



# chapter

# IV.b

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## Guatemala

## CHAPTER IV. B

### GUATEMALA

#### I. INTRODUCTION

1. Within the framework of its treaty mandate and rules of procedure, the Inter-American Commission on Human Rights (“the Commission,” “the Inter-American Commission,” or “the IACHR”) has closely followed the human rights situation in Guatemala and has observed structural challenges that have a serious impact on the enjoyment and exercise of human rights. These challenges stem in particular from State actions that undermine judicial independence and call into question the fight against impunity and corruption, as well as from the progressive weakening of democratic institutions and the institutional framework for human rights.

2. Over the course of 2021, the IACHR observed that systematic actions and interference against the independence of the justice system have intensified. This has reportedly had the effect of weakening and hampering the work of institutions that, since the departure of the International Commission against Impunity in Guatemala (CICIG), had stood out for their independent and impartial efforts to combat corruption and impunity, and for the investigation and prosecution of emblematic cases of serious human rights violations connected to the internal armed conflict, as well as other cases involving corruption on a large scale and at high levels of government. These include the Constitutional Court (CC), the Office of the Special Prosecutor against Impunity (FECI), and judges on High Risk Courts in Guatemala. Specifically, the IACHR received information concerning irregularities in the process to select Constitutional Court judges for the 2021-2026 term; the refusal to swear in a judge who had been selected to serve on the Constitutional Court; the delay by the Congress of the Republic in continuing with the process of selection and nomination to the High Courts; the dismissal of the head of the FECI; and the alleged abuse of motions for impeachment (*antejuicio* proceedings) to intimidate or eventually remove judges from office.

3. The IACHR also received information this year regarding the intensified criminalization and stigmatization of magistrates, judges, and other independent justice operators in the country—due to, among other reasons, an apparent lack of independence of the Public Prosecutor’s Office (Ministerio Público)—which is said to facilitate the manipulation of criminal law against them.

4. In the report on its country visit to Guatemala, published in 2017, the Inter-American Commission noted that the problem of impunity derives from the State’s lack of capacity to provide an adequate and efficient system of administration of justice and an independent and impartial justice in cases from the past as well as the present. The IACHR also repeatedly received information regarding the persistence of parallel power structures hindering the fight against impunity and corruption and the consolidation of the rule of law.<sup>12</sup> At the end of its visit, the Commission indicated that Guatemala was at a crossroads in terms of adopting measures to solve these structural problems and protect the human rights of the Guatemalan people; otherwise, it risked losing ground in this area and repeating episodes of serious human rights violations of the past.<sup>3</sup>

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<sup>1</sup> Pursuant to Article 17(2)(a) of the Commission’s Rules of Procedure, Commissioner Edgar Stuardo Ralón Orellana, a Guatemalan national, did not participate in the discussion, investigation, deliberation, or approval of this report.

<sup>2</sup> IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, paras. 3 and 5.

<sup>3</sup> IACHR, [Preliminary Observations to the IACHR’s On-Site Visit to Guatemala](#), August 4, 2017.

5. After its 2017 country visit, the IACHR expressed its concern regarding events that unleashed “institutional instability” in the country and jeopardized the progress made in recent years in the fight against impunity; in particular, it referred to the declaration of *persona non grata* against the CICIG Commissioner and the order for his immediate expulsion from the country, issued by then-President Jimmy Morales.<sup>4</sup> This grave situation led the IACHR to issue Resolution 1/17, “Human Rights and the Fight against Impunity and Corruption,” in which it reaffirmed the importance of the fight against corruption to combat impunity through a strengthened, independent, and impartial judiciary, and reaffirmed the fundamental importance of the full exercise of the rights to freedom of expression and access to public information, as well as the rights to association and peaceful assembly, for the investigation and denunciation of corruption. In that resolution, the IACHR called on the independent branches of government to act to guarantee the rule of law.<sup>5</sup>

6. Between 2018 and 2020, the IACHR presented three reports to follow up on the recommendations it had issued in its country report. In these follow-up reports, the IACHR noted the lack of progress in compliance with its recommendations regarding the fight against corruption and impunity, due to other steps the Guatemalan State took to undermine the CICIG’s capacity before unilaterally and prematurely ending its mandate in 2019. At the same time, since 2017 the IACHR has observed with concern that systematic actions have continued to be taken to dismantle the country’s anti-corruption institutions, culminating this year with the dismissal of the head of the Office of the Special Prosecutor against Impunity (FECI). On various occasions, the IACHR expressed regret over the termination of the CICIG’s mandate and the weakening fight against corruption. It also indicated that these actions demonstrated the State’s lack of willingness to fulfill its international obligations.<sup>6</sup>

7. In November 2020, the IACHR noted that the Guatemalan President had activated the Inter-American Democratic Charter, in response to the social protests that began on November 21 and to the “coordinated acts of violence” said to have disturbed the public peace and “jeopardized democratic institutions” and the “legitimate exercise of power by the democratically elected authorities.”<sup>7</sup> According to publicly available information, these protests were convened peacefully, initially in opposition to congressional approval of the 2021 budget; subsequently, they included other social demands related to rejecting corruption, questioning the use of resources to address the COVID-19 pandemic, and in general, rejecting the State’s response to the social, economic, and political crisis in the country, which worsened with the hurricane season.<sup>8</sup>

8. In a report published in January 2021, the Special Mission of the General Secretariat of the Organization of American States (OAS) sent to Guatemala by the OAS Secretary General<sup>9</sup> emphasized its concern regarding factors that could undermine the rule of law and the country’s democratic institutions. These included, among others, the perception of corruption and impunity; the lack of transparency in public matters; the legislature’s failure to appoint judges to the Supreme Court and High Courts; and the need to ensure a transparent process for the renewal of the Constitutional Court.<sup>10</sup>

<sup>4</sup> IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 7.

<sup>5</sup> IACHR, Resolution 1/17, [Human Rights and the Fight against Impunity and Corruption](#), September 12, 2017.

<sup>6</sup> IACHR, Annual Report 2018, [Chapter V: Report on Follow-Up of Recommendations Issued by the IACHR in its Report on the Human Rights Situation in Guatemala](#), par. 247; IACHR, Annual Report 2019, Chapter V: [Second Report on Follow-Up on Recommendations Issued by the IACHR on the Situation of Human Rights in Guatemala](#), par. 25; IACHR, Annual Report 2020, [Third Report on Follow-Up on Recommendations Issued by the IACHR on the Situation of Human Rights in Guatemala](#), paras. 14 and ff.

<sup>7</sup> Press Release, [El Gobierno de Guatemala a la población en general informa](#), Government of Guatemala Twitter account (@GuatemalaGob), posted November 22, 2020; EFE, [Giammattei invoca la Carta Democrática Interamericana ante la crisis en Guatemala](#), November 22, 2020.

<sup>8</sup> IACHR, Annual Report 2020, [Chapter IV.A. Human Rights Development in the Region](#), par. 385.

<sup>9</sup> OAS, Press Release E-199/2020, [Statement from the OAS General Secretariat on Sending of a Mission to Guatemala](#), November 26, 2020.

<sup>10</sup> OAS, [Informe de la Misión Especial de la Secretaría General de la Organización de los Estados Americanos en Guatemala](#), January 12, 2021.

9. In this context, and as analyzed in the report at hand, the IACHR cautions that interference with the independence of the judiciary affects the principle of separation of powers recognized in the Guatemalan Constitution and thus the rule of law itself. Moreover, such acts of interference occur in a context in which human rights institutions in the country are being progressively weakened. The IACHR is particularly concerned about information it received regarding persistent actions to obstruct the work of the Office of the Human Rights Ombudsman (Procuraduría de Derechos Humanos, PDH), as well as the ongoing threats and stigmatization of Ombudsman Jordán Rodas, who has stood out for defending anti-corruption institutions, independent justice operators, and in general, the human rights of the Guatemalan people.

10. Having evaluated the human rights situation in Guatemala, the IACHR decided to include the Guatemalan State in this chapter because it believes that the situation falls under Article 59, paragraph 6(d) of the IACHR Rules of Procedure, which establishes the following as one of the criteria for including a Member State in this chapter:

d. The presence of other structural situations that seriously affect the use and enjoyment of fundamental rights recognized in the American Declaration, the American Convention or other applicable instruments. Factors to be considered shall include the following, among others:

[...]

ii. systematic noncompliance of the State with its obligation to combat impunity, attributable to a manifest lack of will;

[...]

11. The IACHR warns that the systematic interference in the independence of the judiciary, the weakening of human rights institutions, and the increasingly evident setbacks in the fight against corruption and impunity have an impact, in turn, on democratic stability and the very exercise of human rights by the Guatemalan people, especially groups that have historically been excluded and discriminated against, such as women, indigenous peoples, children and adolescents, and victims of the internal armed conflict, among others.

12. Moreover, the growing distrust in State institutions in the face of allegations of corruption starting with the highest-level authorities of the State, the perception of impunity, and the co-optation or weakening of independent institutions have all contributed to a growing climate of social discontent that has been manifested through protests and social demonstrations against the current government.

13. In addition, the IACHR and its Office of the Special Rapporteur for Freedom of Expression pointed to the serious risks related to the work of journalism in Guatemala, given such incidents as the murder of two media workers, acts of harassment and intimidation, attacks in the context of social protests, and obstruction of press coverage of official public acts. The IACHR also learned that judicial proceedings have been opened and threats of investigations made against journalists, especially from the media outlet *El Periódico*. The IACHR is likewise concerned about restrictions to freedom of expression and other rights through the establishment of decrees declaring states of emergency, as well as the entry into force of the new law on nongovernmental organizations (NGOs), which has been described as “choking” the work of civil society.

14. Similarly, in terms of structural issues of concern, in 2021 the Inter-American Commission observed that the situation of human rights defenders in Guatemala has deteriorated, due to continuing acts of violence and proceedings to criminalize those who defend human rights in the country. The IACHR also examines the situation of persons deprived of liberty, migrants, asylum seekers, refugees, persons in need of complementary protection, returnees, internally displaced persons, and victims of human trafficking in Guatemala, as well as the situation regarding the rights of women and indigenous peoples.

15. The Commission has used various mechanisms to monitor the human rights situation in Guatemala, including: public hearings; press releases; requests for information from the State based on Article 41 of the American Convention; information provided by the State, the Office of the Human Rights Ombudsman, and civil society; and information from international organizations, all in keeping with the provisions established in Article 59(5) of the IACHR Rules of Procedure.

16. On November 23, 2021, the IACHR sent the State of Guatemala a preliminary copy of this document, which is part of Chapter IV.B of its 2021 Annual Report, and, in keeping with the IACHR Rules of Procedure, requested that the State present its observations within one month. The State sent its response dated December 22, 2021 on December 23, 2021.<sup>11</sup> The Commission values and appreciates the information it received, relevant parts of which were included in the final version of this report, approved on March 1, 2022.

17. In its communication of December 22, 2021, the State expressed its disagreement with the Commission's decision to include Guatemala in Chapter IV.B, considering that "objectively, it is completely inconceivable to frame the country's current situation in terms of the hypothetical case included in Article 59(6)(d)(ii) of the Rules of Procedure of the Inter-American Commission on Human Rights." The State also emphatically denied "the existence of structural situations that gravely affect the exercise and enjoyment of fundamental rights contained in the American Declaration, the American Convention, or other applicable human rights instruments, as well as the guarantees contained in the Constitution of the Republic of Guatemala"; likewise, it "categorically rejects [that there has been] systematic noncompliance with its obligation to combat impunity and a manifest lack of will in this respect."<sup>12</sup>

18. Additionally, in its communication of December 22, 2021, the State emphasized the following:

"In the State's judgment, the current situation with regard to human rights and the fight against impunity is diametrically opposed to the situation and circumstances of other countries that have historically been included in Chapter IV.B of the Annual Report. Moreover, and with the pertinent supporting information, it is possible to establish a remarkable evolution on human rights on the part of Guatemala over the course of recent years. This translates into the creation of public institutions whose mandate includes promotion and dissemination in the area of human rights, payment of obligations from judgments handed down against the State, follow-up and compliance with precautionary measures ordered by the illustrious Commission, strengthening of the culture of peace and an attention to conflict in the country, attention to women and girls whose fundamental rights have been violated, actions geared toward crime prevention, the fight against corruption and impunity, support and respect for the culture and recognition of specific rights of indigenous peoples.

All this, without question, points to the State of Guatemala's commitment to bring itself into line with the requirements established in the prevailing treaty framework in the Americas [and] its respect for and collaboration with institutions such as the distinguished Commission and the honorable Inter-American Court of Human Rights, in the context and under the protection of the principles and guarantees contained in the American Convention on Human

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<sup>11</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021.

<sup>12</sup> In its communication, the Guatemalan State indicated that "the State's concern essentially stems from the fact that the actions, progress, achievements, and goals reached by Guatemala have been rendered invisible, not only as pertains to the fight against corruption and impunity, but also the observance and protection of human rights and payments of compensation. State actions and steps that translate into the diligent work and efforts of public employees and officials, who champion absolute respect for the content of the Constitution of the Republic and the treaty framework in effect in the country. Moreover, there is no recognition of the investment and expenditures from the public treasury devoted to concrete programs and actions to safeguard the human rights of those who live in Guatemala or, as the case may be, to provide a decent remedy to persons whose fundamental rights have been violated." Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 2.

Rights. Moreover, consideration should be given to the tangible achievements the State of Guatemala has made to attain the standards of the inter-American and universal human rights systems, struggling against difficulties and adversities to do so, as is the case with other countries that make up the Organization of American States.

It must be said that the preliminary report prepared by the distinguished Commission does not take into account official information, which the State believes is important in order to have a broader and more objective view of the human rights situation in Guatemala—for example, the investment the State makes in security and justice.

The IACHR directly imposes on the State of Guatemala the condition of an on-site visit, established in the communication sent by the Executive Secretariat, which indicates that “if the on-site visit materializes, the IACHR would not include your Illustrious State in Chapter IV of the Annual Report for 2021.” It calls for the State to accept the visit and imposes the condition that it must within “10 days from today send a written invitation to the IACHR,” a decision that in no way is in line with the provisions of Article 59(8) of the procedural rules, which in any case assumes the on-site visit as a concrete event that has happened and establishes that the State that has been the subject of the visit is not included in said report for that year.<sup>13</sup>

19. Finally, the Commission acknowledges the State’s assertion that the current government has maintained “a position of compliance with international human rights obligations,” always promoting a frank and sincere dialogue with the IACHR, and has given its full attention to the requests issued by the two institutions in the inter-American human rights system regarding thematic hearings, monitoring of precautionary measures, and appropriate monitoring and payment of judgments. In this regard, the State reiterated its willingness “to continue working and collaborating, within a framework of respect, recognition of national sovereignty, impartiality in decision-making, and good faith, being careful to avoid polarizing Guatemalan society, thus bringing about a national agenda where the main objective is respect and recognition of human rights without ideological bias or the prevalence of vested interests.”<sup>14</sup> To create a better communication mechanism and “find viable strategies that allow dialogic progress in the human rights challenges detected”, the State proposed a State of Guatemala/IACHR Work Plan with meetings convened at the policy and technical level consisting of 1. Review of the portfolio of cases pending before the Commission; 2. Follow-up on Petitions, Cases, admissibility processes, merits processes, Friendly Settlement Agreements

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<sup>13</sup> The State maintains that there is no basis for the potential inclusion of Guatemala in Chapter IV.B, as none of the criteria established in Article 59(6) of the Rules of Procedure of the Inter-American Commission on Human Rights have been met. It noted that: (a) Guatemala’s democratic institutional framework is intact, with the general elections to choose the President of the Republic of Guatemala, representatives of Congress, and mayors held in 2019, as established in the Constitution of the Republic of Guatemala, through a process carried out in regular fashion by the Supreme Electoral Tribunal of Guatemala; (b) The State of Guatemala, as established in its constitutional legal framework, is organized to guarantee human rights; (c) The exercise of power in the State of Guatemala takes place in a context of adherence to the law and respect for due process; (d) Judicial independence is respected, and the constitutional standard prohibiting the subordination of branches of government to each other is followed; (e) The State of Guatemala has guaranteed the free exercise of the rights contained in the Constitution of the Republic of Guatemala, as well as in the American Declaration, the American Convention, and other treaties on these matters; (f) Exceptional measures such as the declaration of a state of emergency, a state of siege, and the suspension of constitutional guarantees, or special security measures, have been imposed in the context of containing the COVID-19 pandemic, and such measures were ratified by the Congress of the Republic, as established under existing law; (g) The State of Guatemala is committed to fight corruption and impunity and to strengthen the security and justice system. By way of example, the State mentioned that as of November 2021, the Office of the Public Prosecutor has a presence in all 340 municipalities, through Municipal Public Prosecutor’s Offices and Local Prosecutorial Agencies, covering the entire country; in addition, in January 2020, the President of the Republic of Guatemala created the Presidential Commission against Corruption as an institution that can—in a way that is technical, efficient, objective, and in line with national and international law—assist bodies in the executive branch to prevent acts of corruption from happening again. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 2-4.

<sup>14</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 6.

and Precautionary Measures; 3. Trainings; 4. Specific requirements.<sup>15</sup> The IACHR welcomes this positive and proactive initiative, which it hopes can become a reality as soon as possible, and makes itself available to the State to provide any technical assistance needed.<sup>16</sup>

20. Below, the IACHR will examine in more detail the aspects described above and the factors that led the IACHR to determine that it would include Guatemala in Chapter IV.B of the 2021 Annual Report.

## II. ANTI-CORRUPTION EFFORTS, JUDICIAL INDEPENDENCE, AND THE SITUATION OF JUSTICE OPERATORS

21. In 2021, the IACHR received troubling information concerning setbacks in the fight against impunity and corruption, stemming from systematic violations of judicial independence and the deteriorating situation of independent justice operators. According to information provided by civil society organizations, the crisis in the Guatemalan justice system is extremely troubling because such actions are apparently part of an intended co-optation strategy by parallel power groups and structures involved in corruption schemes and interested in ensuring impunity and perpetuating the means of corruption.<sup>17</sup>

22. In that regard, the IACHR recognized from its visit to the country in 2017 that overcoming the problem of corruption and impunity constituted one of the main challenges to the strengthening of the rule of law and democratic institutions in Guatemala. Nevertheless, since 2017, the Guatemalan State, starting with its highest-level authorities, has been carrying out various actions intended to weaken anti-corruption institutions and the independence of the bodies responsible for administering and delivering justice in the country. Thus, on August 27, 2017, then-President Jimmy Morales declared CICIG Commissioner Iván Velásquez to be *persona non grata* and ordered him to be expelled immediately from the country. That announcement was made days after the CICIG had denounced a case of alleged corruption and improper electoral financing involving high-level authorities, including the President. On January 9, 2019, President Morales announced unilaterally that the CICIG would no longer be carrying out its activities in Guatemala.<sup>18</sup>

23. On that point, in its response to the draft report, the Guatemalan State indicated that the CICIG “was temporary in nature, with its mandate coming to an end in September 2019; nevertheless, before it ended, the transfer of capacities to the Office of the Public Prosecutor of Guatemala took place.” Currently, “the strengthening of anti-corruption efforts falls under Pillar 2 of the 2018-2023 Institutional Strategic Plan of the Public Prosecutor’s Office and is a commitment that the Attorney General and Chief of the Public Prosecutor’s Office has taken on.”<sup>19</sup> In that regard, the State noted that the Public Prosecutor’s Office is an institution whose

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<sup>15</sup> In a communication dated May 24, 2022, the State of Guatemala presented additional information regarding the work route proposed, specifically in relation to carrying out a series of work, promotional and recommendation follow-up visits on dates to be defined during 2022. Note from the Permanent Mission of Guatemala to the Organization of American States (OAS). NV-OEA-M4-121-2022, May 24, 2022.

<sup>16</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, Annex.

<sup>17</sup> Situation of Judge Gloria Porras of the Constitutional Court of Guatemala, Meeting on April 28, 2021, between the IACHR, the Human Rights Ombudsman, Judge Gloria Porras, and civil society organizations, records on file at the IACHR; IACHR, 181<sup>st</sup> period of sessions, “[Human Rights Situation of Justice Operators and Judicial Independence in Guatemala](#),” public hearing held on October 28, 2021; Meeting on November 8, 2021, between civil society organizations and the IACHR, records on file at the IACHR.

<sup>18</sup> IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017.

<sup>19</sup> In its response to the draft report, the Guatemalan State also pointed to the following actions: By means of Decision 59-2019, the Office of the Special Prosecutor against Impunity (FECI) was elevated in rank to Section Prosecutor’s Office within the organizational structure of the Office of the Public Prosecutor, and it is now one of the prosecutor’s offices that works in coordination with the Anti-Corruption Secretariat of the Office of the Public Prosecutor. The strengthening of the FECI, by making it part of the organizational structure of the Public Prosecutor’s Office, is reflected in an increase in cases prosecuted, criminal structures dismantled, cases investigated, and convictions obtained during the current administration. Since the FECI was incorporated as a Section Prosecutor’s Office, it was strengthened with a Technical Support Unit made up of investigators, crime analysts, financial analysts, and support staff, in addition to its

staff is highly committed to the Guatemalan people, through 23 District Prosecutor's Offices, 31 Section Prosecutor's Offices, and a presence in all 340 municipalities through Municipal Prosecutor's Offices and Prosecutorial Agencies.<sup>20</sup>

24. After the departure of the CICIG, information available to the IACHR indicated that the Public Prosecutor's Office, the FECCI, and in general the bodies responsible for administering and delivering justice in the country saw their independence systematically affected as a result of arbitrary interference by the government and other actions intended to obstruct their work; these culminated in 2021 with the dismissal of the head of the FECCI, Juan Francisco Sandoval. As will be analyzed below, these developments not only weaken the rule of law and the principle of separation of powers but also call into question the Guatemalan State's commitment and willingness to fight corruption and impunity.

### ***Fight against Corruption and Impunity***

25. As the IACHR has indicated previously, the fight against impunity and corruption has permeated Guatemalan institutions since the era of the internal armed conflict. The IACHR has thus repeatedly urged the State of Guatemala to make a political commitment to dismantle the parallel power structures that continue to exist in the country, in order to ensure the full exercise of human rights in Guatemala.<sup>21</sup>

26. According to public information, on July 23, 2021, the Attorney General and Chief of the Public Prosecutor's Office announced that the head of the FECCI, Juan Francisco Sandoval, had been removed from office, allegedly for presenting a written objection to a verbal instruction. However, the information available to the IACHR indicates that his removal occurred in the context of several years of actions carried out for several years to end the progress made and the efforts undertaken by the FECCI to combat corruption and impunity in Guatemala.

27. In fact, after the departure of the CICIG, the work of the Prosecutor's Office headed by Juan Francisco Sandoval stood out for its independent and impartial efforts to identify and investigate parallel power structures related to criminal activities and acts of corruption, including officials, former officials, judges and magistrates, active and retired members of the military, and businesspeople. The cases that were investigated and prosecuted included the illegal financing of the campaign of then-candidate Jimmy Morales, who won the presidency in 2015,<sup>22</sup> and the existence of illicit negotiations and influence peddling in the process to fill seats on the Courts of Appeal and the Supreme Court (CSJ).<sup>23</sup>

28. In a press conference held on July 23, Special Prosecutor Sandoval reported that his dismissal was an attempt to keep the FECCI from continuing with its investigations involving ex-President Jimmy Morales,

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original members. To be specific: 142 individuals, plus a Technical Support Unit made up of 11 investigators, 10 crime analysts, 10 financial analysts, 6 support staff, and interinstitutional support from 4 financial analysts from the Special Verification Office and 19 National Civil Police (PNC) investigators. The State notes, as well, that this prosecutor's office has security arrangements to ensure the protection of its staff; these arrangements are determined through risk assessments done by the Security Department. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 7.

<sup>20</sup> Guatemala, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 8.

<sup>21</sup> IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017.

<sup>22</sup> *La Hora*, [MP y CICIG revelan segundo caso de financiamiento ilícito de FCN](#), April 19, 2018; *Prensa Libre*, [Estos son los casos más emblemáticos investigados por la FECCI](#), July 23, 2021.

<sup>23</sup> In a report presented on May 28, 2020, the FECCI pointed to circumstantial evidence of manipulation and influence peddling in the process of installing the Nominating Committees responsible for analyzing the records of candidates to high-court positions. It established that 75 individuals aspiring to be appointed to Courts of Appeals and 15 individuals already nominated to the Supreme Court were the subject of some criminal investigation or had yet to resolve pretrial issues (*antejuicios*). Observatorio de Independencia Judicial [Judicial Independence Observatory], [Informe de MP revela tráfico de influencias en la elección de cortes](#), 2020.

congressional representatives, public officials, and people close to the current government, including the Attorney General herself. He also indicated that the FECCI was in the process of investigating cases of corruption that could involve high-level officials in the current government, including the seizure of 123 million quetzals in cash at the home of a former government official.<sup>24</sup> In addition, after the dismissal of Special Prosecutor Sandoval, the *New York Times* revealed that the FECCI had been investigating alleged bribes received by the President from a Russian company to receive a concession at a port on the border with Honduras.<sup>25</sup> On August 23, 2021, the government categorically rejected the reports.<sup>26</sup>

29. In response to the draft of this report, the State of Guatemala indicated that the IACHR “should be aware that investigations are institutional, the responsibility of a team and not a particular person or prosecutor’s office, as the Office of the Public Prosecutor is a single, indivisible institution that is organized hierarchically.” As such, “combating corruption and impunity continues to be a steadfast mission of the Office of the Public Prosecutor in its entirety, through its district prosecutor’s offices, section prosecutor’s offices, municipal prosecutor’s offices, and local prosecutorial agencies, with the participation of more than 10,900 employees.”<sup>27</sup>

30. In addition, the State indicated that “in the case of the attorney Juan Francisco Sandoval Alfaro, he is making use of the ordinary constitutional remedies available before the State of Guatemala’s jurisdictional bodies to seek reinstatement to the position he held in the Office of the Public Prosecutor.”<sup>28</sup> The State also indicated that Juan Francisco Sandoval Alfaro “must clear up his legal situation in the country in relation to two court cases in which arrest warrants are pending for investigated incidents having to do with Mr. Sandoval Alfaro, for the possible commission of criminal acts.” Nevertheless, “to this day, the Office of the Public Prosecutor has kept the security arrangement assigned to Mr. Sandoval Alfaro, and even when it is known that he is not in the Republic of Guatemala, the security agents and institutional vehicles remain in place in accordance with the security arrangement.”<sup>29</sup>

31. In response to this serious situation, international and Guatemalan civil society organizations condemned the prosecutor’s removal and considered that his dismissal was “not an isolated incident but part of a pattern of attacks, stigmatization campaigns, and abuse of the criminal justice system directed against all independent justice operators in Guatemala, and aims to create a climate of fear, as well to co-opt the judicial

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<sup>24</sup> According to public information, in October 2020, the home of the president’s former private secretary, Giorgio Bruni, was searched as part of an investigation into some suitcases containing more than 122 million quetzals, found on the property of former Communications Minister José Benito, in Antigua, Guatemala. In that regard, Special Prosecutor Sandoval also stated that there were other lines of investigation that could lead to the President of the Republic that were blocked by the Attorney General. *Prensa Libre*, [Feci halla más de Q122 millones en casa en Antigua Guatemala, que podrían estar vinculados a exfuncionario](#), October 16, 2020; Observatorio de Independencia Judicial, [Impacto de la destitución del Fiscal Juan Francisco Sandoval para el futuro de la justicia](#), August 2021; *El Espectador*, [Guatemala capturada por élite corrupta](#), August 21, 2021.

<sup>25</sup> *El País*, [El presidente de Guatemala es investigado por presuntos sobornos de empresarios rusos](#), September 4, 2021; *New York Times*, [Biden Faces a Trade-Off: Stop Corruption, or Migration?](#) August 24, 2021.

<sup>26</sup> Secretariat of Social Communication, Office of the President, [Respuestas a la Periodista Natalie Kitroeff](#), *New York Times*, August 23, 2021.

<sup>27</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 8.

<sup>28</sup> According to the information provided, on August 2, 2021, Mr. Sandoval filed a petition for constitutional protection (*amparo*) challenging Decision 2157-2021 dated July 23, 2021; moreover, on August 17 of the same year he filed a labor lawsuit. Both cases are being processed and aim to seek the reinstatement of Mr. Sandoval to the post he held as head of the FECCI Section of the Public Prosecutor’s Office. Guatemala, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 8-9.

<sup>29</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 8.

system to ensure impunity for the criminal networks that operate in the country.”<sup>30</sup> Among other things, they denounced the fact that in 2021, the Attorney General ordered that any support the FECI needed from the National Civil Police required her direct authorization, which limited immediate and direct access to that institution.<sup>31</sup> On July 26, a European Union spokesperson indicated that the dismissal of the head of the FECI raised “serious concerns about Guatemala’s commitment to the rule of law and its efforts to fight corruption.”<sup>32</sup>

32. On July 27, the U.S. State Department, for its part, said that the Attorney General’s decision fit “a pattern of behavior that indicates a lack of commitment to the rule of law and independent judicial and prosecutorial processes.” It also announced that the U.S. government was temporarily pausing programmatic cooperation with the Public Ministry.<sup>33</sup> On September 20, the U.S. Secretary of State said that Attorney General Consuelo Porras and her Secretary General, Ángel Pineda, had been added to the list of Undemocratic and Corrupt Actors, known as the Engel List.<sup>34</sup> In his statement, he indicated that the current Guatemalan Attorney General had ignored cases based on political considerations and actively undermined investigations carried out by the FECI, including by firing its lead prosecutor, Juan Francisco Sandoval. Previously, on July 1, 2021, the State Department had included 18 current and former Guatemalan officials, including Judge Néster Vázquez Pimentel of the Constitutional Court and Justice Manuel Duarte Barrera of the Supreme Court, for allegedly manipulating the appointment of judges.<sup>35</sup>

33. In response to the dismissal of the Special Prosecutor and the revelation of possible acts of corruption by high-level government officials, indigenous peoples and organizations of campesinos, women, feminists, students, and others engaged in demonstrations and peaceful protests expressing their support of the FECI and calling for the President of the Republic and the Attorney General to resign. Added to these demands were complaints related to poor management of the COVID-19 pandemic and reported irregularities in the vaccination process. The IACHR notes that these protests reportedly went on for more than eight days; in addition, there was said to be increased mobilization and social tension around the defense of democratic institutions and the fight against corruption.<sup>36</sup>

34. The IACHR notes with concern that the dismissal of Juan Francisco Sandoval, the head of the FECI, as well as the series of actions intended to weaken the prosecutor’s office in charge of investigating high-profile corruption cases involving public officials and parallel political and economic power structures, call into question the Guatemalan State’s will and commitment with regard to the fight against corruption and impunity. Both issues, which are structural in nature, seriously impede and obstruct the full exercise of the rule of law and the democratic institutional framework in the country.

35. Along these lines, the IACHR observes that the Rule of Law Index 2021, put together by the World Justice Project, ranks Guatemala 109<sup>th</sup> out of 139 countries around the world and 26<sup>th</sup> out of 32 countries in Latin America and the Caribbean. Guatemala had its lowest rankings for such factors as whether there is an

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<sup>30</sup> FIDH, [Guatemala: Destitución del Fiscal Especial Contra la Impunidad va contra el Estado de Derecho](#), July 28, 2021; See also joint statement, [International Organizations Reject the Dismissal of the Prosecutor Juan Francisco Sandoval](#), July 24, 2021.

<sup>31</sup> *La Hora*, [Consuelo Porras no quiere operativos, con PNC, sin que ella autorice](#), July 2, 2021; *Prensa Libre*, [FECI debe solicitar autorización de fiscal general para operativos, pero otras fiscalías no](#), July 14, 2021.

<sup>32</sup> Twitter account, Spokesperson for Foreign Affairs & Security Policy of the EU (@NabilaEUspox), [posting](#) of July 26, 2021.

<sup>33</sup> [Press briefing by Jalina Porter](#), Principal Deputy Spokesperson, U.S. Department of State, July 27, 2021.

<sup>34</sup> U.S. Department of State, [United States Announces Actions Against Seven Central American Officials for Undermining Democracy and Obstructing Investigations into Acts of Corruption](#), September 20, 2021.

