

Chapter V

Follow-up of recommendations issued by the IACHR in its country or thematic reports

Third report on follow-up on recommendations issued by the IACHR on the Situation of Human Rights in Guatemala

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

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

I. INTRODUCTION

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

2. Invited by the Republic of Guatemala ("Guatemala," "the State"), the IACHR paid an on-site visit to the country from July 31 to August 4, 2017. The IACHR drafted the Report on the Situation of Human Rights in Guatemala (Country Report), which was adopted by the IACHR on December 31, 2017. In the country report, the Commission pointed out that the information it had consistently received during its visit indicated that, in essence, more than 20 years after the signing of the Peace Accords, several of the grounds that gave rise to the internal armed conflict persisted: the economy is still based on a concentration of economic power in the hands of a few, and a weak, poorly endowed, State structure due to scant tax revenue and high levels of corruption. Ongoing structural problems include racial discrimination, social inequality, widespread poverty and exclusion, chronic child malnutrition, low levels of education, and a lack of access to justice, all of which stand as roadblocks to full respect for human rights in Guatemala. Likewise, parallel power structures persist that thwart efforts to fight impunity and corruption and to strengthen the rule of law.

3. In the conclusions to its Country Report, the IACHR stated that it was essential for the State to redouble its commitment to continue efforts to combat impunity, violence, intolerance, and corruption, through prevention and pro-human rights policies and programs and the forging of a more robust, independent, and impartial justice system. At that time, the Commission stressed the importance of ensuring the conditions for the International Commission against Impunity in Guatemala (CICIG) and the Office of the Public Prosecutor (*Ministerio Público*)

*In accordance with Article 17(2) of the Rules of Procedure of the IACHR, Commissioner Edgar Stuardo Ralón Orellana, a Guatemalan national, did not participate in the discussion, research, deliberation or adoption of this report.

¹ IACHR, [The Human Rights Situation in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017.

to be able to efficiently perform their jobs, as well as approve a reform to the Constitution in the field of justice in keeping with the highest human rights standards. The Commission likewise urged the State to make further efforts to adopt laws, policies and programs to close the persistent inequality and exclusion gap. Finally, the Commission expressed its will and willingness to contribute and collaborate with the State of Guatemala in the implementation of a human rights agenda aimed at ensuring and protecting the rights of its inhabitants.

4. In 2018 and 2019, the IACHR presented its first and second follow-up reports to the Country Report, which included relevant observations received from the State and civil society.

5. For this report, on September 23, 2020, the IACHR requested the State of Guatemala to provide, within 30 days, information on steps taken to implement the recommendations contained in the country report. The State's response was received on October 23, 2020. On January 12, 2021, the IACHR transmitted to the State a copy of the preliminary draft of this document, which is part of Chapter V of its 2020 Annual Report. In keeping with IACHR's Rules of Procedure, it requested that the State send its observations within three weeks. The State sent its response on February 3, 2021. The Commission values and is grateful for the information received from the State, which, as relevant, was included in the final version approved on February 24, 2021. The IACHR would also like to thank civil society organizations and the Human Rights Ombudsman (PDH) for the information they provided.²

6. The present analysis is divided into five sections devoted to consideration of the measures adopted by the State in 2020 to comply with the Commission's recommendations and of still pending challenges. The recommendations are evaluated pursuant to the General Guidelines for following up on IACHR recommendations and decisions,³ keeping to the structure used in the IACHR report to which this follow-up report refers. Each section addresses the recommendations made by the IACHR in the respective chapters, analyzing the main features of progress made and challenges identified and drawing conclusions regarding compliance with the recommendations.

7. This analysis is performed in light of information provided by the State and civil society organizations, as well as information culled by the Commission in its monitoring of the overall human rights situation in the country. For that, the Commission has relied on information received from the State, public hearings,⁴ ex officio investigations, input from the system of individual petitions and cases, applications for precautionary measures, and requests for information under Article 41 of the American Convention on Human Rights (American Convention),⁵ in addition to information available from other public sources and decisions and recommendations of specialized international agencies, among others.

8. The IACHR reiterates the importance of Guatemala fully complying with the recommendations put forward in the report. The IACHR also reconfirms its readiness to work

² The IACHR received information sent by Asociación Bufete Jurídico Popular Rabinal, Baja Verapaz, Impunity Watch, Bufete Jurídico de Derechos Humanos (BDH), Centro de Análisis Forense y Ciencias Aplicadas (CAFCA), UDEFEGUA, Grupo Guatemalteco de Mujeres (GGM), and Red de la No Violencia contra las Mujeres (REDNOVI).

