

## CHAPTER V

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

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

##### I. INTRODUCTION

1. This chapter follows up on the recommendations contained in the report *Situation of Human Rights in Guatemala: Diversity, Inequality, and Exclusion* (the “Report on Diversity, Inequality, and Exclusion,” “Report of the IACHR,” or “Report”) adopted by the Inter-American Commission on Human Rights (the “Commission,” “Inter-American Commission,” or “IACHR”) on December 31, 2015, in accordance with Article 59 (9) of its Rules of Procedure. According to that provision, by means of Chapter V of its Annual Report, the Commission shall follow-up on measures adopted to comply with the recommendations issued in its country reports.

2. In the report *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion* the Commission analyzed the human rights situation in Guatemala, as well as a number of structural challenges in terms of access to justice and impunity, citizen security, marginalization and discrimination which have severely affected the human rights of its inhabitants. The report of the IACHR centered on three main aspects: citizen security, administration of justice, and the inequality and exclusion suffered by indigenous peoples.

3. With respect to citizen security in particular, the IACHR identified a situation of widespread violence that despite being on a downward trend is, nevertheless, high, in addition to a serious problem of lynchings, and barely supervised use of private security. Other problems it highlighted included obstacles to achieving judicial independence in relation to selection processes for, and tenure of, justice sector operators; grave shortcomings with regard to access to justice and impunity; and the legacy of the internal armed conflict.<sup>1</sup>

4. The IACHR also lamented attacks targeting defenders of indigenous peoples' rights, land rights and the environment, as well as those representing victims of the internal armed conflict and trade union leaders, who are being singled out for attacks and threats, including assassinations, arbitrary detentions, persecution, and surveillance. As a result, the IACHR called for the clarification of these acts and reiterated that the work of human rights defenders is fundamental for the implementation of human rights.<sup>2</sup>

5. The Commission also analyzed the inequality and exclusion suffered by indigenous peoples in Guatemala as a result of entrenched racism and discrimination. The IACHR also noted the 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.<sup>3</sup>

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<sup>1</sup> IACHR, [IACHR Publishes Report on the Human Rights Situation in Guatemala](#), OEA/Ser.L/V/II., December 31, 2015, par. 19.

<sup>2</sup> IACHR, [IACHR Publishes Report on the Human Rights Situation in Guatemala](#), OEA/Ser.L/V/II., December 31, 2015, par. 18.

<sup>3</sup> IACHR, [IACHR Publishes Report on the Human Rights Situation in Guatemala](#), OEA/Ser.L/V/II., December 31, 2015, par. 13.

6. In its additional observations to the country report, the State of Guatemala reiterated its commitment to protecting and ensuring human rights, which, it said, was evident “from various actions and efforts of the State and its institutions [...] whose ultimate goal is to facilitate the conditions that guarantee the full enjoyment and exercise of human rights and universal liberties in the country's territory.” It also said:

it will deploy its best efforts to tackle the challenges that persist arising from the manifestations of multi-causal violence, discrimination, and exclusion, and would implement the measures that are indispensable to make it possible to eliminate critical poverty, prevent and combat crime, as well as unrest, which prevent the full development of its inhabitants, as a result of which it is useful to implement those recommendations from the country report that are deemed relevant and timely.<sup>4</sup>

7. On February 26, 2016, the State of Guatemala extended an invitation for the Commission to visit the country in the course of the year, on a date to be agreed upon. On March 14, 2016, commissioners James Cavallaro and Enrique Gil Botero presented the IACHR report “Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion” in Guatemala City. During the visit, the president of the republic, Jimmy Morales, who took office on January 14, 2016, reiterated to the commissioners the invitation for the IACHR to visit Guatemala. Owing to the financial crisis afflicting the Commission, the IACHR publicly announced the cancellation of its visits in 2016, which meant that it was unable to visit Guatemala.

8. In a letter of March 10, 2016, the IACHR requested the State of Guatemala to provide, within six months, information on steps taken to implement the recommendations contained in the country report. In a letter of August 4, 2016, the IACHR agreed to the State's request for additional time and gave it an extra month, so that it might present its observations on October 10, 2016. The State presented its report on implementation of the recommendations on that date. In its report, the State repeated its invitation for the IACHR to make an on-site visit in 2017. The Commission is grateful for the invitation and hopes that the visit will materialize.

9. In a press release dated August 15, 2016, the IACHR invited civil society organizations to submit any information they considered pertinent regarding the implementation of the recommendations in their areas of expertise in order to analyze compliance with the recommendations contained in the 2015 country report on Guatemala.

10. For the purposes of this report, the IACHR forwarded a copy of the preliminary draft to the State in accordance with the Article 59 (10) of its Rules of Procedure and requested it to convey any observations it might have. On January 23, 2017, the IACHR received the State's observations, and which, as appropriate, were incorporated in the final draft adopted by the Commission on March 15, 2017. In its comments on the draft of this report, the State of Guatemala reiterated to the IACHR its commitment to continue toward complying with the recommendations made in the report “Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion.” It also reiterated its commitment to follow up on the recommendations with regard to taking up the Peace Accords agenda once more.<sup>5</sup>

11. This follow-up report has four sections. It adopts the same structure as the country report in terms of the recommendations. Each section addresses the recommendations put forward by the IACHR in the corresponding chapters and analyzes the main progress and challenges identified by the IACHR from the information presented by the State and civil society organizations, as well as from that which the Commission has gathered from its monitoring of the overall situation of human rights in the country. For that, the Commission has relied on information received from the State during public hearings, ex officio investigations, input from the system of individual petitions and cases, applications for precautionary

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<sup>4</sup> Additional observations made by the State of Guatemala on the Draft Report on the Situation of Human Rights in Guatemala. Note Ref. P-925-2015/AFAP/hm of December 9, 2015 received at the Secretariat on December 11, 2015, pp. 1 and 5.

<sup>5</sup> [Communication from the State of Guatemala, Comments of the State of Guatemala on “Draft: Chapter V Follow-up of Recommendations Formulated by the IACHR in its Report on the Situation of Human Rights in Guatemala: Diversity, Inequality, and Exclusion,”](#) January 23, 2017.

measures, and requests for information under Article 41 of the American Convention on Human Rights, in addition to information available from other public sources and decisions and recommendations of specialized international agencies, among others. Finally, the IACHR offers its conclusions and recommendations.

12. The IACHR reiterates the importance that the State of Guatemala implements all the recommendations formulated in the report of the IACHR.

## II. FOLLOW-UP OF RECOMMENDATIONS

### A. General Recommendations

- Restart the agenda of the Peace Accords.
- Comply with and implement the recommendations, decisions, and judgments of the inter-American human rights bodies.
- Continue to make efforts to eradicate extreme poverty and hunger, in particular, and adopt the necessary measures to eliminate the grave problem of child malnutrition.

13. The Commission noted in its country report that the Peace Accords were an opportunity for profound change in Guatemala. The succeeding administrations since the end of the armed conflict have made efforts to implement the accords. However, most of the gross human rights violations committed during the armed conflict have gone unpunished.<sup>6</sup>

14. Civil society organizations told the IACHR that 2016 marked the 20th anniversary of the signing of the Peace Accords and that when assessing compliance of the commitments, the conclusion is that the commitments adopted by the State in the areas of reparation, truth, justice, and non-repetition have not been met.<sup>7</sup> The organizations said that the State needed to redesign its actions in order to kickstart them and meet its commitments. According to the organizations, although the State has been working to rebuild society, the issue of transitional justice needs to be one of the fundamental pillars in reconstituting the social fabric.<sup>8</sup>

15. The State, for its part, said that it had restarted the Peace Accords agenda in July 2016 and that it is preparing a study on progress in implementing each commitment. In that regard, it reported that the executive branch, with input from civil society, the Congressional Committee on Demining, and government ministries and secretariats, is developing the "2017-2020 Policy Agenda 20 Years after the Peace Accords (Giving New Meaning to the Peace Accords)," an objective of which is to follow up on institutional budget spending in the Annual Operating Plans (AOPs).<sup>9</sup>

16. The State also informed to the Commission that on May 23 and 24, 2016, the Chair of the Presidential Commission on Human Rights (COPREDEH) met with members of the Inter-American Court at the Court's seat in Costa Rica in order to reiterate the commitment to comply with the judgments in the *Diario*

<sup>6</sup> IACHR, [IACHR Publishes Report on the Human Rights Situation in Guatemala](#), OEA/Ser.L/V/II., December 31, 2015, par. 47.

<sup>7</sup> Information presented by the following civil society organizations with the request for a thematic hearing on "Reparation in Guatemala," October 10, 2016: Alta Verapaz Victims Coordinator (*Coordinadora de Víctimas de Alta Verapaz* – CODEVI), El Petén Victims Coordinator (*Coordinadora de Víctimas de El Petén* – COVIP), Smallholders' Association for the Development of Nebaj (*Asociación Campesina para el Desarrollo Nebajense* – ASOCDENEB), Communities in Resistance (*Comunidades de Población en Resistencia* – CPR-Sierra), Cotzal El Quiché Victims' Communities (*Comunidades de Víctimas de Cotzal El Quiché*), Center of Forensic Anthropology and Applied Sciences (*Centro de Análisis Forense y Ciencias Aplicadas* – CAFCA). That communication was duly forwarded to the State.

<sup>8</sup> Information presented by the civil society organizations (CODEVI, COVIP, CAFCA, ASOCDENEB, and others) with the request for a thematic hearing on "Reparation in Guatemala," October 10, 2016.

<sup>9</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 2.

*Militar* and *Río Negro* cases as well as in others in which the jurisdiction of the State had previously been challenged,<sup>10</sup> and reiterated its desire to work to ensure that the State of Guatemala does not continue its disobedience with the decisions of the inter-American system.<sup>11</sup>

17. The IACHR welcomes the willingness that the State of Guatemala has expressed this year to abide by the recommendations of the Commission and the judgments of the Court. The State said the following in its report on the draft of Chapter V—which follows up on the recommendations contained in the 2015 country report—and in its report on implementation of the recommendations, submitted in October 2016:

[The State is] mindful of its commitments in the area of human rights, particularly as regards adherence to the rulings issued by the Inter-American Court of Human Rights and the recommendations and decisions of the illustrious Commission. That is why a series of meetings have been initiated with the principal actors (parties in the disputes) with the aim of arriving at different solutions that would allow the State to meet its domestic and international obligations in relation to human rights.<sup>12</sup>

18. With respect to the recommendation on measures adopted to eradicate poverty, extreme poverty, and hunger, in September 2016, the Inter-American Commission on Human Rights conducted a working visit to Guatemala to gather information for its first thematic report on poverty and human rights in the Americas. During its visit, it heard about many concerns of civil society organizations with regard to the structural challenges to be overcome to reduce poverty and extreme poverty and to guarantee real equality in Guatemala.<sup>13</sup> The information received indicated that poverty and extreme poverty have a disproportionate impact on indigenous and rural populations, which are “the most excluded” segment of the population.<sup>14</sup> In this context, the IACHR was also informed of the high levels of chronic childhood malnutrition in the country

<sup>10</sup> The State also provided information about steps taken to make good on commitments arising from the human rights protection mechanisms of the inter-American system, including advancing investigations under the responsibility of the Public Prosecutions Service (*Ministerio Público*), possibly through a working group; publishing judgments of the Inter-American Court; holding public acts of acknowledgment of responsibility; making audiovisual productions; and building a park of remembrance. Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 3.

<sup>11</sup> The steps taken are as follows: Investigations: Meetings have been held with legal representatives of petitioners in the various cases before the inter-American system, and the possibility was proposed of setting up a working group to help move the investigations under the Public Prosecutions Service forward. In August 2016, the COPREDEH Chair met with the Prosecutor General, who heads the Public Prosecutions Service. The Prosecutor General was in agreement with him on the State's obligation in relation to the investigations in the cases.

Publication of judgments: Judgments have been published in the cases of *Veliz Franco* and *Velasquez Paiz*. In addition, the judgments are in the process of being published in the *Río Negro*, *Diario Militar* and *Olga Yolanda Maldonado* cases.

Public ceremonies: Every year a public ceremony is held on August 25 to remember the Child Victims of the Internal Armed Conflict. In addition, the Myrna Mack Scholarships award ceremony was held on September 22.

Audiovisual productions: The production of a documentary film on the situation of the victims in the *Diario Militar* case is pending.

Park of Remembrance: Arrangements for building the park are in progress. On August 16, 2016, the COPREDEH Chair met with representatives of the Municipality of Guatemala City to explore the possibility of acquiring an area of municipal land and moving forward with carrying out this commitment.

Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 4.

<sup>12</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 2.

<sup>13</sup> IACHR, Press Release No.136/16, *IACHR Concludes Working Visit to Guatemala*, September 26, 2016. Available online: [http://www.oas.org/en/iachr/media\\_center/PReleases/2016/136.asp](http://www.oas.org/en/iachr/media_center/PReleases/2016/136.asp)

<sup>14</sup> IACHR, Press Release No.136/16, *IACHR Concludes Working Visit to Guatemala*, September 26, 2016. Available online: [http://www.oas.org/en/iachr/media\\_center/PReleases/2016/136.asp](http://www.oas.org/en/iachr/media_center/PReleases/2016/136.asp)

and the increase in children living in poverty in both rural and urban areas, a situation which falls short of the World Health Organization (WHO) international standards. In this regard, it is worth mentioning that, at the present time in Guatemala, over a million children are affected by chronic malnutrition.<sup>15</sup> In fact, 46,5% or almost half of the children under the age of five are chronically malnourished, and in the Western Highlands, as many as 7 in 10 children suffer from chronic malnutrition, or childhood stunting.<sup>16</sup> In the case of indigenous children, chronic malnutrition reaches levels as high as 80%.<sup>17</sup> Only minimal progress has been achieved in terms of battling chronic malnutrition in the country over the past two decades, making it the country most afflicted by chronic malnutrition in Latin America, and one of the worst such situations in the world.<sup>18</sup> The Human Rights Ombudsman of Guatemala published a report this year analyzing how Guatemala was not guaranteeing the right to food of its population.<sup>19</sup>

19. During the visit, the IACHR was also informed of the lack of access to jobs, salaries falling below the statutory minimum wage necessary to access the basic food basket, and the high rates of informal employment.<sup>20</sup> Civil society organizations also mentioned the shortage of medicine and medical personnel in public health care centers, increased migration, growth in makeshift urban settlements due to a lack of access to housing, child labor, and increased social inequality.<sup>21</sup> Although the State has taken measures to increase education and to implement Intercultural Bilingual Education, data remains quite alarming, with 15,3% of the non-indigenous population not knowing how to read or write, in comparison with a 35,3% illiteracy rate for indigenous people.<sup>22</sup> The information received by the IACHR also points to the serious problems in access to potable water in rural areas due to drought, river diversion, and businesses monopolizing water resources, in addition to land seizures and pollution due to the use of agrochemicals by companies and due to large development projects.<sup>23</sup> Access to running water and sanitation services such as access to sewers is also a problem that particularly affects indigenous peoples in the country.<sup>24</sup>

20. On the other hand, the State provided the IACHR with information on a series of programs targeting the people and communities living in poverty and extreme poverty in Guatemala, as well as the

<sup>15</sup> SESAN, National Strategy for the Prevention of Chronic Malnutrition 2016-2020, Government of Guatemala, 2016. Available online: <http://www.sesan.gob.gt/index.php/descargas/91--11/file>

<sup>16</sup> MSPAS. 2015. Guatemala VI Encuesta Nacional de Salud Materna Infantil 2014/15. Guatemala: Ministerio de Salud Pública y Asistencia Social (MSPAS)/ Instituto Nacional de Estadística (INE)/Centros de Control y Prevención de Enfermedades (CDC); FANTA, *Malnutrition in Guatemala: Holding our country back*, June 2016, Available online: <http://www.fantaproject.org/sites/default/files/resources/Guatemala-municipal-brief-English-June30.pdf>.

<sup>17</sup> Secretariat for Food and Nutrition Security. *Strategic Plan for Food and Nutrition Security*. p. 1.

<sup>18</sup> FANTA, The Cost of Essential Nutrition Interventions to Reduce Chronic Malnutrition in Guatemala, Executive Summary, 2015. Available online: <http://www.fantaproject.org/sites/default/files/resources/Guatemala-Nutrition-Costing-Exec-Summ-Dec2015.pdf>

<sup>19</sup> Human Rights Ombudsman (Procurador de los Derechos Humanos), Dirección de Comunicación Social, *Comunicado de prensa: Día Mundial De la Alimentación*, October 16, 2016, Guatemala. Available online: [http://www.pdh.org.gt/archivos/descargas/Sala%20de%20prensa/Comunicados/comunicado\\_da\\_mundial\\_de\\_la\\_alimentacin\\_16\\_octubre\\_2016.pdf](http://www.pdh.org.gt/archivos/descargas/Sala%20de%20prensa/Comunicados/comunicado_da_mundial_de_la_alimentacin_16_octubre_2016.pdf)

<sup>20</sup> IACHR, Press Release No.136/16, *IACHR Concludes Working Visit to Guatemala*, September 26, 2016. Available online: [http://www.oas.org/en/iachr/media\\_center/PReleases/2016/136.asp](http://www.oas.org/en/iachr/media_center/PReleases/2016/136.asp)

<sup>21</sup> IACHR, Press Release No.136/16, *IACHR Concludes Working Visit to Guatemala*, September 26, 2016. Available online: [http://www.oas.org/en/iachr/media\\_center/PReleases/2016/136.asp](http://www.oas.org/en/iachr/media_center/PReleases/2016/136.asp)

<sup>22</sup> Guatemala. Ministry of Public Health and Social Assistance (MSPAS)/Panamerican Health Organisation (PAHO)/World Health Organisation (WHO) in Guatemala, *Perfil de Salud de los pueblos indígenas de Guatemala*, Guatemala, 2016 p.22. Available online: [http://reliefweb.int/sites/reliefweb.int/files/resources/perfil\\_salud.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/perfil_salud.pdf)

<sup>23</sup> IACHR, Press Release No.136/16, *IACHR Concludes Working Visit to Guatemala*, September 26, 2016. Available online: [http://www.oas.org/en/iachr/media\\_center/PReleases/2016/136.asp](http://www.oas.org/en/iachr/media_center/PReleases/2016/136.asp)

<sup>24</sup> Guatemala. Ministry of Public Health and Social Assistance (MSPAS)/Panamerican Health Organisation (PAHO)/World Health Organisation (WHO) in Guatemala, *Perfil de Salud de los pueblos indígenas de Guatemala*, Guatemala, 2016, p.19-21. Available online: [http://reliefweb.int/sites/reliefweb.int/files/resources/perfil\\_salud.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/perfil_salud.pdf)

implementation of public policy initiatives using a gender-based perspective to reduce poverty.<sup>25</sup> In particular, the State referred to the literacy program developed by the Literacy Committee; efforts to bolster the school food system; food baskets for families living in extreme poverty; and the programs implemented by the Ministry of Social Development aiming to substantially lower malnutrition and poverty.<sup>26</sup> A 20-year Development Plan was adopted in 2014 to address the inequalities faced by different groups throughout the country, which falls in line with the Sustainable Development Goals (SDG). The State also referred to actions taken to strengthen tax-collection mechanisms and budget processes, as well as the National Dialogue Commission's mechanism and special policies for women living in poverty.<sup>27</sup> In its comments on the draft of this report, the State of Guatemala reiterated its commitment to continue to make efforts to eradicate extreme poverty.<sup>28</sup>

21. With regards to the right to food and the problem of malnutrition in particular, in its 2015 Country Report, the Commission observed that the State had set in place institutions and public policies aimed at reducing chronic malnutrition and there had been litigation on the right to food with some success.<sup>29</sup> Nonetheless, the IACHR indicated its concern with the fact that many of these programs were not aimed at strengthening the communities' food security, but solely provided assistance measures, thereby avoiding addressing the root causes of malnutrition. Given that malnutrition affects indigenous children to a much more alarming extent in Guatemala, it also encouraged the State to consider the root causes of food insecurity for indigenous peoples, and to explore the intimate relation between malnutrition and indigenous people's lack of access to their ancestral lands and territories.

22. In March 2016, the government of Guatemala announced that it was making the prevention of chronic malnutrition a priority, and presented its 2016-2020 National Strategy to Prevent Chronic Malnutrition.<sup>30</sup> The strategy aims to reduce chronic malnutrition in children below 2 years of age by 10 percent within the next four years, through a holistic and systematic approach involving all relevant ministries, local governments, civil society and community organizations.<sup>31</sup>

23. The IACHR welcomes the State's National Strategy to Prevent Chronic Malnutrition in Guatemala, as this strategy has the potential to curtail the proportion of children growing without access to adequate nutrition with the profound consequences this can bring for their health and lives. It also welcomes the State's initiative to increase partnerships and communication between different government branches given that this lack of communication has been identified by civil society as part of the causes leading to the

<sup>25</sup> IACHR, Press Release No.136/16, *IACHR Concludes Working Visit to Guatemala*, September 26, 2016. Available online: [http://www.oas.org/en/iachr/media\\_center/PReleases/2016/136.asp](http://www.oas.org/en/iachr/media_center/PReleases/2016/136.asp)

<sup>26</sup> IACHR, Press Release No.136/16, *IACHR Concludes Working Visit to Guatemala*, September 26, 2016. Available online: [http://www.oas.org/en/iachr/media\\_center/PReleases/2016/136.asp](http://www.oas.org/en/iachr/media_center/PReleases/2016/136.asp)

<sup>27</sup> IACHR, Press Release No.136/16, *IACHR Concludes Working Visit to Guatemala*, September 26, 2016. Available online: [http://www.oas.org/en/iachr/media\\_center/PReleases/2016/136.asp](http://www.oas.org/en/iachr/media_center/PReleases/2016/136.asp)

<sup>28</sup> Communication from the State of Guatemala, Comments of the State of Guatemala on "Draft: Chapter V Follow-up of Recommendations Formulated by the IACHR in its Report on the Situation of Human Rights in Guatemala: Diversity, Inequality, and Exclusion," January 23, 2017.

<sup>29</sup> The IACHR highlighted the efforts of programs such as "Bolsas Seguras", "Hambre Cero", as well as the implementation of the 2011-2015 Agricultural Policy and its various subprograms, the "Fertilizer Program", the "Food for Action Program", the "Food Assistance Program" and the "Family Garden Program."

<sup>30</sup> SESAN, National Strategy for the Prevention of Chronic Malnutrition 2016-2020, Government of Guatemala, 2016. Available online: <http://www.sesan.gob.gt/index.php/descargas/91--11/file>

<sup>31</sup> It goes hand in hand with the "Ventana de los Mil Días" program that was set up in 2012 to provide health services and nutrition support to women during the 1000 days where chronic malnutrition most affects the development of the child, from conception until the child reaches the age of 2. Government of the Republic of Guatemala, [Presentan Estrategia Nacional para la Prevención de la Desnutrición Crónica 2016-2020](#), March 4, 2016; Food and Agriculture Organisation of the United Nations, [Guatemala presenta la Estrategia Nacional para la Prevención de la Desnutrición Crónica 2016-2020](#), March 10, 2016; Government of the Republic of Guatemala, [Presidente Morales plantea a alcaldes unificar esfuerzos contra la desnutrición](#), May 15, 2016.

