

CHAPTER IV.B

GUATEMALA

1. As its paramount mission “to promote the observance and defense of human rights” in the hemisphere, the Inter-American Commission on Human Rights has been particularly attentive in following the human rights situation in Guatemala, and has observed a series of structural challenges in the areas of justice, citizens security, marginalization, and discrimination that for decades have taken a toll on the human rights of its inhabitants.

2. At its 153rd Regular Session, the IACHR decided to prepare a report on the human rights situation in Guatemala and include it in Chapter IV.B of its 2014 Annual Report. In January 2015, the IACHR offered to the State of Guatemala the possibility that the State might invite the IACHR to conduct an on-site visit to the country in 2015 to analyze the situation of human rights. In that note, the IACHR mentioned that if a visit was agreed upon, the IACHR would prepare a country report and would not include Guatemala in Chapter IV B of the 2014 Annual Report.

3. On February 8, 2015, the State expressed an interest in receiving an on-site visit in order to “share ... the efforts and challenges of the institutions that work constantly to advance and protect human rights.” It also reaffirmed “the will of the Government of Guatemala to improve the dynamic and relations between the IACHR and the State of Guatemala in order to strengthen collaboration and cooperation.” The State, proposed that the visit take place in September. However, due to preexisting activities, during its 154th session the IACHR decided not to accept the proposed date and instead proposed to the State that the visit be held in late April to early May. In response, the State verbally expressed its opposition to the proposed dates, as well as the one for September, saying that it would no longer appear viable a visit in 2015 as it was an election year. As a result of the foregoing, although the Guatemalan State gave its consent for the IACHR to visit the country, unfortunately the visit could not be carried out on the dates that would have been feasible in 2015 because of difficulties in the agendas of the State and the IACHR.

4. Taking into account the difficulty in establishing a new date for the *in loco* visit, which in turn could allow the processing of information and achieve the adoption of a report in 2015; on August 3, 2015 the IACHR informed the State of its decision to prepare a report on the situation of human rights in Guatemala. To this end, on August 14 requested information on issues of interest for the preparation of the report.

5. On September 16, the State requested an extension of 30 days to respond to the request for information. On October 7, 2015, the State submitted its response after the granting an extension of 20 additional days by the IACHR.

6. After analyzing the situation of human rights for 2015, the Commission decided to include the State of Guatemala in Chapter IV of its Annual Report for 2015 in accordance with Article 59. 6 (c) and 6 (d. i and iii) of its Rules of Procedure, believing that the situation of human rights in the country presents structural situations in the areas of justice, security, marginalization and discrimination that seriously affect the enjoyment of human rights.

7. On December 2, 2015, the IACHR forwarded to the State copies of the preliminary drafts of the country report "Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion" and of Chapter IV.B of its Annual Report, which were approved by the Commission on November 29, 2015. In so doing, the IACHR requested the State to present its observations by December 23, 2015. On December 11,

2015, the IACHR received the observations of the State, dated December 9, 2015.¹ The observations and comments were reviewed by the Inter-American Commission and the relevant portions reflected both here in Chapter IV. B and in the country report, an executive summary of which is contained in this chapter. Both reports were approved by the IACHR on December 31, 2015.

8. In its observations, the State of Guatemala questions the rationale by which the IACHR had decided to include the State in Chapter IV. B of its 2015 Annual Report, saying that “based on the information analyzed and reviewed by the IACHR, it is not possible to conclude for certain that the State is guilty of widespread, serious, and systematic human rights violations since there have been no crimes that have either been perpetrated or sponsored by the state's apparatus against the population, or been systematic or widespread. What is evident, however, is that there has been a prejudgment of the State of Guatemala since the hearings held on October 28, 2014, during the 153rd session, at which civil society organizations requested Guatemala's inclusion in said chapter.”

9. Inasmuch as the Commission adopted in 2015 its report "Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion, which examines in detail the structural factors identified by the IACHR as impairing the enjoyment of human rights by Guatemala's inhabitants, following the Commission presents the Executive Summary of the said report.

EXECUTIVE SUMMARY

1. In the present report the Inter-American Commission on Human Rights (IACHR) addresses the situation of human rights in Guatemala, and a number of structural challenges in access to justice and impunity, citizen security, marginalization and discrimination which have affected severely the human rights of its inhabitants. Special attention is given to the situation of human rights defenders, journalists, women and children, LGBTI people, migrant population, among others. In this context, the report also addresses the situation of the indigenous peoples, who has seen their rights to ancestral lands, and to consultation affected due to grave levels of exclusion and inequality with generations of malnutrition due to structural discrimination and racism.

2. The IACHR has focused specific attention on the independence and autonomy of the administration of justice in Guatemala and the selection processes and guarantees of tenure for the positions of justice operators. It has also focused on the need for the State to provide an adequate, efficient, independent, and impartial system for the administration of justice to tackle the persistent structural impunity with respect to severe human rights violations in both the past and the present.