³ IACHR, [General Guidelines on the Follow-up of Recommendations and Decisions of the Inter-American Commission on Human Rights](#), OEA/Ser.L/V/II.173 Doc. 177, September 30, 2019.

⁴ IACHR, Hearing of October 2, 2020 on impunity of assaults and murders of human rights defenders in Guatemala.

⁵ IACHR, Requests to the State on August 31, 2020 for information regarding setbacks to the institutionalization of human rights; complaints on August 3, 2020 regarding threats to judicial independence in Guatemala; in connection with follow-up to the Public Hearing on October 26, 2020 on impunity of assaults and murders of human rights defenders in Guatemala.

with the Guatemalan State, within the framework of its mandate and functions, to ensure effective enjoyment of human rights for everyone.

II. FOLLOW-UP OF RECOMMENDATIONS

A. General Recommendations

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

9. As regards **the creation, jointly with the IACHR, of a Mechanism to Follow Up on the report's recommendations**, the Guatemalan State reiterated in its observations on the draft report that since July 2019, it has had the Guatemalan Recommendations Monitoring System for International Human Rights Protection (SIMOREG). This tool consolidates the recommendations issued by different international human rights mechanisms so that the relevant national institutions may follow up and implement the recommendations. The State indicated that the SIMOREG tool will help further implementation of the recommendations received, regardless of the international mechanism that issues them.⁶ For its part, the PDH pointed out that the Presidential Commission for the Coordination of Executive Policy on Human Rights (COPREDEH) had planned to start specific work on cross-cutting follow-up to the recommendations stored in that system in 2020. However, following the Government Decisions closing COPREDEH and replacing it with the Presidential Commission for Peace and Human Rights (COPADEH), it would appear to be unclear whether programs and activities will continue and which Government entity will be responsible for ensuring that SIMOREG functions effectively.⁷ In that respect, the State pointed out in its observations on the draft report that all the functions that COPREDEH had previously discharged had been taken over by this new institutional framework. Furthermore, it stated that, although "this report refers to 2020, it is

⁶ [Observations by the Guatemalan State to the Draft Chapter V Report, Follow-Up on Recommendations Issued by the IACHR in Its Country and Thematic Reports](#), Third Follow-Up Report on Recommendations Issued by the IACHR on the Human Rights Situation in Guatemala of 2017, Ref. NV-OEA-M4-No.087-2021, February 3, 2021, p. 1.

⁷ Human Rights Ombudsman (PDH), Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," received on October 23, 2020, p.2

premature to assume that COPREDEH's closure would mean setbacks in compliance with recommendations when this [new] institutional framework had only began operating a couple of months prior.⁸

10. In addition, the State reiterated its commitment to establish a mechanism for following up on recommendations issued by the IACHR. Along those lines, it underscored such actions as remitting information regarding the officials who will act as liaison officers for the Inter-American SIMORE, and participation in the training provided by the IACHR in September 2020 on how to use that system.⁹ Despite the above, the IACHR observes a lack of concrete progress and even some measures denoting some backtracking with respect to compliance with this recommendation, especially following the closing of COPREDEH. Therefore, the IACHR considers that compliance with this recommendation is still pending. What is more, it reiterates its readiness to provide technical cooperation to the State and to resume the progress that had been made thanks to communications with COPREDEH in previous years.

11. Regarding the recommendation to **make sure that the CICIG, under the direction of its Commissioner, Iván Velásquez, is able to fulfill its mandate with the proper protections, without harassment, threats or undue interference, in accordance with the Agreement creating it**, as of 2018 the State of Guatemala has expressly stated that it will not comply with the recommendation, and reiterated that position in 2019.¹⁰ Furthermore, by way of background it is to be mentioned that, on September 3, 2019, the CICIG ended its mandate prematurely due to the Government's unilateral cessation of the agreement with the United Nations. That same year, the Congress of the Republic (hereinafter "Congress") adopted Decision (*Acuerdo*) 12-19, establishing a commission to investigate CICIG.¹¹