State's difficulties in addressing widespread malnutrition.<sup>32</sup> Another encouraging measure undertaken by the government was the presentation of its 2017 budget, in which it increased the funding of the ministries in charge of social programs related to health, education, as well as food security, complying with the first necessary step to properly set in place the 2016-2020 strategy.<sup>33</sup> The IACHR welcomes the State's acknowledgement of the need for additional funding in order to properly tackle the issue of chronic malnutrition, and salutes the State's decision to rely on a results-based management approach. The United Nations World Food Program's director, Ertharin Cousin, announced to the press that she had faith in the proposed strategy, which she found realistic and feasible to attain given the strong political will of the current government.<sup>34</sup> She insisted, however, that this was only a first step in combatting chronic malnutrition in the country, and that further policies would be required to attain the objective.<sup>35</sup>

24. Nonetheless, civil society organizations have identified a chronic under-investment in nutrition in Guatemala, and a historical and cumulative budget shortfall, with the government allocating merely one third of the necessary funds to addressing chronic malnutrition in the past years.<sup>36</sup> Although the State has taken a positive step and increased its investment in health and nutrition in its 2017 budget, it is key that this increased funding continue over the next three years to guarantee the State gives itself the proper tools to develop its national strategy. Given that this national strategy only addresses chronic malnutrition of children under the age of 2, continued investment in health, prevention and nutrition will also be necessary to address the broader issue of malnutrition.

25. The IACHR also received information during a hearing on the right to nutrition of children in Guatemala, held during its 157<sup>th</sup> Period of Sessions, in which the participating civil society organizations acknowledged the existence of laws, programs and policies, but highlighted both their misapplication by public servants and the lack of proper implementation of the judicial decisions taken on the basis of these laws.<sup>37</sup> Said organizations underscored that various enforceability mechanisms were necessary to ensure the efficiency of the new strategy and programs, requiring inter-institutional coordination mechanisms, inter-institutional and multidisciplinary intervention mechanisms, measures for immediate integral attention for children suffering malnutrition, follow-up procedures, and specific deadlines as well as disciplinary measures to guarantee compliance.<sup>38</sup> The IACHR also notes that the State did not dedicate any portion of its National Strategy to the most affected group, indigenous children, and did not address the issue of access to their lands and resources, despite the recommendation issued by the IACHR in its Report on Guatemala. The IACHR will continue monitoring closely the situation of hunger and chronic malnutrition in Guatemala, in particular with regards to the measures implemented to ensure food security within indigenous communities.

26. Based on the foregoing, the IACHR reiterates its recommendations that the State of Guatemala restart the agenda of the Peace Accords and continue to make efforts to eradicate extreme poverty

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<sup>32</sup> IACHR, Hearing on the Right of Children to Food in Guatemala, 157 Period of Sessions, April 5, 2016, Available online: <https://www.youtube.com/watch?v=IKhDg1dkDco>.

<sup>33</sup> Government of the Republic of Guatemala, "Government to give priority to chronic malnutrition in Guatemala in 2017 proposed budget" (*Gobierno prioriza la desnutrición crónica en Guatemala, en Proyecto del Presupuesto 2017*), September 2, 2016; Government of the Republic of Guatemala, "CONASAN proposes investment hike to combat malnutrition in Guatemala" (*CONASAN propone aumentar inversión para luchar contra desnutrición en Guatemala*), July 12, 2016.

<sup>34</sup> Government of the Republic of Guatemala, [La ONU respalda a Guatemala para reducir la desnutrición un 10% en cuatro años](#), April 11, 2016.

<sup>35</sup> Government of the Republic of Guatemala, [La ONU respalda a Guatemala para reducir la desnutrición un 10% en cuatro años](#), April 11, 2016.

<sup>36</sup> FANTA, The Cost of Essential Nutrition Interventions to Reduce Chronic Malnutrition in Guatemala, Executive Summary, 2015. Available online: <http://www.fantaproject.org/sites/default/files/resources/Guatemala-Nutrition-Costing-Exec-Summ-Dec2015.pdf>

<sup>37</sup> IACHR, Hearing on the Right of Children to Food in Guatemala, 157 Period of Sessions, April 5, 2016, Available online: <https://www.youtube.com/watch?v=IKhDg1dkDco>.

<sup>38</sup> IACHR, Hearing on the Right of Children to Food in Guatemala, 157 Period of Sessions, April 5, 2016, Available online: <https://www.youtube.com/watch?v=IKhDg1dkDco>.

and hunger. The IACHR also acknowledges and values the State's new position with respect to implementing and complying with the decisions and judgments of the organs of the inter-American human rights system.

## **B. Recommendations with respect to the situation of violence and insecurity**

- Design preventive public policies based on the causes of violence and high levels of crime for the purpose of reducing crime substantially and ensure that Guatemalans can live in peace in a country free of violence.
- Protect the life and integrity of those who, because of their role in society or their special vulnerability, due to historic discrimination and exclusion, suffer a differential impact, especially those persons who defend human rights, including indigenous authorities and leaders, environmentalists, trade unionists, and judicial officers, as well as women, children and adolescents, journalists, migrants and refugees, the LGBTI population, persons with disabilities, and persons deprived of liberty. Massively promote the importance of the work of human rights defenders.
- Implement a public policy of protection for human rights defenders.
- Refrain from stigmatizing the work of human rights defenders, journalists and indigenous leaders.
- Strengthen the legislative norm and give adequate resources for the Analysis of Attacks against Human Rights Defenders in Guatemala. Regarding the protection program for journalists, it reiterates that it is constituted in accordance with international standards and in consultation with civil society organizations, journalists and media workers.
- Adopt all measures that are needed to prevent future acts of human trafficking. For this purpose, the measures adopted by the Guatemalan State must be aimed at tackling the causes that favor and promote human trafficking. To this end, the measures adopted by the Guatemalan State must be aimed at addressing the causes that favor and promote human trafficking, such as situations of special vulnerability for victims and potential victims, the steady demand for goods and services produced on the basis of the work carried out by victims of human trafficking, and the existence of a context where human trafficking actions go unpunished. Likewise, to implement measures aimed at promoting the identification of the victims of human trafficking, especially groups in situations of vulnerability, such as indigenous communities, working children, migrants returnees, persons working in sexual commerce, and children involved in gangs. Also develop measures aimed at training civil servants and the population in general against human trafficking.
- Strengthen mechanisms for the search of the disappeared persons.
- Guarantee that the PNC is the agency in charge of internal security in the country. To that end, allocate the material and human resources it needs to do its job and develop training programs in keeping with human rights standards. Guarantee that the police forces are prepared in the face of disturbances of public order by applying measure respectful of human rights.
- Intensify efforts to investigate and punish human rights violations committed by state agents.
- Ensure that legislative and administrative initiative and practices are compatible with the prohibition of participation of the armed forces in public security tasks and in particular the control of violence in social protests. Limit budgetary matters relating to national defense allocations.
- Improve the training of the members of the Armed Forces and the Police Force in human rights.
- Establish an integrated policy aimed at eradicating the phenomenon of lynching through a comprehensive policy that considers its causes.
- Limit the states of emergency to the situations that represent a treat to the Nation and; implement the specific guarantees that govern states of emergency under international law.



- Ensure supervision and effective control of the private security companies and their agents, the registration and punishment of those who do not comply with the rules and regulations; and keep strict tabs on arms and any future process of disarmament.

27. The Commission mentioned in its Country Report that the threats to citizen security are various in Guatemala.<sup>39</sup> In its Country Report, the IACHR brought attention to the fact that, despite a descending curve in the overall murder rates over the past 10 years, the homicide rate in Guatemala remains one of the highest in Latin American and the Caribbean, one of the world's most violent regions. It explained that most crimes are attributed to gangs (*maras*) and drug trafficking cartels that constitute a major security problem.

28. The Ministry of the Interior recorded 3,421 homicides between January and September 2016, equivalent to 12.5 homicides a day, on average. That figure represents a slight improvement on the 3,461 homicides registered in the same period in 2015.<sup>40</sup> For its part, the organization *Grupo de Apoyo Mutuo* (GAM) reported 3,698 killings from January to August 2016.<sup>41</sup>

29. In April 2016, the IACHR published its *Regional Report on Violence, Children and Organized Crime*, in which it highlighted that Guatemala was among the 14 most violent countries of the world, with the age group most exposed to violence being adolescent and young people, especially males, between 15 and 29 years of age.<sup>42</sup> The average rate of homicides among adolescents and youths aged 15-24 in Guatemala is 55.4 per 100,000 inhabitants.<sup>43</sup> Eighty percent of these violent deaths are said to be caused by firearms in Guatemala, which the IACHR attributed to the lax control of the ownership and bearing of firearms, on the lack of a firearms reduction policy and a National disarmament plan.<sup>44</sup>

30. The IACHR finds it important to underline the fact that levels of violence continue to be high in Guatemala. Just recently, the IACHR had to reiterate its concern with regard to violence taking place within a Guatemalan prison, having led to 14 deceased and 10 injured inmates.<sup>45</sup> Further, seven journalists were

<sup>39</sup> IACHR, *IACHR Publishes Report on the Human Rights Situation in Guatemala*, OEA/Ser.L/V/II., December 31, 2015, par. 107.

<sup>40</sup> Website of the Ministry of the Interior, News: September second most violent month in 2016 (*Noticias: septiembre segundo mes menos violento de 2016*), October 7, 2016.

<sup>41</sup> Grupo de Apoyo Mutuo, Monitoring Reports on Homicidal Violence in Guatemala (*Informe de Monitoreo de Violencia Homicida en Guatemala*), September 13, 2016.

<sup>42</sup> IACHR, *Report on Violence, Children and Organized Crime*, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015. Available online: <http://www.oas.org/en/iachr/reports/pdfs/ViolenceChildren2016.pdf> ; IACHR, Press Release No.047-16, *IACHR Presents Report on Violence, Children and Organized Crime*, April 6, 2016. Available online: [http://www.oas.org/en/iachr/media\\_center/PReleases/2016/047.asp](http://www.oas.org/en/iachr/media_center/PReleases/2016/047.asp)

<sup>43</sup> IACHR, *Report on Violence, Children and Organized Crime*, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015. Available online: <http://www.oas.org/en/iachr/reports/pdfs/ViolenceChildren2016.pdf>, par. 57.

<sup>44</sup> The report insisted on the fact that the gains achieved in early childhood survival rates through public policies were wiped out in adolescence due to the homicide rates. It also drew attention to the fact that adolescent boys were often the target of stereotyping and social stigma based on presumptions of their involvement in criminality, which made them more vulnerable to discrimination by State officials, the media and society as a whole, as well as to various forms of violence, such as the current surge in citizens taking justice into their own hands through lynchings, for instance. The IACHR found that marginalization, social exclusion, poor education quality, violence at home, and poverty, had led to the emergence and expansion of criminal groups, and to children and adolescents being captured and used by organized criminal groups who coerce them into joining their ranks. The IACHR's position is that the eradication of violence in Guatemala has to be accompanied by social policies that address the root causes of the violence, including poverty and social exclusion. Measures designed to hold adolescents accountable for their actions should be based primarily on a model of restorative justice and socio-educational measures, whose purpose is to rehabilitate adolescents and reintegrate them into society, rather than prioritize repressive, punitive and retributive responses to adolescent offenders. IACHR, *Report on Violence, Children and Organized Crime*, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015. Available online: <http://www.oas.org/en/iachr/reports/pdfs/ViolenceChildren2016.pdf>.

<sup>45</sup> IACHR, *IACHR Condemns Violence in Guatemalan Prison*, Press Release 109/16, August 3, 2016. See also, previously in the year: IACHR, *IACHR Regrets Violence in Guatemalan Prison*, Press Release 002/16, January 16, 2016.

reportedly murdered in the country over the course of the year.<sup>46</sup> In addition, the IACHR has consistently received information with regard to threats and acts of intimidation against human rights defenders and their criminalization due to their work, as well as of failures to afford them due process guarantees in the proceedings (see section on human rights defenders).<sup>47</sup> In some cases, the violence, the threats and the intimidation are said to have been perpetrated by police agents.

31. The Commission also remains deeply troubled at the high levels of violence and discrimination against lesbian, gay, bisexual, and trans (LGBT) people in Guatemala. Civil society organizations told the IACHR that age was a worrying factor in the case of trans women, given that in 85 percent of cases the victims of violence and discrimination were less than 35 years old, while 33 percent of all victims were between the ages of 18 and 24.<sup>48</sup> Furthermore, according to human rights defenders' records, 30 LGBT people were murdered until June 2016.<sup>49</sup> A report by Redlactrans published in January 2016 describes the cases of several trans women sex workers apparently murdered by gangs, criminal groups, or clients in Guatemala.<sup>50</sup>

32. The IACHR welcomes the State's initiative to present, in April 2016, the 2015-2035 Democratic Criminal Policy (*Política Criminal Democrática del Estado de Guatemala 2015-2035*) which aims to reduce criminality and violence through reforms in four different axes: prevention, investigation, punishment, and reinsertion.<sup>51</sup> Among the concrete proposals for the prevention of criminality, the State established the following ones: the implementation of the *National Policy to Prevent Violence and Crime, Citizen Security and Peaceful Cohabitation 2014-2034*,<sup>52</sup> the development of early warning and monitoring mechanisms for social conflicts, the passing of amendments to laws and regulations to strengthen public ethics and judicial independence, the implementation of holistic and coordinated mechanisms of attention to victims with special attention to those who are part of particularly vulnerable groups, the implementation of public campaigns to promote a culture of peaceful cohabitation, as well as to reduce sexism, racism and discrimination, the promotion of a culture of reporting acts of corruption, as well as the design of rapid-

<sup>46</sup> IACHR, [Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala](#), Press Release 91/16, July 1, 2016.

<sup>47</sup> Peace Brigades International, Monthly Information Pack – Guatemala, Number 155, August 2016.

<sup>48</sup> Redlactrans, Human Rights Violations against Trans Women in Costa Rica, El Salvador, Guatemala, Honduras, and Panama (*Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá*), January 2016, p. 33, par. 121.

<sup>49</sup> Sin Etiquetas, Trans women: We need to reform our laws to stay alive in Central America (*Mujeres trans: Necesitamos reformar nuestras leyes para seguir vivas en Centroamérica*), June 26, 2016.

<sup>50</sup> Case of the murder of trans women S, G, J and D, Redlactrans, *Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá*, January 2016, p. 36, pars. 132-134.

<sup>51</sup> In terms of prevention, the policy seeks to acknowledge and address vulnerability factors in the country, such as difficult socioeconomic conditions and low levels of education, to try to anticipate the development of criminality, as well as to foment a culture that promotes respect for the law. In terms of investigation, it strives to attain timely and efficient investigations, through a strengthening of the institutions in charge of investigating and sanctioning crimes, a better coordination of efforts between levels of government, government agencies, as well as with traditional indigenous authorities to avoid inefficiency and duplication of efforts. The policy emphasizes the importance of the eradication of impunity and corruption. The policy also aims to reform the conception of punishment in the country, describing it as a means to compensate damages caused to victims. Among other amendments to the criminal law in the country, the program proposes to streamline the use of preventive detention, to increase the amount of available alternative sentences which allow for compensation of damages caused to victims, including those imposed by traditional indigenous authorities, as well as to avoid the imposition of two or more simultaneous sentences to one same defendant. It also strives to reduce prison overcrowding and conditions. Finally, the new policy envisions the establishment of treatments and programs that will allow for the reinsertion of offenders, and avoid recidivism. Government of the Republic of Guatemala, [Política Criminal Democrática del Estado de Guatemala 2015-2035](#), April 2016. Available online: [http://sitios.usac.edu.gt/wp\\_pec/wp-content/uploads/2016/04/Politica-Criminal.pdf](http://sitios.usac.edu.gt/wp_pec/wp-content/uploads/2016/04/Politica-Criminal.pdf)

<sup>52</sup> The policy aims to help reduce the different types of violence and crime in the country. The policy has three dimensions: prevention of violence and crime, strengthening citizen security, and implementing a genuine culture of peaceful coexistence. It also reported that it approved a “Municipal Policy of Violence and Crime Prevention, Citizen Security and Peaceful Coexistence” 2015-2019. The purpose of this policy is for municipal authorities to address the issues of crime prevention, citizens security, and peaceful coexistence within their respective jurisdictions.

response mechanisms to prevent lynchings.<sup>53</sup> The State also said that it has 58 public policies in effect, 10 of which include prevention and reduction of violence and insecurity among their objectives.<sup>54</sup>

33. The IACHR acknowledges and encourages the efforts carried out by the State to set up a major policy reform in the country, in order to address the high levels of crime, violence and insecurity it faces. Given the extensive breadth of this major public policy reform and the limited amount of time since its establishment, it is hard to assess its impacts, and whether it is successful.

34. However, the IACHR notes with concern that the new policy does not address all of the issues that were drawn to its attention in the Country Report. For instance, the IACHR is concerned by the major reform's omission of an effective plan to control and eradicate the illegal possession of firearms, despite it being one of the leading causes of violent deaths in the country. The IACHR also highlights the fact that the issue of privatization and militarization of security was not considered in the setting in place of this new policy. Regarding this, in its comments on the draft of this report, the State of Guatemala indicated that among its lines of action, the National Policy on the Prevention of Violence and Crime for Citizen Security and Peaceful Coexistence 2014-2034 includes a "Strategic Focus for the Prevention of Armed Violence," which has six objectives and 68 lines of action.<sup>55</sup>

35. With respect to lynchings, the Commission referred to this serious problem in its Country Report and urged the State to adopt a comprehensive policy to prevent and combat it and to provide a prompt, coordinated and interinstitutional response in places where lynchings could be committed.<sup>56</sup> Figures provided by the Office of the Human Rights Ombudsman (*Procuraduría de los Derechos Humanos* – PDH) for 2016 reported 44 lynchings between January and April 2016, in which seven people died and 37 were injured, compared with 59 people reported for the same period in 2015.<sup>57</sup>

36. The State provided information on measures registered by the National Committee to Support the Program to Prevent Lynching, notably the following: National Civil Police (*Policía Nacional Civil* – PNC) protocol to prevent mob violence and lynching (*Protocolo de Intervención de la PNC para la Prevención de Conato, Vapuleo y Linchamiento*); the holding of 50 awareness and training workshops for judges,

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<sup>53</sup> The State of Guatemala affirmed that this new policy, which is the result of a two-year process of consultation and reflection, included inputs from civil society, Maya, Xinka and Garífuna indigenous leaders, the church, and experts in the academic field. The State also plans to make this public policy into law, to grant it further efficiency and authority, and to have its implementation be supervised by a National Commission on Criminal Policy. The policy is based on a serious study of all of the historical, social, institutional, structural and cyclical factors which cause criminality and violence in the country. It is also important to underline the State's efforts to begin awareness and training workshops for judicial operators and community leaders to sensitize them to the issue of lynchings, and to begin discussions with media outlets to start general awareness campaigns in the country.

<sup>54</sup> Some of these policies are: National Policy on Advancement and Integral Development for Women 2008-2023 (Executive Decree 302-2009), Public Policy for Coexistence and Elimination of Racism and Racial Discrimination (Executive Decree 143-2014), Public Policy against Human Trafficking and Comprehensive Protection for Victims (Executive Decree 306-2014), Public Policy on Comprehensive Protection for Children and Adolescents (Executive Decree 281-2014), National Youth Policy 2012-2017 (Executive Decree 173-2012), National Policy against Addictions and Illicit Drug Trafficking, National Defense Policy, National Security Policy, National Policy on Prison Reform. Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 19.

Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 18.

<sup>55</sup> Communication from the State of Guatemala, Comments of the State of Guatemala on "Draft: Chapter V Follow-up of Recommendations Formulated by the IACHR in its Report on the Situation of Human Rights in Guatemala: Diversity, Inequality, and Exclusion," January 23, 2017.

<sup>56</sup> IACHR, [IACHR Publishes Report on the Human Rights Situation in Guatemala](#), OEA/Ser.L/V/II., December 31, 2015, par. 135.

<sup>57</sup> Office of the Human Rights Ombudsman (PDH), Report on Mob Detentions and Lynchings, Cases and Victims [Informe de retenciones multitudinarias y linchamientos, casos y víctimas](#), from 2005 to April 30, 2016.

community leaders, and judicial facilitators in departments most prone to social discord (Sololá, Alta Verapaz, Huehuetenango, Quiché, Totonicapán); and awareness campaigns with the media.<sup>58</sup>

37. The State reported that the budget of the PNC had been increased. The budget allocated to the PNC in 2015 was GTQ 2,765, 857, 540.00, compared to GTQ 2,721, 964,495.00 in 2014.<sup>59</sup> As regards measures to ensure that the PNC is the agency in charge of internal security in the country and that its capacities are consistent with human rights standards, the State referred to public policies for reducing criminality, such as the already mentioned National Policy for Violence and Crime Prevention, Citizen Security and Peaceful Coexistence 2014-2034 and its National Plan of Action.<sup>60</sup> In its Country Report, the Commission valued the incorporation of new agents to the National Police as well as the efforts made with regard to their professionalization and training.<sup>61</sup> The IACHR takes note of the fact that in July 2016, the Ministry of the Interior organized a training event for 75 investigators of the Specialized Criminal Investigation Division (*División Especializada en Investigación Criminal* – DEIC), the PNC, and the Human Rights Unit of the Ministry of the Interior on the subject of criminal investigation consistent with international human rights standards within the framework of the Interagency Encounter on Human Rights and Criminal Procedure.<sup>62</sup>

38. The State also informed the Commission that training programs for the police on human rights are included in the study programs and curricula of the following training courses: basic training and promotion training for police deputy inspectors and inspectors.<sup>63</sup> The State also said that in 2016 the Office of the Inspector General of the PNC held 1,302 training workshops on human rights and that in 2015 training was provided to 409 people.<sup>64</sup> The IACHR welcomes the information provided by the State and encourages it to ensure that all police units engaging operational activities receive training on international human rights principles and their relation to citizen security; that quality training processes are established, as are refresher and continuous training programs; and, in particular, that police receive training in providing effective and efficient assistance to people in especially vulnerable circumstances.

<sup>58</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 58.

<sup>59</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 48.

<sup>60</sup> Executive Decree No. 281-2014 of August 20, 2014.

<sup>61</sup> IACHR, *IACHR Publishes Report on the Human Rights Situation in Guatemala*, OEA/Ser.L/V/II., December 31, 2015, par. 159

<sup>62</sup> Website of the Ministry of the Interior, Portal de noticias: PNC investigators begin human rights training ([investigadores de PNC inician capacitación sobre derecho humanos](#)), July 11, 2016.