3. The IACHR is especially troubled by the State's failure to comply with the recommendations and judgments of the organs of the inter-American human rights system (IAHRS). Despite the fact that Guatemala accepted the jurisdiction of the Inter-American Court of Human Rights on March 9, 1987 and undertook to abide by its decisions, under the administration of former president Otto Pérez Molina, in adjudicated cases including those where the State accepted its responsibility, the Government denied its obligation to live up to its commitments questioning the temporal jurisdiction of the Court and stressing the legitimacy of amnesties during the internal armed conflict, including that contained in the

¹ Communication of the State, Matter: Report of the State of Guatemala regarding the "Draft Report on the General Human Rights Situation in Guatemala", Chapter IV Guatemala and the IACHR Communication of August 14, 2015. Ref. P-766-2015/AFAF/HN/wr-er, October 6, 2015; and Communication of the State with Additional observations of the State of Guatemala on the "Draft General Report on the Situation of Human Rights in Guatemala." Note Ref. P-925-2015/AFAF/hm of December 9, 2015, received by the Secretariat on December 11, 2015. Available at: <http://www.oas.org/es/cidh/docs/anual/2015/doc-es/GT-Informe-del-Estado.pdf> and <http://www.oas.org/es/cidh/docs/anual/2015/doc-es/GT-Observaciones-adicionales.pdf>

National Reconciliation Act of 1996. The IACHR observes with concern that, during the administration of former President Pérez Molina, the government refused to characterize the incidents of the conflict, with its devastating impact on indigenous communities, as genocide.

4. In this regard, in a private hearing to monitor compliance with 11 judgments against Guatemala, the Inter-American Court in its last resolution of August 21, 2014, indicated that the position taken by Guatemala constituted "an act of obvious contempt of State regarding the enforceability of the judgments delivered by the Court, contrary to the international principle conform to its treaty obligations." The Court explained the inapplicability of the Reconciliation Act to the cases subject to the supervision and ordered the State to adopt "all measures necessary to comply promptly with the judgments, and "comply in good faith with their treaty obligations and inform the Court². During a hearing held in the 156 period of session of the Commission, held from October 17 to 28, 2015, the State reiterated to the IACHR its approach as to the scope of the jurisdiction of the Inter-American Court; also reiterated its position with regard on the alleged legitimacy of the amnesty as a cause of extinction of criminal responsibility in cases of human rights violations committed during the internal armed conflict. The Commission restates to the Government of Guatemala that this position is contrary to the standards and inter-American jurisprudence and contributes to the prevailing of impunity.

5. Notwithstanding, the IACHR recognizes progress in different areas which has a direct impact on the situation of human rights. The IACHR notes changes in favor of a society committed with human rights, promoted by the work of public officials compromised with justice and human rights defenders as well as social leaders. The support of international human rights agencies, as well as the International Commission against Impunity in Guatemala (CICIG, for its acronym in Spanish), has been critical to those efforts.

6. Throughout this report, the Commission highlights for example reduction of the rate of homicide; and, on indigenous rights, the decision of the Constitutional Court of September 2015 by which for the first time ordered the practice consultation with indigenous communities affected by an investment project.

7. Also in the administration of justice it is worth noting the work of the CICIG and the Public Ministry in the dismantling of criminal networks and the fight against corruption. In this regard the IACHR appreciates that in 2015 the State extended the mandate of the CICIG. Moreover, the Commission appreciates the State's efforts to create a protection program for journalists and the actions taken to prevent and combat human trafficking, and the creation of differentiated statistics on violence against women, which would contribute to the development of public policies, among others.

8. The year 2015 has had a special impact in the Guatemalan society. Since the revelation of the so called "case La Linea" and another series of acts of corruption, Guatemalan society took to the streets to demand the resignation of the President of the Republic. On September 3, 2015 Otto Perez Molina resigned from the Presidency of the Republic having been indicted for his alleged role in the network of customs fraud. According to the Office of the High Commissioner for Human Rights in Guatemala (OHCHR-Guatemala) "amid the deep political and institutional crisis in decades, and the Guatemalans are aware that only through comprehensive reforms will real change be achieved in the country."

² I/A Court H.R., Joint Monitoring Compliance of 11 cases v. Guatemala. Monitoring Compliance with Judgment of the Inter-American Court of Human Rights of August 21, 2014.

9. On October 25, 2015 James Ernesto Morales was chosen in the second round as President of the Republic, and will take office on January 14, 2016. The new government has crucial challenges on human rights. To take steps to ensure that Guatemalans live in a country free of violence, continue the fight against impunity, corruption, exclusion and discrimination are just some of them. The Commission urges the new government to resume the agenda of the peace agreements and ensure compliance with the recommendations of the Commission and judgments of Inter-American Court.

