register had started operating. In light of the above, the IACHR observes that compliance with this recommendation is still pending.

132. As for the recommendation urging the State to **implement on-premise hearings at prison facilities**, the State only reports on regulation of video-conferences for presenting statements.<sup>180</sup> It does not, however, mention any procedure or steps taken to hold hearings at prison facilities, on the terms envisaged by the Commission. That being so, the IACHR issues a reminder that, in addition to ensuring that a larger number of cases are heard, holding hearings in prisons allows justice operators to come into direct contact with prison conditions and could induce greater sensitivity to the importance of using alternatives to deprivation of liberty, especially to address the overcrowding problem in Guatemalan prisons.<sup>181</sup> In light of the above, the IACHR considers that compliance with this recommendation is still pending.

<sup>175</sup> IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163. Doc. 105, Monday, July 03, 2017, par. 91; IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II., Doc. 46/13, December 30, 2013, par. 151; IACHR, Report on the Merits N° 86/09, Case 12.553: Merits. Jorge, Jose and Dante Peirano Basso. Uruguay. Thursday, August 06, 2009, par. 141.

<sup>176</sup> IACHR, The Human Rights Situation in Honduras, OEA/Ser.L/V/II. Doc. 42/15, December 31, 2015, par. 558; IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II. Doc. 46/13, December 30, 2013, par. 137.

<sup>177</sup> Response of Guatemala. Note from the Permanent Mission to the OAS, No. NV-OEA-M12-NO. 538-2018, October 29, 2018, p. 30.

<sup>178</sup> I/A Court HR. *Case of Ruano Torres et al. v. El Salvador*. Merits, Reparations, and Costs. Judgment of Monday, October 05, 2015. Series C No. 303, par. 156.

<sup>179</sup> Response of Guatemala. Note from the Permanent Mission to the OAS, No. NV-OEA-M12-NO. 538-2018, October 29, 2018, p. 31.

<sup>180</sup> Response of Guatemala. Note from the Permanent Mission to the OAS, No. NV-OEA-M12-NO. 538-2018, October 29, 2018, p.p. 31-32

<sup>181</sup> IACHR, The Human Rights Situation in Honduras, December 31, 2017, OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 427, and IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163. Doc. 105, Monday, July 03, 2017, par. 175.

133. With regard to the recommendation urging the State to **ensure that persons deprived of liberty are transferred from police stations and military bases to detention facilities meeting the minimum conditions compatible with the rights of persons deprived of liberty**, the State did not provide pertinent information. For its part, CICIG stated that military barracks, such as the Brigada Militar Mariscal Zavala and Fuerte San Rafael de Matamoros continue to be used as detention centers.<sup>182</sup> The United Nations Committee against Torture likewise expressed its concern about the State continuing to use police stations as permanent detention facilities.<sup>183</sup> In light of the above, the IACHR concludes that compliance with this recommendation is still pending.

134. Regarding the recommendation urging the State to **change Guatemalan law against money laundering and the Criminal Code as indicated by the Commission**, the State did not provide information indicating compliance with the recommendation.<sup>184</sup> Likewise, the IACHR has no information regarding the adoption of any measures to that end. That being so, the IACHR reiterates that the provisions contained in the Money Laundering Law and in the Criminal Code, taken as a whole, do not provide for other ways to satisfy the fine requirement so that when the person convicted of money laundering lacks the means to pay the fines derived from the value of the assets, instruments, or proceeds of the crime, he or she is deprived of liberty indefinitely.<sup>185</sup> In light of the above, the IACHR concludes that compliance with this recommendation is still pending.

### Persons with disabilities

- Investigate ex officio and, when appropriate, punish those responsible for any violation of the personal integrity of persons with disabilities at psychiatric institutions. Establish an independent mechanism to oversee the institutionalization of patients at the Federico Mora Hospital in order to protect against acts of torture or mistreatment.
- In light of the lack of community-based options for patients of the Federico Mora Hospital to receive the necessary services and treatment outside the institution, the IACHR recommends the State to ensure the community life of these persons, by creating and establishing community-based services. For this purpose, the Commission urges the State to adopt, among other ones, the following measures: a) expeditiously define a strategy for the de-institutionalization of persons with disabilities, with a timeline, sufficient resources and specific evaluation measures; b) ensure the participation of persons with disabilities, directly and through the organizations representing them, in the design and implementation of said strategy, and c) allocate sufficient resources for the development of support services.

135. As regards the recommendation calling upon the State to **investigate ex officio and punish those responsible for any violation of the personal integrity of persons with disabilities institutionalized at the Federico Mora hospital**, the State provided no information about any ex officio investigation to that end. The Commission is likewise concerned at the State stressing that the Human Rights Ombudsman is the person competent to file complaints regarding "violation of the rights of persons with disabilities."<sup>186</sup> In the Commission's opinion, that remark seems designed to justify the lack of investigation by the Public Prosecutors' Office into allegations of abuses committed against patients by medical staff.<sup>187</sup> For its part, and with regard to those abuses, the Committee against Torture voiced its concern at the scant

<sup>182</sup> CICIG, *Boletín Temático: prisión preventiva*, July 13, 2018, p. 3.

<sup>183</sup> United Nations Committee against Torture, Concluding observations on the seventh periodic report of Guatemala, CAT/C/GTM/CO/7, 23 November 2018, para. 20.

<sup>184</sup> Response of Guatemala. Note from the Permanent Mission to the OAS, No. NV-OEA-M12-NO. 538-2018, October 29, 2018, p. 33.

<sup>185</sup> IACHR, *The Human Rights Situation in Honduras, December 31, 2017*, OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 427.

<sup>186</sup> Response of Guatemala. Note from the Permanent Mission to the OAS, No. NV-OEA-M12-NO. 538-2018, October 29, 2018, p. 34.

<sup>187</sup> IACHR, *The Human Rights Situation in Honduras, December 31, 2017*, OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 464.

information provided by the State regarding investigations into the matter.<sup>188</sup> In this context, the Commission reiterates that given the State's position as guarantor of the rights of persons with disabilities institutionalized in psychiatric institutions and their particular risk of being exposed to cruelty or torture, the Guatemalan State has a special duty to investigate ex officio and, where applicable, punish those responsible for any violation of the personal integrity of institutionalized persons.<sup>189</sup>

136. The State also reports that, in connection with implementation of the aforementioned measures, a number of authorities are analyzing the suggestion to establish a justice facility specifically to address cases involving patients at the hospital.<sup>190</sup> On that, the IACHR points out that the recommendation under review refers to the State obligation to guarantee investigation and punishment of perpetrators in ordinary, not special jurisdiction, courts. Regarding the establishment of an independent mechanism within the Federico Mora hospital, the State has provided no information. According to Disability Rights International, nothing has come of that initiative.<sup>191</sup>

137. In light of the above analysis, the IACHR concludes that compliance with this recommendation is still pending.

138. Regarding the recommendation urging the State to **establish community-based services to ensure the community life of persons with disabilities**, the State points out that it is hoping to achieve decentralization of psychiatric care through the reactivation in 2018 of the institutional working group (*mesa institucional*) comprised of a number of public authorities,<sup>192</sup> civil society organizations, and the Pan American Health Organization and the Office of the UNHCHR in Guatemala. According to the State, this working group's activities are split between two principal components: monitoring of the mental health bill and implementation of the precautionary measure on behalf of the Federico Mora hospital. Regarding the information provided, the IACHR notes that neither of the measures referred to focuses on the creation of community alternatives in the terms indicated in the present recommendation. For its part, Disability Rights International points out that the State has not established any mechanism in the community and that the budget allocated to the hospital in 2018 was apparently used only for current operations and maintenance.<sup>193</sup>

139. The State also explained that many patients are in the Federico Mora hospital for "strictly humanitarian reasons", because they have been abandoned and have nowhere to go back to.<sup>194</sup> In the Commission's view, the conditions described by the State reflect the fact patients in this institution are there due to the lack of services that would enable them to live in a community. This state of affairs is especially worrisome considering that, despite the large budget allocated to the Federico Mora hospital in the first six months of the year -- equivalent to roughly US\$7 million (54,049,060 quetzales)<sup>195</sup> -- the State has not invested in setting up alternatives in the community to safeguard the rights of persons with disabilities in keeping with international standards. Accordingly, bearing in mind that the institutionalization of these patients is caused and exacerbated by the lack of specially tailored support services in the community, what is

<sup>188</sup> United Nations Committee against Torture, Concluding observations on the seventh periodic report of Guatemala, CAT/C/GTM/CO/7, 23 November 2018, para. 30.

<sup>189</sup> IACHR, Country report. Situation of Human Rights in Guatemala, OEA/Ser.L/V/II. Doc. 208/17 31 December 2017, par. 465.

<sup>190</sup> Response of Guatemala. Note from the Permanent Mission to the OAS, No. NV-OEA-M12-NO. 538-2018, October 29, 2018, p. 34.

<sup>191</sup> Disability Rights International, Actualización sobre la situación del Hospital Nacional de Salud Mental Federico Mora, January, 2018, p. 2.

<sup>192</sup> The authorities taking part in the institutional working group are: The Ministry of Public Health and Social Welfare, the Federico Mora hospital, the Office of the Counsel General of the Nation (PGN), the Criminal Defense Institute, and the Judiciary.

<sup>193</sup> Disability Rights International, Actualización sobre la situación del Hospital Nacional de Salud Mental Federico Mora, January, 2018, p. 1.

<sup>194</sup> Response of Guatemala. Note from the Permanent Mission to the OAS, No. NV-OEA-M12-NO. 538-2018, October 29, 2018, p. 35.

<sup>195</sup> Sistema de Contabilidad Integrada Gubernamental [Integrated Government Accounting System], Presupuesto de ingresos y egresos expresado en Quetzales, January to June 2018.

happening amounts to arbitrary deprivation of liberty.<sup>196</sup> In light of the above, the IACHR observes that compliance with this recommendation is still pending.

### Human Rights Defenders

- Approve and implement on an emergency basis a public protection policy for human rights defenders. This policy should include implementation of a comprehensive protection program, and incorporate a model of risk assessment to make it possible to determine the particular protection needs of each defender, using, for example, a gender perspective or a focus on groups in an especially vulnerable situation.
- Hold public hearings or interviews where citizens, civil society organizations and other interested parties are able to learn the selection criteria of operators of justice, as well as challenge candidates and express their concerns or their support, in order to strengthen the independence of the operators of justice holding the high-level positions in the judiciary, the office of the prosecutor and the public defender's office.
- Adopt measures to ensure that operators of justice carry out their duties impartially and independently, respecting the principle of separation of powers and free of all threat or pressure. For this purpose, the State must strengthen the work of the Crimes against Operators of Justice Unit by recognizing the importance of its function in protecting the right of access to justice, as well as to due process.
- Ensure that the authorities or third parties do not manipulate the punitive power of the State and its organs of justice in order to harass human rights defenders and operators of justice. Likewise, authorities should refrain from making statements or assertions that stigmatize or discredit human rights defenders, journalists, ancestral authorities or leaders, who suggest that the authorities are acting improperly or illegally, when they are simply doing their job as human rights defenders. In this regard, the Commission calls on the State to advance in the drafting of guidelines against criminalization by the Office of the Attorney General.
- Ensure that human rights defenders are not subjected to criminal proceedings for unnecessarily summary and protracted periods of time. Additionally, the State of Guatemala should cease using arrest warrants as mechanisms of punishment or retaliation against human rights defenders.
- Take measures to prevent the use of criminal charges against human rights defenders aimed at keeping them from doing their job. Justice operators must consider, in response to the charges, whether or not the accused was acting in the capacity of a human rights defender, as well as the context of the facts, and in this way be able to identify whether the charges were used as a means of hampering their work as defenders. Likewise, the authorities in charge of the investigation of the crimes must make sure to gather the necessary evidence to determine whether there was unlawful conduct before they proceed to issue precautionary measures or formally open a case against the defenders.
- Establish specialized police and prosecutorial units with the necessary resources, training and specific investigation protocols in order to act in a coordinated fashion and respond with due diligence to the investigation of attacks on human rights defenders, establishing a hypothesis of the crimes and guidelines for the investigation thereof, taking into account vested interested that may have led to retaliation for the activities of the defender attacked. In this regard, the IACHR urges the State of Guatemala to adopt with urgency the General Instructions within the Office of the Public Prosecutor to guide prosecuting attorneys when investigating attacks on defenders.

140. Regarding the recommendation urging the State to **approve and implement on an emergency basis a public protection policy for human rights defenders that includes incorporation of a model of risk assessment to make it possible to determine the particular protection needs of each defender, adopting, for example, a gender perspective or a focus on groups in an especially vulnerable situation**, the State reported that the process and methodology used for drafting public policy

<sup>196</sup> On this see IACHR, *The Situation of Human Rights in Guatemala*, December 31, 2017, OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 466.

has included the active participation of civil society organizations and State institutions covering the country's 22 departments and has been based on the inclusion principle and the relevance of gender, ethnic and territorial factors. The participation of delegates from both civil society organizations and State institutions took the form of weekly meetings of working groups in which each institution or organization provided input on each component of public policy. The State reported that there is now a base document for public policy on protecting human rights defenders, with three main axes: prevention, protection, and the administration of justice. These axes are allegedly aligned with international human rights standards and with the judgment handed down in the *Defender v. Guatemala* case by the Inter-American Court of Human Rights.