<sup>63</sup> The State provided information about the human rights content in the PNC training curricula at different levels: Basic Principles of Police Conduct; PNC Law; General Order on Courtesy and Discipline; Legal Framework on Felonies and Misdemeanors; Criminal Proceedings; Use of Force to Impose Order; Body Search and Handcuffing Techniques; Arrest Procedure; Custody Procedure for Detainees; Right to a Preliminary Hearing; Raids, Inspections, and Searches; Functions of a Police Checkpoint; Vehicle Search and Identification Techniques; Protection of Members of the Public; Alternative Dispute Settlement Methods; Evictions; Surveillance; Perception; Community Relations and Aiding Members of the Public While on Patrol; Correct Use of Firearms in Different Patrol Situations; and Managing Emotions While on Patrol. For promotion to PNC Deputy Inspector and Inspector, the training courses include: An Introduction to Human Rights; International Human Rights Charter; Peace Agreements and Human Rights; Human Rights Protection Mechanisms and Institutions; Human Rights Treaties and Conventions in Relation to Security; Human Rights and Policing; International Legal Framework Governing the Use of Force and Firearms.

Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016.

<sup>64</sup> The training is under the authority of the Office of the Deputy Director General for Studies and Doctrine (*Subdirección General de Estudios y Doctrina*), through the PNC Academy. It also has three extensions: Police Officer Training School; the Police School of Higher Studies (*Escuela de Estudios Superiores de Policía*), and the Police School of Specialty Studies (*Escuela de Especialidades de Policía*). Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, pp. 55-57.

39. The State also informed the Commission that since 2012 the PNC has taken steps to obtain the material and human resources that it needs to perform its functions, including: priority targeting in spending; streamlining use of resources; reducing the gap between budget allocation and execution; efforts to increase the budget allocation; efforts with international cooperation agencies to secure funding for projects to ensure that the PNC performs its functions properly, and other measures.<sup>65</sup> The State also reported on the designation of the Office of the Inspector General as the entity in charge of internal oversight in the PNC. Its functions include the following actions: prevention,<sup>66</sup> investigation, and punitive measures.<sup>67</sup>

40. In its Country Report, the IACHR stated that the militarization of internal security remains a constant in Guatemala, where military personnel frequently take part in citizen security tasks and are sometimes put in command of the PNC.<sup>68</sup> The State said that Legislative Decree 40-2000 (Support for Civil Security Forces Law) empowers the Army of Guatemala to lend assistance to the civilian security forces in matters relating to citizen security. Its purpose is to provide support to the PNC in its functions of preventing and combating organized crime and common criminality, using such units of the Army of Guatemala as may be deemed necessary, when security conditions in the country demand such assistance or the regular means at the disposal of the civilian security forces are considered insufficient.<sup>69</sup> The State also said that the PNC is being strengthened in order to bring it into line with international standards and turn it into a highly professionalized police force of an intercultural, multiethnic, multilingual nature consistent with the country's reality, and that, therefore, it will be purged, and with that the presence of the armed forces will be removed.<sup>70</sup> In its comments on the draft of this report, the State indicated that in 2017, it is committed to withdrawing the Army units that are supporting the PNC on matters of citizen security, and that it will do so progressively.<sup>71</sup> According to the State, in the first phase, it will reassign and relocate Army personnel located

<sup>65</sup> The State also said that it had purchased backpacks, flashlights, telescopic batons, and handcuffs, which are part of PNC regulation equipment; training was provided in service firearm maintenance, including the distribution of a manual with the names of all the various firearm components, in order to enable their proper disassembly and assembly and of implement safety and control measures with respect to their handling. In addition, in 2014, firearms no longer in use were destroyed in order to only to have equipment in good working order. Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 48.

<sup>66</sup> In its report, the State said that preventive actions include:

- a. Supervision: There is constant supervision of, and support for, personnel assigned to police stations, where they are instructed to perform their duties diligently, in accordance to the law, and, especially, observing human rights.
- b. Verifications: Units of the Office of the Inspector General verify police procedures, whether carried out ex officio or on request, in order to ensure that the police acted in a lawful and transparent manner.
- c. Review: Reviews have been conducted on aspects of police operations, in which police personnel receive recommendations and are made aware of the importance of acting diligently in the course of their official duties and avoiding any unnecessary excessive use of force.

<sup>67</sup> For the period from January to September 2016, the State reported 20,101 police supervisory actions, 496 verifications, and 565 reviews, in contrast to the period from January to December 2015, which saw 6644 supervisory actions, 587 verifications, and 233 reviews. In addition, according to State records, between January and September 2016, 79 preliminary inquiries were concluded, in which 14 resulted in a decision of liability and 65 in nonliability, compared with January to December 2015, in which 111 inquiries were completed, with 13 resulting in liability and 98 in nonliability. As regards punitive measures, the State recorded 56 disciplinary penalties for gross violations by personnel that infringed disciplinary rules on human rights offenses. Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 51.

<sup>68</sup> IACHR, IACHR Publishes Report on the Human Rights Situation in Guatemala, OEA/Ser.L/V/II., December 31, 2015, par. 175.

<sup>69</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 51.

<sup>70</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 52.

<sup>71</sup> Communication from the State of Guatemala, Comments of the State of Guatemala on "Draft: Chapter V Follow-up of Recommendations Formulated by the IACHR in its Report on the Situation of Human Rights in Guatemala: Diversity, Inequality, and Exclusion," January 23, 2017.

in 30 municipalities that are a priority due to their high rates of violence; in the second phase (January-April), 50% of soldiers will be withdrawn; and in the third phase (and of 2017) 100% of the soldiers will be withdrawn. The State indicated that in 2018, the Army would continue to provide security outside prisons and along the country's borders. The State also indicated that five years ago, the Governance Ministry began increasing the number of PNC officers, and it expects that number to surpass 37,000 in 2017.<sup>72</sup>

41. The foregoing contrasts with statements made by the Inspector General of the Army of Guatemala, Brigadier General Alfredo Díaz Waigh, at the meeting of the Central American Security Conference (CENTSEC 2016) held in Costa Rica, who said: "at present we are planning the remodeling of the infrastructure in which the new joint operations center will function ... so that, as organizations, we can tackle problems of any nature, be they military, civilian security, public security in disasters ..."<sup>73</sup> The IACHR also takes note of a statement by the Army spokesperson, who said that the increased budget was necessary because in recent years for new units of the Citizen Security Squadron—Mountain Operations Brigade, Marines, Special Jungle Operations, and Central Regional Command—had been created, making a total of nine units, "because of the needs seen in different areas where the population evidently requested a military presence."<sup>74</sup> The nine units added 4,500 military personnel to support the PNC.<sup>75</sup> According to information in the press, the number of military personnel went down from 45,000 in 1996 to 15,500 in 2007.<sup>76</sup> However, since 2008, the size of the military has increased to 22,852 personnel, a trend that goes against the Peace Accords, which envisage their reduction.

42. In this context, the IACHR notes that the Ministry of Defense is the sector that has seen the largest budget increase in 2016, up 37.1 percent compared with 2015. In comparison, the Ministry of Health's budget rose 29 percent while that of the Ministry of Education grew 25.9 percent.<sup>77</sup>

43. The State informed the IACHR that on July 27, 2016, Executive Decree No. 130-2016 created the Office of Human Rights and International Humanitarian Law of the Ministry of National Defense,<sup>78</sup> which has a Director, Deputy Director, Administrative Department, Advisory, Education, and Doctrine Department, Internal Inspection and Control Department, and Gender Department.<sup>79</sup> Its main functions include to manage and conduct all matters relating to the human rights and international humanitarian law strategy; promote and develop continuous training plans and programs on human rights for Army personnel; seek to ensure due respect and guarantees for the human rights of members of the Army of Guatemala; and establish and

<sup>72</sup> Communication from the State of Guatemala, Comments of the State of Guatemala on "Draft: Chapter V Follow-up of Recommendations Formulated by the IACHR in its Report on the Situation of Human Rights in Guatemala: Diversity, Inequality, and Exclusion," January 23, 2017.

<sup>73</sup> *Diálogo*, Digital military magazine, Guatemala modernizes its plan against crime (*Guatemala moderniza su plan contra la delincuencia*), May 3, 2016.

<sup>74</sup> Prensa Libre, Army funding increased 37.1% in five years ([en cinco años, recursos para el ejército aumentaron 37.1%](#)), July 7, 2016.

<sup>75</sup> Prensa Libre, Army funding increased 37.1% in five years ([en cinco años, recursos para el ejército aumentaron 37.1%](#)), July 7, 2016.

<sup>76</sup> Prensa Libre, Army funding increased 37.1% in five years ([en cinco años, recursos para el ejército aumentaron 37.1%](#)), July 7, 2016.

<sup>77</sup> Prensa Libre, Army funding increased 37.1% in five years ([en cinco años, recursos para el ejército aumentaron 37.1%](#)), July 7, 2016.

<sup>78</sup> The Office of Human Rights and International Humanitarian Law of the Ministry of National Defense has, among others, the following responsibilities: to manage, direct and conduct all matters relating to the human rights and international humanitarian law strategy of the Ministry of Defense; carry out activities to raise awareness of, implement, and maintain human rights; promote and develop continuous training plans and programs for personnel; establish and maintain communications with governmental and nongovernmental organizations involved in protection of human rights; and seek to ensure due respect and guarantees for the human rights of members of the Army of Guatemala

<sup>79</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 53.

maintain communications with governmental and nongovernmental organizations involved in protection of human rights.<sup>80</sup>

44. The State also indicated that with support and cooperation from domestic and international governmental and nongovernmental organizations,<sup>81</sup> it continues to organize activities such as postgraduate degrees diploma programs, training courses, workshops, and conferences on the issue of sexual violence, exploitation of and trafficking in persons, women's human rights, discrimination and racism, indigenous law, human rights, international humanitarian law, and use of force and firearms, with a view to strengthening knowledge, respect for, and the application of these topics in the military, especially by personnel that belong to the special reserve for citizen security.<sup>82</sup>

45. In this regard, the Commission and the Court have repeatedly observed that because the armed forces do not have training appropriate for controlling citizen security, it is the job of an efficient civil police force, respectful of human rights, to combat insecurity, crime and violence on the domestic front.<sup>83</sup> The Court has also held that "(...) the States must restrict to the maximum extent the use of armed forces to control domestic disturbances, since they are trained to fight against enemies and not to protect and control civilians, a task that is typical of police forces."<sup>84</sup> Therefore, the IACHR reiterates its recommendation that the State ensure that its legislation and practices are compatible with the prohibition on the participation of the armed forces in public security tasks.

46. The Commission mentioned in its Report that an especially critical issue in the field of security is the operation of private security forces in Guatemala.<sup>85</sup> The IACHR underscored the need for the State to regulate the functions that private security services may perform, the types of weapons and materials they are authorized to use, proper mechanisms to monitor their activities and the introduction of a system of licensing that is accessible and offers sufficient information.<sup>86</sup> The IACHR notes that on September 20, 2016, the General Directorate of Private Security Services (DIGESSP) passed Resolution No. 370-2016 on misuse of the Private Security Services Law (Decree No. 52-2010), which grants operating licenses for the provision of private security services through private security agents as private bodyguards.<sup>87</sup> In addition, from May 31 to June 10, 2016, DIGESSP held public hearings—working meetings to address in person the requests and concerns of users in relation to private security.<sup>88</sup> The State informed the Commission that, on instructions

<sup>80</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 54.

<sup>81</sup> The organizations include the Office of the Human Rights Ombudsman (PDH), the Presidential Commission on Human Rights (COPREDEH), the Presidential Commission against Discrimination and Racism against Indigenous Peoples in Guatemala, the Presidential Secretariat for Women, the National Women's Office, the International Committee of the Red Cross, and Others

<sup>82</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 55.

<sup>83</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, par. 100; IACHR, *Justice and Social Inclusion: The Challenges of Democracy in Guatemala*, OEA/Ser.L/V/II.118, Doc. 5 rev. 1, December 29, 2003, par. 113; I/A Court H.R. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006, Series C No. 150, par. 78: "States must restrict to the maximum extent the use of armed forces to control domestic disturbances, since they are trained to fight against enemies and not to protect and control civilians, a task that is typical of police forces."

<sup>84</sup> I/A Court H.R. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006, Series C No. 150, par. 78.

<sup>85</sup> IACHR, [IACHR Publishes Report on the Human Rights Situation in Guatemala](#), OEA/Ser.L/V/II., December 31, 2015, par. 136.

<sup>86</sup> IACHR, [IACHR Publishes Report on the Human Rights Situation in Guatemala](#), OEA/Ser.L/V/II., December 31, 2015, par. 140.

<sup>87</sup> Website of the General Directorate of Private Security Services (DIGESSP). [Resolution on private bodyguards](#). September 21, 2016.

<sup>88</sup> Website of the Ministry of the Interior of Guatemala, Training continues for private security companies ([continúa capacitación a empresas de seguridad privada](#)), May 24, 2016.

from the General Directorate, the Supervision and Inspection Department of the DIGESSP carries out *ex officio* oversight with the aim of constantly monitoring companies that provide private security services because it is through the supervision of their employees (security agents and administrative staff) that it can be established if the business owners are providing their services in accordance with the law.<sup>89</sup>

47. The State also reported that in May 2016 the Training and Technological Development Department of the DIGESSP evaluated and provided training to 159 private security agents in order to license them as bodyguards and thus enable them to provide their services.<sup>90</sup> On February 2 DIGESSP rolled out a software application for security companies. Furthermore as of May 2016 it had registered 182 companies, 30 of which were properly trained. According to official information, in December all companies will receive training in the new computerized operating system, so that they can all work under it next year.<sup>91</sup> The IACHR hopes to receive more information about the supervision activities of DIGESSP and their results, and its reiterates its recommendation to ensure supervision and effective control of private security companies and their agents and to keep strict tabs on firearms.

48. The Commission noted in its Country Report that in Guatemala there is a practice of declaring states of emergency in response to public protests, usually organized by indigenous peoples and communities in defense of their land.<sup>92</sup> The IACHR stated that, under the terms of Article 27 of the American Convention, the suspension of guarantees is only applicable “[i]n time of war, public danger, or other emergency that threatens the independence or security of a State Party.”<sup>93</sup> The IACHR notes that fewer states of emergencies were declared in 2016. The IACHR is aware of two states of emergency declared due to heavier-than-normal rains.<sup>94</sup> Having said that, on September 20, 2016, the executive branch promulgated Executive Decree 5-2016, which was repealed two days later by the Vice President of the Republic, who claimed that the decree had been misinterpreted. The decree declared a state of emergency—as a result of constant heavy rain—throughout the country, particularly in high risk areas in municipalities, river mouths, settlements, watersheds, ditches, and ravines. It also suspended the constitutional rights recognized in Articles 5 and 26 of the Constitution of the Republic of Guatemala.<sup>95</sup>

49. Civil society organizations said that the territorial scope of the decree was not confined to the areas that were at risk because of the rains, but encompassed the entire country. Thus, it indiscriminately and unjustifiably curbed freedoms and rights without meeting the requirements as to proportionality or need.<sup>96</sup>

<sup>89</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 60.

<sup>90</sup> Ministry of the Interior, DIGESSP evaluates 159 private security agents ([DIGESSP evalúa a 159 agentes de seguridad privada](#)), May 16, 2016.

<sup>91</sup> Website of the Ministry of the Interior of Guatemala, Training continues for private security companies ([continúa capacitación a empresas de seguridad privada](#)), May 24, 2016.

<sup>92</sup> IACHR, [IACHR Publishes Report on the Human Rights Situation in Guatemala](#), OEA/Ser.L/V/II., December 31, 2015, par. 160.

<sup>93</sup> IACHR, [IACHR Publishes Report on the Human Rights Situation in Guatemala](#), OEA/Ser.L/V/II., December 31, 2015, par. 163.

<sup>94</sup> Official Gazette of Guatemala, [Diario de Centro América, Executive Decree 7-2016](#) of September 22, 2016, which, for the purpose of protecting the lives and physical integrity of the country’s inhabitants, declares a state of emergency in the national territory because it is believed that climate change is now manifesting itself in the country given the increase in frequency, duration, or intensity of the rainy season and by virtue of the fact that in the municipalities identified by the National Coordinator for the Reduction of Natural and Man-Made Disasters (CONAPRED) several events have occurred as a result of the instability of hillsides, mudslides, rockfalls and/or partial destruction of infrastructure. Official Gazette of Guatemala, [Diario de Centro América, Executive Decree 2-2016](#) of June 21, 2016, which declared a state of emergency in the Municipality of Jerez, Department of Jutiapa, as a result of the heavy rains that have caused mudslides in the municipality, which have damaged roads, homes, schools, healthcare facilities, and other infrastructure, as well as disrupting basic services in the Municipality of Jerez.

<sup>95</sup> Official Gazette of Guatemala [Diario de Centro América, Executive Decree No. 5-2016](#), September 20, 2016; Prensa Libre, [Decreto se deroga por “generar polémica”](#), September 22, 2016; El Periódico, [Jafeth Cabrera anula censura a libertad de expresión y restricciones a varias garantías constitucionales](#), undated.

<sup>96</sup> CEJIL, Observations on the Report on the Situation of Human Rights in Guatemala, October 14, 2016, p. 10.



50. The State informed the Commission that the officers of the Congress of the Republic summoned the Human Rights Ombudsman in order to present him with a petition requesting an investigation of the reasons for declaring the state of emergency, the technical studies and analyses on which it was based, and the institution or individuals that requested it.<sup>97</sup>

51. With respect to disappearances, in its Country Report the Commission mentioned the need to adopt Law 3590, a proposal that envisaged the establishment of the National Commission on the Search for Victims of Forced Disappearance and Other Forms of Disappearance, the purpose of which is to clarify the whereabouts of more than 45,000 victims of forced disappearance and other forms of disappearance during the period from 1960 to 1996. According to information provided to the IACHR, the proposal, submitted in 2007, has the support of two favorable opinions issued by the congressional committees on Public Finance and Money and on Legislation and Constitutional Issues.<sup>98</sup>

52. The State informed the Commission that in 2015, the National Forensic Sciences Institute (*Instituto Nacional de Ciencias Forenses* – INACIF) created a software application within the Expert Analysis Management System followed by a National Forensic Information System to catalog the fingerprints of unidentified corpses, in order to use those fingerprints to help the process of locating people reported missing.<sup>99</sup> The State also said that the INACIF Genetics Laboratory conducts tests to identify the corpses of unidentified persons identified as “XX” who are children. Furthermore, the judiciary has a computer tool (intranet) that contains information on missing persons reports brought to the attention of justices of the peace.<sup>100</sup> The State also mentioned that it is seeking to establish a “Missing Person Search Committee” comprising representatives of INACIF, the Forensic Anthropology Foundation of Guatemala (FAFG), and other institutions.<sup>101</sup>

53. The Committee urges the State to give priority to the adoption of Law 3590 in order to redouble its efforts to throw light on the disappearances that occurred during the armed conflict.

- **Situation of human rights defenders**

54. The Inter-American Commission on Human Rights, in its 2015 Country Report, highlighted the fact that the situation of human rights defenders in Guatemala has been a source of constant concern, given the harassment, intimidation, and violent attacks to which they are permanently exposed, which have included killings. In its Country Report, the IACHR insisted on its continuous concern in particular with regards to human rights defenders in Guatemala, predominantly those who defend the rights of indigenous peoples, land rights and the environment, and the rights of victims of the internal armed conflict and trade union leaders. The IACHR also called attention to the excessive and unwarranted use of criminal law against human rights defenders, in the form of presumably unfounded criminal proceedings, arbitrary arrests, and prolonged use of pretrial detention, particularly against indigenous leaders and authorities. Another major concern in the country was the stigmatization and defamation against human rights defenders, which undermines their reputation in the eyes of society and delegitimizes social struggle. The IACHR pressed that

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<sup>97</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 59.

<sup>98</sup> CEJIL, Observations on the Report on the Situation of Human Rights in Guatemala, p. 7.

<sup>99</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 47.

<sup>100</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 24.

<sup>101</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 4.

the State is obliged to take positive steps conducive to generating the conditions needed to eradicate violations of the right to life and personal security by state agents or private individuals, in such a way that human rights defenders can freely go about their work.

55. The State held that it had a range of well-functioning institutions that granted protection to citizens working in the defense of human rights.<sup>102</sup> It reported that it had a specialized prosecution service to investigate the crimes against human rights activities, a system of national precautionary measures, as well as a Unit for Reviewing Attacks against Human Rights Activities, which also served as a space to elaborate recommendations and to attempt to prevent attacks against human rights defenders. It also informed the IACHR about its efforts to establish of a new public policy on human rights defenders, and that it was committed to abstaining from making any declaration or affirmation that would tend to stigmatize the work of Human Rights Defenders, and consequently put their lives at risk.

56. The IACHR recognizes the efforts made by the State. However, information received with regards to acts of violence, harassment and intimidation against human rights defenders indicates that the measures adopted are not sufficient to effectively protect human rights defenders in the country. Over the course of 2016, the IACHR has continued to receive information about the persistence of elevated numbers of threats, harassment, smear campaigns and violence, which increasingly jeopardize the right to life and physical integrity of human rights defenders in Guatemala.<sup>103</sup>

57. According to the Unit for the Protection of Human Rights Defenders in Guatemala (*Unidad de Protección a Defensoras y Defensores de Derechos Humanos-Guatemala* – UDEFEGUA), 10 human rights defenders were murdered in the first six months of 2016, compared with 12 cases recorded for the whole of 2015.<sup>104</sup> The Office of the United Nations High Commissioner for Human Rights in Guatemala repudiated those killings in the country.<sup>105</sup>

58. Likewise, the IACHR laments the recent murder of Jeremy Abraham Barrios Lima, an assistant at Centro de Acción Legal, Ambiental y Social (CALAS), on November 12, 2016, who was apparently murdered by a group of unknown assailants. His work involved operational activities for the institution as well as handling sensitive information in connection with a number of lawsuits that the entity had brought, among others, against companies in the extractive industry and members of the government.<sup>106</sup> The Inter-American Commission reiterates that it is a duty of the State to investigate this type of acts *ex officio*, and to

<sup>102</sup> Government of the Republic of Guatemala, COPREDEH, *First Report of the State of Guatemala to the Inter-American Commission on Human Rights on Implementation of the Recommendations Contained in the "Report on the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion"* (2015), October 10, 2016.

<sup>103</sup> Office of the United Nations High Commissioner for Human Rights in Guatemala, press release, OHCHR repudiates recent murders of human rights defenders (*OACNUDH rechaza recientes asesinatos de defensoras y defensores de derechos humanos*), June 21, 2016. Available online: [http://www.ohchr.org.gt/documentos/comunicados/20160621\\_Rechazo\\_asesinatos\\_defensores.pdf](http://www.ohchr.org.gt/documentos/comunicados/20160621_Rechazo_asesinatos_defensores.pdf); Unit for the Protection of Human Rights Defenders in Guatemala (*Unidad de Protección a Defensoras y Defensores de Derechos Humanos-Guatemala* – UDEFEGUA), *Exprésate con otro rollo, sin odio, Informe sobre situación de Defensoras y Defensores de Derechos Humanos*, Informe Semestral 2016; Interreligious task force on Central America, Letter to President Morales and Attorney General Aldana, September 25, 2016.