10. With regard to the preparation of the present Report and, as a result of the information received in recent years about the situation of human rights in Guatemala,³ the IACHR sought the consent of the State of Guatemala to conduct an on-site visit so as to verify the situation for itself. Apart from verification, the visit would also have provided an opportunity to meet with government officials, civil society representatives, and indigenous leaders in order to gather and share information. Regrettably, that visit was unable to come to fruition in 2015 in feasible dates. In light of that, the Commission requested information on the human rights situation in the country from the State, the Human Rights Ombudsman (PDH, for its acronyms in Spanish), and civil society organizations. The IACHR has also taken into account the information and perspectives reflected through its mechanisms including public hearings, precautionary measures and the case system.

11. Poverty, racism, discrimination, exclusion, violence and impunity have been constantly observed in Guatemala by this Commission in the exercise of their various functions. This, framed in a weak state structure, with few resources by poor tax collection and high level of corruption.

12. The IACHR is mindful that the serious human rights situation in Guatemala affects all its inhabitants and permeates every sphere of society. In recognition of that, the IACHR decided that this report should focus on three fundamental aspects: citizen security, administration of justice, and the inequality and exclusion suffered by indigenous peoples.

13. The Commission analyzes the inequality and exclusion suffered by indigenous peoples in Guatemala as a consequence of racism and structural discrimination, situation that is also reflected in the State denial of the genocide suffered by the Maya people during the internal armed conflict. The IACHR also notes the ongoing lack of protection for the human rights of indigenous peoples and communities in accordance with international standards, which is causing social and environmental harm in indigenous areas, including the dispossession of their lands and contamination of their water sources.

14. The chapter entitled "Inequality, Discrimination and Exclusion: The Situation of Indigenous Peoples" draws on valuable information and testimony gathered during the visit made from August 21 to 30, 2013, by Dinah Shelton, the IACHR Rapporteur on the Rights of Indigenous Peoples at that time.⁴ During the 10-day visit, former Commissioner Shelton met

³ The Commission has followed the human rights situation in Guatemala with particularly close attention and noted in its reports a series of structural issues in the areas of security, violence, justice, marginalization and discrimination that have affected the human rights of its people for decades. The Commission has monitored the situation by means of different mechanisms; on-site visits, country reports, Chapter IV of its annual report,³ the system of individual petitions and cases, precautionary measures, and press releases. It has also held public hearings and made requests for information to the State under Article 41 of the American Convention on Human Rights, among other measures. Guatemala has been included in Chapter IV of the Annual Report in the following years: 1983-1984, 1984-1985, 1985-1986, 1986-1987, 1987-1988, 1988-1989, 1989-1990, 1990-1991, 1991, 1993, 1994, 1996, 1997 and 2003. In addition, the has published special reports on the situation of human rights in Guatemala in 1981, 1983, 1985, 1993, 1994, 2001, and 2003. In follow-up to its country reports, it was included in Chapter V of its Annual report in 2002 and 2004.

⁴ On that occasion, the former commissioner said that "racism and discrimination against indigenous peoples persists in Guatemala, but also that the government has initiated several new programs intended to address this situation. Unfortunately, disproportionate rates of poverty, extreme poverty, and child malnutrition, persist among the rural indigenous population." She also said,

with government officials and indigenous authorities and leaders. She also met scholars and representatives of civil society organizations. The various activities took place in Guatemala City, Cobán, Valle del Polochic, Nebaj, Huehuetenango, Totonicapán, San Marcos, and Chichicastenango. The aim of the visit was to gather information on the situation of indigenous peoples in Guatemala, with special emphasis on the discrimination and exclusion experienced by indigenous peoples, as well as the situation involving their lands, territories, and natural resources and their right to free and informed prior consultation.

15. With regard to citizen security in Guatemala, the IACHR notes that for several years, particularly since 2000, there has been a wave of generalized violence that has spiked (in 2008 and 2009) and waned, though without ever falling below levels that make Guatemala one of the most violent countries in Latin America. According to the United Nations Development Programme (UNDP), the high rates of violence and insecurity that plague Guatemala have to do with social exclusion and a failure of law enforcement. This occurs in a context of institutional weakness on the part of the State where the inefficiency to deal with the problem only increases the levels of violence allowing clandestine groups to establish themselves and create hidden networks with State institutions. In this context of violence and insecurity, the IACHR has observed a number of circumstances that make the situation worse, such as the resurgence of missing persons associated with the activities of organized crime groups; the serious problems of lynching and the seldom supervised and disproportionate use of private security providers.