141. As regards next steps, the State points out that this base document does not include diagnostic assessment and presentation, which will be added at the end, once all the information has been collected. Meetings will then resume with a view to completing the document.<sup>197</sup>

142. In its observations on the draft of this report, the State stated that the draft public policy is in the process of being prepared and that the conditions expressed by civil society are taken into consideration, particularly the implementation of a general instruction in the Public Prosecutor's Office for addressing cases of aggressions against human rights defenders. Similarly, there would be a reformulation in the work methodology of the Instance of Analysis that is pending final approval by the pertinent authorities. The State also stated that constitution of the working group within the Criminal Chamber of the Supreme Court of Justice is pending.<sup>198</sup>

143. For its part, the PDH told the Commission that, although the Public Policy on Protection for Defenders was discussed and drafted, the Government has not disseminated and validated it with civil society organization all over the country.<sup>199</sup>

144. The Commission points out that on a number of occasions throughout 2018 it reiterated to the State of Guatemala the pressing need to move ahead with adoption of the public policy. On October 31, 2018, the Committee expressed its alarm at the surge in murders and attacks against human rights defenders in the country and urged the State of Guatemala to move ahead with the adoption and implementation of the public policy on protection for defenders, in consultation with civil society organizations.<sup>200</sup> The Commission observes that both the United Nations Committee against Torture and the United Nations Human Rights Committee called upon the State of Guatemala, in their Concluding Observations, to promptly adopt and implement an effective public policy to protect human rights defenders.<sup>201</sup>

145. Civil society organizations have likewise stressed the importance of adopting this policy. Following the murder of Ramón Choc Sacrab, a q'echí indigenous leader from Ixloq San Pedrito, Cobán, on May 30, 2018, Amnesty International called for headway with the adoption of a public policy for protecting human rights defenders, pursuant to criteria established by the Inter-American Court of Human Rights in the *Human Rights Defender et al. v Guatemala* case.<sup>202</sup> Likewise, following the torture and murder of Juana Raymundo, a Maya Ixil human rights defender and member and part of the CODECA coordination office in the

<sup>197</sup> Government of the Republic of Guatemala, COPREDEH, Observations by the State of Guatemala on the Report of the Inter-American Commission on Human Rights, "Situation of Human Rights in Guatemala, 2017", Ref.P-888-2018/JLBR/WR/cr., October 25, 2018, p. 37.

<sup>198</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 16.

<sup>199</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman] 29.

<sup>200</sup> IACHR, Press Release No. 230/18, [IACHR Expresses Alarm over the Increase in Murders and Aggressions against Human Rights Defenders in Guatemala](#), October 31, 2018.

<sup>201</sup> United Nations Human Rights Committee, [Concluding observations on the fourth periodic report of Guatemala](#), CCPR/C/GTM/CO/4, 7 May 2018, para. 37(d); United Nations Committee against Torture, [Concluding observations on the seventh periodic report of Guatemala](#), CAT/C/GTM/CO/7, November 23, 2018, para. 39(a).

<sup>202</sup> Amnesty International, [Urgent Action, Land defenders threatened and attacked](#), June 1, 2018.

Nebaj Quiché region, as well as member of the Municipal Committee of the Movimiento para la Liberación de los Pueblos, whose body was found on July 28, 2018, the Observatory for the Protection of Human Rights Defenders, a joint program of the World Organization against Torture (OMCT) and the International Federation of Human Rights (FIDH), called upon the State to revive efforts to establish a public policy to protect human rights defenders and comply with the judgment of the I/A Court of H.R., through a broad, participatory process.<sup>203</sup>

146. The Commission acknowledges the State's efforts thus far to move toward adoption of the Public Policy for the Protection of Human Rights Defenders, which has had the backing of a number of State entities and civil society organizations. Accordingly, the Commission urges the State of Guatemala to adopt and implement that policy urgently, in consensus with civil society organizations. To that end, it must instruct the corresponding authorities to gather the information needed for a diagnostic assessment and for presenting the public policy and resume meetings with civil society as soon as possible. In light of this progress and in view of the fact that the public policy has not yet been adopted, the Commission concludes that compliance with the recommendation has been partial.

147. With respect to the recommendation to **hold public hearings or interviews where citizens, civil society organizations and other interested parties are able to learn the selection criteria of justice operators, as well as challenge candidates and express their concerns or their support, in order to strengthen the independence of the operators of justice holding the highest-level positions in the judiciary, the office of the prosecutor and the public defender's office,**<sup>204</sup> the State pointed out that the judges and magistrates of the Supreme Court and Court of Appeals are selected and appointed as prescribed in Articles 215 and 217 of the Political Constitution of the Republic. As for the procedure for choosing the Attorney General (Fiscal General), the State indicated that it is regulated in the Political Constitution of the Republic, the Law on Nominating Commissions, and the Organic Law of the Public Prosecutor's Office (*Ministerio Público*). The State further pointed out that, in order to ensure that candidates are suitable, the Nominating Commissions Law calls for an analysis of the minimum requirements for holding public office and establishes that the Commissions shall publish all important information surrounding the selection process in the Official Gazette and two widely circulated newspapers.<sup>205</sup>

148. The Commission observes that in 2018 the appointment process for the Attorney General of the Republic was conducted, complete with public interviews, and that civil society organizations were able to send in information regarding the candidates. The IACHR notes that the group of civil society organizations forming part of Foro Guatemala voiced their concern at the failure to rule on actions for constitutional protection filed in connection with the appointment of the head of the Public Prosecutors' Office. While the legal deadline for that ruling had not yet expired, the lack of it allegedly created legal uncertainty regarding the nomination process and the final appointment to be made by the President of the Republic.<sup>206</sup>

149. Thus, the Commission welcomes the fact that the selection process for Attorney General was governed by the principles of transparency, professional excellence, objectivity, and openness, and allowed for participation by civil society organizations. In light of the above, the IACHR concludes that compliance with this recommendation has been partial and substantial. The IACHR will continue to keep close track of upcoming selection and appointment processes, particularly in order to ensure that they meet the suitability, capability, and integrity requirements established in Article 113 of the Constitution of the Republic of Guatemala, as well as international standards.

<sup>203</sup> Observatorio para la Protección de los Defensores de Derechos Humanos, [Guatemala: Asesinato de la Sra. Juana Raymundo del CODECA de la región Nebaj Quiché](#), GTM 012 / 0818 / OBS 101, August 2, 2018.

<sup>204</sup> IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. 208/17, Monday, December 31, 2018, par. 475 (37).

<sup>205</sup> Government of the Republic of Guatemala, COPREDEH, Observations by the State of Guatemala on the Report of the Inter-American Commission on Human Rights, "Situation of Human Rights in Guatemala, 2017", Ref.P-888-2018/JLBR/WR/cr., October 25, 2018, p. 39.

<sup>206</sup> Foro Guatemala, [Comunicado del Foro Guatemala sobre el proceso de elección del Fiscal General y Jefe del Ministerio Público](#), April 13, 2018.

150. Regarding the recommendation to **adopt measures to ensure that operators of justice carry out their duties impartially and independently, respecting the principle of separation of powers and free of all threat or pressure, strengthening to that end the work of the Crimes against Operators of Justice Unit by recognizing the importance of its function in protecting the right of access to justice, as well as to due process**, the Commission points out that the State submitted no information on the matter.

151. In its report to the Commission, the PDH pointed out that the State of Guatemala has not implemented measures guaranteeing justice operators judicial independence and impartiality, even though Article 203 of the Political Constitution of the Republic of Guatemala establishes that requirement, particularly since judges continue to be victims of attacks and threats that pose obstacles to the independence of their work. The PDH has asked the IACHR to grant numerous precautionary measures on behalf of judges in Guatemala.<sup>207</sup>

152. The IACHR observes that on January 7, 2019, after opting to terminate the agreement with CICIG, the President of the Republic stated in a speech to the Nation that the Constitutional Court's ruling had caused "economic, social, and diplomatic harm." In that vein, he stated that the Constitutional Court had "misused its powers" when "closing mines, interrupting the construction of hydroelectric plants, and selectively back certain groups calling themselves civil society." The President went on to call upon the magistrates of the Constitutional Court to show "morality" and "national consciousness," adding that they had not been democratically elected, but appointed to do their duty.<sup>208</sup>

153. In its observations on the draft of this report, the State reported that it has the Office of the Human Rights Prosecutor and the Fiscal Unit of Crimes Committed against Justice Operators, through which the necessary investigations are carried out.<sup>209</sup>

154. Recently, the Commission received information indicating that on January 9, 2019 posters were displayed in several parts of Guatemala City saying "Traitors" and showing photographs of four of the five magistrates of the Constitutional Court, who had voted to suspend application of Decision 2/2019 terminating the CICIG agreement.<sup>210</sup>

155. In that situation, the IACHR issued a call to respect the independence of the branches of government and stressed the importance of abiding by rulings of the courts for full exercise of the rule of law. Judicial independence is central to the separation of powers needed to safeguard constitutional democracy and the rule of law. The IACHR is likewise worried about the critical and offensive discourse of several actors in a highly polarized environment, especially that of State agents attacking decisions taken by the Constitutional Court. In this regard, the Commission calls upon the State to protect the lives and personal integrity of the Constitutional Court. In light of the above analysis, the IACHR concludes that compliance with this recommendation is still pending.

156. Regarding the recommendation to ensure that the authorities or third parties do not manipulate the punitive power of the State and its organs of justice in order to harass human rights defenders and operators of justice; refrain from making statements or assertions that stigmatize or discredit human rights defenders, journalists, ancestral authorities or leaders; and move ahead with the drafting of guidelines against criminalization by the Office of the Attorney General,<sup>211</sup> the Commission draws attention to the fact that the State provided no pertinent information in that regard.

<sup>207</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman] 29.

<sup>208</sup> Prensa Libre, [Jimmy Morales arremete contra Cicig, ONU, CC, MP y el TSE](#), January 7, 2019.

<sup>209</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 17.

<sup>210</sup> PublineWS, [Instalan mantas donde señalan de "traidores" a magistrados de la CC](#), January 9, 2019.

<sup>211</sup> IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. 208/17, Monday, December 31, 2018, par. 475 (39).

157. For its part, in its report to the Commission, the PDH pointed out that human rights defenders are still being attacked, both directly through threats, intimidation, and aggressive behavior, and indirectly via the social media and other media through discrediting, defamation, or false and misleading information. Regarding measures adopted by the State, the PDH pointed out that the Public Prosecutors' Office had issued a General Instruction addressing cases involving human rights defenders that has served to strengthen the presence and role of the Office of the Public Prosecutor for Human Rights.<sup>212</sup> The IACHR observes, nevertheless, that that Instruction is meant to regulate investigation in cases in which human rights defenders are victims of crimes, not to avoid their criminalization.

158. The IACHR received information, concerning, inter alia, the judicial harassment and criminal case brought against Jerson Antonio Xitumul Morales, an indigenous defender and Prensa Comunitaria journalist. On July 21, 2017, the defender was notified of criminal charges against him brought by executives of the Guatemalan nickel mining company, Compañía Guatemalteca de Níquel (CGN), for threats, instigation to commit crime, illicit association, illegal meetings and demonstrations, damage and illegal detentions. The charges derived from a protest march in May 2017, in which members of the Artisanal Fishermen's Union (GPA) and of the El Estor community blocked one of the roads in the vicinity of the CGN miners' camp. On the morning of November 11, 2017, Jerson Antonio Xitumul Morales was arrested by Government authorities in El Estor and on December 18, 2017 was granted permission to be held under house arrest. On May 16, 2018, the judge ordered two additional charges to be joined to the case and recognized two new plaintiffs in the criminal proceedings. The defense lawyer for Jerson Xitumul Morales publicly complained that the judge's decision to join the cases amounted to an irregularity within the judicial proceedings, according to the Guatemalan Code of Criminal Procedure, because the time allowed for adding new charges in the case had elapsed, so that the decision constituted a violation of due process and of the defender's judicial guarantees.<sup>213</sup>

159. On July 19, 2018, at the request of the Public Prosecutors' Office, the Court of First Instance for Criminal and Drug-Trafficking-related Activities and Crimes against the Environment ordered the case against Jerson Xitumul Morales closed for lack of evidence. The case lasted a year and the human rights defender was detained for 38 days, until he was released on bail.<sup>214</sup>

160. With respect to stigmatizing discourse, the IACHR notes that, according to the movement called Peaceful Resistance in the Ixquisis Microregion, the Energía y Renovación SA hydroelectric company has plans to build three hydroelectric projects in the region and has already diverted waterways in the area from their original routes, thereby severely impairing the life style and sustenance of indigenous communities, as well as their access to water. On July 14, 2018, the community authorities organized a march to deliver a letter to the PNC, requesting, inter alia, that Energía y Renovación S.A. cease operating on their territories. On July 15, 2018, the Actualidad Huehuetenango website published an article entitled "New armed actions against community members in the northern part of San Mateo Ixatán". The article accused some of the Ixquisis demonstrators of having fired shots and setting fire to a store after the protest had ended and used photographs taken by police and military officers during the previous day's demonstration. However, the photographs did not corroborate the accusations made in the article. In addition, Energía y Renovación S.A. published a press release on its Facebook page using the same language and style as the article posted on the Actualidad Huehuetenango website<sup>215</sup>.

<sup>212</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman] 32.

<sup>213</sup> Front Line Defenders, [Jerson Antonio Xitumul Morales under house arrest after hearing on his case](#), December 22, 2017.

<sup>214</sup> Front Line Defenders, [Criminal case against Jerson Xitumul Morales closed](#), July 24, 2018.

<sup>215</sup> Front Line Defenders, [Smear campaign, threats and police violence against the Peaceful Resistance of Ixquisis Microregion](#), July 26, 2018.

161. The Commission notes that, in a press release dated October 10, 2018, the company repeated its stigmatizing language by referring to the demonstrators as "violent", "radical", "extortionist", and violators of human rights. The IACHR notes, too, that the press release calls upon the PDH not to be biased.<sup>216</sup>

162. The Commission regrets not having received any information from the State on measures adopted to avoid the stigmatization or criminalization of defenders in Guatemala. At the same time, the aforementioned events are an indication that in 2018 there was no substantial change vis-a-vis the criminalization observed during the Commission's on-site visit. The IACHR reiterates that the State of Guatemala needs to take whatever steps are needed to prevent State-sponsored investigations from subjecting persons legitimately calling for the observance and protection of human rights to unfair and groundless trials. In light of the above, the IACHR considers that compliance with this recommendation is still pending.

163. As for the recommendation to **ensure that human rights defenders are not subjected to criminal proceedings for unnecessarily summary or protracted periods of time and to cease using arrest warrants as mechanisms of punishment or retaliation against human rights defenders**,<sup>217</sup> the Commission draws attention to the fact that the State did not provide any pertinent information on the subject.