<sup>35</sup> U.S. Department of State, [U.S. Releases Section 353 List of Corrupt and Undemocratic Actors for Guatemala, Honduras, and El Salvador](#), July 1, 2021.

<sup>36</sup> *El País*, [Guatemala sacude la lucha contra la corrupción con la destitución del fiscal especial contra la impunidad](#), July 25, 2021; *BBC News*, [Protestas en Guatemala: piden la renuncia del presidente y de la jefa del Ministerio Público por la destitución del fiscal anticorrupción](#), July 29, 2021; *Infobae*, [Continúan las protestas en Guatemala para pedir la renuncia del presidente y la fiscal general](#), August 5, 2021.

absence of corruption in the country and for different areas such as civil justice and criminal justice.<sup>37</sup> In addition, the Corruption Perceptions Index (CPI), published in January 2021 by Transparency International, ranked Guatemala 149<sup>th</sup> out of 180 countries. It also ranked Guatemala among the five countries in the Americas considered the most corrupt.<sup>38</sup>

36. The IACHR notes that the interdependence between democracy, rule of law, and protection of human rights is the foundation of the entire system of which the Convention is a part. Based on this substantive link, the IACHR has recognized that corruption affects democratic institutions and the rule of law.<sup>39</sup>

37. In its report *Corruption and Human Rights*, the IACHR indicated that committing illicit acts of corruption gravely affects the principle of the primacy of the law, which is part of the rule of law. The reason this is so serious is because those who commit these illicit acts are precisely the authorities responsible for passing the laws, executing them, and overseeing other branches of government, as well as those who form part of the government bureaucracy. The negative effect of this on institutional legitimacy and citizen trust in the rule of law is clear, and it does harm to democracy. Corruption also has a direct impact on the principle of the common good, which is the legitimate aspiration of a democratic society. In this sense, the IACHR has recognized that corruption affects a State's duty to make decisions based on the good of the majority and not the good of a minority for the sole fact that it is through corruption that the corrupted authority is in a position to turn collective interests into individual interests. It also causes a break with the principle of the independence of authorities, who, through a variety of illegitimate means, become beholden to private interests.<sup>40</sup>

38. In its Resolution 1/17, on "Human Rights and the Fight against Impunity and Corruption" with respect to Guatemala, the IACHR indicated that "corruption, impunity, organized crime, intolerance, political violence, and social exclusion of various sectors, present a serious danger of regression in the effectiveness of the rule of law and restrict the full enjoyment of the human rights that the American Convention recognizes for everyone." In this regard, the IACHR once again calls on the Guatemalan State to reaffirm the importance of the fight against corruption to combat impunity through a strengthened, independent, and impartial system of justice, as well as the fundamental importance of the full exercise of the rights to freedom of expression and access to public information, as well as the rights to association and peaceful assembly, for investigating and reporting corruption.<sup>41</sup>

39. In that regard, the State of Guatemala indicated to the IACHR that in addition to the work done by the Office of the Public Prosecutor, the executive branch has been taking steps to fight corruption. Specifically, as of January 20, 2020, by means of Governmental Decision 28-2020, the President of Guatemala, Dr. Alejandro Giammattei, created the Presidential Commission against Corruption (CPCC), an institution under the Office of the President of the Republic whose purpose "is to develop mechanisms to prevent and combat corruption in the executive branch and, consequently, take legal steps that would make it possible to recover

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<sup>37</sup> With regard to civil justice, the index evaluates such factors as whether civil justice is free of corruption, discrimination, and improper government influence, and whether there is access to justice and to alternative dispute resolution mechanisms. The assessment of criminal justice looks at factors such as whether the system is effective, impartial, and timely, whether it is free of corruption and improper government influence, and whether there is due process of the law and rights of the accused. The World Justice Project (WJP) is an independent, multidisciplinary organization working to advance the rule of law worldwide. It has created a Rule of Law Index to measure eight factors: (1) constraints on government powers, (2) absence of corruption, (3) open government, (4) fundamental rights, (5) order and security, (6) regulatory enforcement, (7) civil justice, and 8) criminal justice. The index is the world's leading source for original data on the rule of law and is based on surveys of more than 130,000 households and more than 4,000 experts in 128 countries. It measures the perception and experience of the general public with the rule of law in practical, everyday situations. The World Justice Project (WJP) [Rule of Law Index 2021](#), p. 89.

<sup>38</sup> Transparency Internacional, *Corruption Perceptions Index 2020*, at: <https://www.transparency.org/en/cpi/2020/index/nzl>.

<sup>39</sup> IACHR, [Corruption and Human Rights](#), OEA/Ser.L/V/II. Doc. 236, December 6, 2019, paras. 125 and ff.

<sup>40</sup> IACHR, [Corruption and Human Rights](#), OEA/Ser.L/V/II. Doc. 236, December 6, 2019, paras. 131 and 132.

<sup>41</sup> IACHR, Resolution 1/17, [Human Rights and the Fight against Impunity and Corruption](#), September 12, 2017.

ill-gotten public funds.”<sup>42</sup> According to the information provided, in 2021, the Presidential Commission against Corruption carried out a number of actions, which included: issuing recommendations designed to improve compliance with the Access to Public Information Law and thus prevent and combat corruption and promote accountability; creating a manual with good practices on active transparency and access to public information, which aims to take steps to build an effective system of transparency for access to public information; following through with compliance with the international agreements ratified by the State of Guatemala in the area of preventing and combating corruption; and conducting administrative investigations into possible acts of corruption committed in agencies under the executive branch.<sup>43</sup>

### **Constitutional Court**

40. In recent years, Guatemala’s Constitutional Court (CC) stood out for its work in defense of human rights, democratic institutions, and the principles that govern the democratic system in keeping with the country’s Constitution. In 2017, the Constitutional Court issued important rulings that suspended the President’s decision to expel CICIG Commissioner Iván Velásquez from the country and to bring the mandate of the CICIG to a close. In 2019, the same Constitutional Court invalidated the process of selecting and nominating judges to serve on chambers of the Court of Appeals and other collegiate High Courts, and ordered the Congress to carry out a process under the requirements established in Article 113 of the Constitution.<sup>44</sup> As a consequence, the IACHR has been receiving information for several years concerning attacks on and interference with the independence of the Constitutional Court, and these incidents intensified in 2021.

41. During the period in question, the IACHR took note of complaints about irregularities in the process to select and appoint the judges who would make up the Constitutional Court during the 2021-2026 term, as well as about threats and attacks on the judicial independence of the judges on the Court, through the alleged abuse of motions for impeachment, or *antejuicio* proceedings. The IACHR was informed that such actions sought to co-opt the Constitutional Court in order to perpetuate impunity, and constituted retaliation for the independent work they had done in recent years in the country.<sup>45</sup>

42. First, the IACHR observed that on January 18, 2021, the Guatemalan Bar Association (Colegio de Abogados y Notarios de Guatemala, CANG) selected Mynor Moto, who was then a criminal court judge of first instance, to serve on the Constitutional Court for the 2016-2021 term, replacing Bonerge Mejía Orellana.<sup>46</sup> For their part, civil society organizations complained that he did not meet the minimum requirements of suitability, capability, integrity, and honor to hold the position, due to the decisions he had handed down and his alleged participation in various high-profile national corruption cases.<sup>47</sup> For example, without having been assigned the “Parallel Commissions 2020” case, he heard an appeal to remove Judge Erika Aifán, from High Risk Court D, from the case.

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<sup>42</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 10.

<sup>43</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 11-12.

<sup>44</sup> Constitutional Court, [Amparo, elección de Magistrados CSJ y Salas de Apelaciones](#), Case File 1169-2020, May 6, 2020, Operative section.

<sup>45</sup> Situation of Judge Gloria Porras of the Constitutional Court of Guatemala, Meeting on April 28, 2021, between the IACHR, the Human Rights Ombudsman, Judge Gloria Porras, and civil society organizations, records on file at the IACHR; IACHR, 181<sup>st</sup> period of sessions, “[Human Rights Situation of Justice Operators and Judicial Independence in Guatemala](#),” public hearing held on October 28, 2021; Meeting on November 8, 2021, between civil society organizations and the IACHR, records on file at the IACHR.

<sup>46</sup> On September 5, 2020, Constitutional Court Judge Bonerge Mejía Orellana died of complications from COVID-19. On December 8, the Guatemalan Bar Association (CANG) convened its members in a Special General Assembly to elect his replacement on the Constitutional Court. *La Hora*, [CANG convoca a elección de magistrado titular ante la CC](#), December 8, 2021.

<sup>47</sup> Joint statement, [El Estado de Derecho y la Justicia están en Juego](#), 2021.

43. On January 4, the FECI requested that he be stripped of his immunity due to his alleged involvement in that case.<sup>48</sup> Even though there were several pending appeals challenging his appointment, on January 26 the Congress swore in Mynor Moto as a magistrate.<sup>49</sup> However, on February 4, the Constitutional Court granted an injunction suspending the swearing-in. To this day, Mr. Moto is reportedly a fugitive with two outstanding warrants for his arrest.<sup>50</sup>

44. Subsequent to that and before the process got underway to select the new judges who would sit on the Constitutional Court for the 2021-2026 term, the IACHR urged the Guatemalan State to pursue a transparent process that complies with international standards, in order to guarantee the independence of the judges who would be selected.<sup>51</sup> Along the same lines, the Special Mission of the OAS General Secretariat in Guatemala recommended that the State ensure a transparent process; design institutional procedures to ensure that appointment processes are transparent, participatory, and informed and include accountability mechanisms; and ensure that the selection process is carried out within the established constitutional and legal time frames, so as to avoid vacancies on the court.<sup>52</sup>

45. The IACHR received information about irregularities in some of the bodies that elect the judges,<sup>53</sup> such as the lack of a process with criteria based on the capabilities, experience, and independence of the candidates, in accordance with the standards of international human rights law and the Guatemalan Constitution. Specifically, the Congress and the executive branch—as electing bodies—reportedly selected individuals whose interests aligned with theirs to sit on the Constitutional Court, using discretionary procedures that failed to take into account the participation of society. In the case of the Guatemalan Bar Association’s selection process, the candidates also failed to fit the ideal profile and even had criminal charges against them for acts of corruption and influence peddling.<sup>54</sup>

46. On April 13, 2021, the Congress swore in 8 of the 10 individuals elected to serve on the Constitutional Court for the 2021-2026 term. However, on that same date, it arbitrarily refused to swear in Acting Constitutional Court Judge Gloria Porras, a beneficiary of IACHR precautionary measures who had been selected by Guatemala’s University of San Carlos to hold that position for a new term. That denial was reportedly based on the existence of a pending provisional injunction against her selection and a decree approved by Congress on March 25, establishing that anyone with pending legal actions could not assume the

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<sup>48</sup> In the course of investigating this case, the FECI documented meetings between Judge Moto and defense counsel of one of the main individuals implicated in the case, Gustavo Alejos, days before his nomination as a candidate to the Constitutional Court. As of January 4, 2021, the FECI filed an impeachment motion against Moto for the crimes of obstruction of justice and breach of trust in connection with decisions handed down by the judge and his alleged participation in various high-profile national corruption cases. Press Release, Twitter account of the Public Prosecutor’s Office (@MPguatemala), [posted on January 4, 2021](#).

<sup>49</sup> *Prensa Libre*, [Mynor Moto: Estos son los recursos legales planteados contra el Congreso y la sala de Apelaciones que otorgó el amparo](#), January 27, 2021.

<sup>50</sup> *Prensa Libre*, [Mynor Moto: CC deja en suspenso juramentación hecha por el Congreso](#), February 4, 2021; *Prensa Libre*, [Mynor Moto, prófugo de la justicia, presenta amparo con el que busca volver a ocupar su cargo como juez](#), April 13, 2021.

<sup>51</sup> IACHR, Press release 031/21, [IACHR Urges Guatemala to Guarantee Transparency and Compliance with International Standards in the Selection Process for the Constitutional Court](#), Washington, D.C., February 11, 2021.

<sup>52</sup> OAS, [Informe de la Misión Especial de la Secretaría General de la Organización de los Estados Americanos en Guatemala](#), January 12, 2021, Recommendations.

<sup>53</sup> The selection process was carried out between January and March of 2021. Under the Constitution, the judges are appointed as follows: (a) one regular judge and one deputy judge selected by the plenary of the Supreme Court; (b) one regular judge and one deputy judge selected by the plenary of the Congress of the Republic; (c) one regular judge and one deputy judge selected by the President of the Republic in the Council of Ministers; (d) one regular judge and one deputy judge selected by the Higher University Council of the University of San Carlos; and (e) one regular judge and one deputy judge selected by the Assembly of the Guatemalan Bar Association (CANG). Impunity Watch, [Anomalías en el proceso de elección de la Corte de Constitucionalidad](#), May 2021.

<sup>54</sup> Impunity Watch, [Anomalías en el proceso de elección de la Corte de Constitucionalidad](#), May 2021.

office. For their part, civil society organizations informed the IACHR that there was no legal impediment to Judge Gloria Porras' being sworn in to the position. They also indicated that there was a latent risk that she could be pursued criminally, since there were reportedly more than 70 legal actions against her based on her role as a judge. Faced with this situation, Judge Porras was forced to leave the country.<sup>55</sup> On August 18, 2021, the newly constituted Constitutional Court ordered Congress not to swear her in due to alleged irregularities in the process used to select her.<sup>56</sup>

47. The State of Guatemala, for its part, informed the IACHR that "at no time was Acting Judge Gloria Porras arbitrarily denied the oath of office, as there are appeals being heard in judicial bodies with jurisdiction." In this regard, it indicated that it "is respectful of the laws in effect and that, according to the Law on *Amparo*, *Habeas Corpus*, and Constitutionality: In any administrative or judicial proceeding, the guarantees of due process of law must be safeguarded or observed."<sup>57</sup>

48. The IACHR notes with concern that the refusal by the Congress to swear in Judge Gloria Porras took place in a context of threats, harassment, stigmatization, and criminalization against her in reprisal for her work on the bench. In this regard, in the course of this year, before the new configuration of the Constitutional Court was selected, the IACHR received information pointing to ongoing threats and attacks against the judicial independence of judges, through the use of expedited proceedings and the alleged abuse of *antejuicio* proceedings [preliminary proceedings to determine whether there is probable cause to bring criminal charges against a judge or officer of the court] to intimidate or eventually remove them from office in reprisal for their work.

49. Specifically, through a resolution dated March 3, 2021, the Supreme Court of Justice (CSJ) submitted new *antejuicio* proceedings to Congress for the crimes of breach of trust, abuse of authority, and rulings in violation of the Constitution with respect to Judge Gloria Porras and Judge Francisco de Mata Vela. The basis for these preliminary proceedings was, among other things, an allegedly unconstitutional line of reasoning used by the Constitutional Court in rulings it had issued in the context of petitions for constitutional protection (*amparo*) that had been filed to challenge the request for Sweden's Ambassador to Guatemala to leave the country in 2018. According to information provided to the IACHR, referring the impeachment hearings to Congress would contravene a final *amparo* ruling of the Constitutional Court, in which it ordered the Supreme Court to issue a new ruling in the aforementioned case in accordance with national and international law.<sup>58</sup> Later on in this report (See below, Situation of Justice Operators), the IACHR will further analyze the concept of the motion for impeachment and its use as a means of intimidation and retaliation for the work of officers of the court in Guatemala.

50. Finally, in 2021, the IACHR was extremely concerned to observe that the selection of judges to the Supreme Court and the Courts of Appeals for the 2019-2024 period, which should have taken place in 2019, continues to be delayed by Congress.<sup>59</sup> That would also represent a failure to comply with the

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<sup>55</sup> Situation of Judge Gloria Porras of the Constitutional Court of Guatemala, Meeting on April 28, 2021, between the IACHR, the Human Rights Ombudsman, Judge Gloria Porras, and civil society organizations, records on file at the IACHR; Convergencia por los Derechos Humanos, [Congreso Impide Juramentación de la Magistrada Gloria Porras](#), April 13, 2021.

<sup>56</sup> República, [La CC ordena no juramentar a Gloria Porras como magistrada](#), August 18, 2021.

<sup>57</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 14.

<sup>58</sup> IACHR, Press Release No. 65/21, [IACHR Expresses Concern over Impeachment Proceedings Brought Against Members of Guatemala's Constitutional Court](#), Washington, D.C., March 18, 2021.

<sup>59</sup> WOLA, Joint Statement, [Urgimos al Congreso de Guatemala a concluir el proceso de elección de cortes](#), October 13, 2020; Impunity Watch, [Análisis del proceso de elección de cortes en el Congreso](#), October 5, 2020; DPLF, [¿Cómo evaluar la idoneidad ética de las personas aspirantes a la Corte Suprema de Justicia y a las Cortes de Apelaciones en Guatemala? Recomendaciones para el Congreso de la República respecto del cumplimiento de la sentencia constitucional del 06 de mayo de 2020](#); Fundación Myrna Mack, [Comisiones Paralelas: Mecanismos de Cooptación de la Justicia](#), May 2020; No-Ficción, [Elección de la CSJ: la maquinaria de la impunidad está atrofiada](#), July 16, 2020.

Constitutional Court ruling handed down in June 2020, which ordered, among other things, that any process must follow the requirements established in Article 113 of the Constitution and that those professionals whose suitability and honesty had been compromised must be excluded from the process.<sup>60</sup> As of the closing date of this report, the current justices of the Supreme Court remain in office indefinitely, even though their mandates came to an end in 2019, which compromises the independence of the justice system in Guatemala.<sup>61</sup>

51. In its response to the draft report, the Guatemalan State noted that the selection process for judges ordered by Congress, which should be carried out within three months before new Supreme Court and Appeals Courts judges take office, has been suspended since September 16, 2019, by virtue of a court ruling (*amparo*).<sup>62</sup> The State also indicated that Congress established seven phases to comply with the orders of the Constitutional Court, from reading the relevant part of the judgment to having the candidate lists in hand. The information provided noted “the time needed to comply with the provisions established by the seventh chamber of the Constitutional Court: there being 296 candidates for the Courts of Appeals and 160 congressional representatives, that would amount to 47,360 voice votes on the names. Assuming one minute per vote, taken over the course of eight-hour days, that would be around 100 days for just the first round.”<sup>63</sup> However, Congress meets twice a week, and a session may be interrupted to attend to different issues, for example to summon government ministers for questioning. In addition, the State noted, “it is important to keep in mind that the Congress of the Republic must continue to fulfill all its duties, the selection of judges being among them.” Accordingly, from May 2020 through August 2021, Congress has included the matter of selection of Supreme Court judges on its agenda at least 17 times, in compliance with the unappealable *amparo* judgment handed down by the seventh chamber of the Constitutional Court by means of case file No. 1169-2020.<sup>64</sup>

52. The IACHR calls on the State of Guatemala to ensure the continuation of the process to select members of the High Courts in compliance with the judgment ordered by the Constitutional Court. It also calls to mind that an adequate selection and appointment process is a condition *sine qua non* for ensuring the independence of justice operators. In its report Guarantees for the Independence of Justice Operators, the Commission laid out the guarantees that must be observed in the selection and appointment process. It also stressed that the goal of any selection and appointment process must be to select candidates based on personal merit and professional qualifications, taking into account the singular and specific nature of the duties to be performed. To that end, it is essential for there to be predetermined, objective criteria to assess and evaluate

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<sup>60</sup> With regard to the appointment of judges to the High Courts for the 2019-2024 term, in February 2020, the FECCI disclosed the existence of illicit deals and influence peddling in the election process, stemming from secret meetings between Gustavo Alejos Cámara (deprived of liberty on charges of influence peddling and offering, soliciting, or accepting bribes) and government officials, politicians, and candidates for positions on the Courts of Appeal and the CSJ, allegedly held to negotiate those positions. In light of those facts, on February 24, 2020, the Public Prosecutor’s Office (MP) filed an action for protection of a constitutional right (*amparo*) alleging irregularities in the drawing up of the lists of candidates. On February 26, the Constitutional Court suspended the election process through a provisional *amparo*, which it rendered definitive on May 6 and ordered the MP to remit a report to Congress on candidates against whom complaints had been filed and who were facing criminal proceedings. The CC likewise ordered Congress to conduct a proceeding in keeping with the requirements established in Article 113 of the Constitution; to exclude from that procedure any professional whose suitability and honesty had been compromised; and to embark on a constitutional reform process that would guarantee an appropriate process for selecting and appointing judges for the various divisions of the Court of Appeals, other collegiate courts of equal standing, and the Supreme Court of Justice. Constitutional Court, “[Amparo, elección de Magistrados CSJ y Salas de Apelaciones.](#)” Case File 1169-2020, May 6, 2020, Operative section.

<sup>61</sup> Observatorio de Independencia Judicial, [Guatemala cumple dos años de retraso en la elección de cortes](#), October 2021.

<sup>62</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 15.

<sup>63</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 15.

<sup>64</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 16.

candidates in order avoid a wide margin of discretion on the part of the institutions involved in the selection process.<sup>65</sup>

### ***Office of the Public Prosecutor (Ministerio Público)***

53. This year, the IACHR received troubling information regarding systematic actions taken by the Attorney General that call into question her obligation to combat impunity in the country. These include the arbitrary dismissal of the head of the FECCI; patterns of practice and manipulation of criminal law to bring criminal charges against independent justice operators; and, as will be analyzed next, a series of actions that represent a sharp setback in the fight against corruption and impunity in Guatemala.

54. As mentioned above, the IACHR expressed its concern over the removal of Special Prosecutor Juan Francisco Sandoval, ordered by the head of the Public Prosecutor's Office, Consuelo Porras, on July 23, 2021. According to information received by the Commission, this dismissal was arbitrary and illegal, as it failed to meet international standards of due process of law as well as the grounds established in domestic law for removing career officials from office.<sup>66</sup> Former Special Prosecutor Sandoval was forced to leave the country because there were more than 68 complaints against him; these remain open in the Public Prosecutor's Office, despite being manifestly groundless, so as to maintain a climate of judicial persecution and fear of arrest.<sup>67</sup>

55. Subsequently, the IACHR learned that the new Chief of the FECCI, Carla Valenzuela, was transferred 12 days after her appointment, purportedly because of her opposition to other arbitrary appointments and transfers said to be taking place at the FECCI. The person appointed to take her place was Rafael Curruchiche, a prosecutor who had come under question for showing favor to individuals suspected of corruption in high-profile cases and who previously headed the Office of the Special Prosecutor against Electoral Crimes. During the same period, there were reportedly other changes at the FECCI which involved, at the least, the transfer of three assistant prosecutors. That situation has generated fear that other prosecutors could be dismissed or transferred, which is said to be affecting their work and the investigation, especially in high-impact cases involving serious human rights violations.<sup>68</sup>

56. During the thematic hearing "Human Rights Situation of Justice Operators and Judicial Independence in Guatemala," held in October 2021 during the Commission's 181<sup>st</sup> period of sessions, civil society organizations, the Ombudsman's Office, and Guatemalan justice operators informed the IACHR that since the appointment of the current Attorney General, Consuelo Porras, the work of the FECCI has faced increasingly intense attacks and obstacles. They reported, among other things, that staff had been moved and transferred arbitrarily among departments; prosecutors legally barred from leading investigations had been appointed, hampering the work of investigation; and investigations led by the FECCI had been transferred to

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<sup>65</sup> IACHR, [Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/Ser.L/V/II. Doc.44, December 5, 2013.

<sup>66</sup> According to public information, Mr. Sandoval "was never subject to a disciplinary proceeding that would objectively and impartially guarantee due process and his right to a defense," as provided in Articles 60 to 65 of the Organic Law of the Office of the Public Prosecutor. It was also indicated that there should have first been a decision by the Attorney General in keeping with provisions of Article 68 of the aforementioned law. Therefore, the dismissal agreement allegedly was "a legal, illegitimate, and arbitrary act," in contravention of "stability and tenure in the position," and "had no legal basis."

<sup>67</sup> IACHR, 181<sup>st</sup> period of sessions, "[Human Rights Situation of Justice Operators and Judicial Independence in Guatemala](#)," public hearing held on October 28, 2021.

<sup>68</sup> AP News, [Guatemala: nuevo jefe anticorrupción causa desconfianza](#), August 3, 2021. The IACHR notes that in its decision on provisional measures, the Inter-American Court indicated that there was a well-founded fear about the possibility that Prosecutor "B" and Assistant Prosecutor "C" could also be dismissed or transferred, which could affect the work of their investigation into the deaths of Mr. Valenzuela Ávila and Mr. Ruiz Fuentes. Considering that there is a well-founded fear that these prosecutors could be separated (by removal, transfer, or dismissal) from the criminal investigations into the deaths of Tirso Román Valenzuela Ávila and Hugo Humberto Ruiz Fuentes, the Court ordered, as an additional protection measure, that the State must ensure the independence in the exercise of their office of Prosecutor "B" and Assistant Prosecutor "C," and thus guarantee the right of access to justice of the victims in the cases of *Ruiz Fuentes et al.*, and *Valenzuela Ávila*. I/A Court H.R., *Case of Valenzuela Ávila and Case of Ruiz Fuentes et al. v. Guatemala*, Provisional Measures and Monitoring Compliance with Judgment, Order of the Inter-American Court of Human Rights of September 23, 2021, paras. 61 and 62.

other prosecutor's offices in cases involving the President or individuals close to him.<sup>69</sup> During the same hearing, former Special Prosecutor Juan Francisco Sandoval, alleged that on at least 24 occasions the Attorney General had tried to speed up an investigation to prosecute political adversaries, or slow down investigations related to State agencies.<sup>70</sup>

57. In terms of pursuing criminal charges against members of the FECCI, the IACHR was informed that the investigations and complaints against them were processed swiftly, by applying pressure on other prosecutors, which is evident from the arrest warrant handed down against Juan Francisco Sandoval the day after his dismissal. Moreover, these were said to have been processed anonymously, in contravention to Guatemalan law. Finally, in a press release dated November 7, the former Special Prosecutor stated that the Office of the Prosecutor for Internal Affairs within the Public Prosecutor's Office had summoned several justice operators to testify for the purpose of tying former FECCI personnel to alleged illicit activities as "part of a fictitious criminal structure."<sup>71</sup>

58. In this context, on September 23, 2021, the Inter-American Court granted provisional measures for two members of the FECCI. In its order, the Court noted that the two prosecutors were being intimidated, followed, and threatened. The Inter-American Court also took note of the adverse context of risk toward the work of the FECCI, as well as attacks and threats against justice operators working to fight impunity and corruption. Among other factors, the Inter-American Court pointed to selective harassment, stigmatization, and disparagement of them in social media posts and in the press that seek to discredit the work of FECCI prosecutors by likening it to criminal activity, and noted that such incidents show that the surveillance and harassment of them continues.<sup>72</sup>

59. Meanwhile, the IACHR learned that on October 11, the Attorney General announced changes to the top positions in 11 prosecutorial divisions, including the transfer of the Prosecutor for Human Rights, Hilda Elizabeth Pineda García, to the Office of the Prosecutor for Crimes against Foreign Tourists.<sup>73</sup> Civil society organizations complained that the transfer came at a time when the Office of the Prosecutor for Human Rights was litigating important cases involving serious human rights violations that occurred during the armed conflict, and that this therefore constituted yet another step to dismantle that division. They also alleged that the decision is part of a pattern that shows a lack of independence of the Public Prosecutor's Office, as well as a policy of harassing and hampering the work of all independent justice operators in the country, resulting in a profound weakening of the rule of law.<sup>74</sup>

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<sup>69</sup> For example, in September 2020, the Attorney General withdrew the FECCI from the investigation into alleged crimes related to the "purported plot to take control of the Guatemalan Social Security Institute," in which senior government officials may have been involved. Moreover, the Attorney General herself filed administrative complaints against members of the FECCI after they brought up the need to file a motion for impeachment (*antejuicio*) against the Secretary General of the Office of the President. *Soy502*, [Una solicitud a Giammattei provoca la salida del a FECCI del caso IGSS](#), September 14, 2020.

<sup>70</sup> IACHR, 181<sup>st</sup> period of sessions, "[Human Rights Situation of Justice Operators and Judicial Independence in Guatemala](#)," public hearing held on October 28, 2021.

<sup>71</sup> Press Release, Twitter account of Impunity Watch Guatemala (@GuatemalaGob), [posting of November 8, 2021](#).

<sup>72</sup> I/A Court H.R., *Case of Valenzuela Ávila and Case of Ruiz Fuentes et al. v. Guatemala*, Provisional Measures and Monitoring Compliance with Judgment, Order of the Inter-American Court of Human Rights of September 23, 2021.

<sup>73</sup> Office of the Public Prosecutor (*Ministerio Público*), [Press Release](#), October 11, 2021; *Prensa Libre*, [Consuelo Porras hace rotaciones en 11 fiscalías entre ellas la de derechos humanos cuya ex titular llevó a juicio a Ríos Montt](#), October 11, 2021.

<sup>74</sup> According to public information, Prosecutor Hilda Pineda and her team have pursued criminal charges against perpetrators of crimes of genocide, forced disappearance, sexual violence, extrajudicial executions, torture, and crimes against humanity committed during the internal armed conflict (1960-1996). She obtained convictions of former members of the military responsible for the Dos Erres massacre (1982), as well as taking dictator Efraín Ríos Montt to trial for genocide and crimes against humanity against the Maya Ixil people. At the time of her transfer, she was in charge of the "*Diario Militar*" case involving the capture, torture, and forced disappearance of at least 183 political opponents between 1983 and 1985, allegedly at the hand of soldiers and police, as well as investigations into the murder of the human rights defender Benoît Maria in August 2020. Transferring Prosecutor Hilda Pineda puts the progress made in these cases at grave risk, as well as the cases involving justice and reparation for thousands of victims of gross human rights violations and crimes against humanity. FIDH, [GUATEMALA: Traslado injustificado de la Fiscal de Derechos Humanos](#), October 14, 2021.

60. In that regard, in a communication dated August 5, the Guatemalan State informed the Commission that under the procedures established in its laws, it fully protects justice operators' tenure in their positions, as well as their judicial independence. It indicated that the Public Prosecutor's Office includes an Office of the Prosecutor for Human Rights, which is divided into units that handle the various cases in line with each of their duties or activities. It also indicated that it has safeguarded the safety and integrity of all judges and magistrates in the country, heeding the precautionary measures issued by the IACHR as well as those ordered and/or requested by justice operators.<sup>75</sup>

61. With regard to the specific function of prosecutors, the Inter-American Court has noted that they perform duties corresponding to agents of justice and, in that capacity, they must enjoy guarantees of job security, among others, as a fundamental condition for their independence in the correct performance of their procedural functions.<sup>76</sup> Therefore, they must also be protected by the guarantees of an adequate appointment process, a fixed term in the position, and protection against external pressures. Otherwise, this would jeopardize the independence and objectivity that are required of their function to ensure that the investigations conducted and the claims made before the jurisdictional bodies are addressed exclusively at achieving justice in the particular case, in keeping with Article 8 of the Convention. The absence of the guarantee of irremovability of prosecutors—since it makes them vulnerable to reprisals for the decisions they take—results in a violation of their independence that Article 8(1) of the Convention guarantees.<sup>77</sup> The independence recognized to prosecutors ensures that they will not be subject to political pressures or improper obstruction of their actions, nor will they suffer retaliation for the decisions they objectively make, which precisely requires a guarantee of stability and a fixed term in the position.<sup>78</sup>

62. Likewise, the Inter-American Court has indicated that the guarantee of tenure and irremovability of prosecutors consequently implies (i) that separation from the position must be exclusively for permitted causes, either through a procedure that complies with judicial guarantees or because the mandate has expired; (ii) that prosecutors may be removed only for grave disciplinary offenses or incapacity; and (iii) that all proceedings against prosecutors must be resolved by means of fair procedures that guarantee objectivity and impartiality according to the Constitution or the law, given that removal of prosecutors without cause promotes an objective doubt regarding the possibility that they are able to perform their duties without fear of reprisal.<sup>79</sup>

63. Finally, the IACHR recalls that if prosecution services are subordinate to other institutions, their independence may be compromised, both in terms of the effectiveness and thrust of their investigations and any implications to due process. In this sense, the IACHR recalls that the duties of prosecutors—such as the investigation of crimes, oversight to ensure the lawfulness of investigations, and enforcement of court rulings—are essential to eliminating impunity in cases involving human rights violations.<sup>80</sup> The IACHR therefore calls on the Guatemalan State to ensure the institutional independence of the Public Prosecutor's

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<sup>75</sup> Government of Guatemala, Diplomatic Note No. NV-OEA-M4-No. 630-2021 – Observations of the State of Guatemala to the press release “IACHR Expresses Concern over Actions that Weaken Judicial Independence in Guatemala,” August 5, 2021.