12. The IACHR notes that, in January 2020, said commission presented its report to a plenary session of Congress, indicating that CICIG had not complied with and had, rather, exceeded the functions and objectives established in the agreement that gave rise to it and, in particular, "instead of identifying illegal bodies and clandestine security apparatuses, it had limited itself to engaging in political and selective persecution of specific segments of Guatemalan and even foreign society resident in the country, manipulating Guatemalan criminal law institutions at its whim and completely arbitrarily in order to pursue destabilizing, polarizing, and socially disruptive goals." That report was remitted to the Office of the Public Prosecutor "with a view to organizing the legally corresponding arrest warrants with the competent legal authorities," as well as to the United Nations and the Organization of American States (OAS), so as to bring other nations' attention to "the illegalities denounced", committed by CICIG.¹²

⁸ Observations by the Guatemalan State to the Draft Chapter V Report, Follow-Up on Recommendations Issued by the IACHR in Its Country and Thematic Reports, Third Follow-Up Report on Recommendations Issued by the IACHR on the Human Rights Situation in Guatemala of 2017, Ref. NV-OEA-M4-No.087-2021, February 3, 2021, p. 1.

⁹ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 2.

¹⁰ Guatemalan State, Observations of the State of Guatemala on the Report on the Situation of Human Rights in Guatemala 2017, October 25, 2018, p. 3.

¹¹ That Decision states that CICIG has not been supervised or audited in all its 12 years of activity, so that it was deemed essential to verify what its foreign and Guatemalan staff had done and to determine whether or not they had broken any laws. Republic of Guatemala, Congress, Decision 12-19, published on September 27, 2019.

¹² Truth Commission of the Congress of the Republic of Guatemala, [Report on the activities of the International Commission against Impunity in Guatemala \(CICIG\) in 2007-2019](#), December 19, 2019. Presented to the plenary of Congress on January 10, 2020.

13. The Guatemalan State also informed to the IACHR that "it is continuing major efforts to combat corruption," including the signing of the "Inter-Agency Cooperation Agreement to Combat Corruption" by the Executive Branch, the Office of the Public Prosecutor, the Office of the Attorney General (*Procuraduría General de la Nación* - PGN), the Office of the Comptroller General, the Superintendency of Tax Administration, and the Superintendency of Banks, on January 14, 2020.¹³ Through Government Decision 28-2020, the Guatemalan State also established the "Presidential Commission against Corruption," to support actions by Ministries and other Executive Branch institutions to coordinate the Policy to Prevent and Combat Corruption, "by putting in place mechanisms for preventing replication of the corruption cases detected and for reviving trust in, and the credibility of, State institutions, by filing legal suits for the recovery of stolen public funds."¹⁴

14. On numerous occasions, the IACHR voiced its support and recognition of the crucial role of CICIG in the fight against corruption in Guatemala through the disbanding of criminal networks and organized crime structures together with the Public Prosecutor's Office, as well as its efforts to provide training and promote legal reforms to improve the efficiency of the justice system, in keeping with its mandate. That being so, it observes with concern the report presented to Congress by the so-called "Truth Commission" regarding illegal acts allegedly committed by CICIG, and its referral to the Office of the Public Prosecutor.

15. In light of the above and of the State's indication that it would not comply with this recommendation, as pointed out in the IACHR 2019 Annual Report, following termination of the CICIG mandate, this recommendation has not been implemented.¹⁵

16. Regarding the recommendation **to endow the Presidential Commission for the Coordination of Executive Policy on Human Rights (COPREDEH) and the Office of the Human Rights Ombudsperson with sufficient human and budgetary resources to be able to fully comply with their mandates**, this year the IACHR received worrisome information regarding the continuation of actions that would impair the normal performance of PDH functions. Moreover, through Government Decision of July 30, 2020, the head of the Executive Branch announced the definitive closure of COPEDEH.

17. As regards the PDH, the State reported that budgetary allocations for all institutions in 2020 would remain the same as they were in 2019, so that the PDH was assigned 120 million quetzales, of which it had executed 46.38% by August.¹⁶ In keeping with the foregoing, the State reiterated in its observations on the draft report that "the PDH has not been

¹³ The purpose of that Decision is purportedly to "establish procedures for inter-agency coordination and assistance to bolster the fight against corruption, within the spheres of competence and capacities of its signatories and their current legal framework, and to foster steps to enhance the quality of public expenditure, a culture of honesty, transparency, and accountability; to prevent corruption and impunity; and to denounce to the Office of the Public Prosecutor any potentially illicit acts, irregularities, warning signs detected in institutions." Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 2.