164. The Commission observes that civil society organizations continue to stress their concern about the long period of pre-trial detention to which human rights defenders are subjected. Thus, they point to the constant postponement and suspension of hearings in criminalization cases, which often lead to unnecessary transfers and increase the anxiety and uncertainty felt by human rights defenders deprived of their liberty and by their family members. Regarding structural changes to their lives, the organizations point out that prolonged judicial proceedings alter and interrupt the life plans of human rights defenders forced to undergo judicial proceedings. Economically, having to pay lawyers increases the hardships endured by, in many cases, already poor and financially vulnerable, indigenous families. Opportunities for community organization are also severely curtailed or impaired by criminalization. In both cases, distance from their families, persons of trust, and grassroots organizations and partners in the defense of human rights lead to a sense of being uprooted and feelings of impotence for the human rights defenders concerned.<sup>218</sup>

165. In its report to the Commission, the PDH pointed as an example to the proceedings against Bernardo Caal, which will be analyzed below.<sup>219</sup>

166. The Commission recalls that inter-American case law establishes that when an arrest warrant is issued it must indicate the grounds and reasons for it, as a safeguard against arbitrary arrests and in order to guarantee the right to defense. The Commission further recalls that the State has an obligation not to use arrest warrants as a tool for punishing or taking reprisals against anyone, including, in particular, human rights defenders. In light of the above, the Commission concludes that compliance with the recommendation is still pending.

167. As regards the recommendation to **take measures to prevent the use of criminal charges against human rights defenders aimed at keeping them from doing their job and to ensure that the authorities in charge of the investigation of the crimes gather the necessary evidence to determine whether there was unlawful conduct before they proceed to issue precautionary measures or formally open a case against the defenders**, the State pointed out that the Public Prosecutors' Office adopted General Instruction No. 05-2018, which approves the Protocol for investigating crimes committed

<sup>216</sup> Energía y Renovación S.A., [Acontecimientos recientes de San Mateo Ixtatán Huehuetenango, reafirman y consolidan a la mesa de diálogo y negociación](#), 10 de octubre de 2018.

<sup>217</sup> IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. 208/17, Monday, December 31, 2018, par. 475 (40).

<sup>218</sup> Organizaciones de la sociedad civil, [Informe alternativo de las organizaciones de la sociedad civil de Guatemala al Comité contra la Tortura de la ONU](#), par 176-179, October 2018

<sup>219</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman] 33.

against human rights defenders, the purpose of which is to provide criteria and specific tools for personnel in the Public Prosecutors' Office taking part in the investigation and processing of crimes committed against human rights defenders. Also adopted was General Instruction No. 06-2018 for the institutionalization, implementation, and observance of the "Democratic Criminal Prosecution Policy pursued by the Public Prosecutors' Office" (PPPDMP), which establishes how the institution must conduct criminal investigation and prosecution, in line with a general criminal policy framework.

168. Finally, General Instruction No. 07-2018 was also adopted, for approving, institutionalizing, implementing, and observing the Human Rights Policy for Criminal Prosecution of the Public Prosecutors' Office (PDHPP); for ensuring and protecting access to justice for victims, through diligent investigation and criminal prosecution of cases constituting violations of human rights and of humanitarian law; and for guaranteeing the fostering of an institutional culture of respect for human rights, including Guatemalan diversity within the Public Prosecutors' Office.<sup>220</sup>

169. For its part, in its report to the Commission, the PDH points to some backtracking in connection with the criminalization of human rights defenders. It pointed, as an example, to the case of Bernardo Caal, against whom, on December 8, 2017, the Second Criminal Court of Alta Verapaz issued an arrest warrant on charges of aggravated theft, instigation to commit crime, threats, and illegal detentions. For these crimes there are no substitute measures, so that he was left in pre-trial detention. A series of anomalies were denounced in the course of the proceedings, but on November 9, 2018 he was sentenced to seven years and four months in jail on account of illegal detentions under aggravating circumstances and aggravated theft.<sup>221</sup>

170. The Commission observes that on December 19, 2018, several United Nations experts voiced their concern at the imprisonment of the indigenous leader and human rights defender following his opposition to a hydroelectric dam project. They pointed out that the criminal case brought against Bernardo Caal Xól had been preceded by vicious defamation campaigns against him in the media, describing him as a violent criminal acting against national interests. They also point out that the sentencing of Mr. Caal Xól to more than seven years in prison on charges of illegal detention and aggravated theft of a drill, a toolbox and optical fiber appeared to be disproportionate, as well as based mainly on testimony of affiliates of the OXEC Company. According to the experts, the sentence handed down against the q'eqchí leader was an apparent attempt to silence and discredit the legitimate exercise of the indigenous community's rights.<sup>222</sup>

171. The IACHR observes that this appears not to be an isolated case and that, on the contrary, numerous members of indigenous communities are being criminalized in Guatemala for defending their traditional lands and resources against development mega-projects causing environmental damage. Civil society organizations point, inter alia, to the case of Abelino Chub Caal, a community leader accused in connection with his support for the community, of five crimes and arrested in February 2017.<sup>223</sup> According to information received by the Commission, on May 8, 2018, a hearing was conducted to review the charges brought against the human rights defender, in which he was formally accused of the crimes of "aggravated illicit appropriation" (*usurpación agravada*), arson, and illicit association, for allegedly having taken part in an invasion of property pertaining to the El Murciélagos estate in El Estor, Izabal, and deprived of his liberty ever since.<sup>224</sup>

<sup>220</sup> Government of the Republic of Guatemala, COPREDEH, Observations by the State of Guatemala on the Report of the Inter-American Commission on Human Rights, "Situation of Human Rights in Guatemala, 2017", Ref.P-888-2018/JLBR/WR/cr., October 25, 2018, p. 41.

<sup>221</sup> Aportes del Procurador de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos "Seguimiento sobre el cumplimiento de las recomendaciones del Informe sobre situación de Derechos Humanos en Guatemala" 2017. [Inputs by the Human Rights Ombudsman] 33.

<sup>222</sup> United Nations, High Commissioner for Human Rights, [UN experts concerned indigenous leader convicted in retaliation for opposition to Oxec hydro project](#), December 19, 2018.

<sup>223</sup> Organizaciones de la sociedad civil, [Informe alternativo de las organizaciones de la sociedad civil de Guatemala al Comité contra la Tortura de la ONU](#), par 175, October 2018.

<sup>224</sup> Front Line Defenders, [Abelino Chub Caal formally charged, remains in detention](#), May 11, 2018.

172. In 2018, Plataforma Internacional contra la Impunidad documented testimony by 24 defenders located in three of the country's eight regions: Maya Mam communities in the municipality of San Pablo, department of San Marcos; Maya Q'anjob'al communities of the municipalities of Santa Cruz Barillas and Santa Eulalia, department of Huehuetenango; and communities of the Xinca and ladino and/or mestizo peoples in the municipalities of San José del Golfo and San Pedro Ayampuc, department of Guatemala. One third (33%) of all those interviewed said that they had each been criminalized in the form of individual criminal charges brought against them and all said they were terrified of being detained. Asked how their lives had been changed as a result of criminalization, they pointed to financial costs, harm to their health, and negative impacts on organizational, family, and community life. Numerous ailments were listed, the most common being frayed nerves, sadness, a sense of defenselessness, despair, fears, obsessive thoughts of persecution, anger, and mistrust, all of which reflect psychological and emotional disorders.<sup>225</sup>

173. The Commission points out that, judging by the information provided by the State, no measures appear to have been adopted to prevent criminal charges being used as a mechanism to obstruct the work of defenders. Based on its monitoring in 2018, the Commission notes that criminal proceedings continued to be used to obstruct the work of accused human rights defenders and ended up being shelved. The Commission reiterates that the State of Guatemala must take whatever steps are needed prevent State-sponsored investigations from subjecting persons legitimately calling for the observance and protection of human rights to unfair and groundless trials. In light of the above, the Commission concludes that compliance with this recommendation is still pending.

174. As regards the recommendation to **establish specialized police and prosecutorial units to act in a coordinated fashion and respond with due diligence to the investigation of attacks on human rights defenders , and to adopt with urgency the General Instructions within the Public Prosecutors' Office to guide prosecuting attorneys investigating attacks on defenders,**<sup>226</sup> the State pointed out that, since 2014, the State of Guatemala through the Ministry of the Interior, has had the Protocol for implementing immediate security and preventive measures on behalf of human rights defenders. That Protocol regulates the operational aspects of risk assessments and security arrangements via the PNC. The Public Prosecutors' Office likewise adopted General Instruction No. 05-2018, approving the Protocol for investigating crimes committed against human rights defenders, the purpose of which is to provide criteria and specific tools for personnel in the Public Prosecutors' Office taking part in the investigation and processing of crimes committed against human rights defenders.<sup>227</sup> Thus, the Special Public Prosecutor's Office for Human Rights within the Public Prosecutors' Office coordinates all the prosecuting attorney offices nationwide in order to determine whether the acts being investigated were committed with a view to curtailing the right to defend human rights. The State informed the IACHR that the Training Unit in the Public Prosecutors' Office, in coordination with the Criminal Policy Secretariat, the Public Prosecutor's Office for Human Rights, and civil society organization, had agreed to start disseminating the General Instruction among a wider audience.<sup>228</sup>

175. The Commission observes that civil society organizations welcomes the adoption of the General Instruction of the Public Prosecutors' Office, which recognizes the important part played by human rights defenders in strengthening democracy and the rule of law. The organizations point out that that Protocol incorporates international standards aimed at ensuring due diligence in investigations. Inter alia, they stress that the Protocol establishes the obligation to consider, as an initial investigation hypothesis, whether the violation was intended to hamper the defender's work; the Protocol likewise requires analysis of the context surrounding the victim. Furthermore, specific investigation parameters are set based on the type

<sup>225</sup> Organizaciones de la sociedad civil, [Informe alternativo de las organizaciones de la sociedad civil de Guatemala al Comité contra la Tortura de la ONU](#), par 182, October 2018.

<sup>226</sup> IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. 208/17, Monday, December 31, 2018, paras. 475 (42).

<sup>227</sup> Government of the Republic of Guatemala, COPREDEH, Observations by the State of Guatemala on the Report of the Inter-American Commission on Human Rights, "Situation of Human Rights in Guatemala, 2017", Ref.P-888-2018/JLBR/WR/cr., October 25, 2018, p. 41.

<sup>228</sup> Government of the Republic of Guatemala, COPREDEH, Observations by the State of Guatemala on the Report of the Inter-American Commission on Human Rights, "Situation of Human Rights in Guatemala, 2017", Ref.P-888-2018/JLBR/WR/cr., October 25, 2018, p. 46.

of defender, taking into account, for example, gender diversity, sexual orientation, interculturality, and so on. The Protocol also incorporates standards for comprehensive reparation of damage and envisages evaluation of the Instruction.<sup>229</sup>

176. The Commission welcomes the adoption of this Instruction of the Public Prosecutors' Office and will monitor its implementation and dissemination and the training provided to justice operators in connection with it. In light of the above, the Commission concludes that compliance with this recommendation has been partial and substantial.

### **Internally Displaced persons, Migrants, Asylum Seekers, Refugees, and Victims of Trafficking in Persons**

- Adopt measures to prevent the causes of the forced migration of persons, as well as adopt measures of protection, humanitarian assistance and lasting solutions for internally displaced persons and ensure the right of migrants and persons with the need for international protection to leave the territory.
- Adopt specific legislation at the federal and state level to address internal displacement in keeping with the Guiding Principles on Internal Displacement.
- Amend Article 50 of the Code of Migration in keeping with human rights norms and standards in order to ensure that persons requiring international protection are never returned to a country where their life, safety and liberty are in jeopardy.
- Regulate the Code of Migration and other norms relating to persons in the context of human mobility in keeping with the norms and standards of the Inter-American human rights system, in the framework of a participatory process with civil society organizations and other relevant stakeholders.
- Ensure access to justice for migrants and their families, as well as implement measures to search for and identify missing migrants.
- Implement effective measures to ensure the effective enjoyment of the human rights and reintegration of deported and returning persons.
- Ensure that expansionist business and development activities are carried out in keeping with international human rights standards, analyzing legal aspects, potential social conflicts, environmental and social impacts, the right to consultation, the conduct of authorities and corruption, as well as their repercussions in the short and long term. The Guatemalan State must exercise adequate oversight of business activities in order to comply with its international obligations.
- Ensure that evictions are conducted only in observance with human rights norms and standards and with the principles of exceptionality, legality, proportionality and suitability, in order to promote social wellbeing and by ensuring solutions for the evicted population, such as restitution and return, resettlement and rehabilitation or fair compensation.
- Pursuant to the Peace Accords, promote the creation of an agrarian and environmental jurisdiction within the judicial apparatus through enactment by the Congress of the Republic of the respective law.
- Adopt measures to ensure the protection of the dignity, life and security of the evicted persons, by ensuring at a minimum access to food, potable water and sanitation, lodging, clothing, access to medical services, means of subsistence and access to justice, as well as ensure access to humanitarian assistance and independent monitoring.

177. The Commission continued to monitor the situation in Guatemala as a country of origin, transit, destination, and return of migrants, whereby the predominant trend in the country is emigration. The Commission has observed how migration patterns increasingly blur the distinction between the different migration groups which, far from being homogeneous, are highly mixed. The Commission observes that the

<sup>229</sup> CEJIL, UDEFEGUA, [Saludamos la emisión de la instrucción general que aprueba el protocolo de investigación de delitos cometidos contra de defensoras y defensores de derechos humanos 5-2018](#), May 17, 2018.

main factors triggering both internal and international migration in Guatemala are: extortion, generalized violence, threats, the presence of organized crime and drug-trafficking-related activities, mega-projects and large-scale business projects, and domestic and gender-based violence.<sup>230</sup> The Commission further observes that migration may be caused or exacerbated by other factors, such as economic marginalization and poverty, climate changes and natural disasters, demographic pressure, weak State institutions, and corruption.