<sup>104</sup> UDEFEGUA, Report on the Situation of Human Rights Defenders, First Semester 2016 (*Informe sobre situación de Defensoras y Defensores de Derechos Humanos, Primer Semestre 2016*), p. 6. The following human rights defenders were killed: a. Walter Méndez Barrios, member of *Frente Petenero contra las Represas*, murdered on March 15, 2016; b. Benedicto de Jesús Gutiérrez Rosa, *Instituto Nacional de Bosques*, murdered on April 13, 2016; c. Juan Mateo Pop Cholóm, member of *Instituto Nacional de Bosques*, murdered on April 13, 2016; d. Héctor Joel Saquil Choc, member of *Instituto Nacional de Bosques*, murder on April 13, 2016; e. Diego Salomón Esteban Gaspar, member of *Radio Sembrador*, murdered on April 30, 2016; f. Blanca Estela Asturias, community leader, murdered on May 13, 2016; g. Víctor Hugo Valdés Cardona, *Productora Chiquimula Visión*, murdered on June 7, 2016; h. Daniel Choc Pop, member of *CCDA Verapaz*, murdered on June 9, 2016; i. Brenda Marleni Estrada Tambito, legal counsel of UNSITRAGUA, murdered on June 19, 2016; j. Álvaro Alfredo Aceytuno López, *Radio Ilusión*, murdered on June 25, 2016. UDEFEGUA, Report on Implementation of Recommendations in the 2015 Country Report: Situation of Human Rights in Guatemala.

<sup>105</sup> OHCHR, OHCHR repudiates recent murders of human rights defenders (*OACNUDH rechaza recientes asesinatos de defensoras y defensores de derechos humanos*), June 21, 2016

<sup>106</sup> Convergencia por los Derechos Humanos, *La Convergencia por los Derechos Humanos ante el asesinato de un integrante de Calas*, November 13, 2016.

punish the material and intellectual perpetrators. As it has been established by the Commission, the acts of violence and other attacks against human rights defenders not only affect the guarantees afforded to all human beings, but also attempt against the fundamental role they play in society. The IACHR recalls that the investigations must include the development of lines of investigation under the hypothesis that these killings could have been perpetrated in connection with the work of human rights defense.

59. The improper and excessive use of criminal law against human rights defenders continues to specifically affect defenders working to promote and protect the rights to land, territory, natural resources and the environment, or working in the field of transitional justice.<sup>107</sup> The IACHR received information on the criminal process against 7 indigenous authorities and/or community leaders of the department of Huehuetenango, who had been imprisoned unjustly for 14 months before the Guatemalan justice released 5 of them. According to civil society organizations, seven authorities play an important role in the community resistance against the Spanish hydroelectric project “Hidro Santa Cruz”<sup>108</sup>. The decision handed down by the *Tribunal de Sentencia de Mayor Riesgo A*, presided by Justice Yassmin Barrios in July 2016 has become an emblematic case against the criminalization of indigenous social protest.<sup>109</sup>

60. Also, civil society organizations expressed their concern at the situation faced by justice operators, representatives, supporters, and human rights defenders, in general, in transitional justice cases such as Molina Theissen, Creompaz and Sepur Zarco, given that they are subjected to smear campaigns, harassment on social media, threats, intimidation during hearings, and criminalization,<sup>110</sup> and criminal complaints brought against persons involved in the administration of justice have intensified.<sup>111</sup> They said that in the processing of those complaints the procedural and constitutional guarantees of the accused were ignored by, for example, lack of access to investigation records, restrictions on the right to timely assistance of counsel, or unwarranted delay on the part of the Public Prosecutions Service and judiciary personnel in processing complaints.<sup>112</sup>

<sup>107</sup> The IACHR takes note of the attacks on members of *Grupo de Apoyo Mutuo* (GAM), plaintiffs in the CREOMPAZ case; the death threats against Alejandro Rodríguez, the lawyer of Emma Molina Theissen; the physical assault of a member of Impunity Watch and the raid on its offices to steal documents pertaining to the Molina Theissen case; the raid on the residence of the ICJ attorney, Michael Morth, the subject of criminal complaints filed by *Fundación contra el Terrorismo* (FCT); the judicial harassment of human rights defender Iduvina Estalinova Hernández Batres, executive director of *Asociación para el Estudio y de la Seguridad en Democracia* (SEDEM), who supported the victims in the Creompaz and Molina Theissen cases, among others. OMCT, Press Release, Guatemala: Pattern of assaults and intimidation against members of Grupo de Apoyo Mutuo [*Patrón de agresiones e intimidación hacia integrantes del Grupo de Apoyo Mutuo (GAM)*], August 2, 2016; FIDH, *Guatemala: Llamado Urgente*, June 29, 2016; Information presented by civil society organizations for the thematic hearing on “Attacks on Land Defenders and Transitional Justice in Guatemala,” October 10, 2016; FIDH, *Guatemala: Hostigamiento judicial en contra de Iduvina Estalinova Hernandez Batres*, August 31, 2016.

<sup>108</sup> Information presented by the organizations: Center for International Justice and International Law (CEJIL), *Centro para la Acción Legal en Derechos Humanos* (CALDH), *Bufete Jurídico de Derechos Humanos* (BDH), International Commission of Jurists (CIJ), *Asociación de Abogados Mayas*, Impunity Watch and *Consejo de Pueblos de Occidente* (CPO) request for the thematic hearing “Attacks against defenders of the land and transitional justice in Guatemala”, 10 October 2016.

<sup>109</sup> Lawyers without Borders Canada, *Blogue: « Je sais qu’il fait déjà nuit mais le soleil de la justice a commencé à pointer sur notre pays » - Observation du procès Barillas au Guatemala*, October 21, 2016. Available online: <http://www.asfcanada.ca/fr/blogue/billet/je-sais-qu-il-fait-deja-nuit-mais-le-soleil-de-la-justice-a-commence-a-pointer-sur-notre-pays-observation-du-proces-barillas-au-guatemala/346>.

<sup>110</sup> CEJIL, Observations on the Report on the Situation of Human Rights in Guatemala, October 14, 2016, p. 13.

<sup>111</sup> With respect to the criminalization of justice operators involved in criminal proceedings of this type, civil society organizations mentioned criminal complaints filed against several such persons, including Judge Miguel Ángel Gálvez; the new prosecutor of the Human Rights Section, Hilda Pineda; the former chief of the Human Rights Section Prosecutor’s Office, Orlando López; and the staff of the Human Rights Section Prosecutor’s Office as a whole. Information presented by the following civil society organizations: Center for Justice and International Law (CEJIL), *Centro para la Acción Legal en Derechos Humanos* (CALDH), *Bufete Jurídico de Derechos Humanos* (BDH), International Commission of Jurists (CIJ), *Asociación de Abogados Mayas*, Impunity Watch, and *Consejo de Pueblos de Occidente* (CPO), in the request for a thematic hearing on “Attacks on Land Defenders and Transitional Justice in Guatemala,” October 10, 2016.

<sup>112</sup> Information presented by civil society organizations for the thematic hearing on “Attacks on Land Defenders and Transitional Justice in Guatemala,” October 10, 2016.

61. UDEFEGUA reported that between January and June 2016 there were 102 attacks on human rights defenders and that in 38 percent of those the targets were journalists and environmental activists.<sup>113</sup> A matter of particular concern to the IACHR is that the majority of attacks were perpetrated against women.<sup>114</sup> According to UDEFEGUA, although the number of attacks was down in the first half of 2016, with the rise of technology, social media have become the main platform for attacking human rights defenders, through defamation and intimidation.<sup>115</sup> In that regard, in the first quarter of 2016, UDEFEGUA registered 22 cases of defamation of lawyers involved in recent transitional justice trials.<sup>116</sup>

62. The Office of the United Nations High Commissioner for Human Rights (OHCHR) issued a press release on July 1, 2016, in response to messages of violence on social media that resort to aggressive and violent language and that could be interpreted as inciting hate. According to the OHCHR:

It is troubling that some of these messages express threats against the lives and well-being of human rights defenders, including columnists. Homophobic messages have also been seen against organizations and individuals who defend the rights of sexual diversity.<sup>117</sup>

63. In the section on protection programs in its 2015 Country Report, the IACHR took note of the efforts of the State, through the Coordinating Unit for Protection of Human Rights Defenders, Judicial Administrators and Officers, Journalists and other Media Workers, to protect a large number of people who work to protect and advance human right, exercise freedom of expression, and practice journalism. In that section, the Commission also identified a series of challenges in terms of insufficient personnel, withdrawal of protection arrangements without warning, diversity of functions in the risk analysis, among other aspects that have affected individuals protected by the program as well as beneficiaries of precautionary measures requested by the IACHR and provisional measures ordered by the Inter-American Court.

64. During 2016, the IACHR was informed of a number of measures adopted by the State—in particular, COPREDEH—to address the process of designing a public policy on protection of human rights defenders. The steps taken included two meetings with representatives of civil society and the OHCHR as well as the inauguration of the process for the creation of the “Public Policy for Protection of Human Rights Defenders” on September 13, 2016. At present, government authorities are moving forward with activities for determining how the methodology for civil society consultations should proceed. Despite the progress reported, civil society members voiced concerns about the failure to consult with civil society organizations, the failure to disseminate the invitation, the hastiness of the event, and the absence of basic inputs, a roadmap, or a methodology for initiating the process of planning the event, among other considerations.<sup>118</sup>

65. The State informed the IACHR of its efforts to strengthen the Analysis of Attacks Unit. The State underlined the inclusion at the table of new players, such as the Human Rights Ombudsman, the Department of Crimes against Life and Personal Integrity of the National Civil Police, and the Association of Penal law and Criminology of Guatemala. It also reported having completed 36 meetings, to which numerous civil society organizations had participated. Notwithstanding these important efforts on behalf of the State,

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<sup>113</sup> UDEFEGUA, Report on Implementation of Recommendations in the 2015 Country Report: Situation of Human Rights in Guatemala, p. 1.

<sup>114</sup> Unit for the Protection of Human Rights Defenders in Guatemala (UDEFEGUA), *Expresate con otro rollo, sin odio, Informe sobre situación de Defensoras y Defensores de Derechos Humanos*, Informe Semestral 2016, Figure 5.

<sup>115</sup> UDEFEGUA, Report on Implementation of Recommendations in the 2015 Country Report: Situation of Human Rights in Guatemala, p. 1.

<sup>116</sup> UDEFEGUA, Newsletter, First Quarter 2016.

<sup>117</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), OHCHR rejects messages that incite violence (*OACNUDH rechaza mensajes que incitan a la violencia*), July 1, 2016.

<sup>118</sup> UDEFEGUA, Report on Implementation of Recommendations in the 2015 Country Report: Situation of Human Rights in Guatemala, September 14, 2016; CEJIL, Observations on the Report on the Situation of Human Rights in Guatemala, October 14, 2016.

civil society organizations have informed the IACHR that the Unit was not fulfilling its mandate.<sup>119</sup> According to UDEFEGUA, the Unit for the Analysis of Attacks against Human Rights Defenders in Guatemala was created by Interior Ministry Decree No. 102-2008. However, that decree only granted the Unit the authority to operate for four years, a period that has elapsed. Therefore, the Unit is currently operating without the backing of the Decree. It also said that although the representative of the Ministry of the Interior has mentioned in the Unit's meetings that efforts were being made to adopt a new executive decree to support the Unit's work, that decree has not yet materialized. Owing to the lack of valid regulations governing its operations, the Unit has neither a budget nor personnel. Furthermore, its operating capacity depends on the availability of the entities that make it up, which, therefore, impairs its effectiveness.<sup>120</sup>

66. The Inter-American Commission takes note of the efforts made by the State in this area, which are consistent with the recommendations that it made in the 2015 Country Report and with the judgment of the Inter-American Court in the "Human Rights Defender et al." case v. Guatemala in 2014.<sup>121</sup> Without prejudice to the foregoing, the Commission notes that the steps taken are still at an early stage and that, in view of the importance of giving the process and the protection policy that is adopted the greatest possible legitimacy, civil society involvement in the proceedings and related consultations needs to be strengthened. Therefore, the Commission wishes to remind the State of the needs to establish and implement the aforementioned protection policy as soon as possible, so that the State can fulfill its obligation to provide protection by intervening in a timely and proportional way in addressing the risks faced by people involved protection and promotion of human rights in Guatemala.

67. As regards implementation of protection measures through the precautionary measures mechanism, the Commission has received information regarding the willingness of the State to implement a series of protection measures that include assigning bodyguards, assistance with transportation by providing special vehicles, police patrols at the offices and residence of protected individuals, and police escorts, among others. In spite of those measures, the IACHR has received information about continued shortcomings in protection measures actually implemented, including: (i) constant rotation of protection personnel, which creates distrust in beneficiaries of the protection program because they are not familiar with their backgrounds, as well as creating concern over the handling of information on the routines of protected individuals;<sup>122</sup> (ii) failure to pay per diems for PNC escorts, which has an impact on their performance;<sup>123</sup> (iii) lack of follow-up on meetings to agree on measures;<sup>124</sup> (iv) unwarranted delays in implementing protection measures such as assigning armor-plated cars and strengthening residential protection,<sup>125</sup> among other issues. One of the chief concerns raised by civil society organizations has to do with the total or partial dismantling of protection arrangements for beneficiaries of the protection program and of precautionary measures.<sup>126</sup>

<sup>119</sup> UDEFEGUA, *Exprésate con otro rollo, sin odio*, Informe sobre situación de Defensoras y Defensores de Derechos Humanos, Informe Semestral 2016.

<sup>120</sup> UDEFEGUA, Report on Implementation of Recommendations in the 2015 Country Report: Situation of Human Rights in Guatemala.

<sup>121</sup> I/A Court H.R. Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 28, 2014. Series C No. 283, par. 263.

<sup>122</sup> Report presented by CEJIL on July 14, 2016, in the framework of the application for precautionary measures (PM-125-13) for Judge Jazmín Barrios regarding Guatemala.

<sup>123</sup> *Ibid.*

<sup>124</sup> Report presented by CEJIL on March 8, 2016, in the framework of the application for precautionary measures (PM-433-14) for Claudia Escobar regarding Guatemala.

<sup>125</sup> Report presented by the Human Rights Ombudsman of Guatemala CEJIL on June 20 and 23, 2016, respectively, in the framework of the application for precautionary measures (PM-366-13) for Miguel Ángel Gálvez and family regarding Guatemala.

<sup>126</sup> UDEFEGUA, "Suspension of personal protection measures with respect to Guatemala" (*Suspensión de medidas de protección personal respecto de Guatemala*), September 21 and 26, 2016; and information provided by Rosa Elvira Franco on September 19, 2016, in the framework of the application for precautionary measures (PM-139-05) for Rosa Elvira Franco *et al.* regarding Guatemala.

68. The Inter-American Commission considers it important to recall that it is essential when enforcing any regulatory framework for protection programs to be provided with "sufficient human resources with the training and preparation needed to respond to requests for protection, evaluate the degree of risk, adopt and implement protection measures, and monitor measures that are in effect."<sup>127</sup> In particular, the IACHR believes it essential for the State to implement suitable and effective protection measures. For the measures to be adequate, they must be suitable to protect the person from the risk they face, and in order to be effective, they must accomplish the expected results.<sup>128</sup> As regards the removal of protection arrangements, the Commission wishes to stress that only it can take the decision to lift precautionary measures, in accordance with its rules and regulations. Before proceeding to lift or alter a protection arrangement, information is sought, by means of investigation and other applicable methods, as to whether or not the risk factors have been removed. The IACHR also holds working meetings to listen to the person potentially affected and to enable other alternative means of protection to be explored.

69. Furthermore, as regards the investigation of the facts that prompt individuals to enter and remain in protection programs or to seek precautionary measures, the IACHR is troubled at having received no information about steps taken, whether of short-, medium-, or long-term nature, by the competent authorities to establish investigation as a prevention measure as a matter of state policy. The Commission considers that failure to investigate facts that give rise to situations of risk generates a climate of impunity that prompts an endless repetition of acts of violence that undermine the work of human rights defenders and journalists. In that connection, the Inter-American Commission recalls that "the most effective way to protect ... "is by effectively investigating the acts of violence ... and punishing the persons responsible.. Consequently, the Commission appeals to the State to undertake thorough, independent investigations into the attacks suffered by everyone linked to the protection programs, including those who are beneficiaries of precautionary measures requested by the IACHR.

70. In light of the foregoing, the IACHR reiterates the recommendations contained in this section of its report. The IACHR will therefore continue monitoring the measures taken by the State in response to the levels of violence and crime in the country, assess the enactment of new policies to address topics that have been left out of the current Democratic Criminal Policy, and evaluate the efficiency of this new policy to effectively reduce violence and crime. The IACHR will give particular attention to militarization, efforts to train and strengthen the national police, and initiatives to ensure the supervision and control of private security companies.

71. In addition, it will continue to monitor closely the situation of human rights defenders the plans and policies devised for their protection in consultation with those whom they are meant to benefit, as well as measures adopted to prevent their work from being stigmatized or discredited.

- **Situation of journalists and freedom of expression**

72. In its report *Situation of Human Rights in Guatemala*, the IACHR underscored the importance of the right to freedom of expression for consolidating democracy, reporting acts of corruption, and exercising other basic rights. In that regard, the IACHR and its Special Rapporteurship recalled the obligations of the State with regard to violence against journalists, the obligation to prevent violations, the obligation to protect, and the obligation to investigate, prosecute, and punish those responsible for such crimes. As the Special Rapporteurship has pointed out, these obligations complement one another: for there to be free, robust, and unfettered democratic debate, violence against journalists has to be fought through a comprehensive policy of prevention, protection, and prosecution.<sup>129</sup>

<sup>127</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. 505.

<sup>128</sup> I/A Court H.R., Matter of Mery Naranjo et al. regarding Colombia. Provisional measures. Order of the Court, November 25, 2010, considering 27.

<sup>129</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, "Violence against Journalists and Media Workers: International Standards and National Practices on Prevention, Protection, and Prosecution of Perpetrators," December 31, 2013, par. 31.

## Murders

73. The Office of the Special Rapporteur was deeply troubled by the reports of the murders of eight broadcasters in 2016 in Guatemala. Mariano Roberto Salazar Barahona, director of the *Estéreo Azúcar* radio station in the municipality of Asunción Mita, Jutiapa Department, was assassinated on March 17.<sup>130</sup> Winston Leonardo Túnchez Cano, a host at *La Jefa* radio station in the Department of Escuintla, was murdered on April 8.<sup>131</sup> Diego Salomón Esteban Gaspar, broadcaster at *Radio Sembrador*, was murdered on April 30 in the municipality of Ixcán, Department of Quiché.<sup>132</sup> Víctor Hugo Valdés Cardona, a broadcaster and medical doctor was assassinated in the city of Chiquimula, in the department of the same name. Valdés Cardona was out walking with his grandson when two unidentified assailants on a motorcycle intercepted them and shot them several times. The broadcaster hosted '*Chiquimula de Visión*,' a cultural program on a local television station for nearly 30 years.<sup>133</sup> Journalist Álvaro Alfredo Aceituno López, director of *Radio Ilusión* and the host of the news program *Acontecer Coatepecano* in the municipality of Coatepeque, Department of Quetzaltenango, was murdered on June 25.<sup>134</sup> On August 2<sup>nd</sup>, the journalist's daughter was assassinated.<sup>135</sup> On September 4, Felipe David Munguía Jiménez, a *Canal 21* cameraman and social activist, was murdered in the municipality of Santa María Xalapán, Jalapa Department.<sup>136</sup> On September 9, Ana Leonor Guerra Olmedo, was murdered as she was leaving San Juan de Dios General Hospital, where she worked as a press spokesperson.<sup>137</sup> On November 6, the journalist Hamilton Hernández Vásquez and his wife Ermelina González were killed on the highway between the municipalities of Coatepeque and Flores Costa Cuca in the

<sup>130</sup> IACHR. Special Rapporteurship for Freedom of Expression. July 1, 2016. [Press Release R91/16. Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). March 18, 2016. [Profunda consternación por asesinato de periodista](#); Inter-American Press Association (IAPA), March 23, 2016. [La SIP pide investigaciones por asesinatos en El Salvador y Guatemala](#); Unesco. March 23, 2016. [Director-General denounces killing of broadcaster Mario Roberto Salazar Barahona in Guatemala](#); Notas Periodísticas. March 18, 2016. [CLP de la APG condena asesinato del periodista guatemalteco Mario Salazar](#).

<sup>131</sup> IACHR. Special Rapporteurship for Freedom of Expression. July 1, 2016. [Press Release R91/16. Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala](#); Reporters without Borders (RSF). June 8, 2016. [RSF sounds alarm on violence against media in Guatemala](#); Prensa Libre. April 9, 2016. [Locutor es ultimado a balazos cuando se disponía a comprar cigarros](#); Unesco. July 12, 2016. [Director-General condemns killing of local radio journalist Winston Leonardo Cano Túnchez in Guatemala](#).

<sup>132</sup> IACHR. Special Rapporteurship for Freedom of Expression. July 1, 2016. [Press Release R91/16. Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala](#); Reporters Without Borders (RSF). June 8, 2016. [RSF sounds alarm on violence against media in Guatemala](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). May 2, 2016. [Joven locutor asesinado en Ixcán, Quiché](#); Prensa Libre. May 1, 2016. [Locutor es ultimado a balazos en Ixcán](#).

<sup>133</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. July 1, 2016. [Press Release R91/16. Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala](#); Reporters Without Borders (RSF). June 9, 2016. [GUATEMALA | Víctor Hugo Valdez Cardona, cuarto periodista asesinado en lo que va de año](#); Prensa Libre. June 7, 2016. [Muere baleado en Chiquimula el comunicador Víctor Hugo Valdés](#); Knight Center for Journalism in the Americas. June 10, 2016. [Colleagues urge authorities to investigate deaths of Guatemalan and Salvadoran journalists](#).

<sup>134</sup> IACHR. Special Rapporteurship for Freedom of Expression. July 1, 2016. [Press Release R91/16. Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala](#); Inter American Press Association (IAPA). June 28, 2016. [Guatemala: SIP condenó el asesinato de un periodista](#); Committee to Protect Journalists (CPJ). June 28, 2016. [Radio journalist murdered in Guatemala](#); Freedom House. June 29, 2016. [Fifth Journalist Murdered in Guatemala This Year](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). June 27, 2016. [Alerta: Matan a Periodista en Coatepeque, Quetzaltenango](#).

<sup>135</sup> Prensa Libre. August 2, 2016. [Matan a hija de periodista ultimado hace un mes](#); El Herald. August 3, 2016. [Matan a hija de periodista asesinado en Guatemala](#); La Prensa. August 2, 2016. [Matan a hija de periodista asesinado hace un mes en Guatemala](#).

<sup>136</sup> IFEX/Centro de Reportes Informativos sobre Guatemala (Cerigua). September 6, 2016. [Camera operator and community leader killed in Jalapa, Guatemala](#); Prensa Libre. September 4, 2016. [Capturan a sospechoso de ultimar a camarógrafo en Jalapa](#); Unesco. October 13, 2016. [Director-General condemns murder of TV journalist Felipe David Munguía Jiménez in Guatemala](#); Terra. September 4, 2016. [Asesinado a tiros un periodista en Guatemala](#); Knight Center for Journalism in the Americas. September 7, 2016. [Cameraman and community leader killed in southeastern Guatemala](#).