¹⁴ Ministry of the Interior. **Government Decision 28-2020**. Let it be agreed to provisionally [en forma temporal] establish the Presidential Commission against Corruption, hereinafter "The Commission," reporting to the Office of the President of the Republic of Guatemala.

¹⁵ IACHR, Annual Report 2019, [Chapter V, Second Report on Follow-Up on Recommendations issued by the IACHR in its Report on the Situation of Human Rights in Guatemala](#), par. 25.

¹⁶ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 4.

affected by the budget allocation provided.¹⁷ For its part, the PDH stated that it was still taking the administrative and legal steps needed to ensure effective allocation of the 120 million quetzales appropriation for fiscal year 2020. This is because Legislative Decision 13-2019, which adopted the specific Congress of the Republic budget, only allocated 100 million quetzales to the PDH. That budget cut reportedly imposed severe constraints on the institution's activities during the current year, especially "supervisory activities, verifications, and other essential actions for addressing the COVID-19 pandemic."¹⁸ Regarding the PDH budget for fiscal year 2021, on November 18 the IACHR voiced its concern about the proposed 16% cut.¹⁹ Nevertheless, on November 23, the Congressional Board (Junta Directiva del Congreso) decided to suspend processing of the 2021 Revenue and Expenditure Budget in response to mass social protests in the country following its adoption.²⁰ As of the date this report was finalized, the budget allocation for 2021 appeared to be still undecided.

18. In addition to the attempt to reduce the PDH budget, the IACHR also received information regarding ongoing acts of harassment, smear campaigns, and stigmatization of the Human Rights Ombudsman, Jordán Rodas, because of his work. For example, on July 13, the Foundation against Terrorism in Guatemala filed a criminal lawsuit against the Ombudsman and PDH Defender of Workers for alleged crimes of criminal association, misuse of authority, violation of the Constitution, illegal usurpation of authority, and influence peddling, arguing that they had exceeded their functions by supervising private enterprises in connection with actions undertaken to address the COVID-19 pandemic.²¹ In this respect, the Guatemalan State highlighted in its observations on this report that "filings of complaints by Guatemalan citizens do not constitute acts of harassment, given that in keeping with domestic legislation, conventions, and treaties on human rights, all Guatemalans enjoy the right to file complaints when they deem that there are acts that may constitute a crime. Filing complaints against public officials is just part of citizen oversight that should be exercised in any democratic State."²²

¹⁷ Observations by the Guatemalan State to the Draft Chapter V Report, Follow-Up on Recommendations Issued by the IACHR in Its Country and Thematic Reports, Third Follow-Up Report on Recommendations Issued by the IACHR on the Human Rights Situation in Guatemala of 2017, Ref. NV-OEA-M4-No.087-2021, February 3, 2021, p. 2.

¹⁸ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, p.4.

¹⁹ Twitter Account of the IACHR (@CIDH), posted on November 18, 2020. <https://twitter.com/CIDH/status/1329167527662989314?s=20>

²⁰ El País, "El Congreso de Guatemala suspende la aprobación del presupuesto que desató las protestas", November 23, 2020; France 24, "Congreso de Guatemala anuncia suspensión de presupuesto para 2021 que desató protestas", November 23, 2020. [<https://elpais.com/internacional/2020-11-23/el-congreso-de-guatemala-suspende-la-aprobacion-del-presupuesto-que-desato-las-protestas.html>] <https://www.france24.com/es/américa-latina/20201123-guatemala-suspenden-presupuestos-2021-protestas-constitucion>]

²¹ According to the PDH, in keeping with its constitutional mandate to oversee public administration, and in response to complaints by both public and private sector workers of widespread COVID-19 infections in the workplace, including textile factories, call centers, and Executive Branch offices, the Ombudsman, via the Defense of Workers Office (*Defensoría de las Personas Trabajadoras*), supervised actions to protect and safeguard workers' rights taken by the Ministry of Labor and Social Security. Likewise, it has urged companies to proceed with due diligence, in accordance with current laws and protocols, to prevent and mitigate the adverse effects of the pandemic on the health of workers, clients, and suppliers, by aligning their protocols with the Guiding Principles on Business and Human Rights. Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, p.5.