<sup>76</sup> I/A Court H.R., *Case of Martínez Esquivia v. Colombia*, Preliminary Objections, Merits, and Reparations, Judgment of October 6, 2020, Series C No.412, par. 94.

<sup>77</sup> I/A Court H.R., *Case of Martínez Esquivia v. Colombia*, Preliminary Objections, Merits, and Reparations, Judgment of October 6, 2020, Series C No.412, par. 94; *Case of Casa Nina v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2020, Serie C No. 419, par. 72.

<sup>78</sup> I/A Court H.R., *Case of Valenzuela Ávila and Case of Ruiz Fuentes et al. v. Guatemala*, Provisional Measures and Monitoring Compliance with Judgment, Order of the Inter-American Court of Human Rights of September 23, 2021, par. 44; *Case of Casa Nina v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2020, Serie C No. 419, par. 80.

<sup>79</sup> I/A Court H.R., *Case of Valenzuela Ávila and Case of Ruiz Fuentes et al. v. Guatemala*, Provisional Measures and Monitoring Compliance with Judgment, Order of the Inter-American Court of Human Rights of September 23, 2021, par. 45. *Case of Casa Nina v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2020, Serie C No. 419, par. 80.

<sup>80</sup> IACHR, [Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/Ser.L/V/II. Doc.44, December 5, 2013, par. 37.

Office and to cease all actions that would weaken or undermine the institution's efforts to fight impunity and corruption in the country.

### ***Situation of Justice Operators***

64. The Commission has noted on multiple occasions that judges are the primary line of defense in ensuring the judicial protection of human rights in a democratic State and the due process that must be observed when States can implement a sanction. In a democratic system, judges ensure that the acts of other branches of government and public servants in general are consistent with the conventions to which the State is party and with its constitution and laws. Judges also administer justice in disputes between private parties where a person's rights might be at stake.<sup>81</sup>

65. With regard to Guatemala, in the report on its visit to the country, the IACHR noted that attempts by justice operators, including judges, to gain ground in combating impunity and corruption had brought in their wake attacks, threats, acts of aggression, and baseless motions for impeachment, especially from those involved in high-profile cases of corruption and serious human rights violations. Subsequent to the visit, and as the IACHR has noted in its various follow-up reports, judicial persecution of independent justice operators has not only continued but intensified.<sup>82</sup>

66. In fact, this year, the IACHR observed that the criminalization of magistrates, judges, and other independent justice operators worsened due to, among other reasons, an alleged lack of independence on the part of the Public Prosecutor's Office, which is said to facilitate the manipulation of criminal law.

67. In this context, the Commission is particularly concerned about the situation of judges who sit on High Risk Courts in Guatemala, who play an important role in hearing cases related to the internal armed conflict, or corruption cases; these include Pablo Xitumul De Paz, Miguel Ángel Gálvez Aguilar, Iris Yassmín Barrios Aguilar, and Erika Lorena Aifán Dávila, all of whom are beneficiaries of precautionary measures issued by the Inter-American Commission.<sup>83</sup>

68. According to information the Commission received, strategies involving the use and manipulation of criminal law against judges intensified this year, through the filing of complaints and motions for impeachment to try to strip them of their legal immunity. These proceedings, brought before the Supreme Court, reportedly fail to follow the procedure established by law because, among other reasons, they are assigned to justices with a direct interest in the matter, who process the cases without the guarantees in place for due process and the right to defense.<sup>84</sup>

69. In this regard, the IACHR noted that *antejuicio* proceedings were reopened against Judge Erika Aifán; this reportedly was requested by the Judiciary Institute of Court of Appeals Judges for the authorization of allegedly illegal proceedings against lawyers who were candidates to judgeships on chambers of the Court of Appeals and the Supreme Court and were later accused in the context of the "Parallel Commissions 2020" case. According to information the Commission received, in 2020, the Constitutional Court—in its prior configuration—had granted provisional constitutional protection (*amparo*) to Judge Aifán; this was revoked by the new Constitutional Court on June 17, 2021, apparently without grounds or foundation. Another of the active *antejuicio* proceedings against Judge Aifán in 2021 reportedly was filed in February by former Judge

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<sup>81</sup> IACHR, [Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/Ser.L/V/II. Doc.44, December 5, 2013, paras. 16-18.

<sup>82</sup> IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017.

<sup>83</sup> IACHR, Press Release 203/21, [IACHR Expresses Concern over Actions that Weaken Judicial Independence in Guatemala](#), Washington, D.C., August 6, 2021.

<sup>84</sup> IACHR, 181<sup>st</sup> period of sessions, "[Human Rights Situation of Justice Operators and Judicial Independence in Guatemala](#)," public hearing held on October 28, 2021.

Mynor Moto, who filed the motion for impeachment in response to the arrest warrant issued against him, which had been requested by the FECCI for his alleged ties to the “Parallel Commissions 2020” case.<sup>85</sup>

70. With regard to the alleged lack of foundation and grounds for the judgment revoking the provisional constitutional protection for Judge Erika Aifán, the Guatemalan State told the IACHR that “the Constitutional Court, in the related decision, established that by admitting for processing the *antejuicio* proceedings brought against Judge Erika Aifán, the Supreme Court acted in accordance with the powers granted to it under the Constitution of the Republic of Guatemala and the law governing the *antejuicio* process, since the Court observed, providing grounds and foundation, that the *antejuicio* was not done for spurious, political, or illegitimate reasons, thus complying with the prior evaluation the law requires on these matters. This therefore eliminates the grievance alleged in the *amparo* appeal, as the authority in question laid out clearly and precisely the reasons of fact and of law behind its decision.”<sup>86</sup>

71. Moreover, on October 19, 2021, the IACHR learned about irregularities in the *antejuicio* proceedings initiated before the Supreme Court against Pablo Xitumul de Paz, President of High Risk Court C. According to publicly available information, the judge in charge of the *antejuicio* inquiry failed to respect due process by ignoring evidence that the judge presented in his defense and by not hearing his testimony, which would represent a violation of the procedures established by the law for the *antejuicio* process.<sup>87</sup> For its part, in its response to the IACHR regarding the draft of this report, the State indicated that “the *antejuicio* [against Judge Pablo Xitumul] did not occur in the context of the exercise of his functions as a judge, but rather stems from a complaint filed by the inspector of the National Civil Police (PNC), José Cuxaj, who asserts that he was physically and verbally attacked and is thus accusing him of abuse of authority.”<sup>88</sup>

72. With regard to the alleged use and abuse of *antejuicio* proceedings, the State of Guatemala has informed the IACHR at various times that “the State cannot run roughshod over international normative frameworks that it has ratified at a universal and regional level or its domestic legislation by depriving Guatemalans of exercising their right to file complaints when they deem there are acts that may constitute crimes, and even less so when this is done as part of citizen oversight that characterizes any democratic State.” Moreover, the State indicated that it is precisely to prevent abuses in the filing of complaints against those who hold public office that the Constitution has provided for the legal construct of the *antejuicio* as a guarantee, the purpose of which is to prevent arrest and criminal court proceedings without there first being a decision by the competent authority that rules on whether prosecution should be brought. To this end, the relevant proceedings must take place in keeping with the provisions of the law regarding *antejuicios*, namely, Decree 85-2002 of the Congress of the Republic. Thus, the State pointed out, the petition for an *antejuicio* cannot be considered a repressive measure against judicial independence.<sup>89</sup>

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<sup>85</sup> Information received in the context of the “Petition regarding Complaints of Violations of the American Convention on Human Rights,” lodged by Judge Erika Aifán against the State of Guatemala, September 7, 2021. *Prensa Libre*, [CC ratifica decisión de reactivar antejuicio contra jueza Erika Aifán](#), October 4, 2021; *El Periódico*, [CC ratifica que el trámite de antejuicio en contra de la jueza Aifán debe continuar](#), October 4, 2021.

<sup>86</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 19.

<sup>87</sup> *El Periódico*, [CC reactiva antejuicio contra Juez Pablo Xitumul](#), July 1, 2021; Observatorio de Independencia Judicial, [Informe Anomalías en el proceso de Antejuicio contra el Juez Pablo Xitumul](#), October 2021.

<sup>88</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 19.

<sup>89</sup> Observations by the Guatemalan State to the Draft Chapter V Report, Follow-Up of Recommendations Issued by the IACHR in its Country or Thematic Reports, Third Report on Follow-Up on Recommendations Issued by the IACHR in its 2017 report Situation of Human Rights in Guatemala, Ref. NV-OEA-M4-No.087-2021, February 3, 2021, pp. 4 and 5.

73. For its part, in its communication of December 22, 2021, the State of Guatemala reiterated that “*antejuicio* proceedings aim to establish a constitutional guarantee for judges in the Republic of Guatemala, as well as for other high-ranking State officials.” It also noted that “the right of every citizen to report anomalous acts on the part of public officials constitutes a right and at the same time a fundamental pillar of the rule of law based on democracy. The existence of *antejuicio* proceedings is essential for the proper performance of public service by judges across the country, an aspect that clearly encourages the judges’ freedom and independence because they are not affected by the filing of illegitimate complaints that may condition their actions, as the only *antejuicio* proceedings brought by citizens that will prevail are those based on concrete facts consistent with the possible commission of offenses or crimes, notwithstanding that the State may subsequently guarantee the right to a hearing and to a defense through the respective regular means.”<sup>90</sup>

74. In that regard, the IACHR observes that although the *antejuicio* constitutes a guarantee for justice operators, in the current context of Guatemala these proceedings have been used as a means to control their work and intimidate them. This is said to be possible due to the lack of independence of the bodies responsible for processing the *antejuicio* proceedings, including the Public Prosecutor’s Office and the Supreme Court. As evidence of that, the information received shows a lack of response by the Attorney General to requests made by judges in the High Risk Courts to permanently close any baseless claims against them; some of these date back to 2012 but apparently are kept open in order to maintain a climate of fear and keep control over their work.<sup>91</sup>

75. The Commission has established that the effectiveness of rights and freedoms under a democratic system requires a legal and international order in which the law prevails over the will of rulers and individuals, and in which there is effective judicial oversight of the constitutionality and legality of the acts of government. For this reason, judges—unlike other public officials—enjoy reinforced guarantees for the exercise of their jurisdictional power, especially independence in carrying out their duties. This guarantee is a corollary of the right of access to justice that every person enjoys and, in the case of judges, takes the form of an adequate appointment process, tenure in the position, and guarantees against pressure.<sup>92</sup>

76. The Inter-American Commission also reminds the State of Guatemala that under international law, the grounds for disciplinary measures—or in this case, *antejuicio* proceedings—should never be a legal opinion or judgment that a judge wrote in a decision, in the exercise of his or her jurisdictional functions. The Commission therefore reiterates that a critical aspect to consider in decisions ordering sanctions against justice operators is that the grounds for disciplinary investigations and sanctions imposed on them should never be the legal judgment developed in a decision.<sup>93</sup>

77. Meanwhile, in the context of the thematic hearing “Human Rights Situation of Justice Operators and Judicial Independence in Guatemala,” the IACHR received information on threats to the life and physical integrity of judges in High Risk Courts and their families, as well as instances in which they were harassed, surveilled, and followed by vehicles without tags. The judges also said that they had been systematically attacked and singled out on social media through messages sent out through fake accounts from “net centers” with ties to the government. They said that these messages used references to the internal armed conflict to intimidate them and referred to acts such as forced disappearances, kidnapping, torture, and death that were carried out with impunity. In the posted messages, the judges were also apparently labeled

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<sup>90</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 20.

<sup>91</sup> IACHR, 181<sup>st</sup> period of sessions, “[Human Rights Situation of Justice Operators and Judicial Independence in Guatemala](#),” public hearing held on October 28, 2021.

<sup>92</sup> IACHR, [Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/Ser.L/V/II. Doc.44, December 5, 2013, par. 24.

<sup>93</sup> IACHR, [Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/Ser.L/V/II. Doc.44, December 5, 2013, par. 216.

“guerrillas” and threatened with vengeance for fighting corruption. Another form of aggression, they said, was to infiltrate their courts with staff who would leak sensitive information, spy on them, make recordings, and even remove records and case files.<sup>94</sup>

78. In that regard, the IACHR received information concerning the lack of due diligence on the part of the Public Prosecutor’s Office and Guatemalan State authorities in terms of protecting and guaranteeing the life and the physical and emotional integrity of judicial personnel. In particular, complaints they filed over violations of their human rights were reportedly disregarded and filed away; in other cases, investigations and inquiries were apparently carried out with the aim of obtaining information on their security measures. Judges in High Risk Courts also indicated that the instances of infiltration in their courts had not been investigated.<sup>95</sup>

79. In its response to the draft of this report, the Guatemalan State indicated that “to ensure the safety of justices and judges, there are agents of the Institutional Security Directorate, agents of the National Civil Police, pilots, bulletproof vests of the judiciary, armored and unarmored vehicles of the judiciary, National Civil Police squad cars, and weapons belonging to both the judiciary and the National Civil Police. Moreover, the Office of the Public Prosecutor’s Security Department has 321 agents in charge of providing personalized security to prosecutors whose request was deemed to be well-founded.”<sup>96</sup> Likewise, the State noted that “the two individuals who were reported for removing documents and misplacing case files in the court of Judge Erika Aifán were punished via the judiciary’s disciplinary system by being suspended for more than 20 days without pay.”<sup>97</sup>

80. The State also indicated that it “keeps communication channels open and does the appropriate follow-up with respect to individuals with precautionary measures.” In this regard, it reported that on September 10, 2021, a meeting was held with Judge Miguel Ángel Gálvez, COPADEH, the Office of the Public Prosecutor, the Interior Ministry, and the judiciary to reach agreement on precautionary measures. At the meeting, it was agreed that Judge Miguel Gálvez would go to the San Lucas Sacatepéquez Police Station on September 18 so that a new risk analysis could be performed with respect to the beneficiary; it was also agreed that Judge Gálvez would go on September 16 of the same year to the Public Prosecutor’s Office for Crimes against Justice Operators and Members of Trade Unions. However, the State noted that Judge Gálvez did not appear at either, “making it impossible to establish the beneficiary’s current risk status and establish the security measures appropriate to his current situation. Moreover, the investigation into the threats and harassment of which he indicates he is a victim cannot proceed, as he is not providing the necessary elements of investigation.”<sup>98</sup>

81. Finally, in the view of the Guatemalan State, “an important piece of information that points to the current situation of the judicial branch in the country is, without a doubt, the existence of more than 1,000 judges and magistrates throughout the national territory.” In this sense, “and based on the monitoring that the illustrious Commission is able to carry out, it is established that there is an extremely sizeable percentage of judges who, unlike those cited in this report, are not warning about or reporting the existence of structural

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<sup>94</sup> IACHR, 181<sup>st</sup> period of sessions, “[Human Rights Situation of Justice Operators and Judicial Independence in Guatemala](#),” public hearing held on October 28, 2021.

<sup>95</sup> IACHR, 181<sup>st</sup> period of sessions, “[Human Rights Situation of Justice Operators and Judicial Independence in Guatemala](#),” public hearing held on October 28, 2021.

<sup>96</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 17-18.

<sup>97</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 20.

<sup>98</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 18.

problems of State with regard to the exercise and independence of the judiciary in the country, which points to the efforts by the judicial branch to allow the free and independent use of the jurisdictional powers of judges and magistrates.”<sup>99</sup>

82. The IACHR reiterates that it is the Guatemalan State’s duty to protect those who work in the field of justice from attacks, intimidation, threats, and harassment by investigating those who violate their rights and sanctioning them appropriately. If States do not ensure that justice operators are safe from pressure of all kinds, including reprisals for their work of promoting or administering justice directed against them personally or their families, the exercise of judicial authority could be seriously jeopardized, which would thwart effective access to justice.<sup>100</sup> The IACHR also urges Guatemala to carry out thorough and independent investigations into the attacks suffered by justice operators to ensure that the perpetrators and masterminds are punished effectively, and adopt an effective, thorough prevention strategy to prevent attacks, aggression, and harassment against them.

### III. HUMAN RIGHTS INSTITUTIONS

83. In terms of the institutional framework for human rights, the IACHR received troubling information concerning the reported delay by Congress in providing the Office of the Human Rights Ombudsman with the funding it should have received. The amount due, accumulated over 2019 and 2020, reportedly has brought the institution’s budget deficit to 40 million quetzals. As a result, the Ombudsman’s Office warned that the “economic asphyxiation will prevent the institution from fulfilling its constitutional mandate.”<sup>101</sup>

84. Moreover, the IACHR was informed about continuing acts of harassment and campaigns to disparage and stigmatize the work of the Human Rights Ombudsman, Jordán Rodas, including the filing of complaints reportedly seeking his removal from office. In May 2021, the Ombudsman filed a criminal complaint against officials from the Communication Directorate of the Congress of the Republic, after a press investigation revealed that the office had generated media and political content that targeted him.<sup>102</sup> Recently, on October 12, 2021, the IACHR learned that he had been summoned by the Human Rights Commission of the Congress to discuss a petition for his dismissal filed by a former prosecutor and an acting judge, a summons that was ultimately suspended.<sup>103</sup>

85. In its response to the draft report, the Guatemalan State indicated that since 2016, the institution of the Human Rights Ombudsman has had a budget of at least 120 million quetzals, which grew by 30 million in 2020, to a total of Q150,185,000.00,<sup>104</sup> shown as follows:

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<sup>99</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 20.

<sup>100</sup> IACHR, Press Release No. 65/21, [IACHR Expresses Concern over Impeachment Proceedings Brought Against Members of Guatemala’s Constitutional Court](#), Washington, D.C., March 18, 2021.

<sup>101</sup> PDH, [71/21 El Procurador de los Derechos Humanos, Jordán Rodas Andrade, advierte que el incumplimiento del Congreso de la República en el traslado de los recursos aprobados en el Presupuesto General de la Nación hará colapsar a la Institución en los próximos tres meses](#), May 6, 2021.

<sup>102</sup> *La Hora*, [PDH denuncia a la Dirección de Comunicación del Congreso de la República](#); *Vox Populi*, [“La estrategia del Congreso para atacar a opositores y funcionarios](#), May 20, 2021.

<sup>103</sup> *Prensa Comunitaria*, [Continúa desgaste al PDH en el Congreso: fracasa intento de conocer memorial para destituirlo](#), October 12, 2021; *La Hora*, [Comisión de DDHH analizará citar al PDH por pedido de destitución](#), June 10, 2021.

<sup>104</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 22.

**Table: Budget of the Office of the Human Rights Ombudsman 2016- 2021**

YEAR	Budget Allocated	Budget in Effect
2021	120,205,000.00	120,205,000.00
2020	120,185,000.00	150,185,000.00
2019	100,130,000.00	120,250,000.00
2018	121,130,000.00	120,132,475.41
2017	130,000,000.00	123,090,000.00
2016	120,000,000.00	120,033,684.77

Source: Data from SICOINDES, August 2021<sup>105</sup>

86. The State of Guatemala also informed the IACHR that on November 24, 2021, the Congress, by means of Legislative Decree 19-2021, approved an increase in the legislative Budget of Revenues and Expenditures for fiscal year 2021 of Q20,000,000.00 (twenty million quetzals) to be transferred to the Office of the Ombudsman. In addition, for fiscal year 2022, the Congress adopted Decree 16-2021 approving the General Budget of State Revenues and Expenditures, which establishes a budget allocation of Q120,000,000.00 (one hundred twenty million quetzals). Finally, the State emphasized that the Office of the Human Rights Ombudsman “has acted with complete freedom, without restrictions on its functions, it being important not to confuse the actions of persons who, in the exercise of their defense or as a result of clarification, may feel aggrieved by resolutions, declarations, or actions taken by the Human Rights Ombudsman.”<sup>106</sup>

87. On different occasions, the IACHR has underscored the importance of the work of the Ombudsman, Jordán Rodas, in defending the exercise of human rights in Guatemala, and the work of the institutions that are responsible for combating corruption and impunity. In the current context in the country, the IACHR has received information concerning a growing climate of fear over the possibility that the Ombudsman will be dismissed or that the attacks against the work of the Ombudsman’s Office will intensify, given that it is identified as one of the last institutions in the country that works independently and impartially, especially to combat corruption and impunity. In that regard, the IACHR calls on the State to ensure that the Office of the Human Rights Ombudsman has at its disposal, as soon as possible, the budget it needs to carry out its mandate effectively, and specifically calls on the State to cease all acts of intimidation or fear of reprisals over the exercise of its duties.

88. On another matter, in Chapter V of its 2020 Annual Report, the Commission noted that actions intended to weaken the institutional framework for human rights and peace in Guatemala had intensified with the disappearance of the Presidential Coordinating Commission for Executive Policy on Human Rights (COPREDEH), the Secretariat for Peace (SEPAZ), and the Secretariat for Agrarian Affairs (SSA)<sup>107</sup> and their

<sup>105</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 22.

<sup>106</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 22-23.

<sup>107</sup> On July 30, 2020, through Governmental Decisions 99-2020 and 100-2020, the executive branch ordered the closure of COPREDEH and its replacement by the Presidential Commission for Peace and Human Rights (COPADEH). According to the decision establishing it, COPADEH will be in effect for four years and also takes over the functions of the Secretariat for Peace (SEPAZ) and the Secretariat for Agrarian Affairs (SSA). COPADEH will be chaired by the Constitutional President of the Republic and will comprise six Ministers, two Secretariats, and the Attorney General (PGN), as well as the Executive Director. According to the decision establishing it, the purpose of COPADEH is “to advise and coordinate with the various [offices] of the Executive Branch on promoting actions and mechanisms

replacement by another agency, COPADEH, with no guarantee that it would have the budgetary or human resources, or an adequate legal framework, to take over the functions and responsibilities of the agencies it was replacing.<sup>108</sup>

89. At that time, the Guatemalan State informed the IACHR that the decision was based on determinations made by the Office of the President's Technical Committee for Evaluation and Innovation of Institutional Public Management, established on June 24, 2020, as part of the government's Innovation and Development Plan being pursued since the current administration took office, on January 14, 2020. The State further indicated that "restructuring Government institutions requires improvements brought about by efficient and effective mechanisms for innovating institutional public management and bolstering public administration, geared above all to implementing the Government's overall policies and commitments made by the State in treaties and in pursuit of priorities designed to achieve enjoyment of the human rights of all Guatemalans."<sup>109</sup> The State also informed the Commission that COPREDEH's closure "was done for the sake of modernizing, furthering, and improving the State's attention to issues regarding conflict, peace, and human rights."<sup>110</sup>

90. During 2021, the IACHR observed that even though it had been created in June 2020, COPADEH reportedly did not begin operations until December of that year, and with a budget that was apparently lower than what had been provided in total to the three agencies it replaced. For their part, civil society organizations indicated that they had no knowledge of the activities carried out by this institution, and that there was thus a "vacuum" in compliance with the mandate previously assigned to the other agencies. Likewise, they reported that COPADEH had not reached out to victims of human rights violations, pursuant to its mandate.<sup>111</sup>

91. In its response to the draft report, the State of Guatemala informed the IACHR about an extensive series of actions taken by COPADEH to reach its goals and fulfill its mandate. It has four substantive directorates for that purpose: the Directorate for the Monitoring and Promotion of Human Rights;<sup>112</sup>

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to ensure the effective exercise and protection of human rights and compliance with government commitments under the Peace Accords and in connection with social conflicts in the country." Ministry of the Interior (*Ministerio de Gobernación*), [Acuerdo Gubernativo No. 100-2020](#), Articles 3 and 4.

<sup>108</sup> IACHR, [Annual Report 2020. Chapter V. Guatemala](#), Conclusions.

<sup>109</sup> Report of the State of Guatemala on compliance with recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 2.

<sup>110</sup> Observations by the Guatemalan State to the Draft Chapter V Report, Follow-Up of Recommendations Issued by the IACHR in its Country or Thematic Reports, Third Report on Follow-Up on Recommendations Issued by the IACHR in its 2017 report Situation of Human Rights in Guatemala, Ref. NV-OEA-M4-No.087-2021, February 3, 2021, p. 2.

<sup>111</sup> *Prensa Libre*, [Así funciona la Comisión Presidencial por la Paz y los Derechos Humanos](#), April 29, 2021; *El Periódico*, [Gobierno paralizó resarcimiento a víctimas del conflicto armado](#), June 19, 2021.

<sup>112</sup> This body is responsible for generating proposals and actions to comply with human rights protection and is the liaison with the Office of the Human Rights Ombudsman. It is responsible for carrying out the following functions: planning, organizing, managing, coordinating, and overseeing the activities and resources needed to meet the directorate's objectives; promoting, within government institutions, guidelines and actions to ensure that public policies include a comprehensive human rights approach; promoting, in coordination with the Strategic Communication Unit and the COPADEH Directorate for Strengthening Peace, the implementation of actions, campaigns, and training on human rights and citizenship education geared toward society; advising the Executive Directorate on interinstitutional strengthening in human rights; monitoring the general and specific human rights situation in the country, with an emphasis on children, disability, women, senior citizens, indigenous peoples, and human rights defenders, among others; and fulfilling any other function that may be needed, by arrangement of the Executive Directorate. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 23 and ff.

Directorate for Addressing Conflict (DIDAC);<sup>113</sup> Directorate for Strengthening Peace (DIFOPAZ);<sup>114</sup> and Directorate of Regional Offices.<sup>115</sup>

92. With regard in particular to cases, recommendations, petitions, friendly settlement proceedings, precautionary measures, provisional measures, and judgments, the State indicated that COPADEH has a mandate from the Attorney General's Office to advise on and coordinate progress and/or compliance with each specific case, requesting related information from the appropriate institutions and in all cases providing, in an effective and timely manner, a comprehensive response from the State to the inter-American human rights system. The State further indicated that as part of COPADEH's functions, and in response to different circumstances, the agency has given support to Technical Working Groups for Interinstitutional Coordination, at the request of some social organizations. Through this coordination process, COPADEH has brought together different institutions to address specific cases by establishing technical working groups.<sup>116</sup>

93. The State underscored that the main actions carried out by COPADEH include "the disbursement of Q1,816,395.93 for economic compensation payments in the context of the *Case of Cuscul Pivara et al. v. Guatemala*, in which there was a judgment against the State of Guatemala. The disbursement of Q1,184,948.20 is also planned to comply with the commitments stemming from the following cases: (a) *Case of Girón et al. v. Guatemala*; (b) *Case of Rodríguez Revolorio et al. v. Guatemala*; (c) *Case of Gómez Virula v. Guatemala*; (d) *Case of Martínez Coronado v. Guatemala*; and (e) *Case of Cuscul Pivara et al. v. Guatemala*, last partial payment."<sup>117</sup>

94. In terms of the institutional framework for peace, as will be examined later in this report (See below, VI. Memory, Truth, and Justice), the IACHR received information indicating that reparations to the victims of the internal armed conflict have been paralyzed, due to the lack of budgetary resources of the Social Development Fund (FODES), part of the Ministry of Social Development (MIDES). Moreover, according to the information available, since the disappearance of SEPAP, there seems to be a legal vacuum with respect to the appropriate rules and regulations, manuals, guidelines, and procedures governing the operations of the National Reparations Program (PNR) and FODES itself, now under MIDES. According to public information, organizations of victims denounced this as a stalling tactic to avoid paying reparations to victims of the armed

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<sup>113</sup> This body is responsible for determining and coordinating strategies to facilitate the dialogue process to resolve conflicts at the national level. It is, in turn, made up of the Department of Negotiators and the Department for the Study of High-Conflict Issues and Territories. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 39-45.

<sup>114</sup> This body is responsible for planning, organizing, managing, and overseeing the activities and resources needed to generate proposals and actions to promote a culture of peace and monitor compliance with the commitments derived from the Peace Agreements. To carry out its functions, DIFOPAZ is made up of the following departments: 1. Department for Monitoring and Strengthening Peace; 2. Department for Education and Training in a Culture of Peace. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 46.

<sup>115</sup> This body is responsible for attending to the Regional Offices throughout the country, using tools and guidelines for strategic communication in every territory on matters related to social conflict, peace, and human rights, with an institutional focus, coordinating with executive branch agencies at the local level and maintaining relationships with the Department Development Councils. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 47.

<sup>116</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021.

<sup>117</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 25 and ff.

conflict before the expiration of the deadline established in the agreement creating the PNR, in effect until December 31, 2023.<sup>118</sup>

#### IV. SITUATION OF FREEDOM OF EXPRESSION

95. In 2021, the Office of the Special Rapporteur for Freedom of Expression has found that the work of journalism in Guatemala continues to be subject to risks, with the reported murders of at least two media workers, episodes of harassment and intimidation, attacks in the context of social protests, and obstructions to the coverage of official events. The Unit for the Protection of Human Rights Defenders in Guatemala registered 87 incidents of attacks on journalists and media workers between January and June 2021. The IACHR has also learned that judicial cases have been opened and threats of investigations have been made against journalists, especially from the outlet *El Periódico*. The IACHR also observed with concern that various types of punitive measures have been used to restrict the work of journalism. In the context of the pandemic, it also identified restrictions to protest through the establishment of states of emergency. Also of concern is the entry into force of the new NGO Law, which UN and OAS experts have described as “choking” the work of civil society.

##### A. Journalism and Democracy

96. In 2021, the IACHR received reports of at least two murders of journalists in Guatemala. In addition, journalists who investigate matters of public interest such as corruption have reported being targets of surveillance, intimidation, and judicial harassment. The IACHR also heard accounts of attempts to keep the press from entering official buildings and events, to obstruct press access to information. There have also been reports of attempts to censor published content related to COVID-19 with the aim of preventing panic or confusion.

97. On June 9, 2021, Frank Stalyn Ramazzini, a journalist, human rights defender, and president of the Asociación Fiscalizadora Pro-Justicia y Derechos Humanos, was killed in an armed attack in a Guatemala City nightclub in which three other people also died. In addition to his work as a defender of the labor rights of National Civil Police officers, he periodically investigated and published, through a social media site, information that was critical of the government and of considerable public interest, especially about alleged cases of corruption in the prison system.<sup>119</sup> On June 10, the Office of the Prosecutor for Crimes against Life and the Integrity of Persons reported that it had processed the crime scene.<sup>120</sup> According to the information available, on September 12, 2021, the Public Prosecutor’s Office concluded that the weapons found at the scene were used in the journalist’s killing and that there was apparently no connection between this crime and an armed attack in 2018 in which Frank Stalyn Ramazzino was wounded by gunfire.<sup>121</sup>

98. On July 30, 2021, Pedro Alfonso Guadrón Hernández, founder of the Facebook page [Concepción Las Minas Mi Tierra](#), in which he reported on local news, died from multiple gunshot wounds after unidentified individuals attacked him near his home.<sup>122</sup> According to the Association of Journalists of

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<sup>118</sup> FODES is one of the three executing units of MIDES. MIDES and FODES were given the responsibility for all the projects of the defunct National Fund for Peace (FONAPAZ), closed in 2020. *El Periódico*, [Gobierno paralizó resarcimiento a víctimas del conflicto armado](#), June 19, 2021.

<sup>119</sup> IFJ, July 12, 2021, [Guatemala: asesinaron al activista y periodista independiente Frank Stalyn Ramazzini](#); *Prensa Libre*, June 9, 2021, [Ataque armado deja cuatro muertos y dos heridos en una discoteca de la zona 6 capitalina](#).

<sup>120</sup> Public Prosecutor’s Office of Guatemala, June 10, 2021, [La Fiscalía de Delitos contra la Vida y la Integridad de las Personas procesó escena en la cual perdió la vida Frank Stalyn Ramazzini Véliz y tres personas más](#); *La Hora*, June 10, 2021, [Indignación y pedidos de investigación causa asesinato de Frank Ramazzini](#).