<sup>137</sup> Asociación de Periodistas de Guatemala (APG). Comunicado No. 24-09-2016. September 10, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Prensa Libre. September 9, 2016. [Comunicadora del Hospital General es ultimada a balazos](#); El Mundo. September 10, 2016. [Asesinan a tiros a la comunicadora del Hospital General de Ciudad de Guatemala](#).

department of Quetzaltenango. Hernandez was the host of the TV program *Punto Rojo* on *Canal 5*, a local cable channel.<sup>138</sup>

74. The authorities reportedly opened investigations in those cases but it is still not known if all the crimes are related to the practice of journalism and the exercise of freedom of expression. The Office of the Special Rapporteur considers it fundamental for the Guatemalan State to conduct a thorough, effective, and impartial investigation of those crimes in order to clarify the motives and reach a judicial determination about any relationship they may have with journalism and freedom of expression.<sup>139</sup>

### Attacks, threats, and intimidation against journalists

75. In the report *Situation of Human Rights in Guatemala*, the IACHR warned, in relation to the high number of attacks that occur against journalists or those exercising their right to express their opinion in Guatemala, that the adverse working conditions were apparently leading some journalists to practice self-censorship as a means to protect themselves from attacks and threats. In 2016, the attacks on the press continued. The Office of the Special Rapporteur is concerned that the situation continues and that, to date, in spite of efforts, no mechanism has been adopted for protecting journalists.

76. In 2016, the Office of the Special Rapporteur documented multiple attacks on journalists and media workers. The cases recorded include threats against both national and local journalists who reported acts of corruption or were covering stories of public interest, including Julio Arriola, correspondent for *Radio Sonora y Telediario*;<sup>140</sup> José Ramón Zamora, president of *El Periódico* newspaper;<sup>141</sup> Irma Tzi, writer for *Nuestro Diario*;<sup>142</sup> and journalists working for *Plaza Pública* and *Univisión*.<sup>143</sup> Instances were also documented of State agents and private citizens obstructing journalists in their work, as in the case of Mario Guzmán, a *Telecentro 13* correspondent;<sup>144</sup> Miguel Salay and Marvin Pérez, reporters from *Guatevisión*;<sup>145</sup> The IACHR

<sup>138</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. November 21, 2016. [Press Release R171/16. Office of the Special Rapporteur Expresses Concern over Murder of Journalist in Guatemala](#); Prensa Libre. November 6, 2016. [Matan a periodista y a su esposa](#); Tiempo Digital. 6 de noviembre de 2016. [Matan a un periodista y a su esposa en Guatemala](#); La Prensa/AFP. November 6, 2016. [Asesinan a periodista y a su esposa en el suroeste de Guatemala](#); La Prensa Gráfica/ACAN-EFE. November 6, 2016. [Matan a un periodista y a su esposa en Guatemala](#); El Periódico/EFE. November 6, 2016. [Asesinados a tiros un periodista y su esposa en Guatemala](#). La Hora. November 7, 2016. [APG asegura que MP reestructurará la Unidad de Delitos contra Periodistas](#); La Prensa Gráfica/AP. November 8, 2016. [Guatemala: Noveno periodista asesinado en 2016](#); La Prensa. November 10, 2016. [SIP pide evitar impunidad en caso de periodista asesinado junto a su esposa en Guatemala](#); IFEX/Centro de Reportes Informativos sobre Guatemala (Cerigua). November 7, 2016. [Fiscal General anuncia fortalecimiento de la Unidad Fiscal de delitos contra periodistas](#); Guatevisión. November 6, 2016. [Periodista es asesinado junto a su esposa en Quetzaltenango](#).

<sup>139</sup> IACHR. Special Rapporteurship for Freedom of Expression. July 1, 2016. [Press Release R91/16. Office of the Special Rapporteur Expresses Concern over Murder of Journalists and Media Workers in Guatemala](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. November 21, 2016. [Press Release R171/16. Office of the Special Rapporteur Expresses Concern over Murder of Journalist in Guatemala](#).

<sup>140</sup> Centro de Reportes Informativos sobre Guatemala (Cerigua). March 7, 2016. [Intentan dispararle a periodista](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). March 7, 2016. [Periodista fue amenazado por un sicario en Escuintla](#)

<sup>141</sup> Asociación de Periodistas de Guatemala. Press Release No. 12-05-2016. May 10, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Federación Latinoamericana de Periodistas (FELAP). May 11, 2016. [Guatemala: Sale la AGP en defensa del periodista José Rubén Zamora](#)

<sup>142</sup> Procurador de los Derechos Humanos de Guatemala. July 5, 2016. [PDH abre expediente de intervención inmediata por amenazas en contra de periodista](#); S0y502. July 1, 2016. [Amedrentan a corresponsal de Nuestro Diario en Cobán](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). July 9, 2016. [Observatorio de los Periodistas reporta agresiones contra el gremio](#).

<sup>143</sup> Plaza Pública. May 13, 2016. [Señor Caballeros, esto es periodismo](#); Construyendo NF. No date. [Dr. Harold Caballeros - Al pueblo de Guatemala](#); Noticias GT. May 12, 2016. [Caballeros responsabiliza a periodistas por lo que pueda sucederle a él y su familia](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). May 19, 2016. ["Señor Caballeros, esto es periodismo": Plaza Pública](#).

<sup>144</sup> Centro de Reportes Informativos sobre Guatemala (Cerigua). July 9, 2016, [Observatorio de los Periodistas reporta agresiones contra el gremio](#).

<sup>145</sup> República. January 15, 2016. [Acompañantes de Coro agreden a periodistas \[Video\]](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). January 18, 2016. [Empleados de Antonio Coro agreden a periodistas de Guatevisión](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). January 19, 2016. [APG condena agresión contra periodistas de Guatevisión](#); Notas Periodísticas. January 19, 2016. [Condena y rechazo de la CLP de la APG por ataque a 2 periodistas de Guatevisión](#).



was troubled by reports of physical attacks against journalists, as, for example, in the case of Santiago Palomo Vila of *Canal Antigua*;<sup>146</sup> and by the identification by name, harassment, and stigmatization of journalists by officials and social sectors associated with former members of the armed forces, as in the case of *El Periódico* columnist Miguel Ángel Albizures and the activist Iduvina Hernández<sup>147</sup> and journalists Fredy Chalí and Willian Cuxil.<sup>148</sup>

77. The IACHR and the Office of the Special Rapporteur recall that public servants must unequivocally repudiate attacks perpetrated in retaliation for the exercise of freedom of expression, and must abstain from making statements that may increase the vulnerability of those who are persecuted for exercising their right to freedom of expression. Similarly, it is essential that the authorities who hold elective positions or who hold responsibilities within the State structure encourage the competent authorities to act with due diligence and speed to investigate the facts and punish those responsible.<sup>149</sup>

78. Based on the foregoing, the IACHR reiterates its recommendation that the State protect the lives and physical integrity of journalists and refrain from making statements that stigmatize or discredit journalists and media workers, and that it strengthen measures to fight impunity for crimes committed against journalists.

### Protection program for journalists

79. In spite of reiterated recommendations from the IACHR, its Special Rapporteurship, UNESCO, and the OHCHR to move forward with the establishment of a program for protecting journalists and media workers, the implementation of such a system is still at the discussion stage in Guatemala. In 2014 a High Level Roundtable and a Technical Roundtable, composed of COPREDEH, the Ministry of the Interior, the Public Prosecutions Service, and the Secretariat of Social Communication of the Office of the President of the Republic (SCSPR), were created in order to design and implement a journalist protection program.<sup>150</sup> In 2015, the Government moved ahead with the mechanism's design in consultation with civil society and human rights organizations. The High-Level Roundtable and Technical Roundtable worked to design and implement the journalist protection mechanism and were supported in their activities by UNESCO and OHCHR. The process of developing the mechanism produced a first document entitled "Preliminary Proposal for a Protection Program for Journalists." The document identified the institutions that the program would comprise, their roles in the area of protection, and how coordination would function. The document was discussed by journalists and freedom of expression activists. Based on the recommendations and comments put forward, the Technical Roundtable presented a concept design for the System of protection For the Exercise of Journalism [*Sistema de Protección al Ejercicio Periodístico*] (SPEP).<sup>151</sup> However, several journalists' associations complained that they had had little or no say in the proposal's design. In 2016, after the new

<sup>146</sup> Santiago Palomo Vila/Facebook. August 7, 2016. [Amigos, con mucha tristeza, les comparto que fui víctima del constante estado de violencia y hostilidad en la que esta sumergido este país](#); Cámara Guatemalteca de Periodismo. Comunicado de Prensa No. 8-2016. August 7, 2016. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression; Diario Digital. August 7, 2016. [Agreden a analista de Canal Antigua](#); Soy502. August 7, 2016. [Ex candidato a diputado agrade a periodista en un bar](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). August 8, 2016. [La APG repudia y condena agresión a periodista Santiago Palomo](#).

<sup>147</sup> Centro de Reportes Informativos sobre Guatemala (Cerigua). January 22, 2016. [Columnista denuncia actos intimidatorios en su contra](#).

<sup>148</sup> Prensa Libre. July 12, 2016. [Alcalde intimida a periodistas e impide ingreso a comuna](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). July 13, 2016. [APG rechaza intimidación de alcalde contra dos reporteros](#).

<sup>149</sup> The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information. June 25, 2012. [Joint Declaration on Crimes Against Freedom of Expression](#).

<sup>150</sup> IACHR, 2014 Annual Report, [Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II "Evaluation of the State of Freedom of Expression in the Hemisphere"](#) OEA/Ser.L/V/II Doc. 13, March 9, 2015, pars. 557-560.

<sup>151</sup> IACHR, 2015 Annual Report 2015, [Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II "Evaluation of the State of Freedom of Expression in the Hemisphere"](#) OEA/Ser.L/V/II. Doc. 48/15, December 31, 2015, pars. 683-694.

government took over, the administration of president Jimmy Morales decided to suspend the process and start over the mechanism's construction.

80. Thus, on February 1, 16 journalists' groups in the country set out their position in a communiqué, claiming that they had been "barred from the process of drafting" the document and complaining that they were not part of the technical roundtable installed by the previous administration to address the issue, "or of the necessary consultations and discussions in a process of that nature." They asked "that the discriminatory way in which the previous government proceeded be rectified and that a discussion group in which industry groups were represented be established to address the serious security problems faced by the Guatemalan journalism industry."<sup>152</sup>

81. Following the pronouncement, on February 4, the Guatemalan Journalists' Association [*Asociación de Periodistas de Guatemala*] (APG), the Guatemalan Chamber of Journalists' [*Cámara Guatemalteca de Periodistas*] (CGP), the Chamber of Professional Broadcasters of Guatemala [*Cámara de Locutores Profesionales de Guatemala*] (CLPG), the Institute for Social Security for Journalists [*Instituto de Previsión Social del Periodista*] (IPSP) and other representatives of the media, met the Secretary of Social Communication of the Office of the President, Alfredo Brito, and the Undersecretary of Communication, Lucy Barrios, to present their demands regarding the process for creating the journalist protection mechanism. According to those organizations, Brito promised to review and amend the procedure used in constructing the program in view of the alleged exclusion of the media workers from the drafting of the proposal presented to the Technical Roundtable. At the meeting, the organizations were given access to the document drawn up by the Technical Roundtable. The press representatives highlighted the need to open up an effective channel of communication with government officials to ensure security for journalists and suggested to officials of the Press Secretariat that a discussion group be installed comprising representatives of journalists and their associations.<sup>153</sup> On June 8, the press organizations presented Brito a proposal for establishing a generalist protection mechanism.<sup>154</sup>

82. On July 19, representatives of the alliance of press groups had a meeting with the President of Guatemala, Jimmy Morales, and presented him the contents of their proposal for creating a journalist protection program or mechanism. The president promised to support proposal and assured them that they would have the "complete backing" of the Office of the President in making the proposal "a reality."<sup>155</sup>

83. The organizations' proposal includes the creation of an Oversight and Coordination Unit composed of a highly qualified technical team, as well as a Training Unit comprising experts on freedom of expression and freedom of the press, which would work in coordination with the State apparatus. The main core features of the proposal are as follows: protection measures must be apolitical; a forum for reaching decisions and consensus for the protection of journalists; the State's commitment to its responsibility in this area and a willingness to collaborate on the part of journalists and broadcasters, industry groups, and specialized media and institutions; a streamlined structure comprising the bare essentials to run the mechanism adopted; and effective use of the human and material resources needed to implement the

<sup>152</sup> Centro de Reportes Informativos sobre Guatemala (Cerigua), February 2, 2016. [Comunicado conjunto de entidades de prensa](#); Notas Periodísticas. February 2, 2016. [Prensa de Guatemala denuncia exclusión en documento que protege a periodistas](#).

<sup>153</sup> Centro de Reportes Informativos sobre Guatemala (Cerigua). February 2, 2016. [Comunicado conjunto de entidades de prensa](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). February 2, 2016. [Rectificar procedimiento e incluir a actores claves piden periodistas](#); Centro de Reportes Informativos sobre Guatemala (Cerigua). February 5, 2016. [SCSP ofreció rectificar proceso de construcción del Programa de Protección a Periodistas](#); Knight Center for Journalism in the Americas. February 18, 2016. [Mecanismo de protección para periodistas en Guatemala: una promesa sin cumplir](#).

<sup>154</sup> Centro de Reportes Informativos sobre Guatemala (Cerigua). June 8, 2016. [Alianza de entidades de prensa entrega propuesta de Programa de Protección a Periodistas](#).

<sup>155</sup> Republic of Guatemala, First Report of the State of Guatemala to the Inter-American Commission on Human Rights on Implementation of the Recommendations Contained in the "Report on the Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion" (2015), October 10, 2016; Gobierno de la República de Guatemala. July 19, 2016. [Presidente de Guatemala expresa compromiso con protección a periodistas](#); IFEX/Centro de Reportes Informativos sobre Guatemala (Cerigua). July 20, 2016. [Presidente de Guatemala recibe propuesta de Programa de Protección a Periodistas y asume compromiso](#); Prensa Libre. July 23, 2016. [Total apoyo del presidente](#).

program. It also considers it critical for the security and protection mechanism to be constructed with databases containing up-to-date, reliable, and accurate information on the situation of journalists, and that it include the creation of an instrument with program-specific data. The proposal recommends giving priority to adopting preventive measures, providing training to the security forces, prosecutors, and judges, and endowing the Prosecution Unit for Crimes against Journalists with the necessary resources. The proposal has the support of UNESCO, a decision ratified by its representative in Guatemala, Julio Carranza, at the ceremony for the initiative's presentation to the president.<sup>156</sup>

84. The IACHR and the Office of the Special Rapporteur consider it urgent to finalize the process of creating the journalist protection mechanism and putting it into operation as soon as possible. In particular, it is critical that the mechanism be implemented through a high-level, official interagency committee led by a government official with the capacity to coordinate among different authorities and tiers of government. Furthermore, the mechanism should have sufficient resources that it can manage independently, and the participation of journalists and civil society organizations in its design, operations, and evaluation must be guaranteed.

85. The IACHR and the Office of the Special Rapporteur consider it appropriate to recall certain guidelines for the design and operation of protection programs for journalists in line with the standards developed by different human rights protection bodies in that regard. The system must have sufficient trained human resources to inspire trust in the beneficiaries of protection. Additionally, it is "recommendable that for the protection program, the States should have available a state security body that would be separate from the entity that carries out intelligence and counterintelligence activities; whose personnel responsible for protection would be selected, incorporated and trained with absolute transparency and with participation by representatives of the target population of the programs to create relationships of trust among the protected persons and those charged with protecting them."<sup>157</sup> In this regard, the system should guarantee necessary funds in the budget to cover the costs derived from the expenditures of the personnel who work in the program, as well as expenditures associated with the measures for protection.<sup>158</sup>

86. In this regard, the Commission and the Office of the Special Rapporteur have indicated that violence against journalists not only violates in a particularly egregious way the freedom of thought and expression of the person concerned, but also affects the collective dimension of this right. The acts of violence committed against journalists and people working in the media, which are linked to their professional activity, violate the right of these people to express and impart ideas, opinions and information. It also violates the rights of citizens and society in general to seek and receive information and ideas of any kind.<sup>159</sup> As the Inter-American Court of Human Rights has noted, "journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment."<sup>160</sup>

87. Similarly, States also have the obligation to protect at-risk journalists and media workers. According to the human rights standards of the Inter-American System, the States have an obligation to protect those who are exposed to special risk with respect to their fundamental rights. The obligation to

<sup>156</sup> IFEX/Centro de Reportes Informativos sobre Guatemala (Cerigua). July 20, 2016. [Presidente de Guatemala recibe propuesta de Programa de Protección a Periodistas y asume compromiso](#); Prensa Libre. July 23, 2016. [Total apoyo del presidente](#).

<sup>157</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. 526.

<sup>158</sup> IACHR, [Annual Report 2013. Report of the Office of the Special Rapporteur for Freedom of Expression](#), Chapter III, Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators, OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013.

<sup>159</sup> I/A Court H.R., Case of Vélez Restrepo and Family v. Colombia, Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012, Series C No. 248, par. 142-149; IACHR, Office of the Special Rapporteur for Freedom of Expression. [Special Study on the Status of Investigations into the Murder of Journalists during the 1995 - 2005 Period for Reasons That May Be Related to Their Work in Journalism](#). OEA/Ser.L/V/II.131. Doc. 35, March 8, 2008, par. 67.

<sup>160</sup> I/A Court H.R., Case of Vélez Restrepo and Family v. Colombia, Preliminary Objection, Merits, Reparations and Costs. Judgment of September 3, 2012, Series C No. 248, par. 209.

protect an at-risk journalist can be met through the individual application of the measures necessary to ensure, among other things, the beneficiaries' rights to life, humane treatment, and freedom of expression. However, when a particular country is experiencing a systematic and serious structural situation of violence against journalists and media workers, the States must establish special protection programs for those groups.<sup>161</sup>

- **Trafficking in Persons**

88. Regarding the problem of trafficking in persons identified by the Commission in its Country Report, the IACHR appreciated the range of measures taken by the State to address the situation, yet it also underlined the serious deficiencies in training of personnel in the judicial system, in access to justice and care for victims, as well as in investigation and prosecution of the perpetrators of human trafficking. For instance, the lack of awareness by operators of justice of the offense of human trafficking, a shortage of specialized personnel and institutional capacity, the lack of follow-up measures for victims during their re-integration in their communities, a lack of protective shelters, as well as corruption and complicity of some State officials all hamper the State's capacity to properly address the scourge of trafficking.

89. In its *Report on Violence, Children and Organized Crime*, the IACHR reported that Guatemala is a country seriously affected by trafficking in children and adolescents for purposes of sexual exploitation.<sup>162</sup> It was reported that almost 90% of human trafficking victims are under 18 years of age.<sup>163</sup> It explained that girls and adolescents in particular were the primary victims of sexual violence and human trafficking for sexual exploitation by criminal organizations, being used as disposable, interchangeable parts of criminal structures, with the average age of recruitment at 13 years old.<sup>164</sup> It reiterated that children and adolescents who are victims of sexual exploitation and trafficking must be treated at all times as victims of serious crimes and must receive the treatment, support and assistance they need.<sup>165</sup>

90. In its Report to the Commission, the State underscored that, over the course of the years 2015-2016, it had launched a campaign against Human Trafficking in the country, raising awareness on the issue, and the importance of providing holistic attention to victims, to avoid criminalization as well as re-victimization. On April 26, 2016, the State also signed a letter of intention and 2 new agreements, aimed at providing medical attention and medication to victims of sexual violence and trafficking, and at providing increased attention to pregnant girls below the age of 14. In its new Criminal Policy 2015-2035, the State acknowledges that it is afflicted with worrying levels of human trafficking, which require an integral and regional strategy set in place by the State. The State of Guatemala has also committed itself to make substantive efforts to prevent violence and provide care to women, adolescents and girls victims of violence.<sup>166</sup>

<sup>161</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#), OEA/Ser.L/V/II. CIDH/RELE/INF. December 31, 2013, par. 62.

<sup>162</sup> IACHR, *Report on Violence, Children and Organized Crime*, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015. Available online: <http://www.oas.org/en/iachr/reports/pdfs/ViolenceChildren2016.pdf>, par. 255 ; IACHR, Press Release No.047-16, *IACHR Presents Report on Violence, Children and Organized Crime*, April 6, 2016. Available online: [http://www.oas.org/en/iachr/media\\_center/PReleases/2016/047.asp](http://www.oas.org/en/iachr/media_center/PReleases/2016/047.asp)

<sup>163</sup> IACHR, *Report on Violence, Children and Organized Crime*, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015. Available online: <http://www.oas.org/en/iachr/reports/pdfs/ViolenceChildren2016.pdf>, par. 252.

<sup>164</sup> IACHR, *Report on Violence, Children and Organized Crime*, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015. Available online: <http://www.oas.org/en/iachr/reports/pdfs/ViolenceChildren2016.pdf>, par. 7.

<sup>165</sup> IACHR, *Report on Violence, Children and Organized Crime*, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015. Available online: <http://www.oas.org/en/iachr/reports/pdfs/ViolenceChildren2016.pdf>, par. 254.