178. With respect to the recommendations regarding internal displacement, especially those about **adopting measures of protection, humanitarian assistance and lasting solutions for internally displaced persons** and **adopting specific legislation to address internal displacement in keeping with the Guiding Principles on Internal Displacement**, the Commission observes that the State did not provide information, stating only that it has no legislation directly addressing the internal displacement issue, but does have other laws that touch on it.<sup>231</sup>

179. According to estimates of the Internal Displacements Monitoring Centre (IDMC), toward the end of 2017 there were some 242,000 internally displaced people in Guatemala. Of them, 1,200 were displaced because of violence and 45,000 were displaced due to natural disasters in 2017.<sup>232</sup>

180. Both the Inter-American Commission and the I/A Court of Human Rights have regarded the Guiding Principles on Internal Displacement as particularly important for determining the scope and content of Article 22.1 of the American Convention on Human Rights in an internal displacement context.<sup>233</sup> Thus, the I/A Court of Human Rights has established that an evolving (progressive) interpretation of Article 22.1 of the American Convention supports the claim that this right can be violated not only by the existence of formal or legal constraints on circulation of the population, but also by de facto conditions preventing the population from moving around freely.<sup>234</sup> Based on the Guiding Principles on Internal Displacement, States have four principal obligations toward internally displaced persons: (i) the obligation to prevent displacement; (ii) the obligation to protect and provide assistance to the displaced during the displacement; (iii) the obligation to lend and facilitate humanitarian assistance; and (iv) the obligation to facilitate the return, resettlement, and reintegration of the internally displaced persons under safe conditions.<sup>235</sup>

181. Accordingly, the Commission reiterates its recommendations regarding the adoption of protection and humanitarian assistance measures along with lasting solutions for internally displaced persons and the **adoption of specific legislation to address internal displacement in keeping with the Guiding Principles on Internal Displacement**.

182. The Commission also recommended the Guatemala State to i) **Ensure that expansionist business and development activities are carried out in keeping with international human rights standard**, and ii) **Promote the creation of an agrarian and environmental jurisdiction**. On this, the Guatemalan States reported that, in accordance with the Law on Protecting and Improving the Environment, anyone wishing to engage in any activity detrimental to natural resources is required to conduct an environmental impact assessment. With respect to the agrarian jurisdiction, the State reported that it does not have one, but that the Judiciary deals with related matters through first instance courts for civil, criminal, drug-trafficking -related activities and crimes against the environment in accordance with the norms and regulations governing each of those areas.<sup>236</sup> Accordingly, the Commission considers that compliance with those recommendations is still pending and it reiterates the need to guarantee that expansionist business and

<sup>230</sup> IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II, Doc. 208/17, Sunday, December 31, 2017, par. 209.

<sup>231</sup> Communication of the Guatemalan State. Observations of the Guatemalan State on the Report of the Inter-American Commission on Human Rights entitled "Situation of Human Rights in Guatemala", in response to the note of September 26, 2017.

<sup>232</sup> Internal Displacement Monitoring Centre, [Global Report on Internal Displacement](#), p. 103.

<sup>233</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, par. 536.

<sup>234</sup> I/A Court HR. Case of Yarce et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of Tuesday, November 22, 2016, par. 214.

<sup>235</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, par. 537.

<sup>236</sup> Communication of the Guatemalan State. Observations of the Guatemalan State on the Report of the Inter-American Commission on Human Rights entitled "Situation of Human Rights in Guatemala", in response to the note of September 26, 2017, pp. 50, 53.

development activities abide by international human rights norms and standards and to promote the establishment of an agrarian jurisdiction, as ways to prevent internal displacement and to address those causes of displacement relating to the lack of land titling.

183. Regarding evictions and internal displacement, the Commission recommended to the Guatemalan State that it: i) Ensure that evictions are conducted only in observance with human rights norms and standards and with the principles of exceptionality, legality, proportionality and suitability, in order to promote social wellbeing and provide lasting solutions for the evicted population; and ii) Adopt measures to ensure the protection of the dignity, life, and security of the evicted persons.

184. Here, the Guatemalan State provided information regarding 34 judicial eviction orders issued in the last months of 2017 and the first few months of 2018, 10 of which were carried out, while 24 were in the process of being re-scheduled. The State also reported an agreement with the National Civilian Police that it would seek a technical opinion on human rights aspects and a proposal to develop a protocol governing inter-agency actions during and after eviction. The State also reported that COPREDEH had provided assistance with attending to displaced persons in keeping with the "Internal Guidelines for dealing with occupations and complying with eviction procedures."<sup>237</sup>

185. In its observations on the draft of this report, the State reported that it already has elaborated the draft of the Inter-institutional Protocol for the attention of evictions, with the participation of different State.<sup>238</sup>

186. In 2018, the IACDH paid particular heed to evictions and internal displacements in Guatemala. The IACHR noted that evictions affect people who are most vulnerable and who frequently find themselves related to the lack of legal certainty about their lands, particularly due to the lack of procedures to demarcate them.<sup>239</sup> The Commission observed an intensification of displacement as a State policy pursued by the Government of Guatemala. In the hearing on *Complaints of Human Rights Violations in the Context of Evictions in Guatemala*, civil society organizations said there had been an increased number of evictions that were triggering the internal displacement of people in Guatemala. The hardest-hit by those evictions are members of indigenous peoples, campesinos, persons living in poverty, women, children, and older persons. Most of the evictions are occurring in the regions of Alta Verapaz, Izabal, and Petén.<sup>240</sup> In the same vein, in the hearing on the Rights of Maya Q'eqchi Indigenous Families Affected by Evictions in Guatemala, organizations complained of the huge difficulty of having lands recognized and registered, as a result of which some communities had been evicted and displaced and they had to face the uncertainty of that happening again. The organizations drew attention to the way evictions were being conducted, including the burning down their crops ; criminal prosecution of their leaders; the seizure of their women's traditional costumes and the banning of Mayan rituals related to their ancestral lands; and lack of access to schools for their children.<sup>241</sup>

187. Accordingly, the IACHR has granted precautionary measures to persons evicted and displaced from indigenous families in the Chaab'íl Ch'och' community,<sup>242</sup> the "Nueva Semuy Chacchilla" Maya Q'eqchi community,<sup>243</sup> and the "La Cumbre Sa'kuxhá" Maya Q'ueqchi community,<sup>244</sup> in January, February, and June 2018, respectively. Those measures are additional to the precautionary measure on behalf of evicted and

<sup>237</sup> Communication of the Guatemalan State. Observations of the Guatemalan State on the Report of the Inter-American Commission on Human Rights entitled "Situation of Human Rights in Guatemala", in response to the note of September 26, 2017.

<sup>238</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p.17.

<sup>239</sup> IACHR, Human Rights Situation in Guatemala, OEA/Ser.L/V/II, Doc.208/17, 31 December 2018, para. 209.

<sup>240</sup> IACHR, [Reports of Human Rights Violations in the Context of Evictions in Guatemala](#), May 9, 2018.

<sup>241</sup> IACHR, [Rights of the Maya Q'eqchi indigenous families impacted by forced evictions in Guatemala](#), October 1, 2018.

<sup>242</sup> IACHR Resolution 3/2018, Precautionary Measure No. 860-17, [Indigenous families of Chaab'íl Ch'och' Community, concerning Guatemala](#), January 25, 2018.

<sup>243</sup> IACHR Resolution 7/2018, Precautionary Measure No. 872-17, [Families evicted and displaced from the "Nueva Semuy Chacchilla" Maya Q'eqchi Community](#), February 10, 2018.

<sup>244</sup> IACHR, Resolution 43/2018, Precautionary Measure No. 44-18, [Families of the "La Cumbre Sa'kuxhá" Maya Q'ueqchi community, concerning Guatemala](#), June 18, 2018.

displaced members of the Laguna Larga community granted by the IACHR in September 2017.<sup>245</sup> In those precautionary measures, the Commission asked the Guatemalan State to adopt measures needed to protect the life and integrity of the families through culturally appropriate measures designed to improve, inter alia, sanitary conditions, access to medical care and food, especially for children, women, and older persons; culturally appropriate measures to prevent acts of violence; and to investigate the facts that prompted the precautionary measure.

188. Regarding the eviction and internal displacement of members of the Laguna Larga community in Petén, the Bufete Jurídico de Derechos Humanos (Human Rights Law Office) told the IACHR that the 111 families displaced from Petén remain out in the open and that the State is not complying with the precautionary measures granted. The Bufete stated that the evicted and displaced persons are undergoing a humanitarian crisis as they lack access to food, drinking water, electricity, and jobs. What is more, measures for their return have not been complied with.<sup>246</sup> According to the Bufete, the Laguna Larga community is currently still at the camp to which its members were transferred after being evicted from their territory and are living in rather precarious conditions, given that the Government is not providing them with means for decent subsistence, nor is it allowing them to return to their territory.<sup>247</sup> On this matter, the Office of the Human Rights Ombudsman (PDH) told the Commission emphatically that "the State is definitely NOT complying with international standards relating to evictions and is apparently not interested in doing so"<sup>248</sup>. The PDH reported that "the people evicted are definitely not being evicted" and that humanitarian assistance is provided by nongovernmental organizations or international agencies.<sup>249</sup> Accordingly, the Commission observes that compliance with its recommendations regarding evictions and internal displacement is still pending.

189. At the same time, the Commission made recommendations to the Guatemalan State regarding its status as a country of transit and destination of migrants: 1) **Amend Article 50 of the Code of Migration in keeping with human rights norms and standards;** and ii) **Regulate the Code of Migration and other norms relating to persons in the context of human mobility in the framework of a participatory process with civil society organizations and other relevant stakeholders.** On this, the State reported that Article 50 complies with international standards and therefore did not mention measures geared to complying with the Commission's recommendation; as regards regulating the Code, the State only reported on the establishment of the Guatemalan Migration System through the Code of Migration.<sup>250</sup>

190. For its part, the PDH informed the Commission of the drafting of the Rules of Procedure of the National Migration Authority, the General Rules of Procedure, and the Rules of Procedure for determining Refugee Status. It reported that the General Rules of Procedure were seen by the Civil Society Coordination Group on Migration Matters, which found them regressive in certain aspects. As a result, the Group began elaborating a preliminary draft proposal for Rules of Procedure for the Migration Code to present to the corresponding authorities. The PDH complained that there had actually been scant opportunity for participation by civil society organizations in the preparation of the aforementioned Rules of Procedure.<sup>251</sup>

<sup>245</sup> CIDH, Resolución 36/2017, Precautionary Measure No. 412-17, [Evicted and displaced members of the Laguna Larga community, concerning Guatemala](#), September 8, 2017.

<sup>246</sup> IACHR, [Reports of Human Rights Violations in the Context of Evictions in Guatemala](#), May 9, 2018.

and El Periódico, [Más de 500 días a la intemperie llevan 111 familias desplazadas de Petén](#), January 7, 2019.

<sup>247</sup> IACHR, [Reports of Human Rights Violations in the Context of Evictions in Guatemala](#), May 9, 2018.

<sup>248</sup> Human Rights Ombudsman, Inputs by the Human Rights Ombudsman to the Inter-American Commission on Human Rights report "Follow-up on compliance with the recommendations of the Report on the Situation of Human Rights in Guatemala," November 2017, p. 38.

<sup>249</sup> Human Rights Ombudsman, Inputs by the Human Rights Ombudsman to the Inter-American Commission on Human Rights report "Follow-up on compliance with the recommendations of the Report on the Situation of Human Rights in Guatemala," November 2017, p. 39.

<sup>250</sup> Communication of the Guatemalan State. Observations of the Guatemalan State on the Report of the Inter-American Commission on Human Rights entitled "Situation of Human Rights in Guatemala", in response to the note of September 26, 2017, pp. 48 and 49.

<sup>251</sup> Human Rights Ombudsman, Inputs by the Human Rights Ombudsman to the Inter-American Commission on Human Rights report "Follow-up on compliance with the recommendations of the Report on the Situation of Human Rights in Guatemala," November 2017, p. 36.

The IACHR therefore reiterates its recommendations regarding amendment of Article 50 of the Migration Code and secondary Migration Code legislation and considers that compliance with them is still pending.

191. Regarding the Commission's recommendations on **access to justice for migrants**, the State reported on the setting up of the Care and Protection Council to address the issue of prevention and information concerning the risks associated with migrations and the rights of migrants. It said that that Council would be responsible for generating prevention and information campaigns, awareness-raising, reporting human rights violations, health care programs, and migrant families of disappeared persons.<sup>252</sup>

192. In its observations on the draft of this report, the State indicated that the Institute for Criminal Public Defense, through the Migrant Assistance Section, provides technical-legal and professional assistance to persons detained in Guatemala as national or foreign migrants, ensuring compliance with international human rights standards. The State also reported that the National Institute of Forensic Sciences of Guatemala has the management of genetic profiles for human identification of victims of human trafficking, Guatemalan persons who died abroad, persons who died in the territories of the Republic of Guatemala, and in special cases, of massive disasters.<sup>253</sup>

193. For its part, the PDG told the Commission about the drafting of the Human Remains Identification Manual (*Manual de Necroidentificación Humano*) to standardize forensic procedures for identifying corpses and bring them into line with international standards for ante mortem and post mortem collecting of data, including data on migrants. It also coordinated with the United States Government to identify Guatemalans who died abroad. According to the PDH, Guatemala has still not established the steps be taken by the State to file a report on a migrant who has disappeared within or outside the national territory.<sup>254</sup> Accordingly, the Commission acknowledges the progress made with the measures adopted by the Guatemalan State, reiterates its recommendations, and consider that compliance with them has been partial.