<sup>121</sup> *El Periódico*, September 12, 2021, [MP confirmó que las armas localizadas en la zona 6 se usaron en ataque a Ramazzini](#); *Soy502*, September 13, 2021, [Las ubicadas en un carro fueron usadas en el asesinato de Frank Ramazzini](#).

<sup>122</sup> RSF, August 5, 2021, [Asesinado el periodista Pedro Alfonso Guadrón Hernández](#); *República*, July 31, 2021, [Condenan el asesinato de comunicador social en Chiquimula](#).

Guatemala, Guadrón Hernández had previously filed a complaint concerning death threats he had received through social media.<sup>123</sup>

99. In the context of attacks on the press, the IACHR also noted with concern the violent events of September 28, 2021, in Chiul, in the town of Cunén, El Quiché, when journalist José Guarcas, a cameraman for *Xolabaj TV*, was reportedly held for nearly four hours by individuals while he was covering an exhumation, apparently in connection with the ongoing judicial investigation into the massacre of around 115 children in 1988. There had reportedly been demonstrations and conflicts in the context of the exhumation, with opposition from some local residents.<sup>124</sup>

100. In addition, on October 22, at least four journalists from *Prensa Comunitaria* were reportedly attacked when they were reporting on protest demonstrations among the Q'eqchi' population in El Estor, Izabal, and on the use of law enforcement to disperse them. The Office of the Special Rapporteur specifically points to the case of journalist Carlos Ernesto Choc, who reported that police officers beat him and took away his work equipment. Besides reportedly threatening journalists so that they would not record the events, police agents were said to have used tear gas against the demonstrators and members of the media, some of whom were injured. In addition, several members of the National Civil Police were reportedly injured, including four with gunshot wounds. According to the government, the protests were blocking access routes and undermining attempted efforts at dialogue.<sup>125</sup> As a result of these clashes, the government decreed a state of siege in Izabal on October 24, 2021, a measure ratified by Congress on October 25.<sup>126</sup>

101. The IACHR took note of the progress made in the prosecution of those responsible for the abuse of authority and detention of journalist Norma Sancir, who had reportedly been detained while she was documenting police actions during a protest in the Ch'orti' region in Chiquimula. According to reports, the journalist was held for four days.<sup>127</sup> The information available indicates that on September 22, 2021, the Criminal and Drug Activity Court of First Instance in Chiquimula resumed the intermediate hearing in the case against four National Civil Police officers.<sup>128</sup>

102. In its response to the draft of this report, the Guatemalan State informed the IACHR about the development of mechanisms to ensure the security of those who suffer acts of violence in the course of their work as journalists. Among other things, it indicated that the General Directorate of the National Civil Police implements the "Protocol for risk and security analysis and granting of security measures." It also indicated that "based on digital records and physical files kept by the Protection of Persons Division of the National Civil Police, the Risk Analysis Department has done risk assessments of individuals who fit the profile of human rights defenders or activists, whereby it has determined the level of risk they face so as to then recommend

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<sup>123</sup> Association of Journalists of Guatemala, July 31, 2021, [Comunicado 31-07-2021](#).

<sup>124</sup> Ruda, October 1, 2021, [Periodistas narran detención y falta de información a comunidades sobre exhumación](#); PDH, September 29, 2021, [Procurador de los Derechos Humanos - Noticias - 174/21 El Procurador de los Derechos Humanos, Jordán Rodas Andrade, deplora la retención ilegal del periodista José Guarcas, en el contexto de una diligencia judicial de exhumación en Chiul, Cunén, Quiché, donde fueron masacrados 115 niños en 1988](#).

<sup>125</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, October 29, 2021, Press Release 286, [The Office of the Special Rapporteur calls on the State of Guatemala to respect and guarantee the work of journalists in accordance with international human rights standards](#).

<sup>126</sup> Republic of Guatemala, [Decreto Gubernamental 009-2021](#); *Prensa Libre*, October 25, 2021, [Congreso de la República ratifica el estado de Sitio en El Estor, Izabal, y estará vigente 30 días](#).

<sup>127</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Annual Report 2014](#), OEA/Ser.L/V/II Doc. 13, March 9, 2015, par. 551.

<sup>128</sup> Federación Guatemalteca de Escuelas Radiofónicas, September 22, 2021, [Inicia etapa intermedia en caso de periodista Norma Sancir - Federación Guatemalteca de Escuelas Radiofónicas](#); Ruda, September 22, 2021, [Policías podrían enfrentar juicio por abuso de autoridad en contra de periodista](#).

security measures for support or risk mitigation.”<sup>129</sup> According to information provided by the State, the following table shows the security measures provided, based on the degree of risk determined through the aforementioned analysis:

Año	Análisis de Riesgo realizados	Recomendaciones			
		Seguridad Perimetral	Seguridad Personal	Seguridad de Puesto Fijo o Uniformada	Ninguna medida de seguridad específica
2019	44	27	12	0	5
2020	33	24	8	1	0
2021	19	13	5	0	1

Source: Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 49.

103. At the same time, the IACHR has received multiple reports of judicial proceedings being brought against journalists and media outlets to restrict the publication of information of public interest. For example, on May 21, Joselyn Fernanda Mérida Solano, head of communication for the Congress of the Republic, and relatives of Miguel Martínez Morales, former director of the Government Center, reportedly filed complaints against journalists Sonny Figueroa and Marvin del Cid following the publication of journalistic investigations that involved them.<sup>130</sup> From May 21 to August 2, there was a judicial order in place prohibiting the journalists from publishing on issues related to the alleged victims and their family circles.<sup>131</sup>

104. In that regard, the Guatemalan State stressed that on August 3, 2021, during a hearing to oppose security measures, held at the headquarters of the Office of the Public Prosecutor, the judge established that the journalists Marvin Del Cid and Sonny Figueroa did not commit the crime of violence against women of which they had been accused, and revoked the restraining orders that had been imposed on the journalists. The State also indicated that “the aggrieved parties did not pursue the proper avenues for requesting a clarification or correction of the news item published in the digital media outlets *Artículo 35* and *Vox Populi*. Therefore, it was unnecessary to bar Del Cid and Figueroa from the rights to freedom of the press, freedom of expression, and right of access to sources of public information.”<sup>132</sup>

105. In August, Alejandra Carrillo, director of the Victims Institute, reportedly filed a complaint against journalists from the newspaper *La Hora* after it published stories that were critical of her work as a congresswoman from 2015 to 2019, in the context of corruption complaints against congressman Felipe Alejos, her husband.<sup>133</sup> In addition, on September 27, 2021, the Supreme Court determined that the Public Prosecutor’s

<sup>129</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 47-48.

<sup>130</sup> Article 19, August 28, 2021, [Interponen denuncias penales contra Marvin Del Cid y Sonny Figueroa por publicar casos de interés público](#); *La Hora*, August 27, 2021, [Mamá y hermana de Miguel Martínez denuncian a periodistas por reportaje de casa](#).

<sup>131</sup> *Artículo 35*, August 3, 2021, [Levantam censura en contra de periodistas](#); Unit for the Protection of Human Rights Defenders – Guatemala, September 3, 2021, [Comunicado](#).

<sup>132</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 50.

<sup>133</sup> Office of the Human Rights Ombudsman of Guatemala, August 26, 2021, [Comunicado de prensa](#); *CRN Noticias*, August 28, 2021, [Alejandra Carrillo usa la Ley Contra el Femicidio para denunciar a directivos del Diario La Hora](#); *Deutsche Welle*, August 28, 2021, [Asociación de Periodistas de Guatemala condena "acoso judicial" contra La Hora](#).

Office should investigate *El Periódico* for the “possible commission of illicit acts stemming from the publication and use, as a means of conviction, of a document containing testimony in the case file (...) as well as any other action related to the procurement and publication of the information inside a summary case file.” This was referring to the publication of an article by *El Periódico* which included testimony provided to the Office of the Special Prosecutor against Impunity and which reportedly revealed acts of corruption engaged in by high-ranking public authorities.<sup>134</sup>

106. The newspaper *La Hora* also reported that on October 2 it received a communication requesting information from one of its journalists who was responsible for publishing a story in 2019 about operations reportedly carried out by the Office of the Special Prosecutor against Impunity (FECI) and the International Commission against Impunity in Guatemala (CICIG), which were leaked in advance through social media.<sup>135</sup> In addition, on October 19, the journalist and president of *El Periódico* José Rubén Zamora denounced acts of criminal persecution carried out by high-level public officials for purposes of intimidation. As far as the Office of the Special Rapporteur was able to learn, the Public Prosecutor’s Office confirmed the existence of an investigation dating back to 2013, conducted by the Office of the Prosecutor for Administrative Crimes, following a complaint filed in connection with an internal audit of the Guatemalan Social Security Institute (IGSS).<sup>136</sup>

107. Some of these complaints involved journalists who had reportedly been victims of alleged attacks, stigmatizing messages, and other acts of harassment.<sup>137</sup> For example, on March 31, 2021, the police stopped and held Marvin Del Cid’s vehicle for more than 20 minutes a few blocks from his home, allegedly to verify documentation on him and the vehicle. According to the journalist, the official vehicle had already been parked in front of his house and had followed him for several blocks when the lights and siren on the police car went on.<sup>138</sup>

108. The IACHR has also received information concerning various campaigns to harass or discredit journalists. On March 8, 2021, the Spanish journalist Asier Vera was a victim of digital harassment campaigns after a defamatory phrase about him was painted on a sidewalk in the Guatemalan capital.<sup>139</sup> On May 17, 2021, photos of *CNN en Español* correspondent Michelle Mendoza (allegedly taken by a Supreme Court justice while the journalist was covering the launch of the Annual Report of the Public Prosecutor’s Office) were posted on Twitter by the account @LordVaderGT, with the caption, “The little ice cream cart reporting for you from the Hotel Camino Real.” According to the information available, the now-suspended Twitter account<sup>140</sup> described itself as a vehicle to expose “the Injustices of Justice, for my friends all and for my enemies, the Prosecutors, the Judges, Justices, some Journalists [Periodiztaz], and *el Non Grato*.”<sup>141</sup> The IACHR Office of the Special Rapporteur

<sup>134</sup> *El Periódico*, September 28, 2021, [Insólito: Corte Suprema de Justicia resuelve al estilo de la tremenda Corte de Tres Patines](#); SIP, September 30, 2021, [SIP rechaza investigación a el Periódico ordenada por la Corte Suprema de Guatemala](#).

<sup>135</sup> *La Hora*, October 2, 2021, [MP quiere interrogar a periodista por nota que denunció filtración](#).

<sup>136</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, October 29, 2021, Press Release 286, [The Office of the Special Rapporteur calls on the State of Guatemala to respect and guarantee the work of journalists in accordance with international human rights standards](#).

<sup>137</sup> Article 19, April 7, 2021, [Acoso sistemático contra los periodistas Marvin Del Cid y Sonny Figueroa](#); International Federation for Human Rights, April 8, 2021, [Guatemala: Persiste el hostigamiento contra los periodistas Marvin Del Cid y Sonny Figueroa](#); *Deutsche Welle*, April 1, 2021, [Periodistas de Guatemala denuncian nuevos seguimientos y ataques](#).

<sup>138</sup> Article 19, April 7, 2021, [Acoso sistemático contra los periodistas Marvin Del Cid y Sonny Figueroa](#); International Federation for Human Rights, April 8, 2021, [Guatemala: Persiste el hostigamiento contra los periodistas Marvin Del Cid y Sonny Figueroa](#); *Deutsche Welle*, April 1, 2021, [Periodistas de Guatemala denuncian nuevos seguimientos y ataques](#).

<sup>139</sup> Reporteros sin Fronteras, March 11, 2021, [RSF condena las difamaciones y amenazas contra el periodista español Asier Vera](#).

<sup>140</sup> Twitter, undated, [@LordVaderGT](#).

<sup>141</sup> *La Hora*, May 17, 2021, [Periodistas acusan a Magistrada de la CSI de filtrar imágenes a Netcenter](#); Office of the Human Rights Ombudsman of Guatemala, May 17, 2021, [75/21 El Procurador de los Derechos Humanos. Jordán Rodas Andrade, condena los actos de hostigamiento contra la periodista Michelle Mendoza y rechaza categóricamente los ataques promovidos contra líderes civiles desde los netcenters que forman parte de estructuras criminales](#).

was also informed of a cyberattack to the website of *La Hora* around 5 p.m. on July 23, 2021, which blocked readers' access to the newspaper's website.

109. The IACHR also learned of various cases in which journalists' residences were raided and searched in the context of police investigations. On June 10, 2021, police and members of the Public Prosecutor's Office raided the home of journalist Juan José Corado, sports editor at *El Periódico*, after an arrest warrant was issued as part of an investigation into a possible criminal network dedicated to vehicle theft. According to the information available, data from the Cadastral and Real Estate Assessment Office showed that one of the individuals linked to the network under investigation could be living at the address of the journalist's home. During the search, he was reportedly prohibited from any communication with his lawyer. The journalist indicated that he was never provided information about the grounds for the search; rather, the police reportedly told him that if he needed more details, he should go to the Public Prosecutor's Office. Hours later, police spokesman Jorge Aguilar Chinchilla reported that the *El Periódico* editor had nothing to do with the crimes under investigation.<sup>142</sup>

110. With regard to the information about the search of the home of journalist Juan José Corado, the State reported that the Specialized Criminal Investigation Division, Department of Investigation of Crimes of Organized Crime, Section on Vehicle Robbery and Theft (DEIC) of the National Civil Police located a record of an investigation into an individual with the initials LEPM who had registered the address of the searched residence with different public agencies. That was why, on July 9, 2021, the search warrant authorized by the judge in charge of the case was executed, in which Juan José Corado Flores was notified. The State indicated that Mr. Corado Flores signed the search warrant and the record of the search, in which he affirmed that his constitutional rights were respected and that he received the property in satisfactory condition after the search was completed, and no one with an outstanding arrest warrant was able to be found at that location. The search began at 6:01 and ended at 7:14 that same day, June 9, 2021.<sup>143</sup>

111. The IACHR also received information indicating that on October 26, 2021, the National Civil Police raided and searched the home of a correspondent for *Prensa Comunitaria*, Juan Bautista Xol. According to a published account, the operation had been authorized in connection with a judicial investigation that was underway.<sup>144</sup> According to information received by the Office of the Special Rapporteur, in the weeks before that, the journalist had been providing ongoing coverage of protests and other events of public interest.<sup>145</sup>

112. In the context of the pandemic, the IACHR observed with concern that special legislative measures were used to restrict journalists' freedom of expression and the activities of media outlets. The Office of the Special Rapporteur received information indicating that Governmental Decrees 6-2021 and 7-2021, along with their presidential provisions, included arbitrary restrictions to freedom of the press by establishing that "based on the Law of Public Order, publicity organs, communications and broadcast media, must avoid publishing anything that may cause confusion or panic or exacerbate the situation, assuming the responsibilities derived therefrom."<sup>146</sup> According to the information available, on August 22, 2021, the Office

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<sup>142</sup> *El Periódico*, June 9, 2021, [PNC allana vivienda de editor de elPeriódico](#); Latam Journalism Review, June 9, 2021, [Policía allana vivienda de editor de elPeriódico en Guatemala](#).

<sup>143</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 50-51.

<sup>144</sup> *Prensa Comunitaria*, October 26, 2021, [Allanamiento en casa del periodista Juan Bautista Xol, acto de criminalización y censura](#).

<sup>145</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, October 29, 2021, Press Release 286, [The Office of the Special Rapporteur calls on the State of Guatemala to respect and guarantee the work of journalists in accordance with international human rights standards](#).

<sup>146</sup> Government of Guatemala, [Decreto Gubernativo 6-2021](#), August 13, 2021; Government of Guatemala, [Disposiciones Presidenciales y órdenes para el Estricto cumplimiento necesarias por la calamidad pública originada por la pandemia covid-19 y sus variantes, en especial la denominada delta](#), August 13, 2021; Government of Guatemala, [Decreto Gubernativo 7-2021](#), August 21, 2021; Government of Guatemala, [Disposiciones Presidenciales y órdenes para el Estricto cumplimiento necesarias por la calamidad pública originada por la pandemia covid-19 y sus variantes, en especial la denominada delta](#), August 21, 2021.

of the Human Rights Ombudsman filed an appeal for constitutional protection (*amparo*) challenging Governmental Decree 7-2021 on grounds that it violates freedom of expression, freedom of information, and free access to sources.<sup>147</sup> Also, on August 23, congressional representatives from the Unidad Nacional de la Esperanza (UNE) also filed an action of unconstitutionality challenging the declaration of a state of calamity.<sup>148</sup> On August 24, before the Constitutional Court had examined these actions, the plenary of the Guatemalan Congress rejected Decrees 6-2021 and 7-2021 and their amendments.<sup>149</sup>

113. In 2021, the IACHR and its Office of the Special Rapporteur for Freedom of Expression were alerted about difficulties related to press access to public buildings and press conferences of public interest, which were reported to have adversely affected access to information. On June 22, 2021, journalists Edwin Bercian, of *Publinews*, and Rolanda García were reportedly denied access to a public judicial hearing in the *Diario Militar* case, taking place at the Military Medical Center.<sup>150</sup> On that same occasion, a military officer was said to have asked Edwin Bercian what his ideology was. In addition, on September 2, the president of the Congress, Allan Rodríguez, reportedly barred journalist Enrique García of *elPeriódico* from a press conference Rodríguez was holding in his office, where he was to talk about the draft budget for 2022. The congressional president had reportedly accused the media of failing to provide objective information to the public about the budget and said that only “worthy” media outlets could go into his office.<sup>151</sup>

114. In addition, on June 30, 2021, journalist Jorge Roldán was covering a vaccination shutdown at a health center in the community of Tierra Nueva, using his phone to record images of the site and interviews. When he tried to interview staff from the Ministry of Public Health and Social Assistance, an agent of the State reportedly took his phone away, erased all the images, and informed him that they would not be able to give him any type of information at the vaccination site about the national campaign.

## B. Rule of Law and Freedom of Expression

115. The IACHR expressed its concern regarding the entry into force of amendments to the Law on Nongovernmental Development Organizations and to the Civil Code of Guatemala. It also took note of various versions of decrees declaring states of emergency in the context of the COVID-19 pandemic as alleged attempts to restrict citizens from protesting freely. The IACHR has also noted that various clashes have taken place in the context of protests, particularly during national stoppages, during the forced entry of military retirees into the Legislative Palace on October 19, 2021, and in the context of ongoing protests by the Q’eqchi’ people in El Estor, Izabal, the latter of which culminated in the declaration of a state of siege.

116. On May 12, 2021, Guatemala’s Constitutional Court overturned a provisional injunction and revoked several appeals that had been filed to prevent the entry into force of the approved amendments to the Law on Nongovernmental Development Organizations and to the Guatemalan Civil Code. These reforms had

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<sup>147</sup> *La Hora*, August 22, 2021, [La amenaza a la libertad de prensa que ya estaba y ahora causó preocupación](#); Office of the Human Rights Ombudsman of Guatemala, August 22, 2021, [Comunicado de prensa](#).

<sup>148</sup> *La Hora*, August 23, 2021, [Diputados de la UNE accionan contra disposición presidencial sobre labor informativa](#).

<sup>149</sup> *Soy502*, August 23, 2021, [Congreso rechaza el Estado de Calamidad](#); *Deutsche Welle*, August 24, 2021, [Congreso de Guatemala rechaza estado de calamidad por COVID-19 decretado por Giammattei](#).

<sup>150</sup> *Prensa Comunitaria*, June 22, 2021, [Violentan mandato Constitucional en Centro Médico Militar](#); Office of the Human Rights Ombudsman of Guatemala, June 22, 2021, [103/21 El Procurador de los Derechos Humanos, Jordán Rodas Andrade, condena la obstrucción del libre acceso a la fuente y a la información a dos periodistas, en el caso de la primera declaración pública del “Diario Militar” en el Centro Médico Militar](#).

<sup>151</sup> Office of the Human Rights Ombudsman of Guatemala, September 2, 2021, [158/21 El Procurador de los Derechos Humanos, Jordán Rodas Andrade, deplora la actitud arbitraria, autoritaria y violatoria de la Constitución por parte del presidente del Congreso de la República, Allan Rodríguez, al impedir el acceso del periodista Enrique García del diario elPeriódico, a la rueda de prensa que trató aspectos relacionados con el Presupuesto General de Ingresos y Egresos del Estado 2022](#); *El Periódico*, September 2, 2021, [Presidente del Congreso niega acceso a periodista de “elPeriódico” a rueda de prensa](#).

been approved by Congress through Decree 4-2020 of February 11, 2020, and sanctioned by the President on February 27, 2020. With that decision, the law entered into force on June 21, 2021.<sup>152</sup>

117. The IACHR observes that the law in question establishes a series of requirements regarding the establishment, registration, regulation, operation, and monitoring of Guatemalan and international NGOs. In addition to being excessive and disproportionate, these requirements could be applied in a discretionary or arbitrary manner to the detriment of civil society organizations in the country. Moreover, the law establishes rigid, restrictive definitions of what constitutes an NGO and, using vague and ambiguous criteria, restricts access to foreign funding on grounds of “public order” by imposing sanctions, canceling permits, and initiating criminal proceedings. The IACHR also notes with concern that Decree 4-2020 would amend the Civil Code of Guatemala to give the executive branch discretionary powers related to the supervision and monitoring of NGO activities, including the power to dissolve such organizations on grounds of “public order.”<sup>153</sup>

118. In that regard, in its response to the draft report, the Guatemalan State indicated that “the content of Decree 4-2020 of the Congress of the Republic seeks to strengthen the development of Guatemala by establishing mechanisms that allow for transparency of action by the nongovernmental organizations operating in Guatemala. This in no way restricts the rights of association and freedom of expression, nor does it disproportionately hinder Guatemalans’ public participation and defense of human rights or the performance of the activities of the NGOs.”<sup>154</sup>

119. Meanwhile, in the context of protests against the President of the Republic, the leader and his Council of Ministers approved Decree 5-2021 on August 13, 2021, to take effect on August 14, which established a “state of prevention” for 15 days to combat the COVID-19 pandemic.<sup>155</sup> The IACHR also takes note with concern of the impacts the measures may have produced in terms of the exercise of citizens’ freedom of expression. Among the special measures taken, the government ordered “the holding of gatherings outdoors in those cases in which attendees do not abide by physical distancing, the use of masks, and biosecurity measures that ensure non-transmission. Demonstrations are not prohibited as long as they comply with the biosecurity measures already established by the Ministry of Public Health and Social Assistance.” The decree also established that “in the case of any gathering, group, or public demonstration that takes place without being duly authorized or that, having been authorized, is carried out without compliance with the necessary health measures, with the bearing of arms or other elements of violence, a warning shall be issued for compliance with these measures, pursuant to the Law of Public Order, and dissolution shall proceed when health and public safety so warrant.”<sup>156</sup> On July 13, 2021, the Office of the Human Rights Ombudsman filed an *amparo* against the president before the Constitutional Court.<sup>157</sup>

120. On July 28, 2021, the Constitutional Court granted provisional *amparo* to the Ombudsman’s Office to ensure the right to protest, particularly in the context in which days of citizen protests had been called for July 29, 2021, as a “national stoppage” to reject the dismissal from his post of the head of the Office of the Special Prosecutor against Impunity (FECI), Juan Francisco Sandoval, by Guatemalan Attorney General María

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<sup>152</sup> Soy502, June 15, 2021, [Ley de ONG entrará en vigencia el lunes 21 de junio](#); Republica, June 21, 2021, [Entran en vigencia reformas a la Ley de Organizaciones no Gubernamentales](#).

<sup>153</sup> IACHR, May 19, 2021, [IACHR and RFOE Reject Entry into Force of Reforms to the Nongovernmental Organizations Act in Guatemala](#).

<sup>154</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 52.

<sup>155</sup> Government of Guatemala, August 13, 2021, [Decreto Gubernativo 5-2021](#); La Hora, July 14, 2021, [Publican Estado de Prevención: Vicepresidente votó en contra](#).

<sup>156</sup> Government of Guatemala, August 13, 2021, [Decreto Gubernativo 5-2021](#).

<sup>157</sup> Office of the Human Rights Ombudsman of Guatemala, July 13, 2021. [Comunicado de prensa](#).

Consuelo Porras.<sup>158</sup> The stoppages continued into August, with demands for Porras to leave her post and the president to resign, and included roadblocks set up on key thoroughfares and arteries in Guatemala City.<sup>159</sup> On August 9, 2021, the Minister of the Economy reportedly said that, even though there is a right to freely protest, the roadblocks hurt economic activity and are illegal acts.<sup>160</sup>

121. In addition to the July 29 protests, the “national stoppage” of August 19 was reported to be particularly significant. That was when, according to publicly available information, supposed leaders of vendors from the La Terminal market threatened demonstrators with sticks, pipes, and other weapons for the purpose of breaking up the demonstrations because of the impact the protests and roadblocks were said to be having on their livelihoods.<sup>161</sup>

122. The impacts of the days of protests reportedly led the Chamber of Industry of Guatemala to file an appeal for constitutional protection (*amparo*) before the Constitutional Court, denouncing “the grave risk that the authorities being challenged will fail to properly and immediately guarantee the constitutional rights of protection of persons, guarantee of liberty, life, security, justice, peace, and integral development of the person, freedom of action, freedom of movement, and freedom of industry, commerce, and labor on the second day of August and days thereafter, as a result of the call to demonstrations and massive mobilizations that run the risk of paralyzing the country, impeding access and free movement, blocking the main access roads throughout the country.”<sup>162</sup> In a provisional *amparo* decision on August 2, 2021, the Constitutional Court determined that the authorities should take the necessary actions to maintain public order, including with the presence of elements of duly uniformed security forces, not only to guarantee the rights of protest, association, and freedom of expression of thought, but also to guarantee the rights of all people in the national territory to freedom of movement [and] freedom of industry, commerce, labor, health, life, security, integrity, and peace.<sup>163</sup>

123. On August 29, the Constitutional Court confirmed the provisional *amparo*, directing the authorities, “if there are demonstrations in streets and roads, to coordinate and implement steps designed to ensure that Guatemalans can carry out their daily activities without being affected by the right to protest, [and] if necessary, provide specific lanes on roads that could be affected, so that people can hold demonstrations without interrupting the exercise of the rights of the rest of the citizens in terms of their freedom of movement, access to commercial transportation services, and [access] by people.” The Constitutional Court also decided that to maintain order and security, security forces could break up a gathering when it causes a major disturbance, such as long traffic jams, and when the disturbance is serious and sustained.<sup>164</sup>

124. The IACHR received information concerning particularly violent clashes between the National Civil Police and demonstrators in Cuyotenango, Suchitepéquez, on September 27, 2021, stemming from a roadblock protest over the lack of electric power in the region. According to the information available, at least

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<sup>158</sup> Office of the Human Rights Ombudsman of Guatemala, July 28, 2021, [CC otorga amparo provisional a PDH y ordena a las autoridades impugnadas garantizar el derecho a manifestar](#); BBC, July 29, 2021, [Protestas en Guatemala contra el presidente Giammattei y la jefa del Ministerio Público por la destitución del fiscal anticorrupción](#).

<sup>159</sup> Deutsche Welle, July 30, 2021, [Guatemala: bloquean carreteras para exigir renuncia de Alejandro Giammattei](#); Telesurtv, August 10, 2021, [Movimiento campesino amplía protestas en Guatemala](#).

<sup>160</sup> La Hora, August 9, 2021, [Ministro de Economía reconoce derecho a manifestar, pero cuestiona bloqueos](#); Perspectiva August 9, 2021, [Malouf: “bloqueos ocasionan pérdidas económicas.”](#)

<sup>161</sup> Soy502, August 20, 2021, [Accionan contra supuestos vendedores de La Terminal](#); La Hora, August 20, 2021, [Sin Joviel y Anam, vendedores de La Terminal asumen defensa del Gobierno](#).

<sup>162</sup> Constitutional Court, August 29, 2021, [Expediente 4254-2021. Amparo Provisional](#); Prensa Libre, August 9, 2021, [Cámaras de Industria, Comercio y del Agro se pronuncian y muestran rechazo a los bloqueos en Guatemala](#).

<sup>163</sup> Constitutional Court, August 29, 2021, [Expediente 4254-2021. Amparo Provisional](#).

<sup>164</sup> Constitutional Court, August 29, 2021, [Expediente 4254-2021. Amparo Provisional](#); La Hora, August 26, 2021, [CC otorga amparo por manifestaciones: locomoción también debe garantizarse](#).

12 people were taken to the Mazatenango National Hospital for tear gas poisoning, and 10 police officers were injured.<sup>165</sup>

125. The IACHR noted that on October 19, 2021, during a protest in which military retirees demanded the approval of the Law on Financial Compensation for Military Service, demonstrators reportedly stormed the Legislative Palace, destroyed offices, and set five vehicles on fire. Police forces were reported to have fired tear gas in an attempt to contain the protesters. In this context, according to the Association of Journalists of Guatemala, at least eight journalists were said to have suffered attacks and at least four of them were injured.<sup>166</sup> According to the information available, the president of the Congress ordered a full investigation into the events.

126. Moreover, the IACHR learned that on October 22, at least four journalists from *Prensa Comunitaria* were reportedly attacked when they were reporting on the demonstrations among the Q'eqchi' population in El Estor, Izabal, and on the use of public force to disperse the protesters. The IACHR points to the case of journalist Carlos Ernesto Choc, who reported that police officers beat him and took away his equipment. Besides reportedly threatening journalists so that they would not record the events, police officers were said to have used tear gas against the demonstrators and media workers, some of whom were injured. In addition, several members of the National Civil Police were reportedly injured, including four officers with gunshot wounds. According to the government, the demonstrations were blocking access routes and undermining attempted efforts at dialogue.<sup>167</sup> As a result of these clashes, the government decreed a state of siege in Izabal on October 24, 2021, a measure ratified by Congress on October 25.<sup>168</sup>

127. Finally, in 2021, the IACHR documented that Guatemala's executive branch implemented measures to facilitate access to information and press coverage of issues of public interest. The State of Guatemala informed the Commission that on July 12, 2021, it set up a "Press Room," a digital platform located on the government's website where citizens can have easier access to information resources such as official press releases, notices of press conferences, communication campaigns, presidential speeches, a schedule of public activities, and multimedia resources, in addition to schedules of activities of ministries, secretariats, and agencies that are part of the executive branch. In addition, the State of Guatemala reported that since January 2021, the Office of the President's Secretariat of Communication has organized weekly press conferences with officials from the executive branch. Along the same lines, in its response to the draft report, the Guatemalan State reiterated that "the Secretariat of Communication of the Office of the President has a policy of transparency and open doors. By virtue of that policy, access to digital public information resources by journalists and by anyone who needs it is free and unrestricted." Likewise, the State again provided information about the implementation of the "Press Room."<sup>169</sup>

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<sup>165</sup> *El Periódico*. September 27, 2021, [Al menos veinte personas heridas tras protestas en Cuyotenango](#); *República*, September 28, 2021, [Diez policías heridos durante desalojo en bloqueo de Cuyotenango, Suchitepéquez](#).

<sup>166</sup> *EFE*, October 20, 2021, [Exmilitares guatemaltecos asaltan el Congreso para pedir compensaciones](#); *El Periódico*, October 20, 2021, [APG condenó las agresiones contra periodistas durante la manifestación de militares retirados | el Periódico de Guatemala](#).

<sup>167</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, October 29, 2021, Press Release 286, [The Office of the Special Rapporteur calls on the State of Guatemala to respect and guarantee the work of journalists in accordance with international human rights standards](#).

<sup>168</sup> Republic of Guatemala, [Decreto Gubernamental 009-2021](#); *Prensa Libre*, October 25, 2021, [Congreso de la República ratifica el estado de Sitio en El Estor, Izabal, y estará vigente 30 días](#).

<sup>169</sup> For example, according to the information provided, from July 12, 2021, to August 25, 2021, the platform had a total of 476,757 users and recorded 864,610 visits to the materials. Visits to the Press Room platform have been made from countries such as Guatemala, United States, Honduras, Mexico, El Salvador, Ireland, Belize, Brazil, Sweden, and Panama. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 52-55.