<sup>166</sup> Although this has not yet been set in motion, the Cabinet for Women plans to implement an identification, treatment and referral protocol for young girls victims of violence within the national education system, a procedure to file complaints and referrals for pregnant girls under 14 years of age to provide comprehensive care for them and their children, sexual violence protocols to be implemented in national hospitals, and the creation of a protocol to assist victims of sexual trafficking.<sup>166</sup> The State also pledged to expand comprehensive care of women, adolescents and children, to train staff working with victims of violence, to strengthen specialized criminal investigation, to reduce impunity, and to continue communication and awareness campaigns and workshops to promote gender

91. In May 2016, the Human Rights Ombudsman of Guatemala published its *Report on the Situation of Human Trafficking in Guatemala – 2015*, which identified the greatest weaknesses of State institutions that allowed for the problem of human trafficking to continue being a reality in the country.<sup>167</sup> The Ombudsman’s report identified areas for improvement and proposed the following recommendations to improve the State’s efficiency in tackling human trafficking: to increase migratory controls and avoid “blind spots” on the border being used for trafficking purposes; to continue training public officials who work with trafficking victims and especially, train the “Permanent Attention Offices” (“Oficinas de Atención Permanente”) with a human rights approach; to create a protocol to identify victims of trafficking which will be applied as of the first interview in order to properly care for and protect victims; to improve data collection with regards to human trafficking victims in order to tailor more appropriate public policies; to implement a program for the immediate attention to victims; to immediately reopen the shelter for victims “Hogar Luz de Esperanza” that was shut down in 2015; to train specialized personal to accompany victims in their reintegration into their family and community through a plan that includes follow-up measures and the realization of a life project; to improve the plan for integral reparation of victims and its application by judges and judicial officers.<sup>168</sup>

92. Similarly, a report of the CICIG and UNICEF on trafficking in Guatemala concluded that although there have been advances in terms of consolidating institutional capacities to effectively address human trafficking in the country, the efforts to strengthen the efficiency of investigation and criminal prosecution remained at an early stage of development and required energetic and coordinated action to attain effective protection of the victim’s rights as well as to convict those who are truly responsible.<sup>169</sup> The report informed that sexual trafficking in the country was a well-organized activity that amounted to 2.7% of the GDP in the country. The report highlighted that, according to a census of court rulings, between 2009 and 2014, 57% of the victims of trafficking in the country were children and adolescents, although data from other sources would indicate that the proportion might even be higher than that.<sup>170</sup> The report insisted on the link between the lack of data on the amount of people who suffered from sexual exploitation in the country, and the State’s incapacity to elaborate appropriate public policies in order to eradicate it.<sup>171</sup>

93. It also underlined the increase in the amount of prosecutions and sentences for trafficking in persons, but alerted to the insufficiency of these sentences in comparison with the amplitude of the phenomenon of trafficking in the country, and the failure to prosecute traffickers higher up in the chain of command. According to the report, between 2009 and 2014, 3,568 complaints were filed in the country, with final decisions adopted in 2,302 of them, in most instances dismissals.<sup>172</sup> Fear and lack of confidence in the system were identified as a persistent issue, given the lack of available measures to care for and protect victims, and given that discrimination against victims remains widespread due to a lack of training of justice operators. The CICIG also expressed concern that the current approach to reparation of victims does not satisfy the requirements of international human rights law, as they do not contemplate all of the categories of harm that mandate reparation. It finally underlined how the strengthening of internal controls of public

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equality in Guatemala. UN Women, *Government Commitments*, Guatemala, 2016. Available online: <http://www.unwomen.org/es/what-we-do/ending-violence-against-women/take-action/commit/government-commitments>

<sup>167</sup> Jorge Eduardo de León Duque, Human Rights Ombudsman (Procurador de los Derechos Humanos), *Informe de situación de la trata de personas en Guatemala 2015*, Guatemala, May 2016.

<sup>168</sup> Jorge Eduardo de León Duque, Human Rights Ombudsman (Procurador de los Derechos Humanos), *Informe de situación de la trata de personas en Guatemala 2015*, Guatemala, May 2016.

<sup>169</sup> CICIG and UNICEF, *Trata de personas con fines de explotación sexual en Guatemala*, 2016, p.139.

<sup>170</sup> CICIG and UNICEF, *Trata de personas con fines de explotación sexual en Guatemala*, 2016, p.137. According to the report, the country saw 3,568 complaints lodged, with final decisions in the case taken in 2,302 of them. The majority of decisions on the investigation consisted of dismissals, which in many instances were not judicially approved as the law requires, which implies that they were not disposed of in a valid manner. Ver p. 122.

<sup>171</sup> CICIG and UNICEF, *Trata de personas con fines de explotación sexual en Guatemala*, 2016, p.137.

<sup>172</sup> CICIG and UNICEF, *Trata de personas con fines de explotación sexual en Guatemala*, 2016, p.122.

officials and the fight against corruption went hand-in-hand with the fight against trafficking, and called for the identification, processing and punishment of those within the State who tolerate, acquiesce or promote these activities.

94. The IACHR welcomes the advances reported by the State as positive steps towards a better awareness of the population in general as to the crime of human trafficking. The improvement of access to care for victims is an essential measure that requires improvement. The IACHR also salutes the pledges that were made by the Cabinet for Women which plans to implement an identification, treatment and referral protocol for young girls victims of violence, and welcomes the intention to create a protocol to assist victims of sexual trafficking. However, the IACHR also observes significant gaps with regard to the measures which are required to properly come to terms with trafficking in the country which have been identified by the Inter-American Commission in its Country Report and its report on *Violence, Children and Organized Crime*, as well as those that have rightfully been identified by the Human Rights Ombudsman, UNICEF and the CICIG.

95. The IACHR calls on the State to implement all of these recommendations to close the gaps in migratory control which allow for the crossing of trafficking victims at the borders, to improve the serious deficiencies in training of personnel in the judicial system, to improve data collection, to improve integral psychological and physical health care, to guarantee protection and reintegration of victims, to ensure access to justice and dignified reparations for victims, as well as to effectively investigate and prosecute the perpetrators of human trafficking.

### C. Administration of justice

- Adopt measures to ensure that judicial officers perform their work impartially and independently, respecting the principle of separation of powers and free from any threat or pressure from powerful groups.
- Ensure that those who are elected judges or members of the high courts are chosen for their merits, capacity, suitability, and honesty, and that they meet the minimum standards established by international human rights law to ensure judicial independence.
- Adopt effective measures that allow for better and more access to justice for all. With respect to the indigenous peoples, respect their own institutions of representation and decision-making and ensure that they can be heard in their own languages.
- Adopt effective measures that make it possible for the Public Prosecution Service to continue coordinating actions and collaborating with the CICIG and allocating, for this purpose, the resources that are needed.
- Bolster the actions to fight impunity in the case of human rights violations through exhaustive and independent investigations, punish the direct perpetrators and masterminds, and make reparation to the victims.
- Effectively discharge the duty to investigate, prosecute, and punish those responsible for violations of the right to life, humane treatment, and other human rights committed during the armed conflict. In the event that the victims are indigenous peoples, make reparation for the consequences, both individual and collective, in a manner that is integral and culturally appropriate.
- Ensure that the writ of *amparo* and its application in Guatemala meets the relevant inter-American standards.
- Respect, and guarantee, the indigenous legal systems without limiting their areas of competence recognized by international law, and establish a procedure for coordination between the regular justice system and the indigenous one, with the participation of the indigenous peoples. Adopt measures to respect, and recover the indigenous legal system, including the traditional indigenous methods of conflict resolution, so that the indigenous peoples can recover the authority that has been weakened by the internal armed conflict and by the lack of state recognition.

- Implement the measures necessary for the National Reparation Program (*Programa Nacional de Resarcimiento* – PNR) to be an effective and culturally appropriate mechanism to make reparation to the victims of the armed conflict that includes actions to take into due consideration the special situation of indigenous women and children, as well as the participation of the indigenous peoples in the Program’s decisions.

96. Administration of justice in Guatemala is a priority issue for the IACHR, and has been for many years. The State has been grappling with impunity rates reaching the high nineties (between 99.1% and 98.4%), with difficulties providing an independent and impartial justice, as well as with corruption.

97. In recent years, serious questions raised during the process of nomination and selection of judges in the country have led to calls from both civil society and the judicial branch to carry out reforms to strengthen the independence of judicial officers. In its Country Report, the IACHR insisted on the fact that a transparent designation process, based on objective criteria, that guarantees the equality of all the candidates, is fundamental for the independence of the judiciary.<sup>173</sup> As such, it recommended that States establish an independent organ whose functions include the appointment, promotion and removal of judges, who would carry out this process basing themselves solely on an analysis of each candidate’s capacity, suitability, honesty and reputation. Measures were also required to ensure that judges or other judicial officials who denounce irregularities in the selection process are no longer subjected to intimidation or threats.

98. The IACHR urged the State to adopt essential reforms with regard to the independence of the judiciary and the separation of powers. It highlighted the importance of the non-interference of other branches of government in judges’ deliberations and decisions or in operations of the judiciary in general; the importance of avoiding financial dependence on the budgetary allocations made by the legislature; the necessity of a process of designation of judges that is timely, adequate, transparent, and based on qualifications; and the requirement of disciplinary proceedings that offer guarantees of due process.

99. In its follow-up report on the implementation of the recommendations, the State explained that it had set in place a free, speedy and effective reporting system for citizens to denounce any irregular acts or corruption in the judicial system at the national level, available through email, facebook, by phone or in person. In this regard, the State also underlined that it had implemented precautionary measures in favor of former judge Claudia Escobar, Judge Miguel Angel Galvez, Judge Jassmin Barrios, and the Public Prosecutor Thelma Aldana, to allow them to pursue their work, free from any kind of social pressure or threat.

100. In this regard, the IACHR welcomes the information provided by the State and wishes to highlight that the IACHR granted precautionary measures in favor of Claudia Escobar and her family (PM-334-14);<sup>174</sup> Miguel Ángel Gálvez and his family (MC-351-16);<sup>175</sup> Iris Yassmin Barrios Aguilar and others (MC-125-13);<sup>176</sup> and Thelma Esperanza Hernández and her family (MC-497-16) because,<sup>177</sup> based on the information submitted in the context of each proceeding, the IACHR found, *prima facie*, that the beneficiaries were facing situations of seriousness, urgency, and risk of suffering irreparable harm which could put their lives and personal integrity at risk. As such, the IACHR continues monitoring these situations based on

<sup>173</sup> See, IACHR, Second Report on the Situation of Human Rights Defenders in the Americas, December 31, 2012, par. 374. See also, along these lines, Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, CCPR/CO/84/TKJ, June 18, 2005, par. 17.

<sup>174</sup> Claudia Escobar and family (MC 433-14), Precautionary measures granted on November 10, 2014: <http://www.oas.org/es/cidh/decisiones/cautelares.asp>

<sup>175</sup> Miguel Ángel Gálvez: (MC-351-16) ; Miguel Angel Galvez y familia (MC-366-16), Precautionary measures granted on August 21, 2016.

<sup>176</sup> Iris Yassmin Barrios Aguilar y otros: (MC-125-13), Precautionary measures granted on June 28, 2013. Available online: <http://www.oas.org/es/cidh/decisiones/cautelares.asp>

<sup>177</sup> Thelma Esperanza Hernández and her family (MC-497-16), Precautionary measures granted on July 22, 2016. Available online: <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC497-16-ES.pdf>

information provided by the parties to ensure the precautionary measures are effectively implemented by the State. The Commission attributes great importance to the security of justice operators.

101. In that regard, in a briefing note dated October 7, 2016, the Office of the United Nations High Commissioner for Human Rights expressed its concern with the fact that, despite having been granted precautionary measures by the IACHR, Public Prosecutor Thelma Aldana had been receiving persistent death threats, which had increased in the weeks previous to the publishing of the Briefing note.<sup>178</sup> The UN OHCHR acknowledged the positive measures set in place by the authorities, but it held that their efficacy needed to be constant and guaranteed. It also denounced that threats like these were common in the country for judicial officials who were currently involved in the fight against impunity and corruption.<sup>179</sup>

102. In this regard, civil society organizations have insisted that the need to resort to precautionary measures before the Inter-American Commission in the case of Miguel Ángel Gálvez and of Thelma Esperanza Hernández in July and August 2016 demonstrates the insufficient measures set in place by the State to effectively guarantee that judicial officials are free to carry out their work without fear of retaliation, threats or violence against their lives and physical integrity (see also section on human rights defenders).<sup>180</sup>

103. In its Report, the State also recalled that it has been unfolding a process to strengthen its judicial system and combat corruption and impunity in the country, with the support of the United Nations, and the International Commission against Impunity in Guatemala (CICIG, by its initials in Spanish). The Commission highlighted the work of the CICIG in its country report and valued the cooperation with the Public Prosecutions Service and other State institutions.<sup>181</sup> In the area of justice, the work of the CICIG has been significant, both in terms of its investigative work and its support for, and promotion of, legal reforms aimed at making the justice system more effective.<sup>182</sup>

<sup>178</sup> Office of the United Nations High Commissioner for Human Rights, Briefing Notes, *Press briefing note on Guatemala, Spokesperson for the UN High Commissioner for Human Rights*, Geneva, October 7, 2016.

<sup>179</sup> Office of the United Nations High Commissioner for Human Rights, Briefing Notes, *Press briefing note on Guatemala, Spokesperson for the UN High Commissioner for Human Rights*, Geneva, October 7, 2016.

<sup>180</sup> CEJIL, *Observations on the Report on the Situation of Human Rights in Guatemala*, October 14, 2016.

<sup>181</sup> IACHR, [IACHR Publishes Report on the Human Rights Situation in Guatemala](#), OEA/Ser.L/V/II., December 31, 2015, par. 418.

<sup>182</sup> IACHR, [IACHR Publishes Report on the Human Rights Situation in Guatemala](#), OEA/Ser.L/V/II., December 31, 2015, par. 418. The joint efforts of the CICIG and the Public Prosecutions Service uncovered graft at the highest levels of power as a result of the discovery of a network of corruption known as “La Línea” in 2015, which led to the resignation of then-president Otto Pérez Molina and then-vice President Roxanna Baldetti, as well as to the arrest of several individuals implicated in customs controls designed to generate financial benefits. The Commission learned that in 2016 the Public Prosecutions Service, with the support of the CICIG, captured other individuals involved in another corruption case—conspiracy, fraud, and offering of bribes—in relation to a contract for the Quetzal Container Terminal in which Otto Pérez Molina and Roxana Baldetti were also apparently involved. Furthermore, several individuals were arrested in connection with illicit schemes to secure by illegal means the concession for the cleanup of Lake Amatitlán in order to obtain financial gains from it. In that connection, the CICIG put out a press release on July 27, 2016, regarding the decision by Judge of Court B for High Risk Cases, Miguel Ángel Gálvez, in the trial of 53 persons accused in the “Co-Option of the State of Guatemala” case, who included the former president and vice president of the Republic, businessmen, contractors and officials accused of masterminding a criminal network. Furthermore, on June 2, 2016, the Public Prosecutions Service and the CICIG made the “Co-Option of the State of Guatemala” case public, revealing a criminal organization headed by Otto Pérez Molina and Roxana Baldetti that had allegedly co-opted the government following the victory of the *Partido Patriota* (PP) at the ballot box. The investigation revealed operations that dated back to 2008 (four years before the PP came to power) along with a complex money laundering scheme intended to raise funds during the PP’s election campaign in 2011 that carried Otto Pérez Molina to the presidency and Roxana Baldetti to the vice presidency, and continued while they were both in office from 2012 to 2015. In that way, several key government institutions were apparently co-opted by the network, which used a financial scheme that often appeared legal but whose chief aim was the illicit enrichment of the network’s members. The purpose of the financial scheme was to launder money from illicit sources. Furthermore, private media companies were implicated in the case as a result of payments made to the PP election campaign, so that they might profit from contracts for large sums of money once it got into power *Prensa Libre*, [Investigación revela cooptación del Estado por PP](#), June 3, 2016; *El Periódico*, [MP y CICIG, Pérez y Baldetti lideraron una macroestructura criminal que cooptó al Estado](#), June 3, 2016; *Siglo 21*, [Financiaban ilícitamente al PP](#), June 3, 2016; *Publinews*, [La maquinaria para captar fondos del Estado](#), June 3, 2016.



104. The State said that the CICIG, working with the Office of the Prosecutor General and the Head of the Public Prosecutions Service, has helped to strengthen the Anti-Impunity Special Prosecution Unit (*Fiscalía Especial contra la Impunidad –FECI*) in areas such as adoptions, judicial elections, application committees, firearms trafficking, political finance in Guatemala, the system for measuring impunity in Guatemala, and people trafficking for sexual exploitation, among other challenges.<sup>183</sup> The State also informed the Commission that the Supreme Court of Justice reported a total of 475 preliminary inquiries against officials between January 1 and September 20, 2016, including the former president of the Republic, candidates to the presidency and vice presidency, parliamentary deputies, mayors, government attorneys, and the prosecutor general, among others.<sup>184</sup>

105. In this regard, the State mentioned the following major advances with regard to a constitutional reform in relation to justice which is still pending of approval by members of Congress<sup>185</sup>: i) the Public Prosecutor can begin a preliminary investigation against a public official despite the preliminary immunity which is granted to public officials in Guatemala (“Ley de Antejuicio”); ii) appointment committees will be eliminated in the designation process of judges to the Supreme Court, Courts of Appeal, and the designation of the Public Prosecutor; iii) legal pluralism will be included to the Constitution, subject to constitutional review; iv) the number of judges sitting on the bench of the Constitutional Court will be increased to nine judges and their mandate to nine years, with a rotation of three judges every three years; v) the requirements to be a Constitutional Court Judge will be increased to 20 years of exercise as a lawyer or 8 years as a Judge at a Court of Appeal or the Supreme Court of Justice, the requirements to be a judge at a Court of Appeal have been balanced between judges with a least 8 years of experience or lawyers with at least 15 years of experience, and the requirements to be a Public Prosecutor are increased to 6 years; vi) the number of judges sitting on the bench of the Supreme Court will be increased to 13; vii) the Supreme Court’s administrative functions are transferred to the National Board of Justice (“el Consejo Nacional de Justicia”); and viii) the Judicial Career Board (“Dirección de la Carrera Judicial”) will be created, with the mandate of managing, through public tender, access to and practice of the legal profession, formation and training, transfers, disciplinary measures and career development.

106. The new *Law on the Judicial Career* (“Ley de la Carrera Judicial”), which entered into force at the end of November 2016, seeks to contribute to judicial independence and impartiality by dividing the administrative and the jurisdictional function of the Supreme Court of Justice, by guaranteeing that the appointment, promotion and removal of judges is based solely on an analysis of each candidate’s capacity, suitability, honesty and reputation, and by making sure that due process guarantees are included in disciplinary proceedings.<sup>186</sup> The State informed that the roles of the Judicial Career Board is to manage, through public competitions, admissions to and promotions in the career path, training, transfers, disciplinary proceedings and performance evaluations. The head of the Board may hold that position for six years.<sup>187</sup>

<sup>183</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, pp. 73-74.

<sup>184</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 62, pars. 33-35.

<sup>185</sup> In its comments on the draft of this report, the State indicated that the reforms were in the approval phase of the third reading before the Congress of the Republic. Communication from the State of Guatemala, Comments of the State of Guatemala on “Draft: Chapter V Follow-up of Recommendations Formulated by the IACHR in its Report on the Situation of Human Rights in Guatemala: Diversity, Inequality, and Exclusion,” January 23, 2017.

<sup>186</sup> Decree 32-2016; Office of the United Nations High Commissioner for Human Rights (OHCHR), International Commission Against Impunity in Guatemala (CICG), Public Prosecutions Service of Guatemala, Joint Press Release, *MP, CICIG y OACNUDH saludan aprobación de nueva Ley de Carrera Judicial*, June 29, 2016, Available online: [http://www.ohchr.org.gt/documentos/comunicados/20160629\\_Comicado\\_Ley\\_Carrera\\_Judicial\\_MpCicigOacnudh.pdf](http://www.ohchr.org.gt/documentos/comunicados/20160629_Comicado_Ley_Carrera_Judicial_MpCicigOacnudh.pdf).

<sup>187</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 68.

107. The Office of the United Nations High Commissioner for Human Rights and UNHCR-Guatemala, which have both been involved in the process, have welcomed the efforts of the State to begin a dialogue on justice reform in Guatemala,<sup>188</sup> and its different aspects.<sup>189</sup> On October 7, 2016, it released a press release welcoming the presentation to the Congress of a draft bill on constitutional reform in the area of justice, encouraging its approval, as this proposal followed months of consultations with indigenous authorities, legal scholars, civil society organizations, the private sector, and had also garnered the support of the OHCHR which helped to ensure that the reforms were harmonized with international law standards.<sup>190</sup> This constitutional reform of the justice sector is being considered by the Congress with a view to its debate starting in November 2016 and has already received a favorable opinion from the Committee on Legislation and Constitutional Matters.

108. On October 27, 2016, the Office of the United Nations High Commissioner for Human Rights in Guatemala welcomed the State's inauguration of the Special Prosecution Unit against Impunity (*Agencia de la Fiscalía Especial contra la Impunidad del Ministerio Público*) in Quetzaltenango, which it described as a great effort to continue advancing in the fight against corruption and impunity.<sup>191</sup>

109. The IACHR also takes note of the reform of the Electoral and Political Parties Law, the changes to which include the possibility of overseas voting for president and vice president, a ban on voters moving from one municipality to another, penalties for proselytism outside of electoral periods, and granting the Supreme Electoral Tribunal (TSE) power of oversight over public and private contributions to political organizations. The changes also prohibit receiving contributions of resources proceeding from unlawful acts or from individuals who have been convicted of offenses against the public administration or of money laundering; they have also made the presidency of the TSE a rotating position. In spite of the amendments, deputies from different parties believed that the reforms did not go far enough and said that more changes when needed, such as roll-call voting for deputies as opposed to lists. One point at issue was that ethnic and gender participation was not guaranteed because the provisions designed to introduce parity were rejected.

110. The Inter-American Commission on Human Rights notes the efforts and measures that have been taken by all three branches of the State to fight corruption in Guatemala in the past three years, with civil society and international cooperation playing fundamental roles in this process. The IACHR highlights particularly the work of the CICIG and the Attorney General's Office with regards to combatting impunity and corruption in the country. The IACHR acknowledges that the measures undertaken have been aimed at improving access to justice, strengthening the independence and impartiality of judges and magistrates, depoliticizing the selection and designation of judicial officials, as well as recognizing indigenous jurisdiction on domestic matters and encourages the State to continue in this direction.

111. The IACHR also referred in its country report to the need to reform the Law on *Amparo*, *Habeas Corpus*, and Constitutionality with the aim of "expediting the administration of justice, reducing the times for responses, and improving the channels of communication."<sup>192</sup> In that regard, the State said that the Law on *Amparo* requires a reform process that is in line with regional and international human rights standards and constitutional rules developed under its domestic law. It also mentioned that it had been prudent to put the reform to a referendum in accordance with Article 173 of the Constitution of Guatemala

<sup>188</sup> State of Guatemala, National Dialogue, Toward Justice Reform in Guatemala, <http://www.reformajusticiagt.org/?p=319>.

<sup>189</sup> Office of the United Nations High Commissioner for Human Rights, *Hacia una reforma profunda de la justicia en Guatemala*, <http://www.ohchr.org.gt/noticia.asp?idnoticia=196>.

<sup>190</sup> Office of the United Nations High Commissioner for Human Rights, Briefing Notes, *Press briefing note on Guatemala*, Spokesperson for the UN High Commissioner for Human Rights, Geneva, October 7, 2016.

<sup>191</sup> Office of the United Nations High Commissioner for Human Rights, Press Release, *Inauguración de FECI y CICIG en Quetzaltenango constituye un paso importante para el fortalecimiento de la justicia*, Geneva, October 27, 2016, Available online: [http://www.ohchr.org.gt/documentos/comunicados/20161027\\_Inauguracion\\_FECI\\_CICIG\\_Quetzaltenango.pdf](http://www.ohchr.org.gt/documentos/comunicados/20161027_Inauguracion_FECI_CICIG_Quetzaltenango.pdf)

<sup>192</sup> IACHR, *IACHR Publishes Report on the Human Rights Situation in Guatemala*, OEA/Ser.L/V/II., December 31, 2015, par. 45.

given that the law ensures, protects, safeguards, and defends the very constitutional guarantees that underpin the constitutional system of justice, such as direct procedural mechanisms to ensure personal liberty, protection against arbitrary decisions, control over the constitutionality of laws, and the supremacy of the Constitution.<sup>193</sup> The IACHR hopes that the reform of the law can be finalized in order to ensure that the Amparo remedy is consistent with inter-American standards.<sup>194</sup>

112. In its Country Report, the IACHR also underscored the creation of the Unit on Indigenous Matters of the judiciary and the Secretariat for Criminal Justice, as well as the Attorney General's Office's creation of a Department of Indigenous Affairs. The IACHR also welcomed the State's efforts with regard to training of judges and prosecutors on indigenous people's rights and its efforts to expand the bilingual access to justice through an increase in available official interpreters, from 13 of the 22 Maya linguistic communities.