194. The Commission likewise recommended that the Guatemalan State **prevent the causes of the forced migration of persons and ensure the right of migrants and persons with the need for international protection to leave the territory**. On this, the Commission did not receive information from the State. The Commission notes that an estimated one in ten Guatemalans lives outside his or her country and that most seek to arrive in the United States of America.<sup>255</sup> As they travel north, Guatemalans usually face multiple dangers when they cross Mexico and attempt to enter the United States. Guatemalan migrants crossing Mexico have repeatedly been victims of kidnappings, sexual violence, extortion, robbery, disappearance, and trafficking in persons.<sup>256</sup> The number of Guatemalan requesting asylum in other countries has risen significantly in the past five years: by 820.71% in the case of asylum-seekers and 146.24% in the case of persons recognized as refugees.<sup>257</sup>

<sup>252</sup> Communication of the Guatemalan State. Observations of the Guatemalan State on the Report of the Inter-American Commission on Human Rights entitled "Situation of Human Rights in Guatemala", in response to the note of September 26, 2017.

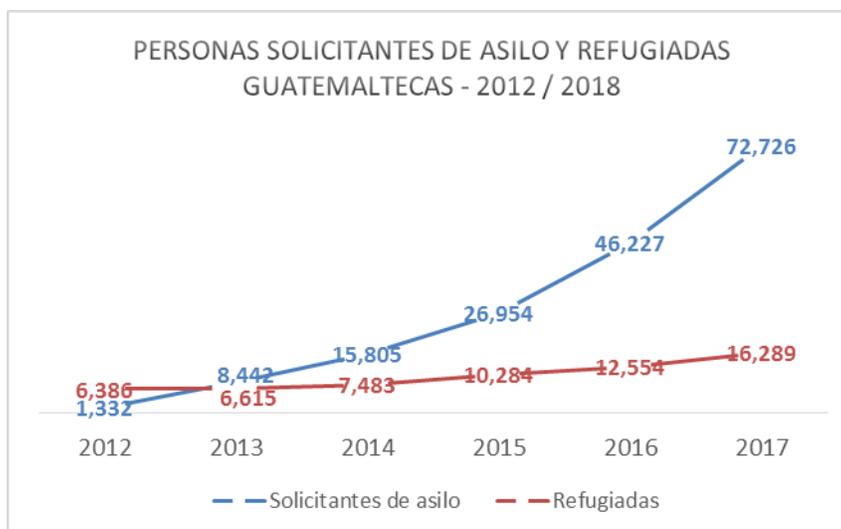
<sup>253</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 19.

<sup>254</sup> Human Rights Ombudsman, Inputs by the Human Rights Ombudsman to the Inter-American Commission on Human Rights report "Follow-up on compliance with the recommendations of the Report on the Situation of Human Rights in Guatemala," November 2017, p. 37.

<sup>255</sup> Bornschein, Dirk, [Antecedentes: el caso de las migraciones en Guatemala, causas y cifras](#), March 24, 2017.

<sup>256</sup> IACHR, [Situation of Human Rights in Guatemala](#), OEA/SER.L/V/IIIM Doc. 208/17, December 31, 2017, par. 233.

<sup>257</sup> UNHCR, [Global Trends](#), 2013 – 2017.



Source: UNHCR, Global Trends, 2012 – 2018.

195. Accordingly, the Commission reiterates its recommendations and considers that compliance with them is still pending.

196. Finally, regarding its recommendation to **implement efficacious measures to ensure the effective enjoyment of the human rights and reintegration of deported and returning persons**, the Guatemalan State informed the Commission that the Secretariat for Social Works of the President's Wife (SOSEP) provides psychological care upon arrival and lodging and specialized care for families who are victims of violence, extortion, and breakdowns in their health, or who are afraid to return to their countries of origin. For its part, the PDH reported progress with incorporating [returning] Guatemalans in the labor market, with the development of the "Huella del Migrante" strategy and the opening of a counter to attend in person to migrants at the headquarters of the Labor Ministry.<sup>258</sup> The Commission has kept track of the considerable increase in persons detained and deported back to Guatemala following more stringent migration policies in the United States and Mexico.

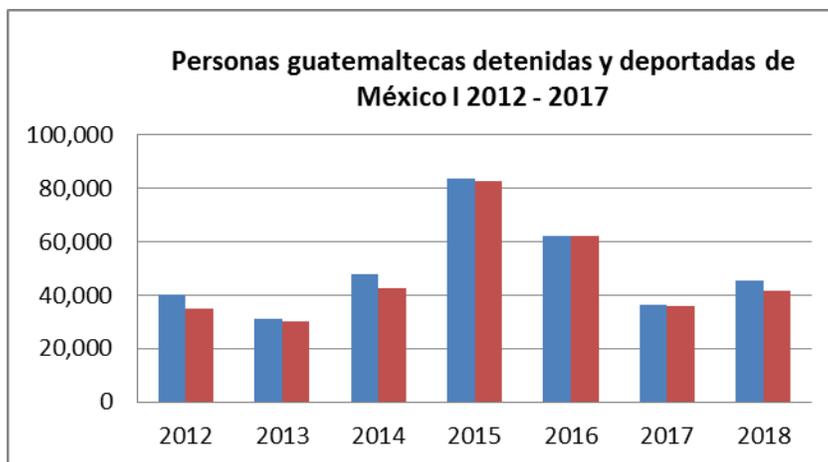
197. In its observations on the draft of this report, the State reported that the National Registry of Persons of the Republic of Guatemala (RENAP) has redoubled efforts to strengthen and expand the mechanisms of assistance and support for returnees, through a interinstitutional coordination carried out with the Guatemalan Air Force in order to carry out mobile days of registry services and issue of the Personal Identification Document (DPI).<sup>259</sup>

198. In addition, with respect to providing access to a legal identity for Guatemalans abroad, he indicated that RENAP has signed an agreement with the Ministry of Foreign Affairs and the Ministry of the Interior, an Inter-institutional Agreement for the delivery of 63,258 DPI for Guatemalans abroad.<sup>260</sup>

<sup>258</sup> Human Rights Ombudsman, Inputs by the Human Rights Ombudsman to the Inter-American Commission on Human Rights report "Follow-up on compliance with the recommendations of the Report on the Situation of Human Rights in Guatemala," November 2017, p. 37.

<sup>259</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 19.

<sup>260</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 19.



Source: Migration Policy Unit of the Secretariat of the Interior Statistics Bulletins 2012-2018

199. Accordingly, the Commission welcomes the measures implemented by the Guatemalan State to receive and attend to persons who have been returned to the country and consider that compliance with those measures has been partial. In this respect, it calls upon the Guatemalan State to continue taking steps to safeguard their human rights, especially by identifying persons in vulnerable situations or who would be at risk if they returned to their places of origin.

#### LGBTI persons

- Adopt the necessary measures to discourage intolerance and abolish any type of law that discriminates against persons based on their sexual orientation, gender identity or expression.
- Act with due diligence to prevent, investigate, punish and provide reparation for any type of violence committed against LGBTI persons.
- Adopt the necessary legislative measures and policies to prevent violence, discrimination and prejudice against persons because of their sexual orientation, diverse gender identity and expressions or whose bodies depart from male and female standards.

200. As regards the recommendation to adopt the necessary measures to discourage intolerance and abolish any type of law that discriminates against persons based on their sexual orientation, gender identity or expression, in its 2017 report on Guatemala the Commission expressed concern regarding Bill No. 5272 on "protection of life and the family," which, if passed, would create new restrictions on women's access to reproductive health; ban teaching of the gender perspective and sexual diversity in schools; reaffirm marriage as an institution to which only people born with different sexes are entitled;<sup>261</sup> and could, moreover, in effect put an end to legal characterization of the crime of discrimination when the discrimination is against persons of diverse sexual orientation, real or perceived gender identities, and sexual characteristics.<sup>262</sup> Accordingly, the Commission notes with concern that in late 2018 said bill was still being studied in Congress and awaiting adoption.<sup>263</sup>

201. At the same time, with respect to the recommendation to **act with due diligence to prevent, investigate, punish and provide reparation for any type of violence committed against LGBTI persons**, the IACHR was told that legislative initiative 5278, which proposed punishing crimes based on

<sup>261</sup> Human Rights Ombudsman (Guatemala). Response to the request for information on the status of the recommendations contained in the 2017 Country Report, presented in November, 2018

<sup>262</sup> IACHR, *Situation of Human Rights in Guatemala*, December 31, 2017, par. 123.

<sup>263</sup> HRW, [Guatemala: Reject 'Life and Family Protection' Law Dangerous Attack on Rights of Women and LGBT People](#), August 31, 2018.

prejudice in Guatemala, was turned down in Congress.<sup>264</sup> According to the information obtained, "one of the principal roadblocks to dismantling discrimination is the prejudice generated against the LGBTI population."<sup>265</sup> Thus, the State reported that the Public Prosecutors' Office, as part of its 2015-2019 Strategic Plan, is developing the General Policy of Caring for Victims, which includes special attention to victims in vulnerable groups, such as women, indigenous peoples, children, and LGBTI persons.<sup>266</sup> Therefore, compliance with the present recommendation is still pending.

202. Nevertheless, the IACHR draws attention to the fact that, despite the inclusion of the LGBTI population among the persons or groups requiring specialized attention, said strategy reportedly does not contemplate protocols or special attention procedures to eliminate the specific barriers faced by the LGBTI population with regard to access to justice. Nor did the State provide information about any cases investigated or punished, or for which reparation had been made. In the same vein, the United Nations Human Rights Committee pointed out that the country lacks consolidated data on investigations, indictments, prosecutions, penalties, or reparations in connection with cases of violence and hate crimes against LGBTI persons.<sup>267</sup> Therefore, the IACHR considers that compliance with this recommendation is still pending.

203. As for the recommendation urging the State to **adopt the necessary legislative measures and policies to prevent violence, discrimination and prejudice against persons because of their sexual orientation, diverse gender identity and expressions**, the State remitted information to the IACHR regarding the "Nuestra Guatemala K'atun 2032" National Development Plan<sup>268</sup>, presented by the Presidential Secretariat for Planning and Programming in 2015, which not only acknowledges the social vulnerability to which LGBTI persons are exposed in Guatemala, but also includes among its priorities and targets mitigating poverty and exclusion, by providing special protection to the population in vulnerable circumstances, including the sexually diverse<sup>269</sup>. While welcoming the Plan, which aims to achieve its goals by 2032, the IACHR notes that no statistics are provided as to how that planning is progressing.

204. In its 2017 country report on Guatemala, the IACHR mentioned the State's commitment to moving ahead with the drafting of a plan for attending specifically to LGBTI persons.<sup>270</sup> According to information received by the Commission, the draft of that plan was put together with the participation of numerous State institutions, as well as representatives of civil society.<sup>271</sup> The Commission acknowledges the State's effort not only to develop the plan to attend to LGBTI persons, but also to include civil society in the design of that plan. It considers the plan a significant commitment to recognizing the rights of LGBTI persons through their inclusion in public policies.

205. Nevertheless, according to information received by the IACHR, even though the aforementioned plan exist in the form of a draft awaiting approval by the Executive, as of end-2018, the plan for attending to LGBTI persons still lacked an effective timeline for adoption, publication, and implementation; nor has information been made available regarding its contents. Another incognito is the budget allocation for implementation of programs contained in the document. Accordingly, the IACHR recalls that observing and guaranteeing human rights not only requires the preparation and adjustment of legal frameworks and of the State's public policies; those measures also have to be implemented to affect people's lives.

<sup>264</sup> Human Rights Ombudsman (Guatemala). Response to the request for information on the status of the recommendations contained in the 2017 Country Report, presented in November, 2018

<sup>265</sup> Human Rights Ombudsman (Guatemala). Response to the Questionnaire for the Report on progress made and constructive efforts to achieve observance and guarantees for the rights of LGBTI persons in the Americas.

<sup>266</sup> Public Prosecutors' Office, [Plan estratégico del Ministerio Público de Guatemala](#), April 24, 2015.

<sup>267</sup> UN, Human Rights Committee, Concluding observations: [Guatemala. CCPR/C/GTM/CO/4](#), May 7, 2018, par. 16.

<sup>268</sup> Guatemala. National Council for Urban and Rural Development. [Plan Nacional de Desarrollo K'atun: nuestra Guatemala 2032](#), July 2014.

<sup>269</sup> Guatemala. National Council for Urban and Rural Development. [Plan Nacional de Desarrollo K'atun: nuestra Guatemala 2032](#), 2014 (Target 2. Result 2.1.E).

<sup>270</sup> IACHR. [Situation of Human Rights in Guatemala](#), December 31, 2017, par. 122.

<sup>271</sup> Guatemalan Government. Response to the request for information on the status of attention to the recommendations made in the 2017 Country Report, presented on October 25, 2018.

206. As for recognition of the right to gender identity, the IACHR notes that currently Guatemala has no law or regulatory framework recognizing the right of trans people to gender identity. In December 2017, the Commission was told that bill No. 5395 had been presented to Congress, with a view to achieving recognition of trans persons' right to gender identity. That law would allow them to correct their birth certificate to match their own perception of their gender identity.<sup>272</sup> However, according to a communication received in August 2018, the bill was turned down by the Commission on Legislation and Constitutional Matters and the Women's Commission, which prevented the bill from being discussed in a plenary session of Congress.<sup>273</sup> Accordingly, the IACHR stresses that legal recognition of gender identity is essential for guaranteeing numerous rights of trans and gender-diverse persons. Likewise, the adoption of gender identity laws or regulatory frameworks governing their recognition has a positive impact on violence and discrimination against trans and gender-diverse people. In light of the above, the IACHR concludes that compliance with this recommendation is still pending.

### Freedom of expression

- Acknowledge, from the highest levels of government, the legitimacy and value of the work of journalists, and condemn attacks committed in retaliation for the exercise of freedom of expression.
- Investigate crimes committed against journalists completely, effectively, and impartially. Additionally, in cases involving the murder of journalists, establish the motive and judicially determine any possible connection to journalistic activity and freedom of expression. The authorities should not rule out the practice of journalism as a motive for the attack and/or assault before the investigation is completed.
- With respect to the program for the protection of journalists and media workers—the creation of which was announced by the President of the Republic during the visit—ensure that its content is consistent with the international parameters, in broad and effective consultation with civil society organizations, journalists, and media workers.
- Take measures to guarantee the exercise of freedom of expression, plurality, and diversity in the digital transition process. Among other things, bring the license access, renewal, and revocation processes into line with the inter-American standards.
- Promote a pluralistic approach to information and multiple points of view by fostering the full enjoyment of freedom of thought and expression, access to the media, and diversity in media ownership and sources of information through, among other things, transparent licensing systems, and, as appropriate, effective regulations that prevent the improper concentration of media ownership.
- Adopt the legislative measures and public policies to recognize and ensure community media outlets' access to radio and television frequencies and licenses; in the meantime, abstain from criminally prosecuting community radio stations.
- Enact special, clear, and precise laws to regulate advertising at each level of government. Such provisions should clearly define government advertising and establish appropriate penalties for their violation. The Office of the Special Rapporteur reiterates that government advertising should never be allocated by the States to reward or punish media outlets for their editorial and news content.