### C. Internet and Freedom of Expression

128. The IACHR has received a number of complaints about the actions of so-called “net centers” that run online harassment campaigns against different figures in Guatemala—including journalists, as reported above, in the section on Journalism and Democracy. The Office of the Special Rapporteur is also particularly concerned about the challenges to universal access to the Internet in Guatemala and learned of reports of possible irregularities in administrative procedures that seek to implement 4G technology in the country.

129. Net centers continued to be active throughout 2021, according to publicly available information. As the 2020 Annual Report explained, these refer to settings in which people are hired to spread fake news and create profiles on social networks with the aim of launching attacks and disseminating distorted information, more commonly known as “trolls for hire.”<sup>170</sup> In this context, it was documented that the hashtag “YoApoyoAMiPresidente” (“#ISupportMyPresident”), which was trending on Twitter in Guatemala in early July 2021, revealed a fictitious public approval of the president, after it was reported that most of the online traffic associated with the hashtag came from newly created accounts that had only interacted with each other and therefore had the characteristics of “bots,” or fake accounts operating jointly as net centers.<sup>171</sup>

130. Meanwhile, the digital gap is a major challenge for Guatemala. It was reported in 2021 that closing the country’s digital gap would require an investment of US\$ 1,125,241,660.<sup>172</sup> In this context, the IACHR, through its Office of the Special Rapporteur, has taken note of various controversies surrounding the evolution of 4G coverage in Guatemala, with equity participation from interested parties and the private sector. On December 30, 2020, by means of Resolution 664-2020, the Superintendence of Telecommunications attested to the purchase made by Comunicaciones Celulares (Tigo), through a private transaction, of the rights of use (*derechos de usufructo*) over approximately one third of the frequency blocks on the 700-megahertz (MHz) band, which had been held by Radio Televisión de Guatemala, S.A. and Televisiete. The acquisition of the rights of use of this band, considered ideal for 4G technology, could potentially allow Tigo to have guaranteed spectrum blocks for 4G (which is being implemented gradually in Guatemala) without participating in public auctions, and could put the company at an advantage to dominate the technology. The blocks for which Tigo acquired rights of use had previously been used or authorized for transmission by television channels. Under Resolution 664-2020, which started a process to reconfigure the spectrum for 4G, the spectrum blocks for which Tigo allegedly has rights of use were already excluded from the auction process.<sup>173</sup>

131. Even though the Superintendence of Telecommunications has not confirmed that Tigo would be able to use the bands acquired from the television spectrum for the implementation of 4G mobile technology, the company Telecomunicaciones de Guatemala, S.A. (doing business as Claro) and the Office of the Human Rights Ombudsman both filed motions with the Superintendence of Telecommunications on January 6, 2021, challenging Resolution 664-2020. In addition, according to publicly available information, the Public Prosecutor’s Office launched investigations into the acquisition of the rights of use by Tigo, under suspicion of corruption.<sup>174</sup> In this context, former superintendent of telecommunications Jose Fernando Monterrosa Mendel, who had led the agency until December 23, 2020, reportedly said that he was dismissed from his

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<sup>170</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, Annual Report 2020.

<sup>171</sup> *El Periódico*, July 4, 2021, [Un netcenter en Twitter disemina apoyo al presidente Giammattei](#); *Soy502*, July 4, 2021, [El "apoyo ficticio" a Giammattei en Twitter por las vacunas](#).

<sup>172</sup> Inter-American Development Bank, 2021, [Annual Report of the Broadband Development Index: Digital Gap in Latin America and the Caribbean](#).

<sup>173</sup> *Plaza Pública*, January 10, 2021, [La posición ambigua de Tigo: Tiene los derechos sobre la banda 4G pero no puede usarlos por el momento](#); *Plaza Pública*, May 13, 2021, [Gobierno hace malabares con banda 4G y beneficia a Tigo](#); *Prensa Libre*, January 7, 2021, [Dos recursos se cruzan en el proceso para subastar la red 4G](#).

<sup>174</sup> *Plaza Pública*, January 10, 2021, [La posición ambigua de Tigo: Tiene los derechos sobre la banda 4G pero no puede usarlos por el momento](#); *Plaza Pública*, May 13, 2021, [Gobierno hace malabares con banda 4G y beneficia a Tigo](#); *Prensa Libre*, January 7, 2021, [Dos recursos se cruzan en el proceso para subastar la red 4G](#).

position by the President of Guatemala because he opposed the resolution and would not sign it in the time frame that the government considered appropriate.<sup>175</sup>

#### D. Freedom of Expression and the Fight against Discrimination and Exclusion

132. Since 2000, the IACHR and its Office of the Special Rapporteur for Freedom of Expression have issued recommendations to the Guatemalan State related to two particular aspects: the need for a fairer, more inclusive legal framework for community broadcasting, and the decriminalization of broadcasting without a license in the country. Picking up again on its 2020 assessment, the IACHR notes that to date there has been no progress with respect to the law on community media, part of congressional bill 4087, or with respect to any other initiative to legalize community radio stations, adopt positive measures on their behalf, or grant them space on the radio spectrum. In 2021, the organizations Article 19, Centro Civitas, and Artículo 35 concluded that the criminalization and criminal prosecution of community radio stations was one of the biggest problems related to the exercise of freedom of expression in Guatemala between 2011 and 2020.<sup>176</sup>

133. The Inter-American Court is examining that issue, along with the searches and seizures, confiscation of equipment, and initiation of criminal proceedings against unlicensed community radio stations, in the *Case of the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*. From June 9 to 11, 2021, the Inter-American Court held the public hearing in that case.

134. The IACHR also learned that police officers allegedly searched the premises of the community radio station *Xyaab' Tzuultaq'a* on October 24, after a state of siege was declared in the town of El Estor. Weeks earlier, according to the information available, the radio station had reported on the demands of the Q'eqchi' Maya community, which is opposed to mining development.<sup>177</sup>

135. On the other hand, the IACHR welcomes the decision issued on September 3, 2021, by the Nebaj Criminal Court of First Instance dismissing the criminal case that had been opened against Anastasia Mejía Tiriquiz, a Maya K'ich'e journalist, for supposed crimes of "sedition" and "assault with specific aggravating circumstances."<sup>178</sup> As indicated in the 2020 Annual Report, the community journalist Anastasia Mejía was covering protests when she was arrested. She was held for some 38 days without a pretrial detention order, after which she was released to house arrest pending criminal proceedings on charges of sedition and aggravated assault.<sup>179</sup> The ruling found that there was insufficient evidence to pursue the charges against Mejía Tiriquiz for those crimes.

136. The IACHR also takes note of the campaign called #TengoMiedo (#I'mAfraid), by which Guatemalan women offered testimonials on social media about their fear of femicide and other forms of gender-based violence and shared personal experiences.<sup>180</sup> The IACHR has received information indicating that the National Civil Service Office had rescinded the work contract of María Alejandra Morales Arana, one of the

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<sup>175</sup> Soy502, January 4, 2021, [Exjefe de SIT acusa a Giammattei de presiones para firmar acuerdo](#); CentralAmericaData, January 8, 2021, [Subasta de red 4G: Batalla en Guatemala - CentralAmericaData](#).

<sup>176</sup> Article 19, Centro Civitas, Artículo 35, April 19, 2021, [Guatemala: Estado contra la Prensa y la Libertad de Expresión](#).

<sup>177</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, October 29, 2021, Press Release 286, [The Office of the Special Rapporteur calls on the State of Guatemala to respect and guarantee the work of journalists in accordance with international human rights standards](#).

<sup>178</sup> Committee to Protect Journalists, September 10, 2021, [CPI welcomes decision to drop criminal charges against Guatemalan journalist Anastasia Mejía](#); International Federation for Human Rights, September 23, 2021, [Guatemala: Fin de la criminalización de Anastasia Mejía Tiriquiz](#).

<sup>179</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, [Annual Report 2020](#), OEA/Ser.L/V/II Doc. 28, March 30, 2021, par. 745.

<sup>180</sup> *Prensa Libre*, February 15, ["Tengo miedo", la campaña contra la violencia hacia las mujeres y que el MP critica](#); *El País*, April 28, 2021, [#TengoMiedo, el grito contra los asesinatos y desapariciones de mujeres y niñas en Guatemala](#); *La Hora*, February 15, 2021, [Campaña "#TengoMiedo" busca hacer conciencia sobre la violencia contra las niñas y mujeres en GT](#).

organizers of the #TengoMiedo movement. The former adviser claimed that the reason for the rescindment was her role in the campaign and filed an *amparo* motion with the Constitutional Court. The Human Rights Ombudsman's Office asked the National Civil Service Office to conduct an objective analysis of the decision not to renew her contract.<sup>181</sup>

## V. ECONOMIC, SOCIAL, CULTURAL, AND ENVIRONMENTAL RIGHTS

137. With respect to the situation of economic, social, cultural, and environmental rights in Guatemala, the Commission and its Special Rapporteurship for this area (REDESCA, for its Spanish acronym) once again express their concern over the country's high rates of poverty and inequality, which particularly affect indigenous peoples and other groups that are especially vulnerable. As OXFAM International states in its report *Entre el suelo y el cielo* [Between Earth and Sky], the structural nature of inequality in Guatemala is reflected in the lack of access to and enjoyment of human rights in general and economic, social, cultural, and environmental rights in particular, such as the right to health, to nutrition, to education, or to employment.<sup>182</sup>

138. In terms of the right to health, the IACHR and REDESCA note that Guatemala's health-care system has been facing structural deficiencies and challenges for years, leaving broad segments of the population unable to access or enjoy their right to health consistent with relevant inter-American and universal obligations.<sup>183</sup> The pandemic has markedly aggravated the situation. It is a matter of concern that, according to the Human Rights Ombudsman, there has been a lack of diligent management by high-level authorities in the Ministry of Public Health and Social Assistance (MSPAS) in the containment of COVID-19 and the implementation of the National Vaccination Plan.<sup>184</sup>

139. The Commission and REDESCA note with concern that on June 22, 2021, the Office of the Human Rights Ombudsman declared the administrative conduct harmful to the interests of Guatemalans and, consequently, a violation of the human right to integral health of the people who should be vaccinated under the State of Guatemala's National Vaccination Plan, through the MSPAS. The Ombudsman's Office also issued a series of recommendations to the MSPAS to ensure the availability of COVID-19 vaccines and improve the vaccination process to provide adequate care to the population.<sup>185</sup>

140. In addition, on July 2, 2021, the Office of the Comptroller General of Guatemala filed a criminal complaint against the Ministry of Health for the crimes of abuse of authority, failure to comply with duties, and embezzlement related to the purchase of COVID-19 vaccines.<sup>186</sup> According to the Comptroller General's Office, the complaint was filed because guarantees had not been put in place to ensure that the contract would have its intended effects, the necessary information had not been disseminated, and the signing of the contract was outside the jurisdiction of the Ministry of Health.<sup>187</sup>

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<sup>181</sup> Office of the Human Rights Ombudsman of Guatemala, March 24, 2021, [39/21 El Procurador de los Derechos Humanos, Jordán Rodas Andrade, recomienda a la ONSEC analizar con objetividad y considerando el marco normativo, la no renovación del contrato laboral de María Alejandra Morales Arana, sin más causa aparente que haber promovido la impactante campaña ciudadana #TengoMiedo, en relación a la violencia contra la mujer.](#)

<sup>182</sup> OXFAM International, [Entre el suelo y el cielo. Radiografía multidimensional de la desigualdad en Guatemala](#), March 2019.

<sup>183</sup> IACHR, [Situation of Human Rights in Guatemala](#), 2017, OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, paras. 39 and 49; REDESCA, Annual Report 2021, Doc. OEA/SERL/V/II. Doc. 28, March 30, 2021, paras. 605 to 629.

<sup>184</sup> Office of the Human Rights Ombudsman of Guatemala, *Información sobre irregularidades en el proceso de vacunación contra el COVID-19 en Guatemala*, Document No. DP-SMIP-46-23021-mvlg, August 3, 2021.

<sup>185</sup> Office of the Human Rights Ombudsman of Guatemala, *Información sobre irregularidades en el proceso de vacunación contra el COVID-19 en Guatemala*, Document No. DP-SMIP-46-23021-mvlg, August 3, 2021; Office of the Human Rights Ombudsman of Guatemala, Resolution case file REF.EXP.2610-2021 ACUM.REF.EXP.2966-2021, Guatemala, June 22, 2021.

<sup>186</sup> Comptroller General of Guatemala, [Twitter feed](#), July 2, 2021.

<sup>187</sup> *Prensa Libre*, [Contraloría General de Cuentas denuncia a la ministra de salud, Amelia Flores](#), July 2, 2021.

141. For their part, the Commission and REDESCA observe that in addition to the health crisis provoked by the pandemic, there are other matters that have had a critical impact on the State's capacity and response in terms of ensuring the right to health without discrimination. In this regard, the Commission and REDESCA take note of situations such as the lack of essential medications and the lack of sufficient equipment and other emergency supplies that are reportedly contributing to the high mortality rate for people suffering from diseases.<sup>188</sup>

142. In its response to the draft of this report, the Guatemalan State informed the Commission about several actions taken by the Secretariat for Planning and Programming of the Office of the President (SEGEPLAN), the Ministry of Social Development, and other entities to address the pandemic during fiscal year 2020, through the Family Voucher program (Bono Familia) and the Temporary Food Support Program, among others.<sup>189</sup> The State likewise provided general information about public policies to guarantee the economic, social, and cultural rights of the Guatemalan people, including the right to education and health.<sup>190</sup>

143. With regard to the process of vaccination against COVID-19, the State indicated that it had received 724,604 doses of the vaccine as of September 10, 2021. It also informed the IACHR that it had administered a total of 566,183 doses; of those, 362,994 were first doses and 203,189 were second doses of the currently recommended vaccination regimens. Of the doses administered, "52.74% were administered to males and 47.26% to females. Likewise, the vaccines have been administered as the phases and sub-phases of the National Plan for Vaccination against COVID-19 have been launched." The State further noted that since the beginning of the pandemic, the Guatemalan Social Security Institute has carried out different campaigns to counter disinformation about vaccines and ensure access to appropriate information.<sup>191</sup>

144. Additionally, the Commission and REDESCA have received information regarding certain factors said to be noticeably limiting the effective enjoyment of the rights of health-care workers. According to publicly available information, the saturation of hospitals as a result of COVID-19 cases, along with low salaries and the lack of better labor protections, have led health professionals to leave positions in public service and move to private hospitals, leading to an even bigger drop in the quality standards of medical service in public hospitals.<sup>192</sup> Mindful of that situation, the Commission and REDESCA call on the country's authorities to improve the labor conditions of health-care workers in hospitals. In that regard, they call to mind that as Resolution 4/20 of the IACHR indicates, States have the obligation, especially in the context of the pandemic, to fully guarantee the labor rights of health-care workers and other caregivers.

145. The Commission and REDESCA also draw attention to the consequences that the climate emergency could bring to the country, and take note of the statement issued on August 18, 2021, by Foro

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<sup>188</sup> *Prensa Libre*, [Crisis hospitalaria: Así viven la escalada de casos por covid-19 en los diferentes centros asistenciales de Guatemala](#), September 12, 2019.

<sup>189</sup> The State also reported on the following programs: Distribution of Food Rations in response to COVID-19; Grants, Services, and Infrastructure for Social Development; Temporary Assistance Voucher; interventions to address the COVID-19 emergency; Social Basket (Bolsa Social). Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 56-65.

<sup>190</sup> These include: Education Voucher; VIDA Program; Supplemental Nutrition; Social Scholarship for Secondary Education; First Job Social Scholarship. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 66-100.

<sup>191</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 100-105.

<sup>192</sup> *El Periódico*, [Médicos renuncian al sistema de Salud](#), January 19, 2021.

Guatemala, “¡Unida por la vida!” [United for Life!], recognizing Guatemala’s vulnerability to disasters.<sup>193</sup> In addition, according to the Germanwatch Global Climate Risk Index, Guatemala was among the 20 countries at highest risk for climate change from 2000 to 2019.<sup>194</sup> Thus, from a human rights standpoint, any measures that Guatemala can adopt to protect its population from the effects of climate change are of maximum urgency.

146. The Commission and REDESCA are likewise concerned about the availability of water in the country. According to civil society sources, of the total amount of water that can be consumed, only 2% is used in homes, while 39% is used in industry, 27% in agriculture, and 26% for hydroelectric plants. Although there are 28 legislative bills concerning water, no specific law is yet in place. The IACHR and the Special Rapporteurship believe it is urgent for Guatemala to have a regulatory and policy framework that focuses on the human right to water. In this regard, they are mindful of the call to implement a watershed approach to water management, considering the existence of an intersection between water recharging areas and forests in Maya, Garifuna, and Xinca areas where there are mining and hydroelectric interests.<sup>195</sup>

147. As a telling example, the Commission and the Special Rapporteurship took note of the heavy rains that fell on June 15, 2021, in various parts of Guatemala, especially in the department of Sololá. Five people reportedly died and more than 200,000 were affected.<sup>196</sup> The Red Cross reported that it had worked to set up temporary lodging for around 10,000 residents from the village of Guineales and surrounding areas, in Santa Catarina Ixtahuacán.<sup>197</sup>

148. Impacts have also been reported from large-scale climate events, such as in areas near the Pantaleón River, where heavy rains and the accumulation of sediment in the river bed changed the flow of the river and produced significant flooding in the region, causing impacts to communities, roads and bridges, crops, cattle, shrimp fishing, and housing, as well as putting mangrove areas at risk and threatening livelihoods connected to the estuary, such as fishing and tourism.<sup>198</sup>

149. The Commission and the Special Rapporteurship express their concern about this situation, given that the effects of climate change and environmental degradation are particularly severe for those populations that are in an especially vulnerable situation or have historically faced discrimination, and whose contribution to greenhouse gas emissions is very marginal; these include women, children and adolescents, indigenous peoples, people of African descent, and people living in rural areas or living poverty.<sup>199</sup> The Commission and the Special Rapporteurship are therefore keeping a close watch on the recurrence of rains and other climate events recorded by the State’s National Coordinator for Reduction of Natural Disasters (CONRED). According to CONRED, during the 2021 rainy season, which goes from May to October, the authorities had tallied, as of June, five deaths, two injuries, 266,000 people affected, 1,170 left homeless, 4,430 evacuated, 178 in shelters, and 6,363 people attended to. In addition, by the agency’s count, 34 houses had

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<sup>193</sup> Foro Guatemala Vulnerable, *Unidad por la vida*, Statement of the National Virtual Gathering of August 18-19, 2021.

<sup>194</sup> Germanwatch, [Briefing Paper. Global Climate Risk Index 2021](#), January 2021.

<sup>195</sup> Foro Guatemala Vulnerable, *Unidad por la vida*, Statement of the National Virtual Gathering of August 18-19, 2021.

<sup>196</sup> IACHR, [Statement on Twitter](#), June 15, 2021.

<sup>197</sup> Soy502, [Unas 10 mil personas podrían ser evacuadas tras inundaciones en Sololá](#), June 13, 2021.

<sup>198</sup> República, [Río Pantaleón cambia de cauce y afecta comunidades, cultivos y carreteras](#), September 12, 2021.

<sup>199</sup> IACHR and REDESCA, [In the framework of COP 26 of the Framework Convention on Climate Change, the IACHR and REDESCA call on OAS Member States to put the protection of human rights at the center of their climate policies and actions](#), November 4, 2021.

sustained severe damage, 768 had moderate damage, and 368 had light damage, and at least 34 roads were destroyed.<sup>200</sup>

150. At the same time, the Commission and the Special Rapporteurship take note of a report issued by the International Organization for Migration (IOM) which said that in one in ten households in the departments of Alta Verapaz and Huehuetenango, some member of the immediate family intends to migrate in the next 12 months to seek better living conditions or because of natural disasters caused by climate change.<sup>201</sup> The biggest losses recorded in this context were from the destruction of private homes, with damages estimated at 2,444,000,000 quetzals.<sup>202</sup> The IOM indicated that 1,084 households were displaced by Hurricanes Eta and Iota in seven communities in the municipalities of San Cristóbal Verapaz, Chiantla, and Cuilco. However, it notes that there are more households affected by the storm that do not show up in the report.<sup>203</sup>

151. In addition, the Commission and the Special Rapporteurship are aware that in June, more than 80 civil society organizations and around 17 individuals requested urgent ratification of the Escazú Agreement, which was signed for its adoption in Guatemala on March 4, 2018, and which the Congress reportedly does not intend to approve. The statement stressed the importance of the agreement as a legal instrument for environmental protection, which in turn would strengthen the State's actions vis-à-vis environmental problems.<sup>204</sup> The statement also requested gradual compliance with the adoption of supplementary legislation to introduce the standards established in the Escazú Agreement regarding access to information, access to participation, and access to justice in environmental matters, as well as measures of prevention and protection for environmental defenders.<sup>205</sup>

152. The IACHR and REDESCA note that Guatemala has yet to join the Escazú Agreement even though it has been a signatory since 2018. Taking into consideration what was indicated above, the Commission and the Special Rapporteurship call to mind that this instrument also represents a significant legal step forward in terms of environmental degradation and climate change, in a context of growing concern for the planet and for those who defend the environment. This is because the agreement reinforces principles and obligations established in inter-American standards and jurisprudence on the right to a healthy environment, highlighting the need for the so-called "access rights" to be guaranteed in order to ensure the exercise of this right, such as the effective protection of the right for people to defend the environment.<sup>206</sup>

153. In its response to the draft report, the State of Guatemala recognized the importance of addressing climate change and its effects. It indicated that "conservation, protection, and restoration are vital to mitigate and improve adaptive forest management through the use of agroforestry systems that help to ensure food security." These lines of action, the State said, "help to recognize the effects of climate change." Accordingly, the State informed the IACHR about a series of actions taken with regard to the establishment,

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<sup>200</sup> Yahoo! Noticias, [La temporada de lluvias deja cinco muertos y 266.000 afectados en Guatemala](#), June 14, 2021.

<sup>201</sup> IOM, [Encuesta de medios de vida a hogares desplazados por tormentas en Alta Verapaz y Huehuetenango: DTM Tormentas Guatemala](#), 2021.

<sup>202</sup> CRN Noticias, [Los huracanes Eta e Iota aún generan desplazados en Guatemala](#), May 5, 2021.

<sup>203</sup> IOM, [Encuesta de medios de vida a hogares desplazados por tormentas en Alta Verapaz y Huehuetenango: DTM Tormentas Guatemala](#), 2021.

<sup>204</sup> La Hora, [Más de 80 organizaciones piden ratificar Acuerdo de Escazú](#), June 30, 2021.

<sup>205</sup> La Hora, [Más de 80 organizaciones piden ratificar Acuerdo de Escazú](#), June 30, 2021.

<sup>206</sup> IACHR, [On Earth Day, IACHR and REDESCA welcome the entry into force of the Escazú Agreement and call on the States of the region to strengthen their environmental public policies in the face of the climate emergency](#), April 22, 2021.

recovery, restoration, management, production, and protection of forests in Guatemala.<sup>207</sup> The State also pointed to the legal framework adopted in recent years on the issue of climate change, all of which it considers progress in Guatemala's compliance with its international commitments regarding the United Nations Framework Convention on Climate Change.<sup>208</sup>

154. With regard to business and human rights, the Commission and REDESCA point to their statement of November 4, 2021, in which they condemn the excessive use of force and repression directed against Maya Q'eqchi' indigenous peoples, journalists, and media outlets. Specifically, in the context of the mining activities at the "Phoenix" project, the Special Rapporteurship notes that the mining exploitation being carried out by the Compañía Guatemalteca de Níquel (CGN), a subsidiary of the Russian company Solway Investment Group, could produce serious pollution in Izabal Lake, destroy the region's flora and fauna, and endanger the health and lives of the people in the area, which is why these activities have been rejected by the local population and Maya Q'eqchi' communities.<sup>209</sup>

155. Along these lines, the IACHR and REDESCA remind the State that it has the duty to heed the concerns of the people, communities, and populations affected, as part of its obligation to prevent violations and supervise the effective enjoyment of human rights in the context of business activities. Such obligations are reinforced when, as is the case with those who live in the municipality of El Estor, the protection of territories is essential for the enjoyment of other rights whose satisfaction is critical for people's subsistence, such as the right to food, the right to water, or the right to a healthy environment.<sup>210</sup>

156. Consequently, the Commission and REDESCA call on the State to urgently implement inter-American standards on business and human rights with regard to any measures that may be adopted to address the social conflict related to the Phoenix Mine. This includes the effective exercise of the right to free and informed prior consultation of indigenous peoples and the population's effective participation regarding projects and business activities that may affect them.<sup>211</sup>

## VI. MEMORY, TRUTH, AND JUSTICE

157. In the area of memory, truth, and justice, civil society organizations have pointed to a serious weakening of the institutional framework responsible for fulfilling the provisions of the Peace Accords, ever since Governmental Decisions 98-2020, 99-2020, and 100-2020 did away with the Secretariat for Peace in the Office of the President of the Republic (SEPAZ) and the Presidential Coordinating Commission for Executive Policy on Human Rights (COPREDEH) and established the Presidential Commission for Peace and Human Rights (COPADEH).<sup>212</sup>

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<sup>207</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 107-114.

<sup>208</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 112-126.

<sup>209</sup> IACHR, [La CIDH condena el uso excesivo de la fuerza y la represión en contra de pueblos indígenas mayas q'eqchi', periodistas y medios de comunicación en El Estor, Guatemala](#), November 4, 2021.

<sup>210</sup> IACHR, [La CIDH condena el uso excesivo de la fuerza y la represión en contra de pueblos indígenas mayas q'eqchi', periodistas y medios de comunicación en El Estor, Guatemala](#), November 4, 2021.

<sup>211</sup> IACHR, [La CIDH condena el uso excesivo de la fuerza y la represión en contra de pueblos indígenas mayas q'eqchi', periodistas y medios de comunicación en El Estor, Guatemala](#), November 4, 2021.

<sup>212</sup> Prensa Comunitaria, [Víctimas del conflicto armado interno denuncian a Guatemala ante la ONU](#), July 30, 2021; *La Cuerda*, [Las mujeres que llevan 22 años buscando justicia en nombre de sus familias](#), September 6, 2021; Prensa Comunitaria, [Piden declarar inconstitucional Acuerdo que afecta resarcimiento a víctimas de Chixoy](#), May 18, 2021; Prensa Libre, [Así funciona la Comisión Presidencial por la Paz y los Derechos Humanos](#), April 29, 2021; UDG TV, [Denuncian retroceso en acuerdos de paz al recordar masacre en Guatemala](#), January 31, 2021.

158. In that regard, the IACHR observes that the budget allocated to COPADEH represents 27% of the total budget previously allocated to COPREDEH, SEPAZ, and the Secretariat of Agrarian Affairs, which was also abolished last year.<sup>213</sup> In addition, according to public information, the National Reparations Program has yet to be executed, which is of concern to the IACHR, particularly considering that the reparations program is set to end on December 31, 2023, if it is not extended.<sup>214</sup>

159. On that point, the State informed the IACHR that, pursuant to Governmental Decision 98-2020, the Ministry of Social Development issued Ministerial Decision DS-27-2021 on March 2, 2021, establishing that the executing unit for the Social Development Fund (FODES), part of the Ministry of Social Development, will be in charge of continuing to implement the National Reparations Program. As a result, in 2021, FODES “received the files, assets, rights, and obligations of the National Reparations Program, as the agency responsible for coordinating the administrative procedures to issue appropriate policies and rules for the proper admission and execution of the Reparations Program.”<sup>215</sup>

160. Meanwhile, the IACHR welcomed the injunction handed down on February 9 by the Constitutional Court of the Republic of Guatemala, which conclusively suspended the proceeding to create, sanction, and promulgate the law corresponding to bill No. 5377, amending Decree 145-96, the Law on National Reconciliation. The Constitutional Court determined that the legislative authority must refrain from continuing with the respective legislation and must proceed to archive the bill.<sup>216</sup>

161. In that regard, the Commission notes that Congress archived the bill in April 2021.<sup>217</sup> However, on June 7 of this year, a group of congressional representatives presented a draft “Consolidation of Peace and Reconciliation Law,” bill No. 5290, which establishes the extinction of responsibility for the crimes committed during the internal armed conflict in the country from November 20, 1960, to December 26, 1996.<sup>218</sup> The Commission reminds the State of Guatemala that laws intended to hamper the investigation and punishment of serious human rights violations are incompatible with inter-American human rights standards, and urges the State of Guatemala to definitively archive bill No. 5290.

162. On another matter, the Commission points to the progress made in the *Diario Militar* case, which is investigating crimes such as forced disappearance, torture, sexual violence, and extrajudicial execution by at least 183 members of the security forces between 1983 and 1985.<sup>219</sup> The IACHR notes that the Office of the Prosecutor for Human Rights of Guatemala instituted legal proceedings against three of the twelve retired members of the military and police who are reportedly implicated in the case. The IACHR also learned that a person was extradited from the United States to face trial in Guatemala for murder and crimes against humanity in connection with the Dos Erres massacre.<sup>220</sup>

<sup>213</sup> Government of Guatemala, [COPADEH cumple un año de existir institucionalmente y 7 meses en funciones: fomentando una cultura de paz y respeto a los derechos humanos](#), July 30, 2021.

<sup>214</sup> *El Periódico*, [Gobierno paralizó resarcimiento a víctimas del conflicto armado](#), June 19, 2021; *Prensa Comunitaria*, [Víctimas del conflicto armado interno denuncian a Guatemala ante la ONU](#), July 30, 2021.

<sup>215</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 132-133.

<sup>216</sup> Constitutional Court, Combined case files 682-2019 and 1214-2019, February 9, 2021.

<sup>217</sup> *La Hora GT*, [Tras sentencia de la CC, Congreso archiva Ley de Reconciliación Nacional](#), April 20, 2021.

<sup>218</sup> Congress of the Republic, Legislative Directorate, Control of Initiatives, Registration No. 5290, 2021; *Prensa Comunitaria*, [Víctimas del Conflicto Armado Interno rechazan proyecto de ley que busca amnistía para militares](#), June 22, 2021.

<sup>219</sup> CEJIL, [Demandamos a Guatemala justicia y verdad en cumplimiento de la sentencia de la Corte IDH en el caso Diario Militar](#), May 28, 2021; DW, [Guatemala: inician imputación a acusados en caso "Diario Militar"](#), June 3, 2021.

<sup>220</sup> DW, [Guatemala: arrestan a José Ortiz por masacre en "Dos Erres"](#), May 9, 2021; U.S. Immigration and Customs Enforcement, [ICE removes Guatemalan citizen for alleged human rights violations in connection with 1982 Dos Erres massacre](#), May 12, 2021; *La Hora GT*, [Caso Dos Erres: Juzgado envía a juicio a José Ortiz por crímenes cometidos en 1982](#), October 14, 2021.

## VII. SPECIFIC SITUATION REGARDING GROUPS OF SPECIAL CONCERN

### A. Human Rights Defenders

163. During 2021, the Inter-American Commission observed with concern that the situation of human rights defenders in Guatemala has deteriorated. Specifically, it noted that the acts of violence and criminal prosecution of people who defend human rights in the country continued in 2021. At the same time, it observed a closing of democratic spaces, which makes it more difficult to exercise the right to defend human rights in Guatemala.

164. The Commission observed that 2021 was especially dangerous for the work of defending human rights in the country. According to information presented by civil society organizations, at least 755 attacks on individuals, organizations, and communities that defend human rights had been recorded as of October 2021, including instances of violence, intimidation, and threats, among others. These figures would seem to confirm *O de plano algo más claro como 2x1* durante enero y febrerowith respect to the numbers recorded for all of 2020, when there were a total of 1,055 attacks. According to the information available, 45% of these attacks were directed against men, 42% against women, and 14% against organizations, institutions, or communities that defend human rights.<sup>221</sup>

165. The Commission is concerned that members of the Comité de Desarrollo Campesino (CODECA) continued to be killed in 2021. The Commission had previously expressed its concern regarding the murder of human rights defenders active in the defense of the land and territory of indigenous communities who had also belonged to CODECA.<sup>222</sup> In that regard, the Commission learned that Ramón Jiménez López, a community leader and member of CODECA, was murdered on September 20, 2021, in the community of Volcán La Paz, Santa María Xalapán, Jalapa.<sup>223</sup> The Commission also learned of the murder of Emilio Aguilar Jiménez, a land defender and member of CODECA, which occurred on April 11, 2021, based on the information available, when unidentified individuals broke into his home in the community of Saxico, in the municipality of Santa María Xalapán, department of Jalapa.<sup>224</sup> Likewise, the Commission learned of the attempted murder of Julio David González Arango, a defender of the rights of the Xinka people, which took place on January 16, 2021, when a gunman fired shots into his home.<sup>225</sup>

166. The IACHR notes that murders and other acts of violence directed against human rights defenders have a multiplier effect which goes beyond the person of the defender. When an assault is committed in reprisal for a human rights defender's actions, it produces a chilling effect on those connected to the defense and promotion of human rights.<sup>226</sup> For indigenous communities especially, the loss of a leader or defender has

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<sup>221</sup> UDEFEGUA, [Retroceso de la democracia en Guatemala UDEFEGUA presenta situación sobre agresiones a personas, organizaciones y comunidades defensoras de DD. HH.](#), September 3, 2021.