²² Observations by the Guatemalan State to the Draft Chapter V Report, Follow-Up on Recommendations Issued by the IACHR in Its Country and Thematic Reports, Third Follow-Up Report on Recommendations Issued by the IACHR on the Human Rights Situation in Guatemala of 2017, Ref. NV-OEA-M4-No.087-2021, February 3, 2021, p. 2.

19. The PDH also complained about ongoing steps by Congress allegedly posing a threat to its ability to go about its work. In particular, in July, the Congressional Human Rights Commission had asked the Permanent Commission to summons the PDH with a view to proposing his possible dismissal. Among the grounds cited, some congressmen complained of the publication of a photo of the rainbow flag on the PDH website in connection with the commemoration of the LGBTQ+ Pride Day and alleged failure to comply with amparo judgment of the Supreme Court of Justice ordering the Ombudsman to suspend presentation distribution of the Manual on Human Rights, Sexual and Reproductive Rights, and Care for Pregnancies in Girls and Adolescents.²³

20. The IACHR has, on numerous occasions, underscored the important work being done by the PDH, Jordán Rodas, to defend the institutions responsible for combating corruption and impunity. In today's circumstances in Guatemala, that work remains vital for protecting the human rights of the population in a manner that is both independent and autonomous. For that reason, the IACHR urges the State to guarantee that the PDH is able to effectively comply with its mandate, without being subjected to acts of intimidation or fear of reprisals for doing its job.

21. As regards the status of COPREDEH, on July 30, 2020, through Governmental Decisions 99-2020 and 100-2020, the Executive ordered its closure and replacement by the Presidential Commission for Peace and Human Rights (COPADEFH). According to the Decision establishing it, COPADEFH will be in effect for four years and also takes over the functions of the Secretariat for Peace (SEPAZ) and the Secretariat for Agrarian Affairs (SSA).²⁴

22. According to the Guatemalan State, this Decision was based on determinations made by the Technical Committee for Evaluation and Innovation of Institutional Public Management in the Office of the President of the Republic, established on June 24, 2020 as part of the Government's Innovation and Development Plan pursued since the start of President Alejandro Giammattei's term on January 14, 2020. The State further pointed out that "restructuring Government institutions requires improvements brought about by efficient and effective mechanisms for innovating institutional public management and bolstering public

²³ According to the information received, on August 12 2020, the Supreme Court of Justice admitted, by a majority vote, the request for assistance filed by the La Familia Importa ("The Family Matters) Association against the Ombudsman in execution of the amparo judgment of December 8, 2017; it also ordered that the Public Prosecutors' Office be notified for it to determine the Human Rights Ombudsman's criminal responsibility for failure to comply with the aforementioned judgment. It also fined him Q.4,000.00. In response the PDH filed an appeal of complaint before the Constitutionality Court for it to establish whether the Supreme Court had correctly determined whether or not the judgment handed down on December 8, 2017 and its respective clarification and additions. The Constitutionality Court declared the appeal to be well founded, establishing that the Human Rights Ombudsman had complied with the judgment in question and annulling the resolution ordering the Public Prosecutors' Office to initiate an investigation. Human Rights Prosecutor. Monitoring of compliance with the recommendations made in the 2017 Report on the Situation of Human Rights in Guatemala, received on October 24, 2020, p.4

²⁴ COPADEFH will be chaired by the Constitutional President of the Republic and will comprise dix Ministers, 2 Secretariats, the Attorney General (PGN), and by the Executive Director. According to the Decision establishing it, the purpose of that Commission is to "advise and coordinate with the various branches of the Executive Branch on promoting actions and mechanisms to ensure the effective exercise and protection of human rights and compliance with government commitments under the Peace Accords and in connection with social conflicts in the country." Ministry of the Interior (*Ministerio de Gobernación*), [Governmental Decision \(Acuerdo Gubernativo\) No. 100-2020](#), Articles 3 and 4.

administration, geared above all to implementing the Government's overall policies and commitments made by the State in treaties and in pursuit of priorities designed to achieve enjoyment of the human rights of all Guatemalans."²⁵ Regarding compliance with the decisions and recommendations of the Inter-American Human Rights System, the State reported that they would be implemented by the respective competent authorities on a case-by-case basis.²⁶ Finally, the State reiterated in its observations on the draft report that COPREDEH's closure "was done for the sake of modernizing, furthering, and improving the State's attention to issues regarding conflict, peace, and human rights." In this regard, "the State's actions only reflect the strengthening of peace and human rights promotion and monitoring, as well as attention to social conflict."²⁷