16. The Guatemalan State has attempted a series of policies and strategies in response to the violence and insecurity. However, some of its acts (or omissions), such as the continuous weakening of the National Civilian Police (PNC, for its acronym in Spanish), the disproportionate use of states of emergency, militarization of citizen security, and the creation of special squads, have only increased tensions and exacerbated the problem.

17. Aside from the context of violence and insecurity, there is the situation of those whose role in society or because they have been subjected to a historic discrimination are disproportionately affected by the violence and discrimination. They include individuals who defend human rights, including indigenous authorities and leaders, environmental activists, trade union leaders, and justice operators, among others. Others groups affected include women, children and adolescents, journalists, migrants and refugees, LGBTI persons, people with disabilities, and persons deprived of liberty.

18. According to reports from the NGO Protection Unit Defenders of Human Rights in Guatemala (UDEFEQUA) there would have recorded 380 attacks against defenders of human rights from January up to September 2015. Attacks and aggressions that include murder, threats, arbitrary detentions, persecution and surveillance. According to the same organization, in 2014 they have recorded 814 attacks. The attacks have been directed at human rights defenders who work the main problems affecting the country's human rights, such as those dedicated to defending the rights of indigenous peoples, territory, land and environment healthy, representing victims of the internal armed conflict or union. The IACHR laments these deaths and calls for their clarification, and reiterates that the work of human rights defenders is fundamental for the implementation of human rights and for the full existence of democracy and the rule of law.

"It is also of concern that the current licenses for mining and hydroelectric plants were granted without the State having implemented prior, free, and informed consultation with affected indigenous communities, as it is obligated to do under international treaties signed by Guatemala." IACHR, Press Release 66/13 - Office of the Rapporteur on the Rights of Indigenous Peoples Conducted Working Visit to Guatemala. Washington, D.C., September 18, 2013.

19. The IACHR stresses the need in Guatemala for an efficient, independent, autonomous justice administration to strengthen democracy and the rule of law because a judiciary with those characteristics puts limits on abuses of power and guarantees the rule of law and protection of human rights for all. In that regard, of special concern for the IACHR has been the independence of the judicial branch in light processes of selection and tenure of justice operators, access to justice and impunity, and the legacy of the internal armed conflict.

20. In 2014 and 2015, the IACHR received information about the impacts on the independence of the judiciary in Guatemala from the absence of suitable processes to appoint and select justice operators. It also continued receiving information about the distressing rates of impunity, which among other impacts have direct repercussions for the access to justice. The IACHR observes that the impunity rate for the crime of homicide from 2008 to 2014, according to a report from the CICIG of November 2015,⁵ fluctuated between 99.1% and 98.4%, with certain drops depending on the years and the subject. To this can be added the fact that most of the incidents that took place during the armed conflict (1960 to 1996) went unpunished. Notwithstanding, it is worth mentioning the progress made by judicial officials as self-executing the statement issued by the Inter-American Court rulings handed down by the Criminal Chamber of the Supreme Court, as well as progress in the investigation, prosecution and conviction in various cases. In this regard, by the magnitude of the cases that are still unpunished further efforts are required, including the correction of the position of the Government, as to question of the competence of the Inter-American Court and insist position of the State on the legitimacy of amnesties for cases during the internal armed conflict.

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

it would deploy its best efforts to tackle the challenges that persist arising from the manifestations of multi-causal violence, discrimination, and exclusion, and would implement the measures that are indispensable to make it possible to eliminate critical poverty, prevent and combat crime, as well as unrest, which prevent the full development of its inhabitants, as a result of which it is useful to implement those recommendations from the country report that are deemed relevant and timely [...].⁶

22. The Commission appreciates the contributions of the state and civil society in the preparation of this report; in particular, the testimony of hundreds of authorities and indigenous leaders that allowed him to better understand, from their voices, the situation experienced in Guatemala.⁷

⁵ The CICIG defines impunity as the failure to report, investigate, arrest, bring to trial, find positive solutions for the victims, and/or convict those responsible for crimes classified in Guatemalan law and focuses its report on the subject of judgments of conviction. CICIG, Press release 091, *Sistema de Medición de Impunidad en Guatemala* [System to Measure Impunity in Guatemala], November 27, 2015.

⁶ Additional observations of by the State of Guatemala about the “Draft Country Report title: Situation of Human Rights in Guatemala: citizens security, access to Justice, diversity, inequality and exclusion” (from now on Draft Report on the Situation of Human Rights in Guatemala), <http://www.oas.org/es/cidh/docs/-anual/2015/doc-es/GT-Observaciones-adicionales2015.pdf>. Ref. Note P-925-2015/AFAF/hm of December 9, 2015, received at the IACHR Secretariat on December 11, 2015, pp. 1 and 5.

⁷ The testimonies were received during the visit of former Rapporteur Dinah Shelton to Guatemala in 2013.