<sup>222</sup> IACHR, Press Release No. 215/20, [The IACHR Condemns Murders and Attacks against Defenders in Guatemala](#), September 11, 2020.

<sup>223</sup> Office of the Human Rights Ombudsman, Press Release No. 169/21, [El Procurador de los Derechos Humanos. Jordán Rodas Andrade, condena el asesinato del defensor de derechos humanos y líder comunitario Ramón Jiménez López, y recuerda que en los tres últimos años han sido ejecutados más de 20 dirigentes del Codeca](#), September 21, 2021; *La Hora*, [Reportan asesinato de integrante de Codeca en Jalapa; dos fiscalías investigan el hecho](#), September 21, 2021.

<sup>224</sup> FIDH, [Guatemala: Violencia sistemática contra quienes defienden el territorio](#), April 15, 2021.

<sup>225</sup> Amnesty International, [Guatemala: Indigenous Leader Shot: Julio David González Arango](#), January 25, 2021; Business & Human Rights Resource Centre, Guatemala: [Almost 200 international organisations jointly denounce the murder attack against Xinka leader opposing Escobal mine](#), January 21, 2021.

<sup>226</sup> IACHR, [Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser. L/V/II.124 Doc. 5 rev.1, March 7, 2006, par. 43.

a serious impact on their cultural integrity and breaks down the sense of community that binds them together in their struggle to defend their human rights.<sup>227</sup>

167. The IACHR calls on the State to adopt all measures necessary to guarantee the right to life, integrity, and security of human rights defenders, especially indigenous leaders and those who are active in the defense of land and territory, who have been particularly affected by the situation of violence.

168. Meanwhile, the Commission observes that in 2021, the criminalization of human rights defenders continued to be one of the means used to obstruct their work of defending human rights. In that respect, the Commission learned that on September 30, 2021, Juan Agustín, Bernardino Pérez, María Santos Méndez de Ramos, Rosa Margarita Pérez Canan, and Gerónimo Ramos Santoz Méndez, indigenous and land defenders, were arrested for the alleged crime of “illegal detentions.” The five defenders were reportedly taken by the National Civil Police (PNC) to the Chiquimula Criminal Court of First Instance, where criminal proceedings were opened against them and they were ordered under house arrest while the investigations are ongoing. Organizations indicate that they are being subjected to these proceedings in reprisal for their peaceful resistance to mining activities reportedly taking place in their community.<sup>228</sup>

169. Likewise, the Commission continued to follow the case of the human rights defender Bernardo Caal Xol, who reportedly remains deprived of his liberty. The Maya Q’eqchi’ community leader was convicted in November 2018 for crimes of aggravated robbery and illegal detentions, and his case is under appeal. A group of United Nations experts expressed their concerns about the long periods of detention and the repeated suspension of hearings, which they said were prolonging the trial of the indigenous defender.<sup>229</sup>

170. In its various reports, the Commission has recommended that the State of Guatemala make sure that authorities or third parties do not manipulate the punitive power of the State and its bodies of justice in order to harass human rights defenders and justice operators. It also recommends that the State ensure that human rights defenders are not subjected to criminal proceedings for unnecessarily summary or protracted periods of time, and that it take measures to prevent the use of criminal charges against human rights defenders aimed at keeping them from carrying out their work.<sup>230</sup>

171. The Commission reminds the States that the criminalization of human rights defenders is a complex obstacle that affects the free exercise of the defense of human rights in a variety of ways.<sup>231</sup> Due to the nature of the violations involved in bringing baseless criminal actions against human rights defenders, a State that engages in this practice may bear international responsibility for violating various rights protected by inter-American instruments, by failing to meet its obligation to respect and guarantee the rights involved as a result of the criminalization.<sup>232</sup>

172. In addition, the Commission rejected the entry into force of Decree 4-2020 amending the Law on Nongovernmental Development Organizations (the NGO Law) and the Civil Code of Guatemala.<sup>233</sup> According to information the Commission received, on May 12, 2021, Guatemala’s Constitutional Court overturned a provisional injunction and revoked several appeals that had been filed to prevent the law’s entry into force.

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<sup>227</sup> IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II. Doc. 66, December 31, 2011, par. 298.

<sup>228</sup> FIDH, [Guatemala: Criminalización de cinco personas defensoras Maya Ch’orti’](#), October 13, 2021.

<sup>229</sup> United Nations OHCHR, [Guatemala: Stop treating indigenous human rights defenders like criminals – UN experts](#), July 27, 2021.

<sup>230</sup> IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, paras. 39-41.

<sup>231</sup> IACHR, [Criminalization of the Work of Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, par. 16.

<sup>232</sup> IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), par. 80.

<sup>233</sup> IACHR, Press Release No. 128/21, [IACHR and RFOE Reject Entry into Force of Reforms to the Nongovernmental Organizations Act in Guatemala](#), May 19, 2021.

These reforms had been approved by Congress through Decree 4-2020 of February 11, 2020, and sanctioned by the President on February 27, 2020.<sup>234</sup> The Commission has learned that the amended NGO Law entered into force on June 21, 2021, and its regulations were published on August 2, 2021.<sup>235</sup>

173. On this matter, the Commission and its Office of the Special Rapporteur for Freedom of Expression expressed their concern about these amendments, as they establish a series of requirements applicable to the establishment, registration, regulation, operation, and monitoring of Guatemalan and international NGOs. In addition to being excessive and disproportionate, these requirements could be applied in a discretionary or arbitrary manner to the detriment of civil society organizations in the country. Moreover, the Commission and the Office of the Special Rapporteur are concerned that the law establishes rigid, restrictive definitions of what constitutes an NGO and, using vague and ambiguous criteria, restricts access to foreign funding on grounds of “public order” by imposing sanctions, canceling permits, and initiating criminal proceedings. The IACHR also notes with concern that Decree 4-2020 would amend the Civil Code of Guatemala to give the executive branch discretionary powers related to the supervision and monitoring of NGO activities, including the power to dissolve such organizations on grounds of “public order.”<sup>236</sup>

174. The Commission reminds the State that for individuals to fully and freely enjoy the right to freedom of expression, States have the duty to create the legal and real conditions through which human rights defenders, media outlets, and journalists can go about their work freely. In this regard, the IACHR has noted that although the obligation to guarantee the right of association does not prevent a State from regulating the establishment and monitoring of organizations within its jurisdiction, the State must ensure that legal requirements do not prevent, delay, or limit the creation or operation of these organizations.<sup>237</sup>

175. Finally, the Commission takes note that no progress was made in 2021 toward the preparation of a comprehensive public policy for the protection of human rights defenders.<sup>238</sup> In that regard, civil society organizations expressed to the Commission the urgency of ensuring the continuity of that process.<sup>239</sup> The Commission reiterates to the State that it is necessary to approve a public policy for the protection of human rights defenders, one that includes the implementation of a comprehensive protection program and a risk assessment model to make it possible to determine each defender’s need for protection, incorporating differential and intersectional approaches.<sup>240</sup>

176. For its part, in its response to the draft of this report, the State of Guatemala said that it is moving to strengthen the COPADEH teams that will be responsible for tracking the processes to formulate public policy proposals on human rights defenders and journalists.<sup>241</sup> It deems that the process of developing

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<sup>234</sup> DW, [Corte de Guatemala da luz verde a cuestionada ley sobre ONG](#), May 13, 2021; *San Diego Tribune*, [Guatemala: Corte da via libre a ley que controla a las ONG](#), May 13, 2021.

<sup>235</sup> *Prensa Libre*, **Error! Hyperlink reference not valid.**, June 22, 2021; *Soy502*, [Gobierno publica reglamento de Ley de ONG en Guatemala](#), August 2, 2021.

<sup>236</sup> IACHR, Press Release No. 128/21, [IACHR and RFOE Reject Entry into Force of Reforms to the Nongovernmental Organizations Act in Guatemala](#), May 19, 2021.

<sup>237</sup> IACHR, [Second Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser.L/V/II. Doc. 66, December 31, 2011, paras. 157 and 163.

<sup>238</sup> Office of the Human Rights Ombudsman, [Informe de supervisión a Comisión Presidencial por la Paz y los Derechos Humanos. Secretaría de Planificación y Programación de la Presidencia y Ministerio de Gobernación sobre la Política Pública para la Protección de Defensoras y Defensores de Derechos](#), June 2021.

<sup>239</sup> IACHR, 181<sup>st</sup> period of sessions, “[Human Rights Situation of Justice Operators and Judicial Independence in Guatemala](#),” public hearing held on October 28, 2021.

<sup>240</sup> IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, Recommendation 36.

<sup>241</sup> According to the State, on August 17, 2021, COPADEH participated in the virtual course on protection of human rights defenders convened by the Inter-American Commission on Human Rights (IACHR) for human rights defenders and officials from the States of Guatemala, El Salvador, and Honduras. The purpose of the workshop was to familiarize participants with inter-American standards

and approving public policy involving different State institutions should be carried out through a dialogue with the various institutions involved, one that is broad, open, and inclusive, held at the national level with different actors. It also reported that in the context of following up with the commitments that the State had made related to protection of journalists, COPADEH convened a working meeting on June 18, 2021, in order to review institutional documents and actions related to the creation of the Journalist Protection Program. At that meeting, a roadmap was presented to develop the proposed program.<sup>242</sup>

## B. Persons Deprived of Liberty

177. Another structural problem that affects human rights in Guatemala is the situation of persons deprived of liberty. Specifically, the IACHR observes that there continue to be high levels of overcrowding in prisons (with an excess population equivalent to about 256% of official capacity), excessive use of pretrial detention (over 48%), and challenges related to the application of alternative measures. In addition, the Commission has been informed about obstacles related to information systems, remote hearings, and the need to strengthen the public defender system.

178. Official information reported by World Prison Brief shows that Guatemala has the second highest prison occupancy level among the countries of the region and the third highest in the world.<sup>243</sup> According to government data, as of September 13, 2021, there were 24,942 people in the prison population.<sup>244</sup> This would represent an occupancy level of 356.47%, with an excess population of over 256%, considering that as of October 7, 2020, the system had an official capacity to hold 6,997 prisoners.<sup>245</sup> On this point, the IACHR calls to mind that under international human rights law, the overcrowding of persons deprived of liberty in itself could constitute a form of cruel, inhuman, or degrading treatment, violating the right to personal integrity and other human rights.<sup>246</sup> Therefore, when the collapse of a prison system or of a particular detention center makes it materially impossible to provide inmates with dignified living conditions, the State can no longer continue to place individuals in those facilities, because in so doing, it is deliberately subjecting them to a situation that violates their fundamental rights.<sup>247</sup>

179. In this situation, the excessive use of pretrial detention is one of the main reasons behind the high levels of overcrowding. According to official information, as of September 13, 2021, there were 24,942 people deprived of liberty in Guatemala, 12,077 of whom were in pretrial detention (1,356 women and 10,721 men).<sup>248</sup> These figures represent a pretrial detention rate of 48.42%. As to the causes that affect the excessive application of pretrial detention, the Commission again notes that one of them continues to be the imposition of mandatory pretrial detention without the possibility of alternative measures and the exclusion of the benefit

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related to prevention, protection, and investigation of acts of violence against human rights defenders. On August 30 and September 6, personnel from COPADEH took a course (“Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”) offered by the Office of the United Nations Commissioner for Human Rights in Guatemala. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 133-134.

<sup>242</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 134.

<sup>243</sup> Institute for Criminal Policy Research at Birkbeck - University of London, [World Prison Brief data -Highest to Lowest - Occupancy level \(based on official capacity\)](#), 2021.

<sup>244</sup> Number of individuals deprived of liberty under the responsibility of the @Dgspg as of today, Twitter account, General Directorate of the Prison System (@DGSP), [Posted on September 13, 2021](#).

<sup>245</sup> Institute for Criminal Policy Research at Birkbeck - University of London, [World Prison Brief data - Guatemala](#), 2021.

<sup>246</sup> IACHR, [Report on the Use of Pretrial Detention in the Americas](#), OEA/Ser.L/V/II. Doc. 46/13, December 30, 2013, par. 290.

<sup>247</sup> IACHR, [Report on the Use of Pretrial Detention in the Americas](#), OEA/Ser.L/V/II. Doc. 46/13, December 30, 2013, par. 290.

<sup>248</sup> Number of individuals deprived of liberty under the responsibility of the @Dgspg as of today, Twitter account, General Directorate of the Prison System (@DGSP), [Posted on September 13, 2021](#).

of release for certain types of crimes, including the crimes in the Anti-Drug Law.<sup>249</sup> Meanwhile, according to civil society reports, no progress has been made in amending crime legislation and criminal procedures to change the mandatory imposition of this precautionary measure by type of offense.<sup>250</sup>

180. In that regard, the Commission calls to mind that the use of pretrial detention must be based on consideration of the right to the presumption of innocence and must take into account the exceptional nature of this measure and be applied in keeping with the criteria of legality, necessity, and proportionality.<sup>251</sup> Thus, deprivation of liberty of the accused should be only procedural in nature and, accordingly, may be based only on legitimate procedural aims, in other words, to reasonably avoid the risk of flight or prevent the investigation from being thwarted.<sup>252</sup>

181. With respect to alternatives to pretrial detention, the Commission observes that challenges remain for the implementation of an electronic surveillance system as an alternative to incarceration. According to publicly available information, the installation of telematic monitoring, which took effect in December 2016, continues to be behind schedule for administrative reasons.<sup>253</sup> In July, the Ministry of the Interior reportedly rejected the actions of the committee handling the bidding on the lease to implement the system.<sup>254</sup> The IACHR calls to mind that the use of measures other than pretrial detention is one of the main steps to take to reduce the prison population.<sup>255</sup> It is also one of the most effective measures to, among other benefits, reduce recidivism and use public resources more effectively.<sup>256</sup>

182. With respect to measures implemented to guarantee the rights of persons deprived of liberty, the State reported the following: (i) development of academic activities on pretrial detention; (ii) implementation of information management systems in judicial and prison settings; (iii) increase in hearings held remotely; and (iv) strengthening of public defender systems for criminal cases.<sup>257</sup> However, the Commission learned about obstacles related to these measures. Specifically, with respect to the implementation of judicial and prison information management systems, the State indicated that the 23 correctional centers under the administration of the General Directorate of the Prison System are connected to the Prison Administration Information System (SIAPEN), which registers the information provided by the

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<sup>249</sup> These crimes, specifically, are: international transit; planting and cultivation; manufacturing or transformation; illicit trade, trafficking or stockpiling; possession for use; promotion and inducement; facilitation of means; alteration; illicit selling; prescription or supply; illicit transactions and investments; criminal association; pursuit of impunity, or evasion; promotion or encouragement of drug addiction; actual cover-up; personal cover-up. Government of Guatemala, Inf. Inter, DAJCC-Seprem 003-2021, April 14, 2021, p. 6. Information provided in the context of the preparation of the report on women deprived of liberty.

See also IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 400.

<sup>250</sup> Colectivo Artesana and Sare Consultants, *Consideraciones sobre la privación de libertad en Guatemala 2021*, Records of the IACHR, September 27, 2021, p. 2.

<sup>251</sup> IACHR, [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas](#), OEA/Ser.L/V/II.163. Doc. 105, July 3, 2017, par. 231, Recommendation A, "General Measures Related to Matters of State Policy" (hereinafter, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas), par. 1.

<sup>252</sup> IACHR, [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas](#), par. 231, Recommendation A, "General Measures Related to Matters of State Policy" (hereinafter, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas).

<sup>253</sup> *Backfem Prensa*, [El hacinamiento en las cárceles continúa sin que se implementen mecanismos alternativos – Prensa Libre](#), September 16, 2021.

<sup>254</sup> *Backfem Prensa*, [El hacinamiento en las cárceles continúa sin que se implementen mecanismos alternativos – Prensa Libre](#), September 16, 2021.

<sup>255</sup> Along these lines, see IACHR, [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas](#), par. 108.

<sup>256</sup> See IACHR, [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas](#), par. 110.

<sup>257</sup> Government of Guatemala, Diplomatic Note No. NV-OEA-M4-No. 631-2021 – Response from the Presidential Commission for Peace and Human Rights (COPADEH) to the Consultation Questionnaire on compliance with the recommendations of the Inter-American Commission on Human Rights (IACHR) related to detention conditions and pretrial detention in Guatemala, Honduras, and El Salvador, August 5, 2021, pp. 9, 41-43, and 47.

judiciary on persons deprived of liberty.<sup>258</sup> According to official data, SIAPEN has information related to the following: (i) the person's case file, including photograph, full name, emergency contact, reason for and date of entry, where the person came from, location within the prison system, current status of criminal proceedings, and the court involved; (ii) complete personal data, including medical conditions and physical description; (iii) information on the person's legal situation; and (iv) information about the person's transfer, including location in the facility, arrival and departure dates, and the official who gives those orders.<sup>259</sup> In addition, the State reported that there is a Central Register on Persons in Custody (RECEDE), which keeps similar records on people who are being held.<sup>260</sup>

183. However, as the Commission was informed by civil society, the records at Guatemalan detention centers have flaws, which include, most notably: (i) a failure to update in real time the legal status of persons deprived of liberty; (ii) the lack of a gender-based approach; and (iii) the absence of any consideration of the children who live with their mothers in prison.<sup>261</sup> Moreover, according to civil society, the RECEDE is not linked to the prison system's records, which reportedly leads to delays in the provision of information and legal status with respect to those in custody.<sup>262</sup>

184. With respect to the increase in the number of remote hearings held in detention centers, the State reported that, according to official data from the Ministry of the Interior (*Ministerio de Gobernación*), 1,885 videoconferences had been held from different prisons in 2021, through May 31, whereas in 2020 there were a total of 1,943 virtual hearings.<sup>263</sup> In addition, official information from the judiciary indicates that 3,949 videoconferences had been held in 16 correctional centers as of May 31, while 6,371 hearings were documented in 2020.<sup>264</sup>

185. Nevertheless, the Commission received information indicating that even though the pandemic had demonstrated the efficiency of holding virtual hearings, effective measures must still be implemented to ensure that these can be held on an ongoing, permanent basis.<sup>265</sup> Specifically, audio and connectivity problems

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<sup>258</sup> Government of Guatemala, Diplomatic Note No. NV-OEA-M4-No. 631-2021 – Response from the Presidential Commission for Peace and Human Rights (COPADEH) to the Consultation Questionnaire on compliance with the recommendations of the Inter-American Commission on Human Rights (IACHR) related to detention conditions and pretrial detention in Guatemala, Honduras, and El Salvador, August 5, 2021, p. 44.

<sup>259</sup> Government of Guatemala, Diplomatic Note No. NV-OEA-M4-No. 631-2021 – Response from the Presidential Commission for Peace and Human Rights (COPADEH) to the Consultation Questionnaire on compliance with the recommendations of the Inter-American Commission on Human Rights (IACHR) related to detention conditions and pretrial detention in Guatemala, Honduras, and El Salvador, August 5, 2021, pp. 45-46.

<sup>260</sup> Specifically, it contains the following information: names and surnames; identity document number; age; gender; marital status; nationality; place of residence and address for notifications; name of close relatives or trusted individuals and addresses for notification purposes; center or location where the person is being held; judge who issued the order for arrest or pretrial detention, or whether this is a case of arrest in the act of committing a crime; court that has the person in custody; name of defender and how to locate that person for notifications; and name of parents. See: Government of Guatemala, Diplomatic Note No. NV-OEA-M4-No. 631-2021 – Response from the Presidential Commission for Peace and Human Rights (COPADEH) to the Consultation Questionnaire on compliance with the recommendations of the Inter-American Commission on Human Rights (IACHR) related to detention conditions and pretrial detention in Guatemala, Honduras, and El Salvador, August 5, 2021, pp. 45-46.

<sup>261</sup> Colectivo Artesana and Sare Consultants, *Consideraciones sobre la privación de libertad en Guatemala 2021*, Records of the IACHR, September 27, 2021, p. 2.

<sup>262</sup> Colectivo Artesana and Sare Consultants, *Consideraciones sobre la privación de libertad en Guatemala 2021*, Records of the IACHR, September 27, 2021, p. 2.

<sup>263</sup> Government of Guatemala, Diplomatic Note No. NV-OEA-M4-No. 631-2021 – Response from the Presidential Commission for Peace and Human Rights (COPADEH) to the Consultation Questionnaire on compliance with the recommendations of the Inter-American Commission on Human Rights (IACHR) related to detention conditions and pretrial detention in Guatemala, Honduras, and El Salvador, August 5, 2021, pp. 48-49.

<sup>264</sup> Government of Guatemala, Diplomatic Note No. NV-OEA-M4-No. 631-2021 – Additional institutional information sent by the judiciary, referring to points 3, 6, and 12 of the IACHR questionnaire on recommendations, August 9, 2021, pp. 77-78.

<sup>265</sup> Colectivo Artesana and Sare Consultants, *Consideraciones sobre la privación de libertad en Guatemala 2021*, Records of the IACHR, September 27, 2021, p. 2.

continue to be an obstacle preventing most of the detention centers from having the necessary conditions in place to hold these hearings.<sup>266</sup> In that regard, the Commission emphasizes that holding custody hearings by videoconference could make it difficult for the judicial authorities to identify signs of acts of torture or ill-treatment.<sup>267</sup> Moreover, the virtual environment could make people in custody feel intimidated or coerced in voicing their respective complaints.

186. In terms of strengthening the public defender system in criminal cases, the State provided information about measures to provide public defenders with training and education using funds allocated to the Institute of Public Criminal Defense (IDPP), as well as the hiring of new staff, particularly public defenders.<sup>268</sup> Nonetheless, despite these steps forward, the Commission was informed that the increase in the number of Prosecutor's Offices in the country placed the IDPP at a disadvantage, given that the institution is said to have less capacity, a situation that would impact the quality of the technical representation provided to individuals who lack other resources to access any other type of legal representation.<sup>269</sup>

187. In its response to the draft of this report, the State of Guatemala informed the IACHR that on December 9, 2021, the General Directorate of the Prisons System reopened the Fraijanes II Men's Prison, under the New Prison Management Model (NMGP), a new model which will put into practice different strategies related to rehabilitation and respect for human rights. The State also pointed to the work it has done with women deprived of liberty, noting specifically that "over the course of six months, various training activities to promote self-sustainability were held for a group of female inmates at the Zone 18 Santa Teresa Detention Center for Women."<sup>270</sup> It also indicated that the School for Prison Studies (EEP) has offered workshops, certification programs, training sessions, talks, and other activities, including through digital platforms, given the ban on in-person educational activities due to the COVID-19 pandemic.<sup>271</sup>

### C. Migrants, Asylum Seekers, Refugees, Persons in Need of Complementary Protection, Returnees, Internally Displaced Persons, and Victims of Human Trafficking

188. Through its various monitoring mechanisms, the IACHR has followed the situation of migrants, asylum seekers, refugees, persons in need of complementary protection, returnees, internally displaced persons, and victims of human trafficking in Guatemala in 2021. In this context, the Commission has

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<sup>266</sup> Colectivo Artesana and Sare Consultants, *Consideraciones sobre la privación de libertad en Guatemala 2021*, Records of the IACHR, September 27, 2021, p. 2.

<sup>267</sup> Along these lines, see: IACHR, [Report on the Use of Pretrial Detention in the Americas](#), paras 179, 199, and 326, Recommendation C, "Legal framework and application of pretrial detention"; IACHR, [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas](#), par. 182; IACHR, [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#), par. 199; and IACHR, Resolution 1/20, [Pandemic and Human Rights in the Americas](#), adopted on April 10, 2020.

<sup>268</sup> Government of Guatemala, Diplomatic Note No. NV-OEA-M4-No. 631-2021 – Response from the Presidential Commission for Peace and Human Rights (COPADEF) to the Consultation Questionnaire on compliance with the recommendations of the Inter-American Commission on Human Rights (IACHR) related to detention conditions and pretrial detention in Guatemala, Honduras, and El Salvador, August 5, 2021, pp. 41-43.

<sup>269</sup> Colectivo Artesana and Sare Consultants, *Consideraciones sobre la privación de libertad en Guatemala 2021*, Records of the IACHR, September 27, 2021, p. 3.

<sup>270</sup> More than 100 female inmates were trained during workshops on cosmetology, carpentry, writing, and French, among other subjects, to enable them to make a decent living once they are released. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 135.

<sup>271</sup> The activities carried out include: certificate program in Human Rights in Prison Management, Limits to Use of Force with a Focus on Conflict Resolution, conferences on How to Manage Anxiety in Prison in Times of COVID-19, Advice on Making Prison Work Effective and Efficient, How to Cope with the Loss of a Loved One, Morals and Ethics, Handling Emotions in Times of COVID-19, Applying Biosecurity Measures and Protocols, and the Importance of Teamwork. The EEP Directorate reported that these new innovative virtual tools are being used to strengthen the capacity and knowledge of all staff. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 136.

observed the importance that changes in migration movements and dynamics have brought to North and Central America, including Guatemala. This is due primarily to: (i) the broad, constant volume of movement throughout the region, whether forced or voluntary; and (ii) the vulnerability of those who make up these movements of people, most of whom are migrating outside the regular channels for entry given their lack of legal alternatives.

189. In terms of the structural causes that force people to move, the Commission observes that according to the latest statistics from the United Nations High Commissioner for Refugees (UNHCR), as of the end of 2020 there were a total of 24,559 refugees of Guatemalan origin, and a total of 146,109 asylum seekers whose cases are said to be pending.<sup>272</sup> Compared with 2019 figures, this would represent an increase of 7% in the number of refugees and an increase of 22% with respect to asylum seekers whose cases are pending.<sup>273</sup> In addition, there are a total of 27,264 persons of Guatemalan origin who are considered persons of concern under the UNHCR mandate.<sup>274</sup>

190. Furthermore, the IACHR has observed an increase in the movement of unaccompanied or separated children and adolescents. According to the most recent figures from U.S. Customs and Border Protection (CBP), at least 52,818 unaccompanied minors who arrived at the southern border of the United States in 2021 are from Guatemala. This amounts to 39.8% of the total number of unaccompanied minors arriving at that border. Moreover, it represents an increase of 600% when compared with the same period in 2020.<sup>275</sup>

191. In its response to the draft report, the Guatemalan State provided data about unaccompanied Guatemalan children and adolescents served by the Public Prosecutor’s Office on Children and Adolescents in the Attorney General’s Office, which has an Area on Migrant Children and International Removal. In 2021, “in contrast to the cases seen in 2020, there has been a considerable increase in the number of children and adolescents traveling by land who were assisted, while cases involving travel by air showed a decline,” as shown in the chart below.<sup>276</sup>

2020					
By air		Total	By land		Total
FEMALE	MALE		FEMALE	MALE	
637	1,712	2,349	620	1,578	2,198

<sup>272</sup> UNHCR, [Global Trends: Forced Displacement in 2020](#), June 2021, Tables 1 to 22 of the annex.

<sup>273</sup> IACHR, [Annual Report 2020, Chapter V. Guatemala](#), par. 189; UNHCR, [Global Trends: Forced Displacement in 2019](#), June 2019, p. 79.

<sup>274</sup> UNHCR, [Global Trends: Forced Displacement in 2020](#), June 2021, Tables 1 to 22 of the annex.

<sup>275</sup> According to the information available, beginning in March of fiscal year 2020, USBP and OFO statistics on encounters include both Title 8 apprehensions, Title 8 inadmissibles, and Title 42 expulsions. CBP, United States, [Southwest Land Border Encounters](#), 2021.

<sup>276</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 135.

January-November 2021					
By air		Total	By land		Total
FEMALE	MALE		FEMALE	MALE	
606	1,534	<b>2,140</b>	1,107	3,571	<b>4,678</b>

**Source:** Information based on statistical reports from the Regional Delegations of Quetzaltenango and Guatemala, Public Prosecutor's Office on Children and Adolescents, Document PGN-PNA-583-2021/gacr, dated December 15, 2021. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 135.

192. With regard to the foregoing, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) noted that the COVID-19 pandemic and Hurricanes Eta and Iota in 2020 multiplied the endemic vulnerabilities that already existed in Guatemala. It also indicated that the structural and multidimensional nature of the crisis had led to a disproportionate impact on women, children, indigenous peoples, people of African descent, LGBTI persons, and people with disabilities.<sup>277</sup>

193. In addition, a report by OXFAM International indicated that the levels of extreme poverty in Guatemala could grow from 19.8% to 22.7%. That could lead people to seek informal employment—with no social or health-care benefits—or to look for other alternatives to generate enough income to cover their basic needs and provide for their families. These options may focus on irregular migration or other activities that could jeopardize their fundamental rights.<sup>278</sup> In addition, the International Organization for Migration (IOM) and the United Nations Population Fund (UNFPA) indicated that while it is not yet possible to fully understand the current juncture marked by the COVID-19 pandemic, some analyses show that the population groups that were already vulnerable have been among the hardest hit. Given that conditions of exclusion and vulnerability are worsening, they added, it is likely that migration would now be seen as an option for people who before the pandemic had not considered it as such.<sup>279</sup>

194. In this regard, the IACHR has indicated that States should contribute to the prevention and elimination of irregular migration, bearing in mind that irregular migration increases the vulnerability of migrants and persons subject to international protection, putting their lives, dignity, and security at risk.<sup>280</sup>

195. In terms of migrants in transit, in a press release on January 28, 2021, the Commission condemned the excessive use of force by members of the Guatemalan police and army against a caravan of migrants from Honduras during operations carried out on January 17 and 18. According to the information the Commission received, law enforcement and soldiers beat migrants with sticks and used tear gas to disperse and stop the caravan. The Commission also noted with concern that the Guatemalan authorities had returned around 3,000 people to their country of origin, this in a context in which positive coronavirus cases had been identified.<sup>281</sup> Along the same lines, in a press release on April 1, 2021, the Commission noted that days before the entry of the migrant caravan in question, the Office of the President adopted Governmental Decree No. 1-

<sup>277</sup> UN OCHA, [Humanitarian Needs Overview: El Salvador, Guatemala & Honduras](#), July 2021, pp. 11, 15, 21, and 30.

<sup>278</sup> OXFAM International, [Faces of Hunger in Central America: Food and nutritional insecurity in the Dry Corridor as a consequence of the hurricane season, drought, and Covid-19](#), March 2021, pp. 3 and 5.

<sup>279</sup> IOM and UNFPA, [Caracterización de la migración internacional en Guatemala \(Censo 2018\)](#), Guatemala, 2021, p. 9.

<sup>280</sup> IACHR, Resolution 4/19, [Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking](#), December 7, 2019.

<sup>281</sup> IACHR, Press Release 16/21 – [IACHR Calls on States in Central and North America to Ensure Comprehensive Protection for the Rights of the Individuals who Make Up the Migrant Caravan from Honduras](#), January 28, 2021.