23. The IACHR notes that, in addition to being established on a temporary basis, COPADEH's mandate would appear to be more restrictive, compared to the functions that had been assigned to COPREDEH. Thus, the PDH underscored that the new entity's functions are "above all to coordinate and advise" and that it lacks well defined procedures, established budgets, and implementation deadlines. That, and the lack of a strategy for transferring the responsibilities previously assigned to COPREDEH, could exacerbate "weaknesses in attending to, following up on, monitoring, and complying with various actions and obligations vis-a-vis international human rights protection systems. For instance, COPREDEH used to be responsible for coordinating Public Policy to Compensate Communities Affected by Construction of the Chixoy Hydroelectric Plant; for inter-agency actions to make reparation for human rights abuses and include reparation measures in the budgetary plans and programs of State entities; for updating National Human Rights Policy; for ensuring compliance with precautionary measures issued by the IACHR and with actions still pending in connection with public policy for protecting human rights defenders. In essence, the PDH considered the Executive Branch's decision to get rid of COPREDEH a step backwards in terms of the institutionalization of human rights."²⁸

24. The IACHR regrets the closing down of COPREDEH, whose work to defend and promote human rights it publicly recognized in its on-site visit to Guatemala in 2017.²⁹ The IACHR is particularly worried about indications that COPADEH will not be endowed with the human and financial resources needed to fulfill the mandate of the three institutions it is replacing. In light of the above, the IACHR considers that this recommendation has not been implemented.

²⁵ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 2.

²⁶ Report by the State of Guatemala in response to Note 33720/CIDH/SE/MPCT- Art.41/8-2020 regarding the request for information concerning Governmental Decisions 97-2020, 99-2020 and 10-2020, Ref. NV-OEA-M4-No.697-2020, of September 10, 2020.

²⁷ Observations by the Guatemalan State to the Draft Chapter V Report, Follow-Up on Recommendations Issued by the IACHR in Its Country and Thematic Reports, Third Follow-Up Report on Recommendations Issued by the IACHR on the Human Rights Situation in Guatemala of 2017, Ref. NV-OEA-M4-No.087-2021, February 3, 2021, p. 2.

²⁸ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR received on October 24, pp.5 and 6.

²⁹ IACHR, [The Human Rights Situation in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 72.

25. **Regarding the still pending ratification of a number of inter-American human rights instruments**, the State indicated that it was an active participant in international efforts to protect human rights. Thus, it stated that it had ratified both specific and general instruments to protect the human rights of vulnerable groups, such as the International Convention on the Elimination of All Forms of Racial Discrimination, had submitted reports on the Convention, agreed to inspections by the relevant Committee, and had followed up on and complied with its recommendations.

26. As regards ratification of the Additional Protocol to the American Convention on Human Rights to Abolish Death Penalty, the State of Guatemala reiterated the information it had provided in October 2019. Accordingly, it pointed out that Guatemalan law contemplates the death penalty for, inter alia, the following crimes: murder, parricide, kidnapping, extrajudicial execution, forced disappearance and offenses referred to in Drug-Trafficking Law. It also reported that the death penalty is not applied owing to case law of the Constitutional Court, which ruled that it was unconstitutional to take into account the dangerousness of the perpetrator of the crime as one of the factors allowing a judge to consider enforcing the death penalty for certain crimes. Finally, as a result of three appeals for review of death penalty sentences (case files 1-2008, 2-2008, and 4-2008), the Supreme Court of Justice had revoked the death penalty in specific cases.³⁰

27. For its part, the PDH pointed out that the State has still not ratified the Inter-American Convention against All Forms of Discrimination and Intolerance, the Inter-American Convention against Racism, Racial Discrimination, and Related Forms of Intolerance, or the Inter-American Convention on Protecting the Human Rights of Older Persons. With respect to the death penalty, it recommended that Congress promptly introduce legislation aimed at definitively abolishing the death penalty in Guatemala; and that it considers the possibility of ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Second Optional Protocol to the International Covenant on Civil and Political Rights. In light of the above, the IACHR concludes that compliance with this recommendation is still pending.³¹

28. Regarding the **recommendation to continue with efforts to eradicate extreme poverty and hunger, especially, to adopt emergency measures to eliminate the serious issue of child malnutrition, such as programs and policies to prevent maternal and infant mortality in the country**, the Guatemalan State informed the IACHR that it is implementing the national nutrition plan (*Gran Cruzada Nacional por la Nutrición*), which aims to enhance the health and nutrition of the Guatemalan population, with a particular emphasis on children under the age of five, pre-school and school children, women, the rural and indigenous

³⁰ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 5.