<sup>272</sup> Human Rights Ombudsman (Guatemala). Response to the request for information on the status of the recommendations contained in the 2017 Country Report, presented in November, 2018

<sup>273</sup> Congress of the Republic of Guatemala, [Concluyen audiencias públicas para analizar iniciativa 5395, ley de identidad de género](#), August 28, 2018; France 24, [El Congreso de Guatemala rechaza reconocer derechos de los trans](#), August 28, 2018.

- Ensure that its administrative laws and practices are compatible with the prohibition against the participation of the armed forces in public safety operations, in particular, the control of violence at social protests. Limit budget allocations to matters concerning national defense.

207. In its 2017 report entitled *Situation of Human Rights in Guatemala*, the IACHR underscored the vital part played by journalism in light of what was happening in the country at that time, via its reporting on the abuse and misuse of power and its monitoring of investigations into corruption cases. Thus, the report pointed out that journalists and media workers continue to be, throughout Guatemala, the principal source of information and debate about the very serious human rights problems, institutional crisis, and corruption besetting the country. The Commission likewise pointed to the violence against journalists it ascertained during its on-site visit, characterized by murders, threats, and discourse designed to stigmatize the media and journalists committed to combating corruption and the abuse of power. In addition to all that, the report pointed to ongoing structural issues preventing citizens from receiving information from a variety of sources, such as the highly concentrated ownership and control of radio and television (including pay-TV), and the serious difficulties faced by indigenous peoples' radio stations trying to get on the air and receive public funding to achieve sustainability.

208. In its 2017 report on the *Situation of Human Rights in Guatemala*, the IACHR reported that during its on-site visit it witnessed complaints about stepped-up threats and stigmatization through social media, attacks by the security forces, and an atmosphere of severe political and social polarization that appeared to permeate the exercise of journalism in the country, especially opinion columns

209. In 2018, the IACHR also witnessed a Guatemala reeling from the *Volcán de Fuego* eruption disaster in June, which killed several people and left others wounded and displaced. In connection with that situation, a number of media denounced harassment by the State because of their reporting on the crisis. President Jimmy Morales also publicly questioned the work of the press and accused it of sowing panic and fear through what he regarded as fake news. At the same time, the State's decision not to renew the mandate of the head of the International Commission against Impunity in Guatemala (CICIG) and declare him (Iván Velázquez) persona non grata triggered an institutional crisis which was perceived by the international community as a very bad sign. In that context, various communicators reported having been stalked, threatened, and harassed for reporting on the events that induced the Government to take the decision not to renew the CICIG mandate. Moreover in another context, three journalists were murdered for reasons allegedly related to their work.

#### ***Murders, attacks, threats, and intimidation of journalists and the media***

210. Regarding the recommendation to **acknowledge, from the highest levels of government, the legitimacy and value of the work of journalists, and condemn attacks committed in retaliation for the exercise of freedom of expression**, the IACHR did not receive information concerning any specific pronouncements by senior public authorities addressing the context of murders of journalists and attacks on the media on account of their professional activities. On the contrary, the IACHR received information about statements by public authorities stigmatizing the press and singling them out for questioning measures adopted by the Government or for disseminating information that the Government considered false.<sup>274</sup> Accordingly, the IACHR considers that compliance with this recommendation is still pending.

211. In 2018, the IACHR and its Special Rapporteurship for Freedom of Expression received information regarding the murder of three social communicators in Guatemala. Thus, on February 1, the bodies of Castillo Cifuentes —a correspondent for *Nuestro Diario* en Coatepeque— and De León Miranda —a

<sup>274</sup> Centro de Reporteros Informativos sobre Guatemala (Cerigua). May 3, 2018. [La situación de la prensa guatemalteca está lejos de presentar mejoras](#); Prensa Libre. Sunday, January 28, 2018. [Alcalde Arzú habla de combatir a cualquier enemigo, en discurso a reservistas](#); El Periódico. Tuesday, January 30, 2018. [Periodistas responsabilizan alcalde de Guatemala de posibles ataques a prensa](#); Guatevisión. Sunday, January 28, 2018. [VIDEO: Arzú amenaza a medios de comunicación en bélico discurso](#); El Periódico. Tuesday, August 21, 2018. [Presidente habla de "fake news" con un dato falso](#); Soy502/Cuenta de You Tube. Wednesday, June 20, 2018. [Jimmy Morales culpa a las fake news de sembrar el pánico en Escuintla](#). [05:05].

publicist at a local radio station— were found in a sugar plantation in the Bolivia community. Their hands and feet were tied and they had been shot in the head. Both communicators had been working together on a report on the Mazatec carnival.<sup>275</sup> On April 9, journalist José Daniel Rodríguez was reported as missing. The next day his body was reportedly found wrapped in a sheet on a road in Zone 9 of Guatemala City, with signs that violence had been used. The National Forensic Sciences Institute allegedly reported that he had been suffocated to death. Rodríguez was a columnist who wrote about the economy, justice, and politics for the digital medium República.gt. He also tweeted and was known on social networks for his publications on current events in Guatemala.<sup>276</sup>

212. In 2018, the IACHR and its Special Rapporteurship observe that despite information to the effect that there were fewer attacks on the press than in previous periods, civil society reported that insecurity for journalists and media workers continued to be a matter of concern in Guatemala.<sup>277</sup> Thus, there were new cases of death threats, attacks, and intimidation of journalists because of their work.<sup>278</sup> For its part, the Special Rapporteurship also received information from the Office of the Ombudsman for Human Rights in Guatemala (PDH) in which he reports on the political situation in the country and on "acts to restrict freedom the press that have occurred in that context."<sup>279</sup> According to the PDH, the purpose of the attacks on independent journalists and media is to hamper their work.<sup>280</sup>

213. Among the attacks on the independent press, the PDH registered the cyber-attacks against the Guatevisión, Plaza Pública, Soy502, Nómada and El Periódico portals.<sup>281</sup> There were also attacks on reporters for *Guatevisión*, who, according to the Ombudsman's Office, were robbed of the equipment they needed to do their job. According to the complaint, what the attacks on journalists have in common is that the journalists concerned investigate acts of corruption. The information remitted adds that "denunciations have also been filed as a mechanism for intimidating social communicators and dissuading them from going about their work,"<sup>282</sup> and that the *El Periódico* newspaper "has had to face acts of intimidation and surveillance of its facilities."<sup>283</sup>

214. Documented cases include those involving columnist Víctor García and journalist Henry Bin. According to the information available, in April, Víctor García, a columnist for the digital daily *Soy50*, had

<sup>275</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Monday, February 05, 2018. [Press release R19/18 Office of the Special Rapporteur Condemns Murder of Two Journalists in Guatemala, Urges State to Investigate Fully and Implement Protection Mechanism.](#)

<sup>276</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. May 4, 2018. [Press Release R95/18. Office of the Special Rapporteur Condemns Murder of Journalist in Mexico and Urges the State to Investigate Connection to Journalistic Activity.](#)

<sup>277</sup> Asociación de Periodistas de Guatemala (APG) and Observatorio de los Periodistas. [Estado de situación de la libertad de expresión 2018 - Intolerancia Oficial.](#) Friday, November 30, 2018.

<sup>278</sup> Asociación de Periodistas de Guatemala (APG) and Observatorio de los Periodistas. [Estado de situación de la libertad de expresión 2018 - Intolerancia Oficial.](#) November 30, 2018; Publinews. November 6, 2019. [APG rechaza amenazas de muerte hacia comunicadores;](#) Centro de Reporteros Informativos sobre Guatemala (Cerigua). Monday, April 16, 2018. [Un columnista asesinado y otro amenazado de muerte, denuncia CERIGUA.](#)

<sup>279</sup> Communication from the Office of the Human Rights Ombudsman to the Special Rapporteurship for Freedom of Expression on "attacks on the media in connection with the political situation in Guatemala," received on September 4, 2018. Available at: Archives of the Special Rapporteurship for Freedom of Expression.

<sup>280</sup> Communication of the Human Rights Ombudsman of Guatemala (PDH) to the Special Rapporteurship for Freedom of Expression regarding "attacks on the media in connection with the political situation in Guatemala," received on September 4, 2018. Available at: Archives of the Special Rapporteurship for Freedom of Expression.

<sup>281</sup> Communication of the Human Rights Ombudsman of Guatemala (PDH) to the Special Rapporteurship for Freedom of Expression regarding "attacks on the media in connection with the political situation in Guatemala," received on September 4, 2018. Available at: Archives of the Special Rapporteurship for Freedom of Expression; Inter-American Press Association (IAPA). Thursday, August 30, 2018. [La SIP condenó ciberataque contra el Periódico de Guatemala.](#)

<sup>282</sup> Communication of the Human Rights Ombudsman of Guatemala (PDH) to the Special Rapporteurship for Freedom of Expression regarding "attacks on the media in connection with the political situation in Guatemala," received on September 4, 2018. Available at: Archives of the Special Rapporteurship for Freedom of Expression.

<sup>283</sup> Communication of the Human Rights Ombudsman of Guatemala (PDH) to the Special Rapporteurship for Freedom of Expression regarding "attacks on the media in connection with the political situation in Guatemala," received on September 4, 2018. Available at: Archives of the Special Rapporteurship for Freedom of Expression.

for months been the butt of harassment in social networks and had, moreover, received a death threat from a municipal officer.<sup>284</sup>

215. In August, indigenous journalist Rolanda de Jesús García, who worked for the *TeleSur* and *Centro de Medios Independientes* network was reportedly the victim of intimidation by two alleged employees of a hydroelectric company when she was covering news in the municipality of Cahabón about deforestation and the threat of flooding from the Cahabón river as a result of the hydroelectric company's operations in the area. According to the information available, at the same time as she was being told to leave the area, one individual threatened to rape her if she returned. Furthermore, on the way back, six men with machetes held her until she had deleted the images and video she had filmed.<sup>285</sup> In a communique, the Guatemalan Journalists Association (APG) not only condemned those acts, but also pointed out that they "underscored the censorship and self-censorship to which journalists are subjected in the country's more remote departments and areas. They also illustrate discrimination and gender-based violence against women journalists."<sup>286</sup>

216. Also in August, Army personnel reportedly attempted to stop reporters entering the "ground zero" epicenter of the Volcán de Fuego disaster.<sup>287</sup> In that month, too, National Civilian Police (PNC) officers reportedly obstructed the journalistic work of radio announcer César Armando Bejar Pacay, by not letting him document with his cellphone how a group of inmates were transferred on foot to the prison located near the central park in Cobán.<sup>288</sup>

217. On September 7, the Ministry of the Interior posted a message on social networks stating "categorically that it is totally false that a supposed list exists of persons to be accused of treason." Likewise, Alfredo Brito, Secretary for Communication in the Office of the Presidency, reportedly denied that there was a list of people to be charged. The Chief Prosecutor (*Procurador General de la Nación*) also allegedly stated that he knew of no such list. These statements by the Government were reportedly made after information surfaced about an alleged list of names of journalists and human rights activists who could be indicted for treason because of their opposition to decisions taken by President Jimmy Morales.<sup>289</sup>

218. According to information in the public domain, on September 16, National Civilian Police personnel allegedly intimidated reporters for several media who were covering the news outside the main building of the Constitutional Court (CC) regarding a possible resolution by the Court on the ban on Commissioner Iván Velásquez,, head of the International Commission against Impunity in Guatemala (CICIG) from entering the country.<sup>290</sup>

219. The IACHR recalls that Principle No. 9 of its Declaration of Principles on Freedom of Expression establishes 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

<sup>284</sup> Centro de Reporteros Informativos sobre Guatemala (Cerigua). Monday, April 16, 2018. [Un columnista asesinado y otro amenazado de muerte, denuncia CERIGUA](#); Asociación de Periodistas de Guatemala (APG) and Observatorio de los Periodistas. [Estado de situación de la libertad de expresión 2018 - Intolerancia Oficial](#). Friday, November 30, 2018.

<sup>285</sup> Publinews. Thursday, August 23, 2018. [APG condena retención y amenazas a periodista en Cahabón](#); Prensa Libre. Tuesday, August 21, 2018. [Preocupan incidentes en hidroeléctricas, sectores llaman al diálogo y evitar la violencia](#); Asociación de Periodistas de Guatemala (APG). Thursday, August 23, 2018. [Comunicado No. 30-8-2018](#).

<sup>286</sup> Asociación de Periodistas de Guatemala (APG). Thursday, August 23, 2018. [Comunicado No. 30-8-2018](#).

<sup>287</sup> Asociación de Periodistas de Guatemala (APG) and Observatorio de los Periodistas. [Estado de situación de la libertad de expresión 2018 - Intolerancia Oficial](#). Friday, November 30, 2018.

<sup>288</sup> Asociación de Periodistas de Guatemala (APG) and Observatorio de los Periodistas. [Estado de situación de la libertad de expresión 2018 - Intolerancia Oficial](#). November 30, 2018; Noticias La Esfinge. Wednesday, August 22, 2018. [Intentan despojar de equipo de trabajo a periodista en Cahabón A.V.](#)

<sup>289</sup> Prensa Libre. Friday, September 07, 2018. [Gobierno niega que exista persecución a periodistas](#); Impacto. Saturday, September 08, 2018. [Gobierno no va tras de periodistas, aseguran que es un falso rumor](#); "Categorically, it is totally false that a supposed list exists of persons to be accused of treason The population is urged not to be taken in by social media claims...The function of the National Civilian Police is to provide security and guarantees for citizens." Official Twitter account of the Ministry of the Interior of Guatemala @mingobguate. [September 7, 2018](#).