2021 authorizing the use of force to break up any unauthorized meetings, gatherings of people, or demonstrations in municipalities near the border with Honduras. It also noted that these types of decrees had been adopted before the advent of the latest mixed, large-scale migration movements.<sup>282</sup>

196. In this context, the IACHR highlighted the complexity of the issue of human mobility and the challenges that States face in finding adequate solutions for handling this population, in accordance with inter-American standards on the matter.<sup>283</sup> The Commission also reiterated the need to adopt structural, well-coordinated response measures based on the comprehensive protection of human rights and on differentiated, intersectional approaches that comply with the obligation to prevent violations of the human rights of the affected individuals.<sup>284</sup>

197. Meanwhile, the IACHR has observed an increase in the number of people seeking asylum or protection in Guatemala.<sup>285</sup> This could be related to the implementation of regional agreements that send back to Guatemala people who may need international protection.<sup>286</sup> The most current statistics from the Guatemalan Institute for Migration (IGM) indicate that 393 applications for recognition of refugee status were received from January through May 2021. However, only 29 people were reportedly recognized as refugees during that same period.<sup>287</sup> The number of people requesting asylum in Guatemala reportedly increased by 97% over the same period in 2020.<sup>288</sup> In that respect, the State of Guatemala informed the IACHR that in 2021, the Public Prosecutor's Office on Children and Adolescents provided advisory assistance to 10 children and adolescents seeking refugee status at the Department of Recognition of Refugee Status of the Guatemalan Institute for Migration.<sup>289</sup>

198. With respect to procedures for refugee applications, the IACHR has recommended that States should, among other things: (i) constantly review their procedures, regulations, and practices in order to ensure comprehensive protection of procedural guarantees; and (ii) take measures to adapt existing structures and institutions so that they can adequately respond to the current mixed migration movements in the region.<sup>290</sup>

199. In terms of returnees, in a press release on September 17, 2021, the IACHR expressed its concern over the "chain" returns reportedly being carried out from the United States to the northern and southern borders of Mexico, and from Mexico to different borders with Guatemala. The Commission observed at that time that forced returns are serious factors for the humanitarian situation at the borders and are posing serious challenges to the receiving States in connection with protecting this group's human rights. Specifically,

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<sup>282</sup> IACHR, Press Release 82/21 – [IACHR Calls on States in the Americas to Adopt Migration and Border Management Policies that Incorporate a Human Rights Perspective](#), Washington, D.C., April 21, 2021. See also: Diario de Centro América, [Decreto Gubernativo 1-2021](#), January 11, 2021; Diario de Centro América, [Decreto Gubernativo 1-2020](#), January 16, 2020; Diario de Centro América, [Decreto Gubernativo 18-2020](#), October 1, 2020.

<sup>283</sup> IACHR, Press Release 27/20 – [IACHR Urges El Salvador, Guatemala, Honduras, and Mexico to Guarantee the Rights of Migrants and Refugees Traveling Through the Region](#), February 7, 2020.

<sup>284</sup> IACHR, Press Release 16/21 – [IACHR Calls on States in Central and North America to Ensure Comprehensive Protection for the Rights of the Individuals who Make Up the Migrant Caravan from Honduras](#), January 28, 2021.

<sup>285</sup> IACHR, Annual Report 2020, [Chapter IV.A. Human Rights Development in the Region](#), par. 437.

<sup>286</sup> IACHR, Press Release 243/21 – [The IACHR Expresses Concern about the Expulsion of People in a Human Mobility Context from the United States and Mexico and Calls on State to Ensure the Effective Protection of their Rights](#), Washington, D.C., September 17, 2021.

<sup>287</sup> IGM, Guatemala, [Informe estadístico cuantitativo enero-mayo 2021](#), pp. 24 and 25.

<sup>288</sup> IGM, Guatemala, [Informe estadístico general enero - diciembre 2020](#), p. 36.

<sup>289</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 182.

<sup>290</sup> IACHR, [Due Process in Procedures for the Determination of Refugee Status and Statelessness and the Granting of Complementary Protection](#), OEA/Ser.L/V/II, Doc. 255, August 5, 2020, paras. 391 and 395.

it noted with concern that returnees would face a situation of uncertainty upon their arrival at the Guatemalan border, due to the lack of options for accessing asylum or protection measures in another country and, in some cases, fear of returning to the conditions that originally forced them to leave.<sup>291</sup>

200. In this regard, the IACHR urged the States to: (i) allow people in the context of human mobility to enter their respective territories for the purpose of ensuring access to procedures for the recognition of refugee status, complementary protection, or regularization of migration status; (ii) create and expand existing regular channels so that they are safe, accessible, and affordable for international migrants; and (iii) implement mechanisms for regional cooperation and shared responsibility and strengthen national asylum and protection systems so that they can adapt to the complex reality of migration dynamics in the region, to adequately identify protection needs and provide timely responses.<sup>292</sup>

201. With regard to the situation of internally displaced persons, the IACHR has observed cases of forced internal displacement reportedly arising from the practice of forced evictions in the country.<sup>293</sup> In this context, the Commission learned that at least two forced evictions were carried out in 2021, which affected: (i) 35 peasant Maya Q'eqchi' families from the Finca Canaán, S.A., a farm in El Estor, Izabal, in an operation in which some 3,000 members of the National Civil Police (PNC) were said to have participated;<sup>294</sup> and (ii) Q'eqchi' families from the Aktela community, located in the municipality of Sierra Santa Cruz, Izabal. Social media reports alleged that during the eviction, people's homes, belongings, and food were set on fire.<sup>295</sup> Representatives of the communities living in the Sierra Santa Cruz, in the department of Izabal, publicly called on the State of Guatemala to expedite the process of providing ownership titles to their territories, in keeping with internal procedures currently in effect.<sup>296</sup>

202. In its response to the draft report, the Guatemalan State indicated to the IACHR that the Attorney General's Office (PGN) participated as an observer to protect the rights of any children, adolescents, persons with disabilities, and senior citizens who may have been among the group of people to be evicted. With regard to the eviction of 35 peasant Maya Q'eqchi' families from the Finca Canaán, S.A. in El Estor, Izabal, the State indicated that "the eviction was scheduled for June 16, 2021, and the PGN representative who went to the site was able to verify that no children or adolescents, senior citizens, or persons with disabilities were present. With members of the National Civil Police, the respective Justice of the Peace, and other institutions at the scene, it was verified that the squatters on the farm belonged to a single family of about 40 people, and the eviction (which took approximately one hour) proceeded without incident." Meanwhile, with regard to the Q'eqchi' families from the Aktela community in Sierra Santa Cruz, Izabal, the State noted that "during the verification on the ground, it was established that there were no human settlements in the entire area, and no alleged squatters

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<sup>291</sup> IACHR, Press Release 243/21 – [The IACHR Expresses Concern about the Expulsion of People in a Human Mobility Context from the United States and Mexico and Calls on State to Ensure the Effective Protection of their Rights](#), Washington, D.C., September 17, 2021.

<sup>292</sup> IACHR, Press Release 243/21 – [The IACHR Expresses Concern about the Expulsion of People in a Human Mobility Context from the United States and Mexico and Calls on State to Ensure the Effective Protection of their Rights](#), Washington, D.C., September 17, 2021.

<sup>293</sup> IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 232.

<sup>294</sup> *Prensa Comunitaria*, [El Estor: vuelven los desalojos de comunidades Q'eqchi' en medio de la pandemia](#), June 16, 2021; *FGER*, [Operativo policial partió de Río Dulce](#), June 16, 2021.

<sup>295</sup> *PrensaComunitaria* [@PrensaComunitar], October 1, 2021, [Twitter post](#): 1/2 #Izabal | Familias Q'eqchi' de la comunidad Aktela, Sierra Santa Cruz, Livingston fueron desalojadas de manera violenta por un grupo armado ayer; CUC [@CUCGuatemala], September 30, 2021, [Twitter post](#): #Hoy La comunidad Q'eqchi' de Aktela de Sierra Santa Cruz en #Livingston #Izabal fue fuertemente afectada por el desalojo extrajudicial; CUC [@CUCGuatemala], September 30, 2021, [Twitter post](#): #Alerta El día de hoy 30 de septiembre, un grupo armado entró a las 06:00 de la mañana disparando en la comunidad de Aktela de Sierra Santa Cruz en Livingston #Izabal, con el objetivo de desalojar extrajudicialmente.

<sup>296</sup> CUC, [Representantes de 18 comunidades de la Sierra de Santa Cruz, Izabal, demandan la titulación de su territorio al Estado de Guatemala](#), July 5, 2021.

were found during the entire field visit. The only thing reported during the inspection was that in two areas, several blocks of land had been completely cleared of trees and planted with cardamom.”<sup>297</sup>

203. In that regard, the Commission has indicated that evictions must only be carried out in compliance with universal and inter-American human rights norms and standards and with the principles of exceptionality, legality, proportionality, and suitability, with the legitimate aim of promoting social well-being. During an eviction, it is crucial to abide by the strictest procedures, including essential procedural guarantees that: (i) ensure an authentic opportunity for consultation with the affected persons; (ii) provide reasonable and sufficient advance notice ahead of the scheduled date of eviction; (iii) ensure access to effective legal remedies and assistance; and (iv) establish, sufficiently in advance, a contingency plan that includes relocation and housing alternatives.<sup>298</sup>

204. Finally, in its response to the draft of this report, the Guatemalan State informed the IACHR about steps it has taken through various institutions to attend to people in the context of human mobility. Among other things, it noted that the Office of the President’s Social Welfare Secretariat, through its Departmental Offices, provides support to the Sub-Secretariat for the Protection and Care of Children and Adolescents, specifically to the Department of Unaccompanied Children and Adolescents, which handles cases involving unaccompanied migrant children and adolescents who have been reunified. The Departmental Offices provide ambulatory follow-up services through their multidisciplinary teams (psychological, social work, pedagogical, and legal) and counsel families on the risks of irregular migration, opportunities for distance learning coordinated through the Center for Extracurricular Education (CEEX), and links to programs and services depending on the circumstances in each location.<sup>299</sup>

205. The State also indicated that it provided support this year to address the crisis of migrants traveling in caravans, most of them Central Americans. The Departmental Directorate, through the Departmental Offices, in conjunction with the Department of Unaccompanied Children and Adolescents, coordinated monitoring and psychosocial support through service centers set up for irregular migrants (CAMIs); this is where the first migrant caravan (made of primarily of Hondurans) was taken. Finally, in its communication the State provided details to the IACHR about actions it had taken in the context of the program Casa Joven;<sup>300</sup> the care provided at the “Casa Nuestras Raíces” shelters, which take in children and adolescents for 72 hours; and measures adopted by the Directorate of Special Protection for Family and Residential Care.<sup>301</sup>

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<sup>297</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 183-184.

<sup>298</sup> IACHR, Press Release 158/18 – [IACHR, UN Experts Express Concern over Forced Evictions and Internal Displacement in Guatemala](#), Washington, D.C., July 20, 2018.

<sup>299</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 144-145.

<sup>300</sup> As the State informed the IACHR, “one of the goals of Casa Joven [Youth House] is to prevent violence, so it tries to support beneficiaries and give them guidance to resolve conflicts assertively and use their free time for activities that allow them to channel the emotions they are feeling as a result of problems they are going through in their environment, and thus prevent social risk, the reason that has prompted many of them to leave their homes, families, friends, and everything that was part of their world.” The actions carried out by Casa Joven for the population it serves include: psychological therapy as a benefit to help them recover from the trauma produced by insecurity and fear, due to the threat they have suffered and the loss that comes with changes in any aspect of life; assistance to continue their academic education through distance learning and workshops on topics such as computer skills, to support the beneficiaries’ personal growth; schooling for the parents through the program Educando en Familia; and social-work counseling and support so that they can go back to school, among other services. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 144-145.

<sup>301</sup> For example: measures to guarantee care to children and adolescents; training for personnel involved in direct care; separation of children and adolescents by age and profile in dormitories; comprehensive care that includes health, education, food, clothing, housing, recreation, psychological care; decent spaces in which to provide care; restoration of the right to health; video calls and visits with family members; the holding of hearings; restoration of the right to identity; and implementation of protocols to prevent COVID-19

Finally, the State informed the IACHR that the Secretariat of Social Works of the First Lady is working to identify situations of high vulnerability among the population being served and implement the necessary protection measures based on the Protocol for Comprehensive Care to Migrant Families with a Human Rights Focus and a Psychosocial Focus and the National Protocol for Receiving and Attending to Migrant Children and Adolescents in Guatemala.<sup>302</sup>

#### D. Impact of Inequality, Discrimination, and Corruption on Indigenous Peoples

206. The Commission is concerned to observe the impacts of corruption on the State's capacity to institute public and social policies to address the structural socioeconomic inequalities that affect the people of Guatemala, particularly indigenous peoples. According to the World Bank, poverty increased slightly in 2020, from 45.6% of the population to 47%, and was projected to be 45.9% in 2021.<sup>303</sup> The impacts of poverty and social gaps are reflected in statistics indicating that 58% of indigenous children suffer from chronic childhood malnutrition and stunting.<sup>304</sup> The World Bank notes that low central-government revenues limit capacity for public investment to cover basic public services, such as education, health, and access to water, "largely explaining the lack of developmental progress and large social gaps, trailing behind the rest of Latin America and the Caribbean."<sup>305</sup>

207. However, the IACHR notes that it is also important to factor in the impacts of corruption; in 2020, for example, 9.3 billion quetzals earmarked for food reportedly ended up being spent on bribes, according to public information.<sup>306</sup> Civil society sources have called attention to the long reach of corruption, indicating that they believe it "affects all areas of the country's development, including human development, and now affects the children who suffer from malnutrition in more than half the country, reflected in their short stature or inability to develop intellectually to the highest potential."<sup>307</sup> This situation is especially serious given the high percentage of children suffering from malnutrition.

208. The Commission reiterates that the programs and public policies on food and nutrition implemented in Guatemala "should consider that the problem of malnutrition has many causes and is closely related to the lack of access to and the juridical insecurity affecting indigenous lands and territories, as well as the acquisition of such lands and territories by third persons."<sup>308</sup> The Commission observes that conflicts related to the territories of indigenous peoples are ongoing. This is a result of factors such as the historically unequal distribution of agricultural land, the lack of recognition and protection of indigenous territories, and the implementation of projects to explore and develop their natural resources, projects that are put in place

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infections. In addition, measures adopted to guarantee the right of children and adolescents to be raised by their family; legal guidance for their families of origin; the strengthening of family ties; home visits with the families; communication via phone calls and video chats between the children and adolescents and their families; and requests for special court hearings when a suitable remedy already exists for reintegrating the children and adolescents with their family. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 148-149.

<sup>302</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 150-151.

<sup>303</sup> World Bank, [The World Bank in Guatemala: Overview](#), visited on November 22, 2021.

<sup>304</sup> World Bank, [The World Bank in Guatemala: Overview](#), visited on November 22, 2021. The World Bank also indicated that chronic childhood malnutrition affects 47% of all children under age 5 and 66% of children in the lowest income quintile.

<sup>305</sup> World Bank, [The World Bank in Guatemala: Overview](#), visited on November 22, 2021.

<sup>306</sup> *Nómada*, [Q9.3 Mil Millones destinados a alimentación habrían terminado en sobornos, según informe](#), July 29, 2020.

<sup>307</sup> *La Hora.gt*, [Expertos por estudio sobre talla baja en GT: niñez es víctima de la corrupción](#), December 10, 2020.

<sup>308</sup> IACHR, [Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion](#), OEA/Ser.L/V/II. Doc 43/15, December 31, 2015, par. 83.

without following procedures for prior, free, and informed consultation to obtain the consent of the indigenous peoples who are affected.

209. With regard to impunity and access to justice, the Commission observes serious challenges to the effective enjoyment of the rights of indigenous peoples to their lands, territories, and natural resources and their rights to prior, free, and informed consultation to obtain their consent, even when there have been judicial rulings in their favor. Along those lines, on November 4, 2021, the Commission condemned<sup>309</sup> the excessive use of force against protesters and members of Maya Q'eqchi' communities that took place in October 2021 in the municipality of El Estor, in the department of Izabal in Guatemala.

210. The grave acts of violence took place in El Estor, Izabal, where the National Civil Police (PNC) clamped down on Maya Q'eqchi' demonstrators who were protesting the activities being carried out in their territory by Compañía Guatemalteca de Níquel (CGN), a subsidiary of the Russian company Solway Investment Group, to develop the Phoenix Mine. A number of people were injured and affected by the use of tear gas. The Commission was informed that since October 8, residents of El Estor have carried out peaceful actions to protest the operation of the Phoenix Mine. Authorities from the four Q'eqchi' Ancestral Councils<sup>310</sup> said there was a failure to respect the communities' decision to reject mining because it pollutes Lake Izabal, destroys the region's flora and fauna, and endangers the health and lives of the people in the area.

211. With regard to this conflict, the Commission notes, by way of background, that in 2019, Guatemala's Constitutional Court ordered a halt to the mining activity until there was a final ruling on a petition for constitutional protection (*amparo*) filed by the affected Maya communities. On [June 18, 2020](#), the [Constitutional Court](#) confirmed its decision and determined that the rights of indigenous peoples to participate in the creation, application, and evaluation of economic, social, and cultural development plans and programs that directly affect them had been violated. Consequently, it ordered that, in keeping with Convention 169 of the International Labour Organization (ILO), a process of pre-consultation and consultation was to be undertaken with the indigenous peoples living in the area of influence of the Phoenix mining project, and ordered that mining activities were to remain suspended until the consultation process was complete. Nevertheless, the mining company's activities continued.

212. After the violent incidents referred to above, the President of the Republic declared a state of siege in the municipality of El Estor, "considering that actions were carried out that affect order, governability, and the safety of the inhabitants" and "because armed individuals and groups" carried out "acts of violence against the security forces and the freedom of movement of the inhabitants." After the declaration, which was ratified by the Congress on October 25, members of the PNC and the army reportedly deployed to the municipality of El Estor. In that context, the IACHR received information regarding raids and searches conducted at the residences of journalists from *Prensa Comunitaria*, as well as a police search of the premises of the community radio station *Xyaab' Tzuultaq'a* and the Q'eqchi' Ombudsman's Office.<sup>311</sup>

213. With regard to the "Phoenix Mine" extraction project, the State of Guatemala made the following points:

"[...]

2. It has been difficult not to have databases available that would help to establish the presence of organizations that represent indigenous peoples within the area of influence (and

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<sup>309</sup> IACHR, Press Release [293/21 - La CIDH condena el uso excesivo de la fuerza y la represión en contra de pueblos indígenas mayas q'eqchi', periodistas y medios de comunicación en El Estor, Guatemala](#), November 4, 2021.

<sup>310</sup> *ElPaís.cr*, [Peligra resistencia q'eqchi' a proyecto minero Fénix en Guatemala](#), October 22, 2021.

<sup>311</sup> IACHR, Press Release [293/21 - La CIDH condena el uso excesivo de la fuerza y la represión en contra de pueblos indígenas mayas q'eqchi', periodistas y medios de comunicación en El Estor, Guatemala](#), November 4, 2021.

throughout the country), in order to convene the organizations representing indigenous peoples for consultation on any issues that may be necessary.

3. Based on the requests made by individuals and the petitioner [*amparista*] asking to participate in the pre-consultation and consultation phases, the Ministry of Energy and Mines tried to identify the communities seeking to participate in the process, using a variety of physical and digital tools; however, the documentation these persons had presented did not identify them as belonging to an institution that represents the Maya Q'eqchi' indigenous people or as being within the area of influence established in the updated environmental instrument;

4. The Ministry of Energy and Mines provided a response to the petitioning individuals and organizations which, because it was not in tune with their demands, led to actions by groups of people demanding to be included in the pre-consultation process that was being carried out at that time.

5. This led the Ministry of Energy and Mines to request the involvement of the Presidential Commission on Dialogue as a mediator.

6. Violent actions later resulted, such as blockades and arbitrary restrictions of vehicles, beyond the issue of the judgment. There were also actions carried out that the people of El Estor themselves denounced, such as the illegal charging of tolls for vehicles passing through—actions that led the executive branch to declare a state of siege, a measure ratified by the legislative body, and subsequent to that, the “state of prevention.”

7. The State emphasizes that the arrests made by State security forces, in a jurisdiction in which a state of siege and then a state of prevention had been declared, came in response to court-issued arrest warrants drawn up based on incidents other than those related to the pre-consultation and consultation actions and compliance with the *amparo* judgment.”<sup>312</sup>

214. The IACHR reiterates that the unique relationship between indigenous peoples and their territories has been broadly recognized in international human rights law, as has the duty of States to guarantee and protect these territories. The Commission also reaffirms that the right to free determination of indigenous peoples is closely linked to the use and disposition of lands and territories. In this regard, the Commission reiterates that the State of Guatemala has a duty to carry out prior, free, and informed consultation with indigenous peoples about administrative and legislative initiatives, with the aim of obtaining consent. The failure to do so contravenes international standards on the matter and jeopardizes indigenous peoples' fundamental rights to participation and to their lands, territories, and natural resources.

215. Finally, with regard to the situation of indigenous peoples, the Guatemalan State informed the IACHR that the Presidential Commission against Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA) is carrying out actions to prevent and eliminate the racism and racial discrimination that the Maya, Garifuna, and Xinka peoples experience and confront every day in the public and private sphere, for the various reasons established in Article 202 *bis* of the Criminal Code. In addition, CODISRA advises and/or supports individuals and organizations belonging to indigenous peoples in legal proceedings involving cases of discrimination; it has established interinstitutional coordination with municipal authorities and institutions of the executive branch, to take on commitments in the implementation of the Public Policy on Coexistence and

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<sup>312</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 130-131.

the Elimination of Racism and Racial Discrimination at the municipal level; and it advises the Thematic Working Group on Indigenous Peoples in the Specific Cabinet on Social Development (GEDS), among other tasks.<sup>313</sup>

## E. Women

216. Over the course of this year, the Commission was concerned to observe an increase in various forms of gender-based violence against women when compared with the numbers recorded in 2020. According to official figures, as of October 24, 2021, the Public Prosecutor's Office had registered a total of 53,527 complaints involving violence against women, including physical, economic, and psychological violence; 13,093 complaints of sexual violence, including rape, assault, and other sex crimes; and 421 cases involving violent death,<sup>314</sup> of which 120 were classified as femicides.<sup>315</sup> By comparison, official records show that as of October 2020 there were a total of 48,026 complaints of violence against women, 10,331 complaints of sexual violence, and 354 femicides.<sup>316</sup>

217. In this context, the Commission also received information about the weakening of institutions that oversee the protection of women's human rights and the impacts on their rights.<sup>317</sup> Since 2020, the Commission has received information concerning obstacles that the Presidential Secretariat for Women (SEPREM) continues to face in carrying out its mandate of advising and coordinating public policies to promote the integral development of Guatemalan women, mainly because of instability in the agency's top position.<sup>318</sup> In addition to repeated dismissals of individuals who served as Presidential Secretary of SEPREM, the post was reportedly vacant from November 2020 until June 2021.<sup>319</sup> The Commission also received information about the lack of continuity of the work of the National Coordinator for the Prevention of Intrafamily Violence and Violence against Women (CONAPREVI), the agency in charge of coordinating implementation of the National Plan for the Prevention and Eradication of Violence against Women, PLANNOVI 2020-2029.<sup>320</sup> According to information collected by the Commission, as of April 2021, CONAPREVI had held only one working meeting,<sup>321</sup> which has hampered the effective implementation of PLANNOVI. The Commission was also informed that funding for the Comprehensive Support Centers for Women Survivors of Violence (CAIMUS)—which offer support, advice, and safe spaces for women who have suffered violence—arrived late and was insufficient.<sup>322</sup>

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<sup>313</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 153-156.

<sup>314</sup> Office of the Public Prosecutor's Observatory on Women, Guatemala, [Portal estadístico](#), data as of October 24, 2021.

<sup>315</sup> Grupo Guatemalteco de Mujeres, [Informe Estadístico: Violencia contra la Mujer Muertes Violentas de Mujeres-MVM FEMICIDIOS República de Guatemala](#), January 1 to July 31, 2021.

<sup>316</sup> IACHR, [Annual Report 2020, Chapter IV.A. Human Rights Development in the Region](#), par. 406.

<sup>317</sup> IACHR, Public Hearing, "[Situation of Women's Human Rights in Guatemala](#)," 180<sup>th</sup> period of sessions, June 29, 2021.

<sup>318</sup> REDNOVI, CLADEM Guatemala, Women's Link Worldwide, Annex to the request for thematic hearing for 180<sup>th</sup> period of sessions, Record 163499, April 2021, and follow-up communication, September 6, 2021, records on file at the IACHR.

<sup>319</sup> According to information collected by the Commission, as of April 2021, CONAPREVI had held only one working meeting; with regard to the CAIMUS, as of August 2021, the agreement to turn over the funds allocated to the Grupo Guatemalteco de Mujeres for fiscal year 2021 had yet to be signed. REDNOVI, CLADEM Guatemala, Women's Link Worldwide, Annex to the request for thematic hearing for 180<sup>th</sup> period of sessions, Record 163499, April 2021, and follow-up communication, September 6, 2021, records on file at the IACHR.

<sup>320</sup> REDNOVI, CLADEM Guatemala, Women's Link Worldwide, Annex to the request for thematic hearing for 180<sup>th</sup> period of sessions, Record 163499, April 2021, and follow-up communication, September 6, 2021, records on file at the IACHR.

<sup>321</sup> REDNOVI, CLADEM Guatemala, Women's Link Worldwide. Annex to the request for thematic hearing for 180<sup>th</sup> period of sessions, Record 163499, April 2021, and follow-up communication, September 6, 2021, records on file at the IACHR.

<sup>322</sup> REDNOVI, CLADEM Guatemala, Women's Link Worldwide, Annex to the request for thematic hearing for 180<sup>th</sup> period of sessions, Record 163499, April 2021, and follow-up communication, September 6, 2021, records on file at the IACHR.

As of August 2021, the agreement to turn over the funds allocated to the Grupo Guatemalteco de Mujeres [Guatemalan Women's Group] for fiscal year 2021 had yet to be signed.<sup>323</sup>

218. With regard to the State's efforts to address gender-based violence, the IACHR received information regarding the inauguration of the "IxKem" Model for Comprehensive Services for Women Victims of Violence (MAIMI), a program that centralizes in one physical space services related to justice, health, education, and economic empowerment, in order to respond comprehensively to the needs of survivors of violence.<sup>324</sup> The IACHR also takes note of the campaigns carried out to encourage people to report acts of violence against women,<sup>325</sup> as well as the update of the tool to incorporate a human rights, gender, and intersectionality approach into court judgments related to gender violence.<sup>326</sup>

219. In its response to the draft of this report, the Guatemalan State indicated that "the General Government Policy 2020-2024 establishes the reduction of violence against children, women, and intrafamily violence as a priority"; moreover, "it is of fundamental interest for the aforementioned policy to promote a culture of reporting complaints that would show how complex the problem is and make it possible to create strategies to eliminate it." The State affirmed that it has consequently carried out actions in the framework of the National Coordinator for the Prevention of Intrafamily Violence and Violence against Women (CONAPREVI).<sup>327</sup>

220. In addition, in its communication of November 23, 2021, the Guatemalan State noted that the number of cases handled through the MAIMI program has risen to 6,469. Moreover, it has provided 2,704 security and protection measures and has had 2,159 cases come in by other means. Its records also show 417 arrest warrants requested; 1,334 investigative proceedings carried out by the PNC-DEIC in cases in which the offense is not flagrant; 1,317 proceedings sent to the Directorate of Criminal Investigations (DICRI) for investigation, documentation, packaging of evidence, or processing of the scene. The State also reported that the Implementation Strategy for the National Plan for the Prevention and Eradication of Violence against Women 2020-2029 is in the process of being validated.<sup>328</sup>

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<sup>323</sup> REDNOVI, CLADEM Guatemala, Women's Link Worldwide Annex to the request for thematic hearing for 180<sup>th</sup> period of sessions, Record 163499, April 2021, and follow-up communication, September 6, 2021, records on file at the IACHR.

<sup>324</sup> Presidential Commission for Peace and Human Rights (COPADEH), Ref.Of.502-2021-DE/COPADEH/HRCR/LFL/Kg, Document sent to the IACHR, July 15, 2021.

<sup>325</sup> Government of Guatemala, [Yo Denuncio](#) campaign, June 1, 2021; @PNCdeGuatemala, [tweet](#), January 29, 2021, at 5:10 p.m.; @PNCdeGuatemala, [tweet](#), January 29, 2021, at 6:33 p.m.

<sup>326</sup> ONHCR Guatemala, [Presentación de la herramienta para incorporar el enfoque de derechos humanos, género e interseccionalidad en sentencias sobre violencia de género - actualización 2021](#), August 18, 2021.

<sup>327</sup> In that regard, the State noted that an awareness campaign was launched during the COVID-19 emergency with the slogan "You are not alone/Break the silence," the main purpose of which was to promote a culture of reporting cases involving violence against women and girls, senior citizens, and people with disabilities. The State also indicated that it promoted an awareness campaign to encourage the reporting of such cases ("*Yo denuncio*"), with messages on the radio and social media, an effort supported by the United Nations Development Programme (UNDP). The State also pointed to actions carried out by the Interior Ministry to prevent violence against women and intrafamily violence, including: support, immediate follow-up, and coordination of investigations with the Public Prosecutor's Office and campaigns to address the problems of violence against women, intrafamily violence, workplace and sexual harassment, and human trafficking. Finally, from 2018 to 2020, the Ministry of the Interior carried out training activities for police personnel in general, for the Specialized Criminal Investigation Division, on issues related to human rights, the Immediate Search for Missing Women Law, the Alba-Keneth Alert System Law, violence against women, intrafamily violence, and police actions on matters involving children and adolescents in which gender aspects are taken into account. In all, 14,448 police officers have received training. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 162-163.

<sup>328</sup> In that regard, it reported the following steps forward: May 11, 2021—Meeting with the CONAPREVI Commission on Institutional Strengthening of the State to provide feedback on the proposed technical guidelines of the PLANovi Implementation Strategy; preparation of the first draft of the instruments for operationalizing and planning institutional commitments; June 2, 2021—Meeting with the Commission on Institutional Strengthening to review methodological instruments; drafting of the PLANovi Implementation Strategy 2020-2029, which includes methodological instruments; June 21, 2021—Distribution of the preliminary version of the PLANovi

221. The Commission calls to mind that the State has a duty to adopt and strengthen prevention and protection policies to address violence, through a comprehensive approach that includes the justice, education, and health sectors and that tackles the various manifestations of violence against women.<sup>329</sup> To that end, it is essential that these policies include the necessary funding to ensure actual implementation and that there be a well-defined, sustainable, and adequate funding mechanism in place that makes it possible to meet the pre-established goals. Furthermore, the State should ensure the representation and participation of women and women's organizations in every sphere and at every level in the process of drafting and implementing such policies.<sup>330</sup> Along these lines, the IACHR calls on the State to strengthen the institutions in charge of preventing and addressing gender-based violence against women, providing them with the necessary material and financial resources so that they can function properly, and to ensure the participation of women in the design and implementation of prevention and protection policies to address violence.

222. Finally, the IACHR is extremely concerned about Guatemala's adoption of regressive measures with regard to sexual and reproductive rights. Specifically, the IACHR takes note of the Public Policy for the Protection of Life and the Institution of the Family 2021-2032,<sup>331</sup> which prioritizes the protection of the rights of the unborn from the time of conception, to the detriment of the rights of women. The Commission also notes that Guatemala joined the "Geneva Consensus Declaration on Promoting Women's Health and Strengthening the Family,"<sup>332</sup> which expressly excludes access to abortion as an integral part of women's right to sexual and reproductive health and affirms that States have no international obligation to ensure or facilitate access to abortion.

223. Similarly, the IACHR observes that Guatemalan law establishes the absolute criminalization of abortion, except when the woman's life is in danger.<sup>333</sup> In that regard, the Commission underscores that the absolute criminalization of the voluntary termination of pregnancy, including in cases of rape or incest, places a disproportionate burden on the exercise of women's human rights, especially the rights to life, personal integrity, and health and in general, the right of women to live a life free of violence and discrimination.<sup>334</sup> Bearing that in mind, the Commission urges the State to adopt legislation, public policies, and any other measures that may be needed, in accordance with the applicable inter-American standards, to ensure women's access to goods and services related to sexual and reproductive health without discrimination, including access to the voluntary termination of pregnancy in cases involving danger to life or health, as well as in cases of rape or incest.

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Implementation Strategy 2020-2029, including the methodological instruments, to the members of CONAPREVI and national counterparts; June 29, 2021—CONAPREVI Special Assembly to validate and approve the PLANOVI Implementation Strategy 2020-2029. Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 161-172.