113. Nonetheless, the Report also highlighted some shortcomings with regard to access to justice. If access to justice can be defined as the physical possibility to file a judicial action and obtain a response within a reasonable time, citizens of Guatemala face not only impunity and corruption as barriers to their access to justice, but economic barriers resulting from the high levels of poverty, geographic barriers based on the rural character of the country, insufficient infrastructure, and the lack of State presence throughout the territory. Citizens also face difficulties obtaining justice because of the common practice of Courts allowing the processing of notoriously frivolous or abusive motions whose objective is to obstruct justice. Indigenous peoples face an increased difficulty to access justice, a cultural barrier, evidenced by a lack of understanding by judicial operators and judges of indigenous languages and cultures, the insufficiency of interpreters or the use of legal interpreters that do not have mastery of the specific Maya language for which they were hired, as well as the distance between indigenous communities and the nearest court of justice. Women also face preoccupying levels of discrimination and prejudice in the judicial system, which translates into a limited access to justice and high levels of impunity for crimes committed against them.

114. LGBTI people were found to face additional difficulties due to insistent discrimination against them in the judicial system. For example, according to a civil society network, as of 2016,<sup>195</sup> the State still does not ensure due process against discrimination or violence motivated by the victim's sexual orientation or gender identity, in spite of the recommendations of the United Nations Human Rights Committee.<sup>196</sup> Indeed, they say that in 85 percent of such cases the victims filed a complaint for the assault and yet only 26 percent elicited a response from the authorities.<sup>197</sup> In its comments on the draft of this report, the State of Guatemala indicated that it was making efforts via COPREDEH to prepare a comprehensive public policy to protect the human rights of LGBTI persons.<sup>198</sup>

115. In its Report on the follow-up to the IACHR's recommendations, the State provided information as to its efforts to put in practice translation and interpretation services, and professionalize the work of the interpreters through training. The State also highlighted that the Constitutional Court had recognized the existence of legal pluralism in the country in a 2012 decision. In this regard, the constitutional

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<sup>193</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 79.

<sup>194</sup> IACHR, [IACHR Publishes Report on the Human Rights Situation in Guatemala](#), OEA/Ser.L/V/II., December 31, 2015, par. 45.

<sup>195</sup> Redlactrans, [Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá](#), January 2016, p. 37, par. 141.

<sup>196</sup> Human Rights Committee, Concluding observations of the Human Rights Committee: Guatemala, CCPR/C/GTM/CO/3, 19 April 2012, par. 11.

<sup>197</sup> Redlactrans, [Violaciones a los Derechos Humanos de Mujeres Trans en Costa Rica, El Salvador, Guatemala, Honduras y Panamá](#), January 2016, p. 37, par. 141.

<sup>198</sup> The State indicated that this effort enjoys the support of the Pan-American Health Organization in Guatemala, the General Secretariat for Planning and Programming, the Office of the Ombudsman on Sexual Diversity of the Office of the Human Rights State's Attorney's Office, and representatives of civil society organizations, with which it has conducted meetings this year to train public officials.

reform of the administration of justice proposed by all three government branches and the Public Prosecutions Service, which at the time of this writing was before the Congress, and is supported by Office of the United Nations High Commissioner for Human Rights also contemplates a groundbreaking innovation; the inclusion of legal pluralism in the Constitution. The Office of the United Nations High Commissioner for Human Rights affirmed that the express recognition of legal pluralism, which was a key aspect of the reform, would constitute a milestone for the country.<sup>199</sup> The reform seeks to allow indigenous authorities to apply justice in accordance with their norms, procedures, uses and customs, in harmony with the rights protected under the Constitution and international Human Rights instruments. This major reform would be a necessary step to come to terms with an accessibility to justice rate of about 10% for indigenous peoples in Guatemala, data which was reported with great concern by the UN Special Rapporteur on the Rights of Indigenous Peoples earlier this year.<sup>200</sup>

116. The IACHR welcomes this new constitutional reform project and encourages all of the branches of the State to follow-through with this reform. The inclusion of legal pluralism in the Constitution would constitute a major advance for the country which is constituted of 60% of indigenous peoples, who frequently find themselves hindered in their access to justice. It would permit legal disputes to be resolved within communities, therefore bringing down the geographical barrier that commonly affects indigenous people's access to justice. It would allow for them to be judged for certain crimes in accordance with their own cultural understanding of the world, and in their own languages. It would restore respect for indigenous institutions, legal systems and decision-making processes, including the traditional indigenous methods of conflict resolution, and recover the authority that has been weakened by the internal armed conflict and by the lack of state recognition.

117. The State also created the Secretariat for Judicial Strengthening and Cooperation within the Judicial Branch, to advise the Judicial Branch in the implementation of public policies, and to promote the inclusion of training and awareness-raising workshops on the rights of indigenous peoples and legal pluralism for judicial officials.

118. With regards to women, the State of Guatemala has committed itself to make substantive efforts to prevent violence against women and girls, and to provide women who have suffered violence with the necessary services.<sup>201</sup> The State also pledged to train staff working with victims of violence, to strengthen specialized criminal investigation, to reduce impunity, and to continue communication and awareness campaigns and workshops to promote gender equality in Guatemala.<sup>202</sup> The IACHR encourages the State to set in place these measures to improve the situation of access to justice for women in the country, and to guarantee that crimes against women are investigated, prosecuted and punished, and do not remain in impunity.

119. Regarding the National Reparations Program (PNR), the State informed the IACHR that it had continued handing out cultural, psychosocial, economic and material reparations through the PNR. Nonetheless, information received by the IACHR and as it was recognized by the State in the Public Hearing that took place in December 2015, the total amount of the budget assigned to the PNR in the agreement for its creation has never been granted. Moreover, as a consequence of the reduction in budget for the 2015 year, during the first semester of the year, the PNR did not have the necessary funds to fulfill its mandate.<sup>203</sup> During

<sup>199</sup> Office of the United Nations High Commissioner for Human Rights, Briefing Notes, *Press briefing note on Guatemala, Spokesperson for the UN High Commissioner for Human Rights*, Geneva, October 7, 2016.

<sup>200</sup> UN Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, *Derechos Humanos, jurisdicción indígena y acceso a la justicia: Hacia el Dialogo y respeto intercultural*, Presentation at the international encounter on investigation techniques in indigenous affairs, Bogota, Colombia, February 24, 2016.

<sup>201</sup> UN Women, *Government Commitments*, Guatemala, 2016. Available online: <http://www.unwomen.org/es/what-we-do/ending-violence-against-women/take-action/commit/government-commitments>

<sup>202</sup> UN Women, *Government Commitments*, Guatemala, 2016. Available online: <http://www.unwomen.org/es/what-we-do/ending-violence-against-women/take-action/commit/government-commitments>

<sup>203</sup> IACHR, Public Hearing "Right to Full Reparation for Victims of the Armed Conflict in Guatemala", Panamá, December 6 2016; CEJIL, *Observations on the Report on the Situation of Human Rights in Guatemala*, October 14, 2016.

the second semester of the year, funding was increased and the program was able to function again. Nonetheless, these cuts in the budget have caused a preoccupying reduction of personnel, which could debilitate the duties it is trying to perform.<sup>204</sup> Civil society organizations also informed the IACHR that the PNR remained culturally inappropriate, and continued to deny sufficient attention to the special situation of indigenous women and children, which placed the burden trying to access adequate reparations on the organizations that accompany victims.<sup>205</sup> They also indicated that the high rotation of personnel hinders the continuity and delays processes. Furthermore, civil society organizations told the IACHR that victims continue efforts to bring about the adoption of proposed Law 3551, which would give the PNR greater solidity and legal certainty, a bill that was drafted in 2006.<sup>206</sup>

120. The State informed the commission that as of 2015 75,674 victims had registered with the PNR. Of those, 38,263 have received financial compensation and some 20,000 have benefited from material reparation projects.<sup>207</sup> In that connection, civil society organizations said that having taken stock based on the proposals and recommendations contained in the report of the Commission for Historical Clarification, the level of fulfillment has been low, particularly as regards reparations for victims of gross human rights violations during the internal armed conflict.<sup>208</sup> In Public Hearing before the Commission that took place in December 2016, the State recognized that compensating victims of the conflict is still unfinished business in Guatemala, and reported that in addition to the measures to restore the National Reparations Program, it shares the victims' concern for the prompt approval of Law 35-51 and the creation of the National Registry of Victims.<sup>209</sup> The IACHR urges the State to prioritize the reparations for the victims of the armed conflict according to international human rights standards. In this context, the State has to promote the approval of Law 35-51, create the National Registry of Victims and guarantee the adequate budget in accordance with the agreement for the creation of the PNR.

121. With regards to the investigation, prosecution and punishment of human rights violations during the armed conflict in Guatemala, the IACHR welcomes the positive advances, which have taken place in Guatemala, such as in the case of Molina Theissen,<sup>210</sup> CREOMPAZ,<sup>211</sup> and Sepur Zarco,<sup>212</sup> among others. The decision to send former military members to trial on charges of enforced disappearance, sexual slavery, and crimes against humanity during Guatemala's internal armed conflict is a major advance in terms of effectively discharging the duty to investigate, prosecute, and punish those responsible for violations of the right to life, humane treatment, and other human rights violations committed during the armed conflict. The decision in

<sup>204</sup> CEJIL, *Observations on the Report on the Situation of Human Rights in Guatemala*, October 14, 2016.

<sup>205</sup> CEJIL, *Observations on the Report on the Situation of Human Rights in Guatemala*, October 14, 2016.

<sup>206</sup> IACHR, Public Hearing "Right to Full Reparation for Victims of the Armed Conflict in Guatemala", Panamá, December 6 2016; information presented by civil society organizations with the request for a thematic hearing on "Reparation in Guatemala," October 10, 2016.

<sup>207</sup> Republic of Guatemala, Report of the State of Guatemala on the Draft of Chapter V on Follow-Up on the Recommendations of the IV Country Report of the IACHR: Diversity, Inequality and Exclusion (2015). Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 81.

<sup>208</sup> Information presented by civil society organizations with the request for a thematic hearing on "Reparation in Guatemala," October 10, 2016.

<sup>209</sup> CIDH, Audiencia Pública "Derecho a la reparación integral para las víctimas del conflicto armado en Guatemala", Panamá, 6 de diciembre de 2016.

<sup>210</sup> IACHR, Presse Release 001, *IACHR Welcomes Arrest of Individuals Accused of Forced Disappearance and Crimes against Humanity in Guatemala*, January 13, 2015. Available online: <http://www.oas.org/es/cidh/prensa/comunicados/2016/001.asp>

<sup>211</sup> International Justice Monitor, *CREOMPAZ Hearings Conclude ; Tribunal to Determine if Case Goes to trial*, June 7, 2016. Available online: <https://www.ijmonitor.org/2016/06/creompaz-hearings-conclude-tribunal-to-determine-if-case-goes-to-trial/>; NISGUA, *CREOMPAZ: Eleven retired military officers indicted on charges of crimes against humanity*, January 19, 2016. Available online: <http://nisgua.org/creompaz-eleven-retired-military-officers-indicted-on-charges-of-crimes-against-humanity/>

<sup>212</sup> UN Women, *Landmark ruling in Guatemala a victory against sexual violence in armed conflict*, March 3, 2016. Available online: <http://www.unwomen.org/en/news/stories/2016/3/guatemala-victory-against-sexual-violence-in-armed-conflict#sthash.yTVwsDhQ.dpuf>; UNDP, *Mujeres Maya Q'eqchí de Sepur Zarco marcan hito histórico contra la esclavitud sexual como acto de guerra*, 2016. Available online: [http://www.gt.undp.org/content/guatemala/es/home/ourwork/crisispreventionandrecovery/successstories/Sepur\\_Zarco.html](http://www.gt.undp.org/content/guatemala/es/home/ourwork/crisispreventionandrecovery/successstories/Sepur_Zarco.html)

the case of Sepur Zarco has become a landmark decision as it is the first time that a domestic tribunal tries and sentences military officers for the crime of sexual slavery.<sup>213</sup>

122. Civil society nevertheless informed the IACHR that these advances had occurred only in certain specific cases. As the majority of cases did not reach the Courts, crimes committed during the armed conflict remaining generally in total impunity.<sup>214</sup> In addition, civil society organizations alerted the IACHR to the risks that these cases not follow through, given the practice in Guatemala of allowing dilatory procedures to be filed, and amnesty and prescription being used as tactics to protect the defendants.<sup>215</sup> As was noted previously, these procedures have also been accompanied by threats of violence against the Public Prosecutor and the judges who are carrying out their duty.

123. The IACHR reiterates that the State has the obligation to investigate, prosecute and punish the perpetrators of human right violations during the armed conflict, and that it has a responsibility to offer reparations to the victims of the conflict, in particular indigenous women and children.

124. Civil society organizations have informed the IACHR that serious challenges remain in terms of the integral reparation of indigenous women for the damages suffered during the armed conflict.<sup>216</sup> As the United Nations Special Rapporteur on the Rights of Indigenous Peoples explained in her *Observations on how to strengthen access to justice and protection from violence in the case of indigenous women*, in elaborating reparations for indigenous women victims of violence in Guatemala, not only is the prosecution and punishment of the perpetrators necessary, but due attention must be given to the material and immaterial damages suffered by indigenous women, which should have led to individual and/or collective reparations.<sup>217</sup> Legal, political and institutional reforms that guarantee indigenous women's access to justice should take place in order to guarantee that their particular circumstances, their social characteristics, their special situation of vulnerability, their values and customs are taken into consideration.<sup>218</sup>

125. Based on the foregoing, the IACHR reiterates its recommendations and encourages the State of Guatemala to continue its efforts to fight corruption in all three branches of government and to ensure the separation of powers.

126. The IACHR encourages the State to forge ahead with its efforts to investigate, prosecute and punish crimes committed during the armed conflict, and to protect the right to life and physical integrity of the judicial operators who carry out these functions.

127. Furthermore, the Commission urges the State of Guatemala to adopt measures to ensure access to justice for everyone and to give particular attention to the specific needs of indigenous peoples in the area of justice.

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<sup>213</sup> Avocats sans Frontières (Canada), *Blogue : Le procès Sepur Zarco d'un point de vue de droit autochtone*, april 4, 2016. Available online: <http://www.asfcanada.ca/fr/blogue/billet/le-proces-sepur-zarco-d-un-point-de-vue-de-droit-autochtone/314>

<sup>214</sup> CEJIL, *Observations on the Report on the Situation of Human Rights in Guatemala*, October 14, 2016.

<sup>215</sup> CEJIL, *Observations on the Report on the Situation of Human Rights in Guatemala*, October 14, 2016.

<sup>216</sup> CEJIL, *Observations on the Report on the Situation of Human Rights in Guatemala*, October 14, 2016.

<sup>217</sup> UNHR OHCHR, *Observaciones sobre cómo fortalecer el acceso a la justicia y la protección frente a la violencia en el caso de las mujeres indígenas*, Presentation of Victoria Tauli-Corpuz, Special Rapporteur of the United Nations on the Rights of Indigenous Peoples, for the Seminar "Experiencias en litigio de los casos de violencia contra las mujeres y el acceso de las mujeres a la justicia en Centroamérica", Guatemala, February 2016. Available online: <http://unsr.vtaulicorpuz.org/site/index.php/es/declaraciones-comunicados/114-guatemala-women-justice>

<sup>218</sup> UNHR OHCHR, *Observaciones sobre cómo fortalecer el acceso a la justicia y la protección frente a la violencia en el caso de las mujeres indígenas*, Presentation of Victoria Tauli-Corpuz, Special Rapporteur of the United Nations on the Rights of Indigenous Peoples, for the Seminar "Experiencias en litigio de los casos de violencia contra las mujeres y el acceso de las mujeres a la justicia en Centroamérica", Guatemala, February 2016. Available online: <http://unsr.vtaulicorpuz.org/site/index.php/es/declaraciones-comunicados/114-guatemala-women-justice>

128. It also encourages the State to take the necessary steps to strengthen the PNR's human and financial resources and to give priority to reparations for victims of the internal armed conflict that occurred more than 20 years ago but who have yet to receive compensation. Furthermore, it should guarantee comprehensive reparations for victims of sexual violence in the country that cover material and non-pecuniary damages and take into account the individual and collective injuries suffered. These matters are of great interest to the IACHR, which will continue monitoring the situation closely.

#### **D. Recommendations with respect to the situation of inequality and exclusion of indigenous peoples**

- Implement the commitments acquired in the Peace Accords in favor of the indigenous peoples and their members, especially those set forth in the Agreements on Identity and Rights of the Indigenous Peoples, on Socioeconomic Aspects and Agrarian Situation; and on Financing of the Civilian Authority and Function of the Army. Give impetus to and adopt legislative or other initiatives to implement ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.
- Recognize the indigenous peoples and communities as collective subjects with their own authorities and representatives, determined by their customary law.
- Establish an integral public policy that addresses the situation of discrimination that affects the indigenous peoples and that represents an assault on their ways of life; it should be drafted and implemented with the participation of and in consultation with the indigenous peoples of Guatemala, and respecting their ways of life and development projects in keeping with applicable international law. One should also bear in mind the participation of indigenous women and children throughout the process.
- Strengthen the State's institutional framework for indigenous peoples, guaranteeing, through affirmative measures, that the indigenous peoples participate in the different levels of government of the State of Guatemala on equal footing with the rest of society; and recognize, respect, and protect their own forms of organization, representation, and decision-making, all with participation of and in consultation with the indigenous peoples.
- Promote a rural development policy or review the existing one to make sure it is culturally appropriate, sustainable, and inclusive, incorporating integral solutions that enable the indigenous communities to guarantee their food sufficiency and security in keeping with their traditional standards with a view to protecting the ancestral territory and the natural resources. Design, in consultation with the communities affected an integral and culturally appropriate strategy to reduce mortality, morbidity, and malnutrition in indigenous children.
- Promote respect for the labor rights of the indigenous peoples mindful of the relevant provisions of ILO Convention No. 169, oversee the implementation of labor legislation, and punish, as provided by law, those employers who violate the established rules. In particular, adopt decisive and immediate measures to put an end to any form of servitude or forced labor; and investigate, prosecute, and punish all those persons or groups of persons who continue keeping persons in such conditions.
- Ensure the inclusion of ethnicity in all official statistics, censuses, surveys, and administrative and judicial records as a way to strengthen efforts to give visibility to indigenous peoples and ensure ethnicity is considered as a determinant element in defining public policies, plans, and government programs.
- Establish a public policy in conjunction with the indigenous peoples to ensure effective enjoyment of indigenous peoples' right to collective property, to ensure the effective enjoyment of the right to collective property of indigenous peoples and related rights in their various components, mindful of the relevant inter-American standards. Guarantee that the indigenous peoples can use and enjoy their ancestral lands and territories, which imply that they must be delimited, demarcated, titled, and registered by special procedures and with the participation of and in consultation with the indigenous peoples. Identify and create indicators and systems for inter-institutional monitoring implementation of the legislation

and policies aimed at resolving the situation of the indigenous communities and peoples in relation to their rights to their traditional lands and territories.

- Refrain from authorizing or carrying out measures that have a detrimental impact on the lands and territories of indigenous peoples, and do not allow third persons to carry out such measures. This includes but is not limited to refraining from performing acts such as the declaration of unoccupied lands (tierras baldías), individual titling, and pursuing remedies that challenge the juridical personality or historical possession of the communities.
- Adopt the legislative, administrative, or other measures necessary to fully implement and enforce the right to prior consultation of the indigenous peoples and communities, pursuant to international human rights standards and with the full participation of the indigenous peoples. Modify the legislative, administrative, or other measures that impede the full and free exercise of the right to prior consultation, for which one should ensure the full participation of the indigenous peoples. Consult the peoples and communities in a manner that is prior, adequate, effective, and fully in keeping with the applicable international standards in the event that any activity or project for the extraction of natural resources in their lands or territories is planned, or an investment or development plan of any other type that implies potential impacts on their territory.
- With respect to the concessions granted or being implemented, establish a mechanism that makes it possible to evaluate the need for a modification to the terms thereof to preserve the physical and cultural survival of the indigenous communities and peoples. Adopt the measures necessary to ensure that the indigenous peoples and communities that have been suffering the effects of projects with no consultation have access to mechanisms that enable them to mitigate those effects and make adequate reparation for them in a culturally appropriate manner.
- Prevent and protect the indigenous communities from forced displacement, and seek the return of displaced indigenous communities and families in conditions of safety as soon as possible.

129. The IACHR in its Country Report observed that the State had developed a public policy aimed at the elimination of racism and racial discrimination, and was developing another public policy targeting the development of rural areas with the greatest concentration of poverty. However, it noted that these policies were developed in a patchwork fashion, with insufficient political will and an inadequate budget, without the full participation of indigenous peoples, and through measures that were not culturally appropriate, and were poorly implemented, without any mechanism for accountability or to verify results. In this context, the IACHR also observed how the lack of differentiated statistics by gender and ethnic background affected the ability to properly shape and tailor public policies.

130. In addition, the IACHR noted that there was a crucial need to strengthen the State's institutional framework for indigenous peoples, guaranteeing that the indigenous peoples participate in the different levels of government of the State of Guatemala and recognize, respect, and protect their own forms of organization, representation, and decision making. The elimination of discrimination and intolerance is made possible through respect for indigenous peoples, their own forms of organization, representation and decision-making, as well as through inclusion and participation in political processes at the different levels of government. The IACHR insisted on the particular importance of representation and inclusion of indigenous women in decision-making processes.

131. The State informed the IACHR that it created a Cabinet of Indigenous Peoples and Interculturality in 2014 to act as a consultative organ for the Presidency, with the responsibility to evaluate State action with regard to indigenous peoples, initiate investigations and studies on the realities of indigenous peoples in Guatemala and coordinate the design and management of a Public Policy on Indigenous Peoples. The latter has developed a public policy on Cohabitation and the Elimination of Racism and Racial Discrimination, and the strategy for its implementation was presented for approval to the Planning and Programming Secretariat of the Presidency of the Republic ("La Secretaria de Planificación y Programación de la Presidencia de la Republica" - SEGEPLAN) in 2016. In order to promote joint actions for the prevention of racism and racial discrimination, a letter of understanding was drafted in August 2016 between the Ministry



of Social Development (“MIDES”) and the Presidential Commission against Discrimination and Racism (“CODISRA”), in which both institutions agreed to work together to promote actions to incorporate indigenous peoples’ rights in policies, programs and projects of the Social Development Ministry, launch media campaigns to fight prejudice and discrimination against indigenous peoples, and generate programs to encourage social inclusion of indigenous peoples.<sup>219</sup> The State informed the IACHR of the signing of an agreement with the National Council for Prevention of Discrimination and its active participation in the Ibero-American Network of Organizations against Discrimination. However, civil society organizations have informed the IACHR that a reduction in budget had weakened the CODISRA’s capacity.<sup>220</sup> In addition, the information provided by the State, as well as publicly available information, does not mention participation of or consultations with indigenous peoples taking place. The participation of indigenous peoples in the development of policies that apply to them, and the inclusion of their inputs and their needs, is an essential part of the recommendation of the IACHR. A public policy that does not follow this essential process cannot be successful, as it perpetuates the exclusion that these measures are seeking to redress.