<sup>290</sup> Asociación de Periodistas de Guatemala (APG). Monday, September 17, 2018. [Comunicado No. 34-9-18](#).

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."

220. With regard to the recommendation to **thoroughly, effectively, and impartially investigate crimes against journalists and to throw light on the motives behind the murders of journalists, as well as juridically determine any connection those murders may have to journalistic activities and freedom of expression**, and the recommendation that **the authorities should not rule out the practice of journalism as a motive for the attack and/or assault before the investigation is completed**, the IACHR welcomes the progress made with respect to the murder of Manuel Salvador Villagrán, in January 2017. According to the information available, the Unit for Crimes against Journalists of the Office of the Special Prosecutor for Human Rights in the Public Prosecutors' Office presented an investigation to the Sentencing Tribunal for Criminal Cases, Narcotics Activities and Crimes against the Environment of the Department of Zacapa. Thus, in August 2018, that Tribunal resolved to indict Marcos Oswaldo Azurdia Chávez, who was accused of committing that murder.<sup>291</sup> The IACHR likewise welcomes the progress made in connection with the murders of journalists Danilo López y Federico Salazar in March 2015. Reportedly, in January congressman (*diputado*) Julio Antonio Juárez Ramírez was detained in Mazatenango, Suchitepéquez, after High Risk Tribunal B ordered his arrest on charges of murder, attempted murder, and illicit association.<sup>292</sup> According to the investigation conducted by the Public Prosecutors' Office through the Office of the Special Prosecutor against Impunity in coordination with the International Commission against Impunity in Guatemala (CICIG), the congressman is the alleged instigator of both murders.<sup>293</sup>

221. In its observations on the report on the "Situation of Human Rights in Guatemala, 2017", the State pointed out that in Guatemala, the Public Prosecutors' Office, via the Special Public Prosecutor's Office for Human Rights, is represented in seven prosecution units, "which focus on providing the guidance and diligence for each specific case, depending on the profession involved, while, in particular, respecting freedom of expression."<sup>294</sup> One of the seven prosecution units is reportedly the Unit on Crimes against Journalists. The State also reported that, with respect to early warning and rapid response mechanisms for journalists, this Unit has five ancillary public prosecutors so that it can work 24/7 shifts, "with a cellphone on duty including weekends and holidays, available to receive complaints, or queries, and, in cases of threats, the response is immediate, with prompt proceedings and memos to the Ministry of the Interior, so as to provide perimeter security for the journalist in question. The Unit also requests risk assessments from the Department of Protection for Individuals and Security (DPPS) of the National Civilian Police, so as to provide security tailored to the journalist's needs, if the risk assessment so warrants."<sup>295</sup>

222. The State also reported that, together with UNESCO and Fundación Cívica, the Judicial Studies School (Escuela de Estudios Judiciales) has developed training modules for magistrates and judges on Freedom of Expression and security for journalists, the idea being to ensure that " those responsible for administering justice are up-to-date on the subject and familiar with relevant aspects."

<sup>291</sup> Publinews. Sunday, July 22, 2018. [Envían a juicio a responsable de asesinar a periodista](#); Ministerio Público de Guatemala. Friday, July 20, 2018. [Zacapa: MP presentó investigación por la que se envía a debate a hombre por asesinato de periodista](#).

<sup>292</sup> El Periódico. Saturday, January 13, 2018. [Diputado Julio Juárez es capturado señalado del asesinato de dos periodistas](#); Soy502. Saturday, January 13, 2018. [Así trasladan al diputado Julio Juárez agentes de la PNC](#).

<sup>293</sup> "Investigación de MP en conjunto con @CICIGgt permite hoy la captura del diputado Julio Juárez Ramírez sindicado de asesinato, asesinato en grado de tentativa y asociación ilícita. Estaría involucrado en la muerte de dos periodistas". Official Twitter account of the Public Prosecutors's Office of Guatemala @MPguatemala. [13 de enero de 2018](#); "Juárez Ramírez sería el presunto autor intelectual del asesinato de los periodistas Danilo Zapón López y Federico Salazar. Fue detenido en un sector de Mazatenango". Official Twitter account of the Public Prosecutors's Office of Guatemala @MPguatemala. [13 de enero de 2018](#); Ministerio Público de Guatemala. Saturday, January 13, 2018. [Capturado diputado Julio Juárez Ramírez quien estaría involucrado en el asesinato de dos periodistas](#); Reuters. Saturday, January 13, 2018. [Guatemala congressman arrested, accused in murders of two journalists](#); Comité para la Protección de los Periodistas (CPJ). Tuesday, January 16, 2018. [Autoridades guatemaltecas arrestan a legislador acusado de planear el asesinato de dos periodistas](#).

<sup>294</sup> Republic of Guatemala. Observations of the State of Guatemala on the Report of the Inter-American Commission on Human Rights, "Situation of Human Rights in Guatemala, 2017." Ref. P-888-2018/JLBR/WR/cr. Thursday, October 25, 2018. Available at: Archive of the Special Rapporteurship for Freedom of Expression.

<sup>295</sup> Republic of Guatemala. Observations of the State of Guatemala on the Report of the Inter-American Commission on Human Rights, "Situation of Human Rights in Guatemala, 2017." Ref. P-888-2018/JLBR/WR/cr. Thursday, October 25, 2018. Available at: Archive of the Special Rapporteurship for Freedom of Expression.

223. Based on its evaluation, the IACHR considers that compliance with this recommendation has been partial. States should ensure that crimes against freedom of expression are investigated and handled through independent, swift, and effective judicial procedures. Apart from criminal investigations, disciplinary procedures should be set in motion when there is evidence that public servants have violated freedom of expression in the performance of their professional duties. As pointed out on other occasions, failure to punish the perpetrators and instigators of murders, assaults, threats, and attacks on journalists related to their work fosters the commission of new crimes and triggers a notorious reaction of self-censorship, thereby severely undermining the possibility of a genuinely open, uninhibited, and democratic debate.

### ***Protection mechanisms***

224. With respect to the recommendation regarding the program for the protection of journalists and media workers—the creation of which was announced by the President of the Republic during the visit—to ensure that its content is consistent with the international parameters, in broad and effective consultation with civil society organizations, journalists, and media workers, the IACHR and its Special Rapporteurship take note of the communication dated February 21, in which the Secretary for Social Communication of the Office of the Presidency, Mr. José Alfredo Brito Ralón, sent the Special Rapporteurship the preliminary draft of the Governmental Decision on the Program for Protecting Journalists and asked for this Office's technical advice. Following up on that request, on March 7, the Rapporteurship sent the State a technical note on the subject. Despite the above and the IACHR's recommendations to the State of Guatemala following its on-site visit in 2017, and the announcement by President Jimmy Morales on the establishment of a Program for Protecting Journalists and Social Communicators in the country, the Office of the Special Rapporteur notes that to this day—and as the edition of this report went to press—no concrete progress had been made in that direction.

225. In particular, the State reported that in 2016 the President of the Republic had fostered the Governmental Decision to establish the aforementioned Program for Protecting Journalists, "as a social public project to guarantee the Right to Freedom of Expression and related human rights derived from it, with activities geared to resolving the issue of journalists' need for security and the impunity issue." Accordingly, it stated that currently that project was with the Communication Secretariat of the Office of the President of the Republic for a review of the legal and administrative requirements that the Ministry of the Interior deemed necessary in order for the project to be launched."<sup>296</sup>

226. The IACHR, its Special Rapporteurship for Freedom of Expression, UNESCO, and the United Nations High Commissioner for Human Rights have repeatedly recommended that a program be established to protect journalists and media workers in Guatemala, given the violence and attacks they have had to contend with for more than a decade.<sup>297</sup>

227. Based on the IACHR's assessment, compliance with this recommendation has been partial. For the above reasons, the IACHR and its Special Rapporteurship wish to remind the Guatemalan State of some of the guidelines they have developed and which need to be taken into account when designing and operating protection programs for journalists, including: i) political commitment on the part of the State, demonstrated in: an appropriate legal framework; sufficient, well trained and capable human resources; the budgetary resources needed to cover the cost and expenses of personnel working in the program, as well as the expenses relating to protection measures; the adoption of rules clearly demarcating the functions and responsibilities of the authorities involved in implementing and overseeing protection measures; ii) adequate determination of potential beneficiaries and the bases on which potential beneficiaries may seek protection;

<sup>296</sup> Republic of Guatemala. Observations of the State of Guatemala on the Report of the Inter-American Commission on Human Rights, "Situation of Human Rights in Guatemala, 2017." Ref. P-888-2018/JLBR/WR/cr. Thursday, October 25, 2018. Available at: Archive of the Special Rapporteurship for Freedom of Expression.

<sup>297</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Monday, February 05, 2018. [Press release R19/18 Office of the Special Rapporteur Condemns Murder of Two Journalists in Guatemala, Urges State to Investigate Fully and Implement Protection Mechanism.](#)

iii) accurate risk analysis, with a gender perspective, that enables the State to determine the most effective way by which it can meet its protection obligation, taking specific aspects proper to the context into account and providing for active participation by the beneficiary; iv) the provision of suitable and effective protection measures for protecting both the life and personal integrity of the beneficiaries, that are also tailored to journalists' professional needs; v) clear criteria and procedures for monitoring the danger to which the beneficiary is exposed and for monitoring the effectiveness of the measures chosen, and, if they are not effective, for adjusting them to match the specific circumstances of the beneficiary; vi) risk assessment to decide whether or not protection measures should be lifted, whereby the beneficiaries must be allowed to take part in that decision and air their views about any lifting of the measures; and vii) accompanying the material protection measures, exhaustive and independent investigations by competent bodies aimed at preventing and reducing the sources of risk.<sup>298</sup>

### ***Promotion of diversity and pluralism in digital broadcasting***

228. As regards the recommendation to **take measures to guarantee the exercise of freedom of expression, plurality, and diversity in the digital transition process, including bringing the license access, renewal, and revocation processes into line with the inter-American standards**, the State did not inform the IACHR of any concrete actions taken in that regard. Consequently, in view of the lack of information, compliance with the recommendation is considered pending.

### ***Social protest***

229. Regarding the recommendation to **ensure that its administrative laws and practices are compatible with the prohibition against the participation of the armed forces in public safety operations, in particular, the control of violence at social protests; and to limit budget allocations to matters concerning national defense**, the State reported that, in April 2017, pursuant to the Peace Accords of 1996 and in connection with the Partnership for Prosperity Plan, implementation of the plan to gradually withdraw the Guatemalan Army from citizen security duties had begun. Thus, so far, "the Ministry of Defense has withdrawn its personnel in 22 military detachments located in a series of municipalities in the country, thereby initiating a transition process in which the National Civilian Police will take their place, in both the detachments themselves and in respect of their functions."<sup>299</sup>

230. In connection with social protests, the IACHR received information that on August 31, President Jimmy Morales announced that he would not extend the mandate of the International Commission against Impunity in Guatemala (CICIG), which expires in September 2019. In addition, four days later, a communication was made public in which the Immigration authority was ordered to prevent the entry into Guatemala of Iván Velásquez Gómez, head of the CICIG.<sup>300</sup> After those measures, several groups reportedly announced that they would stage protests against corruption, against the government of President Jimmy Morales, and against the decision not to extend the CICIG mandate.<sup>301</sup>

231. Following that announcement, the Human Rights Ombudsman in Guatemala, Jordán Rodas, filed an action for constitutional protection (*amparo*) with the Constitutional Court "to ensure the observance and guarantees for the rights of freedom of expression and freedom of movement, and the right of the

<sup>298</sup> IACHR. [Annual report for 2013. Report 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) Tuesday, December 31, 2013. Par. 81-84; IACHR. [Second Report on the situation of human rights defenders in the Americas](#). Saturday, December 31, 2011. Par. 487-531

<sup>299</sup> Communication of the Human Rights Ombudsman of Guatemala (PDH) to the Special Rapporteurship for Freedom of Expression regarding "attacks on the media in connection with the political situation in Guatemala," received on September 4, 2018. Available at: Archives of the Special Rapporteurship for Freedom of Expression.

<sup>300</sup> Prensa Libre. Tuesday, September 04, 2018. [Gobierno prohíbe a Iván Velásquez entrar al país](#); CNN español. Tuesday, September 04, 2018. [Gobierno de Guatemala prohíbe entrada al país de Iván Velásquez](#).

<sup>301</sup> La Prensa. Thursday, September 20, 2018. [Guatemala: Exigen renuncia de Jimmy Morales en masivas protestas](#); Forbes Centroamérica. Monday, September 10, 2018. [Protestas en Guatemala para renovar CICIG](#); Prensa Libre. Wednesday, September 12, 2018. [Manifestaciones contra Jimmy Morales se concentran en la capital](#); Prensa Libre. Tuesday, September 11, 2018. [Pobladores de Totonicapán liberan ruta Interamericana luego de nueve horas de manifestación](#).

Guatemalan population to assemble and demonstrate."<sup>302</sup> On September 10, sitting en banc, the Constitutional Court ruled to grant that amparo in part and ordered President Morales to guarantee the right to protest during the marches that had been convened.<sup>303</sup>

232. Thus, on September 12, in connection with protests in Guatemala, thousands of military and police personnel reportedly prevented hundreds of demonstrators from entering the historical center of Guatemala City. According to the information available, when they marched toward the center of the city on the third consecutive day of protests, indigenous, campesino and university student protesters came up against more than 2,000 policemen, accompanied by military personnel armed with rifles, who had cordoned off the city center, blocking the protest against President Jimmy Morales.<sup>304</sup>

233. According to information available, the Congress of the Republic of Guatemala is working on Bill 5239, which aims to become a law against terrorist acts. The draft, which was approved by the Ordinary Commission of the Interior prior to its being seen and voted on by Congress as a whole, is said to contain provisions that could turn out to be incompatible with the American Convention on Human Rights and restrict freedom of expression: a vital component of democracy.<sup>305</sup> On March 15, 2018, this Office requested information from the State of Guatemala regarding said bill.