<sup>329</sup> IACHR, [Access to Justice for Women Victims of Violence in the Americas](#), OEA/Ser.L/V/II. Doc. 68. 2007, Chapter IV, Specific recommendations: Precautionary and preventive protection.

<sup>330</sup> IACHR, Violence and Discrimination against Women and Girls, [Annex 1: Standards and Recommendations](#), OEA/Ser.L/V/II. Doc. 233, November 14, 2019, par. 85.

<sup>331</sup> Government of Guatemala, [Política Pública de Protección a la Vida y la Institucionalidad de la Familia 2021-2032](#), July 2021; Presidential Commission for Peace and Human Rights (COPADEH), Ref.Of.502-2021-DE/COPADEH/HRRCR/LFL/Kg, Document sent to the IACHR, July 15, 2021.

<sup>332</sup> Government of Guatemala, Press Release, [Guatemala se adhiere al "Consenso de Ginebra para Promover la Salud de la Mujer y la Promoción de la Familia"](#), October 12, 2021; [Geneva Consensus Declaration on Promoting Women's Health and Strengthening the Family](#).

<sup>333</sup> Congress of the Republic of Guatemala, [Código Penal](#), Chapter III, on abortion, Article 137.

<sup>334</sup> IACHR, Press Release 208/21, [IACHR Expresses Concern over the Adoption of Regressive Measures Concerning Sexual and Reproductive Rights in the Americas](#), August 11, 2021.

## F. Children and Adolescents

224. The IACHR has continued to monitor violations of the rights of children and adolescents in Guatemala. It is particularly concerned to observe the lack of a comprehensive national system for the protection of minors, the context of violence that threatens this population, and the cases of teen pregnancy and chronic malnutrition.<sup>335</sup> In addition, the IACHR has followed the case of the “Virgen de la Asunción” Residential Institution, mainly with respect to the proceedings to hold the alleged perpetrators responsible and the restoration of the rights of the victims.

225. Regarding the National Protection System, the Commission observes that the discussion remains pending on congressional bill No. 5285,<sup>336</sup> which aims to reform the internal legal framework to establish a comprehensive protection system in accordance with international standards in this area.<sup>337</sup> In that regard, the IACHR joins with UNICEF Guatemala in calling for the legislation’s approval<sup>338</sup> and reiterates that the State must adapt its institutional structure, at every level, to adequately protect and ensure the rights of children and adolescents, taking a comprehensive, specialized approach.<sup>339</sup>

226. In terms of the context of violence against children and adolescents, the IACHR notes that according to data published in May, 22.87% of the cases handled by the Prosecutor’s Office for Children and Adolescents between April 1, 2020, and March 31, 2021, were for sexual violence; 35.32% for missing children; and 41.81% for ill-treatment.<sup>340</sup> With regard to missing children, according to the child advocacy organization CONACMI, the Alba-Keneth Alert System reported that 4,621 alerts had been activated as of September—in other words, an average of 513 cases per month and 17 per day. It added that the system has deficiencies that have to do with the difficulty of knowing how many children have appeared and how many remain missing, as well as the conditions in which missing children turn up.<sup>341</sup>

227. In its response to the draft of this report, the Guatemalan State indicated that from January through November 30, 2021, a total of 5,691 alerts had been generated in the framework of the Alba-Keneth Unit. In the same period, 1,640 alerts remained active and 4,051 had been deactivated. In its report, the State noted that “when it is aware that a child or adolescent with an outstanding Alba-Keneth alert may be taken out of the country, it notifies the Ministry of Foreign Affairs, in order to have the alert replicated through the appropriate diplomatic and consular missions, so that once the minor is located those authorities can verify whether he or she is under the protection of a family member, and if it is deemed necessary, the return to Guatemala can be coordinated. In the case of foreign children or adolescents with an outstanding Alba-Keneth alert, the Operational Unit coordinates with the applicable country’s accredited consulate or embassy in Guatemala so that it can support the actions to search for, locate, and protect the minor.”<sup>342</sup>

228. With respect to sexual violence, the IACHR is concerned about information indicating that through August 2021, 76% of the sexual abuse cases evaluated by the National Forensic Sciences Institute of

<sup>335</sup> IACHR, [Annual Report 2020, Chapter IV.A. Human Rights Development in the Region](#), par. 442.

<sup>336</sup> Congress of the Republic of Guatemala, [Consulta Legislativa: iniciativas](#), bill search engine, Bill No. 5285, accessed on October 25, 2021.

<sup>337</sup> Congress of the Republic of Guatemala, [Detalle Iniciativa de Ley No. 5285](#), May 15, 2017, p. 7.

<sup>338</sup> UNICEF Guatemala, [UNICEF llama a construir un Sistema de protección a la infancia en el cuarto aniversario de la tragedia del Hogar Seguro](#), March 6, 2021.

<sup>339</sup> IACHR, Thematic Report, [Towards the Effective Fulfillment of Children’s Rights: National Protection Systems](#), OEA/Ser.L/V/II.166 Doc. 206/17, November 30, 2017, paras. 99-101.

<sup>340</sup> Office of the Public Prosecutor, Guatemala, [Tercer Informe Anual Período 2020-2021](#), May 2021.

<sup>341</sup> Asociación Nacional Contra el Maltrato Infantil (CONACMI), [1 de octubre: no es un día para celebrar](#), October 1, 2021.

<sup>342</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 161-172.

Guatemala (INACIF) corresponded to children and adolescents, and 77% of INACIF evaluations of female victims were of girls.<sup>343</sup>

229. Regarding lethal violence, data from the Observatory on Childhood of the Coordinadora Institucional de Promoción por los Derechos de la Niñez (CIPRODENI) indicate that more than 300 children were murdered in Guatemala from January through October 2021, most of them by gunshots.<sup>344</sup> In addition, the Observatory on Childhood noted that more than 1,100 cases of ill-treatment against children and adolescents were recorded in that period, based on tests performed by INACIF.

230. With respect to child and adolescent pregnancies, the IACHR is concerned about the high number of pregnancies and births recorded during the year. According to data from the Guatemalan Observatory on Reproductive Health, from January through July, there were 65,373 pregnancies among girls between 10 and 19 years of age, and 54,043 births on record through September.<sup>345</sup> In that regard, the IACHR calls to mind that early pregnancy poses a serious risk to the health of the mother and the newborn and increases the probability of malformations or developmental problems due to factors related to the physiological and emotional maturity of the mother.<sup>346</sup> The IACHR therefore reiterates that the State should implement measures to prevent early pregnancy, in particular comprehensive sex education to encourage the empowerment of girls and their awareness of the content of their sexual and reproductive rights.<sup>347</sup>

231. In its response to the draft of this report, the State of Guatemala said that the Social Welfare Secretariat of the Office of the President is taking steps as part of its efforts to prevent adolescent pregnancy; this includes the civil service project “Youth Leadership in Preventing Violence against Vulnerable Children and Adolescents,” by which “young civil servants, with professional support from the teams at the Departmental Offices, conduct workshops on adolescent pregnancy prevention at different educational centers in their respective locations, as well as on other issues in accordance with the community assessments of the main vulnerability factors for children and adolescents.”<sup>348</sup> The State of Guatemala also informed the IACHR about the implementation of its strategy to address and prevent pregnancies among girls 10-19 years of age, which has been rolled out in the various departments of the country.<sup>349</sup>

232. In terms of children’s right to family, the IACHR is concerned to observe the continued institutionalization of children and adolescents in Guatemala. According to information from the Social Welfare Secretariat (SBS), in the first four months of 2021 there were 641 minors housed in 21 residential shelters.<sup>350</sup>

<sup>343</sup> Asociación Nacional Contra el Maltrato Infantil (CONACMI), [1 de octubre: no es un día para celebrar](#), October 1, 2021.

<sup>344</sup> CIPRODENI, [Muertes y lesiones por causas violentas contra Niñas, Niños y Adolescentes de Guatemala](#), October 2021.

<sup>345</sup> Observatory on Reproductive Health, [Embarazos y registro de nacimiento de madres adolescentes – año 2021](#), accessed on November 9, 2021.

<sup>346</sup> IACHR, Thematic Report, [Violence and Discrimination against Women and Girls](#), OEA/Ser.L/V/II. Doc. 233, November 14, 2019, par. 255.

<sup>347</sup> IACHR, Thematic Report, [Violence and Discrimination against Women and Girls](#), OEA/Ser.L/V/II. Doc. 233, November 14, 2019, par. 257.

<sup>348</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 173.

<sup>349</sup> According to the information provided, “The main actions were implemented in the various activities held in the context of the Powers of Prevention Project, geared toward Community Commissions for Prevention of Violence at the community level (women) and municipal level, groups of young people, parents at public and private educational centers, police officers at National Civil Police substations, local personnel from Municipal Offices on Women and Municipal Offices on Youth, and Indigenous Mayor’s Offices, where all the delegates encourage participation and involvement in issues related to violence prevention. Interinstitutional coordination efforts were also implemented to carry out these activities.” Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 206-207.

<sup>350</sup> Government of Guatemala, Social Welfare Secretariat of the Office of the President of the Republic, [Primer Informe Cuatrimestral](#), May 7, 2021.

For its part, the Office of the Human Rights Ombudsman reported on overpopulation<sup>351</sup> and ill-treatment<sup>352</sup> in homes under the responsibility of the SBS. In this regard, the IACHR reiterates that States have a heightened duty as guarantors with respect to children and adolescents under their custody in residential care institutions. This implies a duty to protect their rights, ensure adequate care, and take the necessary measures to prevent situations of risk that pose a serious threat to their rights. The Commission further notes that the State must ensure the right of children and adolescents to live with and be raised by their families, and must adjust any measures separating minors from their household to objective criteria consistent with the principles of exceptionality, necessity, and temporality to safeguard the best interests of the child.

233. In that regard, the State informed the IACHR that “in 2021 it has carried out a total of 246 successful reunifications, thus restoring the right to family of children and adolescents who had been under care and protection measures because their human rights had been violated.” Furthermore, “as regards the current capacity of the care and protection residential facilities, as well as the regular space available for children and adolescents in these institutions,” the State noted that “75% of the residential units are overpopulated; nevertheless, procedures related to the residential institutions overseen by the Social Welfare Secretariat of the Office of the President are under the jurisdiction of the institutions that make up the justice sector, such as the judiciary and the Attorney General’s Office, which are responsible for the process of deinstitutionalization.”<sup>353</sup>

234. Likewise, in its response to the draft of this report, the Guatemalan State said that all the complaints involving “ill-treatment” that have come before the Office of the Human Rights Ombudsman “have been duly responded to through situation reports, supporting evidence, and certifications, among other things. This has been done as part of the human rights protections that are applied in the care and protection residential facilities so that all procedures carried out in these institutions follow standards and guidelines contained in base documents that ensure that the care provided has a gender, inclusive, human rights approach and is intercultural, evolving, and in the best interests of the child.”<sup>354</sup>

235. In addition, the IACHR received information on the follow-up to the events that occurred in 2017 at the “Virgen de la Asunción” Residential Institution, in which 41 girls died. According to a report by Disability Rights International, 600 children and adolescents were institutionalized at the facility at the time of the fire. It added that the State is following up on 40 survivors of the fire, who are now young women; however, the whereabouts of 11 of them reportedly remain unknown. The report also indicated that of the total number of residents institutionalized at that time, 61 girls and boys have since died, another 160 have been relocated to other congregate care facilities, and the whereabouts of 94 of the children and adolescents remain unknown.<sup>355</sup> Likewise, according to the report, there have been barriers in access to the lifelong monthly pensions created for the survivors of the fire; as of November 2020, only two were said to have been receiving this pension.<sup>356</sup>

236. With respect to the restoration of rights to the victims of the incidents at the “Virgen de la Asunción” Residential Institution, the State indicated that from May to October 2021, the Prosecutor’s Office

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<sup>351</sup> Human Rights Ombudsman, [PDH participa en reunión acerca de la sobrepoblación en los hogares de la SBS](#), August 31, 2021.

<sup>352</sup> Human Rights Ombudsman, [PDH recibe ampliación de denuncia en contra de hogar a cargo de la SBS](#), November 5, 2021.

<sup>353</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 184-185.

<sup>354</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 184-185.

<sup>355</sup> Disability Rights International, [Still at Risk – Death and Disappearance of the fire at Hogar Seguro Virgen de la Asunción](#), October 13, 2021.

<sup>356</sup> Disability Rights International, [Still at Risk – Death and Disappearance of the fire at Hogar Seguro Virgen de la Asunción](#), October 13, 2021.

on Children and Adolescents followed up individually with the minors who had been reintegrated, carrying out support visits; connecting them with various social protection institutions so that the children and their families could have access to services; and making connections with local and community actors. In terms of children and adolescents who are still “under protection and care measures,” the State indicated that 80 minors are still located in the various residential institutions run by the Social Welfare Secretariat of the Office of the President, while 49 children and adolescents remain under the responsibility of private institutions. Finally, in the case of 32 children and adolescents who are still under protection measures, the process of reintegrating them into a family environment continues to move forward.<sup>357</sup> Lastly, “with regard to the female adolescents who were victims of the events of 2017 and who have come of age,” the State indicated that the PGN’s Unit for the Protection of Women, Senior Citizens, and Persons with Disabilities is providing support to 43 of the young women, who range in age from 18 to 20 years old.<sup>358</sup>

237. In that regard, the IACHR expresses its concern for the victims’ families, whose search for justice is said to be exposing them to threats and serious risks.<sup>359</sup> The IACHR calls to mind that States must take the necessary measures to ensure the prevention, investigation, punishment, and reparation of violations of rights in any alternative care center or residential institution and focus their efforts on ensuring that such events do not happen again.<sup>360</sup>

### G. Human Rights of LGBTI Persons

238. The Commission expresses its concern about the prevalence of acts of violence against LGBTI persons, which is taking place in a context of structural discrimination based on sexual orientation. In that regard, the IACHR took note of a statement issued by the Human Rights Ombudsman reporting that five LGBTI persons had been murdered during the first weeks of January 2021.<sup>361</sup> The Commission also received information in 2021 about the murder of two trans human rights defenders who were victims of different attacks in the same week in which a gay man was also murdered.<sup>362</sup>

239. Despite the acts of violence against LGBTI persons, the IACHR notes that there is a lack of State policies designed to prevent, investigate, prosecute, and punish such violence with all due diligence. The IACHR reminds the State that the principle of non-discrimination imposes an obligation to adopt differentiated measures to address the violence directed against LGBTI persons.<sup>363</sup> Along these lines, it is essential for the State to adopt comprehensive, transformative measures, based on the collection and analysis of data on violence against LGBTI persons, with the aim of changing social prejudice.

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<sup>357</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 161-172.

<sup>358</sup> Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, p. 195.

<sup>359</sup> Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos, [\[Alerta Defensoras\] GUATEMALA / Asesinan a defensora que buscaba justicia para su hija, una de las 56 niñas víctimas de la masacre en el Hogar Virgen de la Asunción](#), February 24, 2021; Comité pour les Droits Humain en Amérique Latine (CDHAL), [Guatemala: Elsa Siquín, madre de una de las 56 víctimas de la masacre del Hogar Seguro Virgen de la Asunción, amenazada de muerte](#), March 25, 2021.

<sup>360</sup> IACHR, [The Right of Boys and Girls to a Family. Alternative Care. Ending Institutionalization in the Americas](#), OAS/Ser.L/V/II. Doc. 54/13, 2013.

<sup>361</sup> Human Rights Ombudsman, Guatemala, [Comunicado 16/21](#), January 28, 2021

<sup>362</sup> Human Rights Watch, Guatemala: [3 Killings of LGBT People in a Week](#), June 22, 2021; Agencia Presentes, [Asesinaron a las activistas Ceci Ixpata y Andrea González: dos transfemicidios en menos de una semana en Guatemala](#), June 14, 2021.

<sup>363</sup> IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), OAS/Ser.L/V/II.rev.1 Doc. 36, November 12, 2015, par. 84.

240. In addition, the Commission expresses its alarm regarding various legal initiatives underway that would reportedly lead to discrimination in the exercise of the human rights of LGBTI persons. In that regard, the IACHR received information from the State indicating that legislative initiative No. 5272, called the “Bill for the Protection of Life and the Family,” is still before Congress.<sup>364</sup> The Commission has stated that this piece of legislation contains a stereotyped and exclusionary concept of the family, to the detriment of families formed by same-sex couples. The Commission reminds the State of its obligation to refrain from introducing in its legal framework regulations that are discriminatory or that may have discriminatory effects among different population groups.

241. In a similar vein, the IACHR also received information about legislative initiative No. 5940, “Law to Ensure the Comprehensive Protection of Children and Adolescents from Gender Identity Disorders.” The IACHR believes that this bill jeopardizes the human rights situation of trans, nonbinary, and gender-diverse persons who have been exposed to discrimination and violence since childhood because of prejudice in the cis-normative system. In this sense, this bill perpetuates the pathologizing model of gender identities by restricting access to information whose content would “represent, promote, or show alterations to sex identity at birth, gender reassignment, or variations of natural sexual identity,”<sup>365</sup> including in educational programs.

242. The Commission further notes that the State has adopted the previously mentioned Public Policy for the Protection of Life and the Institution of the Family 2021-2032,<sup>366</sup> which replicates stereotypes that exclude LGBTI persons and their families. In that regard, the IACHR points out that these measures fail to recognize inter-American standards regarding the protection and guarantee of the rights of LGBTI persons and contribute to an environment ripe for the development of discriminatory discourse and attitudes that encourage an escalation of the high level of violence against them.

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<sup>364</sup> Presidential Commission for Peace and Human Rights (COPADEH), Ref.Of.502-2021-DE/COPADEH/HRCR/LFL/Kg, Document sent to the IACHR, July 15, 2021, in response to the request for information sent by the IACHR on June 28, 2021, on this and other initiatives.

<sup>365</sup> Congress of Guatemala, Bill 5940, which provides for the passage of a law to ensure the comprehensive protection of children and adolescents from gender identity disorders, July 12, 2021.

<sup>366</sup> Government of Guatemala, [Política Pública de Protección a la Vida y la Institucionalidad de la Familia 2021-2032](#), July 2021; Presidential Commission for Peace and Human Rights (COPADEH), Ref.Of.502-2021-DE/COPADEH/HRCR/LFL/Kg, Document sent to the IACHR, July 15, 2021.

**VIII. CONCLUSIONS<sup>367</sup>**

243. The IACHR observed with deep concern that the rule of law in Guatemala deteriorated significantly in 2021, due to heightened attacks on and interference with the independence of the justice system—especially those bodies that, since the CICIG’s departure from the country, had stood out for their independent, impartial efforts to combat corruption and impunity, namely the Constitutional Court, the FECCI, and the judges with jurisdiction in Guatemala’s High Risk Courts. Among other things, the IACHR observed ongoing actions to dismantle the institutional framework to fight corruption, culminating in the dismissal of the head of the FECCI in apparent reprisal for the investigations he was leading that were said to involve high-level authorities of the Guatemalan State.

244. The IACHR also observed an intensification of efforts to criminalize and stigmatize magistrates, judges, and other independent operators of justice in the country. According to the analysis above, the climate of judicial persecution and harassment has been possible due to the manipulation of criminal law and the alleged lack of independence of the Office of the Public Prosecutor and its Attorney General.

245. In addition, the IACHR took note of a context in which the country’s human rights institutions are progressively weakening, through ongoing threats and stigmatization of the Human Rights Ombudsman, as well as through the obstruction of that institution’s work. Likewise, the work of the institutional framework to promote peace and the bodies responsible for promoting and protecting the rights of women has been hampered due to the lack of funding and other developments that point to a lack of will and political commitment toward these agencies.

246. Based on its analysis, the IACHR notes that the interference with the independence of the judiciary and the setbacks in the fight against corruption and impunity have a severe impact on access to justice and, consequently, on the very exercise of the human rights of the Guatemalan people, especially groups that

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<sup>367</sup> With regard to the conclusions reached by the IACHR, the State of Guatemala made the following statement:  
“[...]

It is important to note that to arrive at objective conclusions that would provide the foundation to include the State in Chapter IV.B of the Annual Report, such as in the case before us, it should be considered that many of the cases in which the State of Guatemala has been singled out for its supposed lack of attention to human rights stand in contrast to facts, circumstances, reports, and testimony, equally as extensive and detailed, that point to the existence of concrete actions, achievements, and fulfillment of the current government’s commitments to meet the human rights standards established in the Convention. Along these lines, the distinguished Commission’s decision to include the State in Chapter IV.B of the Annual Report, without objective reasons for doing so, causes Guatemala profound concern and unease because it obscures and devalues the progress and goals achieved related to promoting and disseminating human rights and combating impunity. The State requests that the illustrious Commission consider the content of the observations laid out in this document and remember the joint commitments it made with the State to pursue a work plan that would seek to overcome the outstanding challenges and goals related to human rights while also recognizing and valuing the progress made in this area.

The State reaffirms its willingness to maintain an open dialogue with the Commission, with truthful information grounded in fact, with no vested interests, noting that all of the State of Guatemala’s institutions are open to the various proposals made by the Inter-American Commission on Human Rights. The State thus proposes a bilateral work plan with direct engagement, using digital media on virtual platforms, with a tentative schedule of activities described in the proposed roadmap detailed below.

In view of the information contained in this report on observations for the IACHR Annual Report, the State finds the need to reiterate to the Honorable Commission that the criterion it used with regard to Article 59(6) of its Rules of Procedure, which establishes a set of six hypothetical situations that would lead to a State being included in Chapter IV.B of an Annual Report, is not conclusive; therefore, in light of that provision, a State’s denial of an on-site visit in no case represents a circumstance that would cause it to be included.

Moreover, the State reiterates its protest of the distinguished Inter-American Commission on Human Rights’ communication of November 23, 2021, which is inconsistent with the mandates of its Rules of Procedure.”

Response from the State of Guatemala to the draft report on Guatemala from Chapter IV.B of the Annual Report of the Inter-American Commission on Human Rights, Note from the Permanent Mission of Guatemala to the Organization of American States (OAS), NV-OEA-M4-980-2021, December 22, 2021, pp. 210-211.

have historically been excluded and discriminated against, such as women, indigenous peoples, and victims of the internal armed conflict. The IACHR also cautioned about the ongoing context of serious risk to the work of journalism, as well as to the defense of human rights, as a result of continuing acts of violence and cases of criminalization and judicial persecution.

247. The IACHR urges the State to reaffirm the political commitment to fight corruption and impunity by strengthening the justice system and the respect for its independence, as well as by taking decisive measures to investigate and prosecute any form of corruption that may affect the effective exercise of human rights in Guatemala.

248. Finally, the IACHR expresses its willingness to collaborate on a technical basis with the State of Guatemala so that it can fulfill its international obligations with respect to human rights. Along these lines, and in keeping with the analysis above, the Commission makes the following recommendations to the State:

## IX. RECOMMENDATIONS

### Fight against Corruption

1. Reaffirm the importance of the fight against corruption in combating impunity by means of a strengthened, independent, and impartial justice system.
2. Implement the necessary mechanisms to prevent, investigate, and punish any form of corruption that may affect the proper functioning of the justice system and the rule of law.

### Judicial Independence and Justice Operators

3. Adopt measures to ensure that agents of justice can carry out their duties impartially and independently, with respect for the principle of separation of powers and free of any threat or pressure.
4. Protect justice operators from attacks, acts of intimidation, threats, and harassment, investigating and imposing effective sanctions on those who violate their rights.
5. Refrain from promoting motions for impeachment (*antejuicio* proceedings) based on the legal opinions of judges or as a means of reprisal for the work they are doing.

### Human Rights Institutions

6. Provide the Office of the Human Rights Ombudsman with sufficient human resources and funding so that it can fully carry out its mandate.
7. Strengthen the institutions responsible for issues related to peace, social conflict, and human rights by means of an adequate legal framework and the budgetary and human resources that enable agencies such as COPADEH to take on the functions and responsibilities of the agencies it replaced.

### Freedom of Expression

8. Strengthen the mechanisms available for the protection of those who work in the field of communication, protecting them from being killed or kidnapped, arrested, intimidated, and threatened, including in the context of social protests; redouble efforts to ensure access to effective and swift justice when such cases occur and consider the practice of journalism as one of the logical lines of investigation to pursue; and ensure that the authorities reject violence against media workers.

9. Refrain from using criminal proceedings under different types of charges when news is disseminated about matters of public interest involving public officials or candidates to public office, and respect the right of all media workers to refuse to reveal their sources of information, or the results of their investigations, to private entities, third parties, or public or judicial authorities.
10. Ensure that public office holders do not promote intolerance, discrimination, or disinformation—including on Internet platforms—and that they do not create, through their discourse, a climate of hostility against journalists, media workers, and media outlets; rather, these authorities should rationally and diligently verify the facts on which they base their opinions and use their leadership positions to promote respect for diversity and provide fair access to information through official events, press conferences, and interviews.
11. Repeal the amendments to the Law on Nongovernmental Development Organizations and to the Civil Code of Guatemala, approved by means of Decree 4-2020 of February 11, 2020, and refrain from adopting legislative measures, even on an exceptional basis, that could illegitimately or disproportionately restrict the exercise of freedom of expression in the form of social protests, independent editorial views, civil society organizations, or other means in which citizens can express their ideas and receive information.
12. Implement measures to broaden access to information and diversity of voices in the public debate, granting legal recognition to community radio stations, giving consideration to reserving parts of the spectrum for these types of media outlets, and providing conditions for equitable access to licenses. Take steps to progressively promote universal access to the infrastructure of the Internet and the technology required for high-quality Internet access.

### **Economic, Social, Cultural, and Environmental Rights**

13. Increase efforts to combat poverty, extreme poverty, and hunger, gearing all public policy toward the exercise and enjoyment of economic, social, cultural, and environmental rights, with a particular focus on groups in especially vulnerable situations and on the failure to guarantee these rights as a cause of human mobility.
14. Adopt a policy of transparency and closely monitor the process of acquiring and distributing vaccines against COVID-19, in order to ensure the proper use of available public resources and be effective in preventing acts of corruption.
15. Take measures to ensure the Guatemalan people's access to and enjoyment of the right to health without discrimination, with special attention to the most vulnerable groups and communities and the protection of the rights of health-care workers.
16. Establish a public policy with a human rights approach regarding climate actions that are taken to mitigate the risks and impacts of climate change in the regions and among the population groups that are most affected, and move forward with the prompt ratification of the Escazú Agreement.
17. Take actions to protect people's rights in the context of business activities, especially the rights of indigenous peoples and rural and campesino communities. To that end, the Commission calls on the State to urgently implement the recommendations in the report Business and Human Rights: Inter-American Standards, prepared by the IACHR-REDESCA.

### **Memory, Truth, and Justice**

18. Strengthen the institutional framework responsible for implementing the commitments of the Peace Accords, ensuring broad participation and an effective dialogue with the victims, their families, civil society organizations, and other relevant actors.

19. Extend the operating period for the National Reparations Program and ensure that it can function to its fullest extent, providing it with the material and human resources it needs to fulfill its mandate.
20. Definitively archive legislative bill No. 5290 and reinforce actions to fight against impunity for human rights violations during the internal armed conflict.
21. Provide sufficient funding to the Historical Archive of the National Police, adopting measures to facilitate its protection and conservation.

### **Human Rights Defenders**

22. Urgently approve and implement a public policy to protect human rights defenders. This policy should include the implementation of a comprehensive protection program and a risk assessment model that makes it possible to determine the protection needs of each human rights defender, incorporating a differential and intersectional approach.
23. Prevent and respond to the criminalization of the work of human rights defenders. In this regard, advance in the drafting of guidelines against criminalization by the Office of the Attorney General.
24. Ensure that the authorities or third parties do not manipulate the punitive power of the State and its bodies of justice to harass human rights defenders and operators of justice.
25. Ensure that human rights defenders are not subjected to criminal proceedings that are unnecessarily summary or protracted. The State of Guatemala should also cease using arrest warrants as a means to punish or retaliate against human rights defenders.
26. Refrain from making statements or assertions that stigmatize or discredit human rights defenders for simply doing their job of defending human rights.

### **Persons Deprived of Liberty**

27. Implement the actions needed to reduce levels of overcrowding and to correct the excessive use of pretrial detention, ensuring that this measure is used as an exception and is bound by inter-American principles related to this issue. As a priority matter, repeal any legal provisions that order the mandatory use of pretrial detention by type of offense, avoid establishing further restrictions on release, and promote, regulate, and implement alternative measures.
28. Continue to adopt measures to strengthen public criminal defense systems, giving priority to coverage and quality of service in order to provide, from the moment of arrest, a service aimed at timely and effective protection of fundamental rights.
29. Ensure the physical presence of persons deprived of liberty at custody hearings, at all times heeding the respective protocols to prevent the spread of COVID-19.
30. Implement efforts to improve judicial and prison information management systems at all detention facilities in the country, in order to provide up-to-date, easily accessible data on cases and the custody status of persons deprived of liberty in the country.

### **Persons in the Context of Human Mobility**

31. Implement policies, plans, programs, or projects designed to address the structural causes that lead to forced displacement of Guatemalans. Such measures should incorporate a differentiated and gender-specific perspective, based on an intersectional approach.
32. Adopt measures to ensure the sustainable reintegration of Guatemalans who have been returned or deported. In the case of people of other nationalities who have been returned or deported to Guatemala, the State should implement effective mechanisms to identify potential needs for international protection, ensuring respect for the principle of *non-refoulement*—which includes prohibiting refusal of entry at the border, indirect return to home country, and collective expulsions—with regard to anyone who seeks asylum or some other form of international protection or anyone whose life or integrity may be at risk in the country to which the person would be returned. Such measures should also incorporate a differentiated and gender-specific perspective, based on an intersectional approach.
33. Ensure that any evictions are carried out only if they are necessary and if they are done in strict observance of international human rights standards and the principles of exceptionality, legality, proportionality, and suitability. Moreover, the State should ensure comprehensive reparation to the victims of evictions and forced displacement. Comprehensive reparation should place a priority on the return of those who have been evicted and displaced; if and only if this is not possible, the State should offer alternatives for resettlement to different land of better or equal quality.

### Indigenous Peoples

34. In consultation and coordination with the indigenous peoples involved, adopt decisive, culturally appropriate measures, along with the necessary funding, to combat the unequal impacts of poverty, malnutrition, and other violations of the social and economic rights of indigenous peoples, with a special focus on children and other vulnerable sectors of indigenous populations.
35. In consultation and coordination with them, adopt decisive, culturally appropriate measures, along with the necessary funding, to institute mechanisms to resolve the demands of indigenous peoples concerning recognition and protection of their territorial rights, in order to settle conflicts with third parties, in accordance with inter-American standards on the rights of indigenous peoples to their lands, territories, and natural resources.
36. Carry out prior, free, and informed consultation with indigenous peoples regarding administrative and legislative initiatives for the purpose of obtaining their consent, including with respect to activities and projects to develop natural resources that may affect their rights.
37. Investigate with due diligence the violent acts of October 2021 directed against Maya Q'eq'chi' demonstrators, and respect and guarantee the right to freedom of expression, the right to social protest, and the rights of indigenous peoples.

### Women

38. The IACHR calls on the State to strengthen the institutions responsible for preventing and addressing gender-based violence against women, providing them with the material and financial resources they need to operate properly, and ensure the participation of women in the design and implementation of policies for prevention and protection against violence.
39. The Commission also urges the State to adopt legislation, public policies, and any other measures that may be needed, in accordance with the applicable inter-American standards, to ensure women's access to goods and services related to sexual and reproductive health without discrimination, including access to the

voluntary termination of pregnancy in cases involving danger to life or health, as well as cases of rape or incest.

### **Children and Adolescents**

40. Develop the appropriate legal framework and institutional reforms to strengthen the comprehensive protection of children and adolescents, pursuant to the standards of international human rights law. This should be accompanied by measures to reinforce the role of children and adolescents as subjects of rights and the capacities of the family as the primary environment for their protection and care.
41. Promote coordinated strategies to deinstitutionalize children and adolescents who remain in residential care institutions, and regulate alternative forms of care, based on the principles of necessity, exceptionality, and temporality.
42. Adopt public policies and other measures necessary to prevent and address the structural causes of violence against children and adolescents, and ensure the effective protection of the rights of children and adolescents in both the public and private spheres.

### **Human Rights of LGBTI Persons**

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