132. The State also informed the IACHR of its efforts elaborating a Diagnostic on the situation of the Garifuna and Afro-descendants in the country, with the help of the Human Rights Office of the High Commissioner of the United Nations. The State submitted to the IACHR that it had recently designed a national statistic policy that took into consideration the compilation, production, analysis and diffusion of statistics, which would include ethnic origin. The National Registry of Persons also now includes information with regard to ethnic background in their information gathering processes.

133. The State claims that it has promoted participation of indigenous people in important positions of the Executive Branch, such as the Minister and Vice Minister of Labor and Social Prevision, the environment and natural resources minister, various ministers at the Education Ministry, at the Secretariat for Peace, the General Directorate for Migration, among others. The Legislative Branch includes 19 indigenous representatives, and from the 13 magistrates in the Supreme Court of Justice, one Judge is indigenous.<sup>221</sup> Out of 158 seats, the presence of only 19 indigenous representatives in the Legislative Branch is strikingly low, given that it amounts to only about 12%, in a country with an indigenous population of over 60%.<sup>222</sup> Information provided to the IACHR by civil society organizations indicates that indigenous representation in political institutions has decreased in the period between 2012-2016.<sup>223</sup>

134. The Inter-American Institute of Human Rights states that the efforts to give “an indigenous face” to the government did not bring about an increase in discussions on key issues for indigenous peoples as the elected candidates were often marked by patronage, where elected representatives would vote for their party lines, or for agreed-upon “social cohesion” measures and not for the interests of the communities that elected them.<sup>224</sup> The State did not report on any measures to increase political participation and representation of indigenous women, despite its inclusion in the recommendations. In its comments on the draft of this report, the State recognized the challenges it faces with regard to representation and inclusion of indigenous women in decision-making processes. The State also highlighted the work that it is doing through

<sup>219</sup> Government of the Republic of Guatemala, Ministry of Social Development, *Firman carta de entendimiento para prevención del racismo y de la discriminación*, August 18, 2016. Available online: <http://mides.gob.gt/firman-carta-de-entendimiento-para-la-prevencion-del-racismo-y-discriminacion>

<sup>220</sup> Inter-American Institute of Human Rights (IACHR), *El derecho a la consulta previa, libre e informada: una mirada crítica desde los pueblos indígenas*, “El caso de Guatemala”, San José, 2016, p. 34. Available online: <http://untref.edu.ar/sitios/ciea/wp-content/uploads/sites/6/2015/05/El-derecho-a-la-consulta-una-mirada-cr%C3%ADtica-desde-los-PI.pdf>

<sup>221</sup> Josué Felipe Baquix Baquix was elected as a Supreme Court justice in October 2014 for a term that will expire in October 2019. He was also elected president of the Supreme Court for the 2014–2015 term.

<sup>222</sup> Government of Guatemala, Note P-943a-2016/VHGM/MJOS/HM/af-wr, received on October 10, 2016, p. 260.

<sup>223</sup> Inter-American Institute of Human Rights (IACHR), *El derecho a la consulta previa, libre e informada: una mirada crítica desde los pueblos indígenas*, “El caso de Guatemala”, San José, 2016, p. 34. Available online: <http://untref.edu.ar/sitios/ciea/wp-content/uploads/sites/6/2015/05/El-derecho-a-la-consulta-una-mirada-cr%C3%ADtica-desde-los-PI.pdf>

<sup>224</sup> Inter-American Institute of Human Rights (IACHR), *El derecho a la consulta previa, libre e informada: una mirada crítica desde los pueblos indígenas*, “El caso de Guatemala”, San José, 2016, p. 34. Available online: <http://untref.edu.ar/sitios/ciea/wp-content/uploads/sites/6/2015/05/El-derecho-a-la-consulta-una-mirada-cr%C3%ADtica-desde-los-PI.pdf>

the Office of the Ombudsman on Indigenous Women (DEMI) to provide training and promote the participation of indigenous women in decision-making spaces, as well as to empower them.<sup>225</sup>

135. Specifically, with respect to women, as was carefully detailed in the United Nation's Special Rapporteur on the Rights of Indigenous People's report on Economic, Social and Cultural Rights of Indigenous Peoples,

[i]ndigenous women have the right, to participate in public and political decision-making processes. That right stems broadly from the right to self-determination, as well as from the provisions of the Convention on the Elimination of All Forms of Discrimination against Women. However, in reality, indigenous women are often excluded from both indigenous decision-making structures and local and national political processes in States. As highlighted by the Committee on the Elimination of Discrimination against Women, there are very few indigenous women in national and local political processes and in some countries, there are none at all. Indigenous power structures and self-governance agreements tend to be patriarchal and exclude the involvement and perspectives of women.<sup>226</sup>

136. The combined layers of discrimination to which indigenous women are exposed due their gender, ethnic background, and socio-economic condition, as well as the denial of agency of indigenous women have a direct impact on the prevalence of violence, and the occurrence of abuse through the entrenchment of power structures that perpetuate systematic vulnerability.<sup>227</sup> Indigenous women play particular roles in their communities and are often perceived as the key to the continuation of their culture, the guarantors of their people's survival.<sup>228</sup> As such, a voice is essential to the fulfillment of their collective role within their communities. The exclusion from participation in public and political decision-making processes further undermines indigenous women's agency and negatively impacts their situation as women, but also hinders their capacity to fight for collective and group rights. The State must therefore comply with its obligation to create public spaces for indigenous women to be able to voice their own viewpoints and influence the policies that have repercussions on themselves and their peoples.

137. The IACHR appreciates the State's efforts, but must nonetheless underline the insufficiency of these measures to obtain a participation of indigenous peoples in the different levels of government of the State of Guatemala on equal footing with the rest of society. The presence of some indigenous representatives and high officials in a country with more than 60% indigenous peoples, is not sufficient to bring about a wider participation and inclusion of indigenous peoples at all levels of government. The State must, therefore, continue its work to effectively comply with this recommendation.

138. In its 2015 Country Report, the Inter-American Commission on Human Rights has stated that the situation of indigenous property rights was characterized by "the lack of legal recognition of the lands and territories historically occupied; the extreme inequality in land distribution; juridical insecurity over their tenure; the lack of a land registry system that recognizes ancestral territory and makes it possible to protect the lands belonging to the indigenous peoples; and the titling and registration of community lands by third persons anomalously and illegally, and the fact that the State considers that it is the owner of natural

<sup>225</sup> Communication from the State of Guatemala, Comments of the State of Guatemala on "Draft: Chapter V Follow-up of Recommendations Formulated by the IACHR in its Report on the Situation of Human Rights in Guatemala: Diversity, Inequality, and Exclusion," January 23, 2017.

<sup>226</sup> United Nations, General Assembly, Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz to the Human Rights Council, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, A/HRC/30/41, August 6, 2015.

<sup>227</sup> United Nations, General Assembly, Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz to the Human Rights Council, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*, A/HRC/30/41, August 6, 2015.

<sup>228</sup> IACHR, *Missing and murdered indigenous women in British Columbia, Canada*, OEA/Ser.L/V/II. Doc. 30/14, December 21, 2014.

resources”.<sup>229</sup> It observed that the current situation of collective property rights was due to a variety of historical factors, which were marked by decades of inequitable distribution and dispossession of the territories of the indigenous peoples and communities, exacerbated during the armed conflict by the displacements and scorched earth operations, and irregular land appropriations. As such, collective property rights in Guatemala were marked by a lack of legal certainty in the absence of a complete titling, delimitation and demarcation process, the lack of an effective resolution process for long-standing land claims, the establishment of protected natural areas on lands and territories historically occupied by indigenous communities, and evictions and displacements caused by extractive or development projects. The IACHR also emphasized the failure of the State to conduct appropriate consultations, the lack of respect for indigenous community’s positions following consultations, the lack of attention to reports of assaults or threats of indigenous peoples, in violation of Guatemala’s responsibilities as a State party to human rights treaties, such as ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples.

139. The State has affirmed to the IACHR that it continues promoting strategies to decrease economic inequalities and to improve access to lands for indigenous peoples. It mentioned the Agricultural policy, which seeks to promote rural development and social participation. It also mentions important case-law from 2014, 2015 and 2016 that ruled on the violation of collective property rights over ancestral lands and territories, and has recognized the unquestionable right to consultation, and its justiciability in case of the violation of that right, in accordance with jurisprudence of the Inter-American Court. The State also mentioned that it has not taken any measures that run against the recognition of indigenous rights on their lands. On the contrary, it affirmed that it has implemented precautionary measure MC-121-11 and has temporarily relocated the 14 indigenous communities that were affected; it affirms it has implemented sentences in line with the Inter-American Court’s decision in Plan de Sanchez; and it has paid out financial reparations to communities affected by the construction of the Chixoy Hydroelectric plant and relocated 730 affected families. In terms of consultation, the State affirms that it has entrusted the Ministry of Mines and Energy with the responsibility of carrying out consultations with indigenous peoples according to applicable international standards for the “La Vega” hydroelectric plant. This led to the setting in place of a methodological proposal as to how to carry out the consultation, which according to the State, was approved by the Santa Maria Nebaj, Quiché indigenous authorities. The State has also affirmed that in 2016, it had begun consulting the Maya, Garifuna and Xinka indigenous communities to identify the minimal standards in order to set up a national protocol on consultation of indigenous communities. In its comments on the draft of this report, the State recognized that it faces significant challenges to implementing ILO Convention 169 as regards the consultation of indigenous peoples.<sup>230</sup> During the working visit to Guatemala, Supreme Court justices informed the IACHR of a series of decisions that impacted the situation of economic, social and cultural rights of indigenous people in the country, such as the suspension of extractive activities until the prior consultation processes were completed. In its comments on the draft of this report, the State pointed to the judgment of the Constitutional Court, found in case file 1149-2012 of September 10, 2015, which ordered the Ministry of Energy and Mining “to take the measures necessary to conduct a consultation of indigenous communities with an interest in and affected by the construction of the ‘La Vega’ hydroelectric power plant, in keeping with applicable international standards.” The State indicated that the Ministry of Labor and Social Security has formed alliances with international and domestic organizations to draft the Basic Standards for Consultation with Indigenous Peoples through a national participatory dialogue with all actors and stakeholders. The goal is to move forward in complying with the provisions in Convention 169 on consultation processes. The State also reported that on June 8, 2016, the Ministry of Energy and Mining signed an institutional agreement with SEGEPLAN to strengthen land management and provide information beforehand and in a timely manner on the land where energy and mining projects are to take place through departmental delegations to provide information. The State also indicated that processes are in place to grant collective land titles pursuant to the ruling of the Constitutional Court, which has established case law on collective ownership with its judgments on violations of the right to ancestral property, in harmony with the

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<sup>229</sup> IACHR, *IACHR Publishes Report on the Human Rights Situation in Guatemala*, OEA/Ser.L/V/II., December 31, 2015, para. 452.

<sup>230</sup> Communication from the State of Guatemala, Comments of the State of Guatemala on “Draft: Chapter V Follow-up of Recommendations Formulated by the IACHR in its Report on the Situation of Human Rights in Guatemala: Diversity, Inequality, and Exclusion,” January 23, 2017.

Inter-American Court of Human Rights: for example, in case files 5955-2013 of November 25, 2015; 628-2013 of June 24, 2014; and 2275 of June 6, 2016.<sup>231</sup>

140. These are all important steps in the implementation of appropriate consultation processes, in accordance with ILO Convention 169. However, the IACHR must note that ILO Convention 169 has been in effect in Guatemala since 1997. Furthermore, the implementation of free, prior and informed consent in Guatemala was part of the undertakings included in the Peace Agreements which brought to an end the internal conflict in Guatemala in 1996; and the Agreement on Identity and Indigenous Peoples Rights signed on March 31, 1995, the binding nature of which was recognized through Decree 52-2005, the Framework Law for the Peace Accords. The Constitutional Court later insisted on the necessity to properly implement the right to free, prior and informed consent and to legislate on the matter in various decisions from 2007 to 2011.<sup>232</sup> The process has been repeatedly delayed, or contested for its failure to consult indigenous peoples. A law that establishes standards on free, prior and informed consent in Guatemala which respects the commitments made by the State at the international level is therefore long overdue, and is of the utmost priority for the State. In order to guarantee the right to effective participation of indigenous peoples, according to international human rights law, the State must implement and protect the right to free, prior and informed consultation and consent of indigenous communities in good faith, in accordance with their customs and traditions, using culturally-appropriate procedures.<sup>233</sup> It must also ensure the right to benefit from the exploitation, industrialization and marketing of resources found in their territories.

141. The Commission notes with concern that the Mining Law, Forestry Law, Hydrocarbons Law, and Electricity Law do not recognize the obligation to consult affected indigenous communities prior to the granting of exploration and exploitation licenses, and which have yet to be modified.<sup>234</sup>

142. The State did not report on measures taken to respect labor rights of indigenous peoples. Indigenous peoples often discriminated against in the workforce and relegated to the informal market, are particularly vulnerable to the most extreme forms of labor exploitation, such as hazardous labor conditions, bonded labor, child labor and forced labor.<sup>235</sup> Indigenous women who work as domestic workers or migrant workers often face deplorable working conditions, in addition to the risk of sexual exploitation and trafficking. The State must take the necessary measures to guarantee labor rights in the country, and adopt decisive and immediate measures to put an end to any form of servitude or forced labor; and investigate, prosecute, and punish all those persons or groups of persons who perpetrate such crimes.

143. In terms of forced displacements, the State of Guatemala distinguished forced displacement and displacement that is carried out according to the law and to international human rights standards. The IACHR deems it important to reiterate that States are under a particular obligation to protect against the

<sup>231</sup> IACHR, Press Release No.136/16, *IACHR Concludes Working Visit to Guatemala*, September 26, 2016. Online: [http://www.oas.org/en/iachr/media\\_center/PReleases/2016/136.asp](http://www.oas.org/en/iachr/media_center/PReleases/2016/136.asp); It also pointed to the judgments handed down in case files 1179-2005; 1408-2005; 2376-2007; 3878-2007; 1031-2009, and combined case files 156-2013 and 159-2013 Considering VI. In addition, it noted case file 628-2013, a case in which the Constitutional Court recognized for the first time the right to communal property, ordering the Property Registry to make null and void the registries and annotations entailed in changes to land title subsequent to the registries made in October 1897. Communication from the State of Guatemala, Comments of the State of Guatemala on "Draft: Chapter V Follow-up of Recommendations Formulated by the IACHR in its Report on the Situation of Human Rights in Guatemala: Diversity, Inequality, and Exclusion," January 23, 2017.

<sup>232</sup> Due Process of Law Foundation, *Right to Free, Prior and Informed Consultation and Consent in Latin America*. Progress and Challenges in Bolivia, Brazil, Chile, Colombia, Guatemala, and Peru, Washington, D.C., 2015, p. 33. Available online: <http://www.dplf.org/en/resources/right-free-prior-and-informed-consultation-and-consent-latin-america>

<sup>233</sup> IACHR, Press Release No. 113/16, *Joint Press Release - Indigenous Peoples' Rights to Effective Participation and to Self-Determined Development*, August 9, 2016. Available Online : [http://www.oas.org/en/iachr/media\\_center/PReleases/2016/113.asp](http://www.oas.org/en/iachr/media_center/PReleases/2016/113.asp)

<sup>234</sup> Due Process of Law Foundation, *Right to Free, Prior and Informed Consultation and Consent in Latin America*. Progress and Challenges in Bolivia, Brazil, Chile, Colombia, Guatemala, and Peru, Washington, D.C., 2015, p. 34. Available online: <http://www.dplf.org/en/resources/right-free-prior-and-informed-consultation-and-consent-latin-america>

<sup>235</sup> United Nations, General Assembly, Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli-Corpuz, to the Human Rights Council, *Rights of indigenous peoples, including their economic, social and cultural rights in the post-2015 development framework*, August 6, 2014, A/69/267, pars. 66-70.

displacement of indigenous peoples who have a special dependency on and attachment to their lands.<sup>236</sup> Despite the efforts undertaken in 2011 and 2012 in order to elaborate a proposal to harmonize national displacement procedures with international human rights standards, and to establish best practices for their execution, no additional measures have been taken by the State to prevent and protect indigenous communities from forced displacement, and seek the return of displaced indigenous communities and families in conditions of safety as soon as possible.

144. In February 2016 the IACHR and the Office of the Special Rapporteur were made aware that the Congress of Guatemala was examining the third phase of proposed law 4087 (Community-Based Media Law). The bill, introduced by “Guatemalan civil society organizations and indigenous peoples sought to ensure “access to the media for indigenous communities and marginalized minorities.” At the time, the Office of the Special Rapporteur said that the bill’s debate represented an extraordinary opportunity for the State to effectively comply with its international obligations in this regard.<sup>237</sup>

145. At this writing the bill had not yet passed. According to available information, the speaker of the Congress assigned the bill to be analyzed by a technical committee composed of members of the Congress.<sup>238</sup> On April 12, the technical committee issued its opinion to the Congress, recommending that “Decree Initiative 4087 (Community Media Law) not be adopted as its contents are technically and legally unsound such as to make its application in the radio spectrum unviable.” It also recommended that the Office of the Superintendent for Telecommunications be requested, through the Ministry of Communications, Infrastructure, and Housing, to conduct an audit of the radio spectrum that examines: (i) the occupancy and use of frequency modulation (FM) bands in order to establish how much space is available and determine who is operating legally and illegally; (ii) the broadcast strengths of the radio stations currently operating normally; and (iii) which frequencies are idle. The technical committee proposed to the Congress that, based on the diagnostic assessment made, “consideration be given to introducing a bill to reform the General Telecommunications Law (Decree 94-96) as regards the assignment of frequencies to community media, in order to avoid fragmentation and legal contradictions, and to strengthen uniform technical parameters for taking greater advantage of the use and occupancy of the spectrum,” so that frequencies can be incorporated for community radio stations that include all the country’s ethnic groups.<sup>239</sup> Civil society organizations that represent the community sector rejected the technical committee’s report.<sup>240</sup>

146. Since 2000, including in the 2015 Country Report, both the IACHR and the Office of the Special Rapporteur have recommended that Guatemala adopt a fairer, more inclusive legal framework on broadcasting that recognizes the community sector and ensures equitable access and licensing conditions for non-profit social actors, particularly the country’s indigenous peoples, who have historically been excluded from the possibility of accessing and managing communication media. In that interval, Guatemalan indigenous organizations have presented more than four proposed laws designed to ensure frequency access for community media; none has passed.

147. Furthermore, on different occasions, the IACHR and the Office of the Special Rapporteur have stated that the use of criminal law to punish violations of the broadcasting regime can be problematic

<sup>236</sup> International Covenant on Civil and Political Rights, section 12, and CCPR/C/21/Rev.1/Add.9, par. 7; UNHCR, *Guiding principles on Internal Displacement*, Principle No.9, September 2004. Available online: <http://www.unhcr.org/en-us/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>

<sup>237</sup> IACHR, February 11, 2016, *The Office of the Special Rapporteur for Freedom of Expression of the IACHR Urges Guatemala to Adopt Legislation on Community Broadcasting*; Knight Center, March 17, 2016, *Bill to recognize community media up for debate in Guatemala again*.

<sup>238</sup> Congress of the Republic of Guatemala. February 29, 2016, *Mesa Técnica Legislativa analiza contenido de Ley de Medios de Comunicación Comunitaria*.

<sup>239</sup> Congress of the Republic of Guatemala. Report of the Technical Committee on Initiative 4087, Community Media Law (*Ley de Medios de Comunicación Comunitaria*). April 12, 2016.

<sup>240</sup> Sala de Redacción. May 2, 2016, *Comunicado. Exigimos que el pleno del Congreso de la República conozca en tercera lectura la iniciativa de Ley de Medios de Comunicación Comunitarios (4087)*; Observacom, May 19, 2016, *Rechazan bloqueo a la aprobación de Ley de Medios Comunitarios en Guatemala*.

under the American Convention. In that connection, the IACHR recalls that imposing criminal sanctions for conduct relating to the irregular or unauthorized practice of commercial or community radio broadcasting is disproportionate.<sup>241</sup> Based on the foregoing, the IACHR again urges the State to expedite the adoption of legislation on this issue, in order to recognize community radio and television and to assign an equitable part of the spectrum and digital dividend to this important form of broadcasting.

148. In light of the above, the Commission calls upon the State to continue working to implement the recommendations contained in this section. In particular, it must fulfill its commitments in favor of indigenous peoples and their members under the Peace Accords, and support and adopt proposed laws and other initiatives for implementing applicable international standards. The IACHR also exhorts the State to guarantee the participation of indigenous peoples at different levels of government.

149. Likewise, the Commission urges the State to take the necessary steps to ensure that indigenous peoples can use and enjoy their lands and ancestral territories, and that it refrain from authorizing or carrying out measures that have a detrimental impact on the lands and territories of indigenous peoples, and do not allow third parties to carry out such measures. Furthermore, it again appeals to the State to give priority to adopting the legislative, administrative, or other measures necessary to fully implement and enforce the right to prior consultation of indigenous peoples and communities, pursuant to international human rights standards and with the full participation of the indigenous peoples.

### III. CONCLUSIONS

150. Based on the information received and analyzed in this report, the IACHR reiterates the need for the State of Guatemala to continue working to implement the recommendations contained in the report *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion*.

151. The Commission acknowledges the efforts of the State to address violence, insecurity and, in particular, corruption in Guatemala, and it encourages it to continue those efforts. As the IACHR noted in its country report, the system for the administration of justice, despite the efforts made, maintains an index of impunity that only reinforces violence and insecurity. And the indigenous peoples continue suffering levels of racism and discrimination of such magnitude that they represent the poorest of the poor, the most excluded of the excluded. The development of a culture of tolerance, of respect for the law and rejection of impunity, requires an effort on the part of all Guatemalans, an endeavor in which they have been and will be accompanied in solidarity by the international community. The IACHR reiterates the importance of the Peace Accords as instruments for advancing in the task of building a more democratic, fair, tolerant country respectful of human rights.

152. The Commission reaffirms its commitment both to working with the State of Guatemala in the search for solutions to the problems and challenges highlighted, and to supporting it in the process of implementing and monitoring measures that the State adopts to comply with its international obligations in the area of human rights.

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<sup>241</sup> IACHR, [Annual Report 2013, Report of the Office of the Special Rapporteur for Freedom of Expression](#), Chapter II. Evaluation of the State of Freedom of Expression in the Hemisphere, December 31, 2013, par. 129; Annual Report 2011, [Report of the Office of the Special Rapporteur for Freedom of Expression](#), Chapter II. Evaluation of the State of Freedom of Expression in the Hemisphere, OEA/Ser.L/V/II. Doc. 69, December 30, 2011, par. 467.