234. With respect to the limitation of budgetary allocations to issues related to National Defense, in its observations on the draft of this report, the State considers the recommendation "inappropriate", since "it is a sovereign decision of the country to distribute the national economic resources for the attention of the services that the State is obliged to provide ". It also confirmed that the initiative of law 5239 meets with favorable opinion of the Commission of Government of the Congress of the Republic. The State affirmed that the initiative has not yet been given a first reading, which is why it is awaiting the corresponding process to officially know about this initiative.<sup>306</sup>

235. With regard to the above, the Commission and the Inter-American Court have issued reminders that in a democratic society punitive power is only exercised when strictly necessary to protect fundamental juridical gains from the most serious attacks undermining or endangering them. Accordingly, the Inter-American Court has affirmed that if restriction or curtailment of the right to freedom of expression "stems from criminal law, it is necessary to observe the strict requirements inherent to the legal characterization of the crime in order to satisfy the principle of legality in this regard. Thus the restrictions must be expressly, precisely, and literally spelled out in advance. The legal framework must provide legal certainty to citizens."

236. The Special Rapporteurship notes with concern that legal initiative (bill) 5239 contains excessively broad and open legal characterizations, which would not meet the minimum requirements called for by the principle of strict legality of criminal provisions. As it is, the bill would leave interpretation of its articles up to the discretion of judges and could lead to unlawful restrictions on citizens in the exercise of their rights to freedom of expression and assembly.

<sup>302</sup> "@PDHgt @JordanRodas presenta acción de amparo ante la @CC\_Guatemala para que se respeten y garanticen los derechos de libertad de expresión, Libertad de locomoción, el derecho de reunión y manifestación de la población guatemalteca". Official Twitter account of the Office of the Human Rights Ombudsman @PDHgt. [9 de septiembre de 2018](#); El Periódico. Sunday, September 09, 2018. [PDH presente amparo ante la CC para garantizar seguridad en manifestaciones](#).

<sup>303</sup> El Diario/EFE. Tuesday, September 11, 2018. [La Corte Constitucional de Guatemala ordena al presidente Morales garantizar las protestas](#); Tuesday, September 11, 2018. [Más bloqueos de carreteras en protesta contra gobierno guatemalteco](#); Prensa Libre. Monday, September 10, 2018. [CC ordena a Jimmy Morales garantizar protestas](#); EFE. Sunday, September 16, 2018.

<sup>304</sup> Reuters. Wednesday, September 12, 2018. [Miles de efectivos en Guatemala impiden avance de protesta contra Morales](#).

<sup>305</sup> Prensa Libre. Thursday, February 22, 2018. [Dos proyectos de ley podrían usarse para limitar protestas ciudadanas y la libertad de expresión](#); El Diario. Tuesday, February 20, 2018. [Cámara de Periodistas de Guatemala rechaza iniciativa de "ley mordaza"](#); La Hora. Thursday, February 15, 2018. [PDH expone preocupación a Relator por ley que pretende limitar libertad de expresión](#).

<sup>306</sup> Guatemalan State, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the report Situation of Human Rights in Guatemala, March 14, 2019, p. 21.

237. Based on the IACHR's assessment, compliance with the aforementioned recommendation is partial. The IACHR therefore calls upon the State to adopt the measures needed to ensure the right to protest and safeguard security through measures that are necessary and proportionate, in accordance with international standards.

### *The radiobroadcasting situation*

#### **Undue concentration of media ownership**

238. With respect to the recommendation to **promote a pluralistic approach to information and multiple points of view by fostering the full enjoyment of freedom of thought and expression, access to the media, and diversity in media ownership and sources of information through, among other things, transparent licensing systems, and, as appropriate, effective regulations that prevent the improper concentration of media ownership**, the IACHR and its Special Rapporteurship discern no progress with respect to the excessive concentration of ownership and control of audiovisual media, particularly free-to-air television, observed during the on-site visit to Guatemala in 2017.<sup>307</sup>

239. In March it came to light that an audit conducted by the Office of the Comptroller General of Accounts (CGC) of Guatemala had found irregularities in the awarding of TV frequencies to businessman Ángel González. The auditor's report had allegedly been completed in December 2017 and is said to have evaluated the granting of entitlement to use regulated free-to-air television frequencies between October 17, 1996 and June 30, 2016. As regards the TV frequencies awarded to TV channels belonging to the Albavisión Group, it was discovered that the same documentation had been used for different files and the channels had been awarded without a public competitive bidding process. In addition, the agreed upon price for a subsequent extension of the same concessions had been US\$42,000 but the entrepreneur only paid US\$11,000.<sup>308</sup>

240. In addition, according to an investigation published on July 30 by *Plaza Pública*, five large media groups allegedly control radio and television in Guatemala. According to that investigation, those groups, "for the most part family-based conglomerates have captured all major frequencies and crushed any possible competitors. To so they milked their ties to the politically powerful. The Albavisión, Emisoras Unidas, Radio Grupo Alius, Radio Corporación Nacional (RCN) and Nuevo Mundo groups hold 39.77% of the FM frequency spectrum, according to data on the inventory of radio frequencies kept by the Superintendency of Telecommunications (SIT), updated through June 12, 2017. That percentage covers most commercial radio and television frequencies in the country."<sup>309</sup> *Plaza Pública* also reported that the Albavisión Group, for example, holds 46.6% of frequencies available for television as well as the entitlement to use the frequencies of channels extended following the 2012 reform by between 15 and 20 years.<sup>310</sup>

241. As for radio, the same investigation revealed a similar trend toward concentration. Thus, the Emisoras Unidas group reportedly holds 10.6% of the 726 registered radio frequencies. 15.9% of FM frequencies are controlled by Albavisión, 3.8% by Grupo Alius, 5.4% by Grupo Nuevo Mundo and 3.2% by Grupo Radio Corporación Nacional (RCN). Thus, according to the investigation, based on official figures, these five groups dominate 38.9% of the frequencies.<sup>311</sup>

242. Based on the IACHR's assessment, compliance with this recommendation has been partial. In light of the above, the IACHR recalls that concentration of the media in just a few hands has a negative impact on democracy and freedom of expression, as noted in Principle No. 12 of the Declaration of Principles on Freedom of Expression of the IACHR: "Monopolies or oligopolies in the ownership and control of the

<sup>307</sup> IACHR. [Situation of Human Rights in Guatemala](#). OEA/Ser.L/V/II. Doc. 208/17. December 31, 2017. Par. 301.

<sup>308</sup> Observacom. Monday, March 19, 2018. [Gobierno de Guatemala adjudicó frecuencias de TV a Ángel González de forma irregular, dice Contraloría](#); El Periódico. Friday, March 09, 2018. [Investigan denuncias por anómala adjudicación de frecuencias de TV](#).

<sup>309</sup> Plaza Pública. Monday, July 30, 2018. [Radio y TV en Guatemala: pocas manos concentran muchas frecuencias](#).

<sup>310</sup> Plaza Pública. Monday, July 30, 2018. [Radio y TV en Guatemala: pocas manos concentran muchas frecuencias](#).

<sup>311</sup> Plaza Pública. Monday, July 30, 2018. [Radio y TV en Guatemala: pocas manos concentran muchas frecuencias](#).

communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information." Since its first pronouncement on the matter, the Inter-American Court of Human Rights has pointed out that any monopoly of the ownership or administration of the media is banned, in any guise, and it recognized that States must actively intervene to avoid concentration of ownership of the media.<sup>312</sup> Furthermore, as the IACHR has previously pointed out, "If these media are controlled by a small number of individuals, or by a single one, this in fact creates a society in which a small number of persons, or just one, exercise control over information and, directly or indirectly, over the opinions received by the rest of society. This lack of pluralism in information is a serious obstacle to the functioning of democracy. Democracy requires the confrontation ideas, debate and discussion. When this debate does not exist or is weakened due to the fact that sources of information are limited, this directly contravenes the principal pillar of democratic functioning."<sup>313</sup>

### Community broadcasting

243. As regards the recommendation to **adopt the legislative measures and public policies to recognize and ensure community media outlets' access to radio and television frequencies and licenses; in the meantime, abstain from criminally prosecuting community radio stations**, the IACHR and its Special Rapporteurship discern no progress with respect to the obligation accepted on numerous occasions by the Guatemalan State to legally recognize the community broadcasting sector and implement effective allocation of permits for its use of frequencies. In the 2017 Report on the Situation of Human Rights in Guatemala, the Inter-American Commission reported that during its on-site visit to the country it had ascertained this lack of progress and "had verified that, although Guatemala has no regulatory framework of policies for the incorporation of indigenous peoples into the broadcasting sector, it continues to persecute so-called "illegal" radio stations, which in some cases provide a service to the communities."<sup>314</sup>

244. On this matter, in its observations on the Report "Situation of human rights in Guatemala, 2017," the State reported that the legal initiative aimed at passing the Community Media Law (bill 4087<sup>315</sup>) had received approval from the Indigenous Peoples Commission and had been through a second round of debate in the plenary of the Congress in 2016. Accordingly, the State reported that "a third debate was currently pending, to be followed by adoption of the articles and approval of the final wording by the Legislative Branch."<sup>316</sup>

245. Based on the IACHR's assessment, **compliance with the above-mentioned recommendation is pending**. In this regard, ever since 2000, the IACHR and its Special Rapporteurship have been making recommendations to the Guatemalan State focusing on two main aspects: the need for a fairer and more inclusive legal framework for radio broadcasting and decriminalization of broadcasting without a license in the country. The use of criminal law to punish breaches of broadcasting regulations may be problematic by the standards of the American Convention on Human Rights and the establishment of criminal sanctions for commercial or community broadcasting, which they may face due to the absence or misuse of the license, may constitute a disproportionate reaction. Article 13.2 of the American Convention on Human Rights also maintains that the exercise of the right to freedom of thought and expression "shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: Respect for the rights or reputations of others; or The

<sup>312</sup> I/A Court HR. Compulsory membership in an association prescribed by law for the practice of journalism (Arts. 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985 Series A. N.5 Par. 33-34; IACHR. [Annual report for 2009. Report of the Special Rapporteurship for Freedom of Expression. Chapter VI \(Freedom of Expression Standards for Free and Inclusive Broadcasting\)](#). OEA/Ser.L/V/II. Doc. 51. Wednesday, December 30, 2009, par. 117

<sup>313</sup> IACHR. [Justice and social inclusion: The challenges of democracy in Guatemala](#). Chapter VII: The situation of freedom of expression, par. 419.

<sup>314</sup> IACHR. [Situation of Human Rights in Guatemala](#). OEA/Ser.L/V/II. Doc. 208/17. December 31, 2017. Par. 293.

<sup>315</sup> Congress of the Republic of Guatemala Initiative No. 4087 - Initiative in preparation for the passing of a Community Media Law. Thursday, August 20, 2009. Available at: <https://www.congreso.gob.gt/iniciativa-de-ley-detalle/?id=2848>

<sup>316</sup> Republic of Guatemala. Observations of the State of Guatemala on the Report of the Inter-American Commission on Human Rights, "Situation of Human Rights in Guatemala, 2017." Ref. P-888-2018/JLBR/WR/cr. Thursday, October 25, 2018. Available at: Archive of the Special Rapporteurship for Freedom of Expression.

protection of national security, public order, or public health or morals." Furthermore, inter-American case law has stressed that States have the obligation to "adopt affirmative measures (legislative, administrative, or of any other nature), under conditions of equality and non-discrimination, to reverse or change existing discriminatory situations that may compromise certain groups' effective enjoyment and exercise of the right to freedom of expression."<sup>317</sup>

### ***Government advertising***

246. As regards the recommendation to **enact special, clear, and precise laws to regulate advertising at each level of government** whereby **such provisions should clearly define government advertising and establish appropriate penalties for their violation** and the observation that **government advertising should never be allocated by the States to reward or punish media outlets for their editorial and news content**, the State informed the IACHR about the current legal framework in Guatemala with respect to the free competition established in the General Law of Telecommunications and the Constitution of the Republic. It also pointed out that "under no circumstances is government advertising allocated to reward or punish media outlets for their editorial and news content." However, the State failed to remit information about concrete steps designed to reduce the high levels of concentration or about regulatory proposals in line with inter-American standards. In light of the lack of substantive information, the IACHR considers that compliance with the recommendation is still pending.

## **III. CONCLUSIONS**

247. The Commission reiterates the recommendations it made in its 2017 Country Report. More than one year after the Country Report was issued, the IACHR observes that compliance with many of the recommendations is still pending. As regards 2018, the Commission regards as particularly worrisome the systematic steps taken by the State of Guatemala to thwart the work of the CICIG and it issues an emphatic reminder of the importance of abiding by the decisions of the Constitutional Court. The IACHR again reiterates its unstinting support for the CICIG and reaffirms the importance of that body for a properly functioning State because of its role in combating corruption; for citizen security, because it dismantles the structures of organized crime; and for fighting impunity and promoting the reforms needed for the justice system to function effectively.

248. Likewise, the IACHR stresses that guarantees for an independent judiciary and the principle of the separation of powers constitute prerequisites for the existence of a democratic constitutional state governed by the rule of law.

249. In addition, the IACHR considers the situation of internally displaced persons and displaced persons to be particularly important, and reiterates the importance of compliance with the recommendations issued in the visit's report, which allow for the guarantee of inter-American human rights standards in terms of human mobility.

250. To the Guatemalan people, the IACHR reaffirms its historic commitment to continue to monitor the human rights situation in the country and therefore also implementation of the recommendations made in this Report. In that sense, the Commission reaffirms its commitment to work together with the State of Guatemala in the quest for solutions to the problems and challenges identified and to lend it support for meeting its international human rights obligations.

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<sup>317</sup> IACHR. [Situation of Human Rights in Guatemala](#). OEA/Ser.L/V/II. Doc. 208/17. December 31, 2017. Par. 300.