³¹ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, p.6.

population, and those living in poverty and extreme poverty.³² The State pointed out that it is seeking to attack the root causes of this problem, through coordinated action at all levels of government, the private sector, civil society organizations, and other actors to improve nutrition for Guatemalan families living in poverty and extreme poverty. Thus, the State indicated that it would bolster integration of the services network through the Expanded Primary Health Care system (APSA) and access to health care, disease prevention, and nutrition promotion services; physical, economic, and social access to food; safe water and sanitation; and social protection.³³

29. According to information provided by the State toward the end of 2019, the Secretariat for Food and Nutritional Security (SESAN), the World Food Programme, and the United Nation's Children's Fund (UNICEF) conducted a joint Food Security Assessment focusing on the population living in rural areas. That study showed that 2.3 million families were suffering moderate to severe food insecurity, related to the loss of harvests as a result of the drought and that year's decline in job opportunities. In 2019, Ministry of Public Health and Social Assistance (MSPAS) data also showed a 22% increase in the number of severe malnutrition cases compared to 2018.³⁴

30. In light of those figures, the Commission and its Rapporteurship on Economic, Social, Cultural and Environmental Rights (REDESCA) were told that, owing to the COVID-19 related health crisis, the State had adopted a series of measures to contain the spread of the virus among the population, including mandatory confinement, which disproportionately impacted segments of the population that have to leave their homes for subsistence reasons. Given that scenario, the State implemented a program of brigades to attend to cases of severe malnutrition and treat children of between 6 months and 5 years of age as part of a pro-active plan to look out for and prevent deaths from severe malnutrition in the COVID-19 context.³⁵

31. The State indicated that there two categories of brigade: institutional brigades comprised of MSPAS and SESAN personnel, other civil society organizations, and local governments; and other brigades financed with cooperation funds, i.e., funds raised through supportive institutions (*Grupo de Instituciones de Apoyo -GIA*),³⁶ in order to hire brigades comprising health workers, including a wide range of health professionals. The MSPAS Directorate of Health, as the main health authority, is in charge of directing and managing the whole process of actively searching for cases, while the bodies responsible for executing those actions at the community level are the Coordinators of the Municipal Health Districts and those

³² Note from the Permanent Mission of Guatemala to the OAS, No. NV-OEA-M4-No.803-2020, October 23, 2020.

³³ Note from the Permanent Mission of Guatemala to the OAS, No. NV-OEA-M4-No.803-2020, October 23, 2020.

³⁴ Note from the Permanent Mission of Guatemala to the OAS, No. NV-OEA-M4-No.803-2020, October 23, 2020.

³⁵ Note from the Permanent Mission of Guatemala to the OAS, No. NV-OEA-M4-No.803-2020, October 23, 2020.

³⁶ Grupo de Instituciones de Apoyo (GIA) is made up of government institutions not included in CONASAN and other international cooperation agencies that provide technical, financial, and operational support at the request of SESAN.

in charge of nutrition in coordination with the supervisor and/or delegate appointed by SESAN.³⁷

32. For its part, the PDH issued a series of recommendations in connection with the monitoring activities conducted during the health emergency, requesting that the Ministry of Social Development coordinate as needed, including making arrangements with municipalities under the various agreements reached for these purposes and ensuring regular operation of the 29 community kitchens in place in 2019 to provide the most vulnerable segments of the population with a varied, balanced, and safe diet.³⁸ In that same context, the Ombudsman made a recommendation directly to the Municipal Council for Food and Nutritional Security of Quiché to ensure the immediate distribution to poor families of the more than 7,000 food baskets in storage, in order to safeguard their right to food, under the supervision that the Ombudsman's office had reportedly organized.³⁹

33. The Commission and REDESCA thank the State for the information provided on compliance with the recommendation in question. Nevertheless, they observe with concern that, according to United Nations and Economic Commission for Latin America (ECLAC) data, Guatemala forgoes some US\$12 billion a year, equivalent to 16.3% of its GDP, owing to economic, social, and health impacts relating to malnutrition, overweight, and obesity.⁴⁰ According to that same study, child mortality declines between 2004 and 2018 from 59,122 deaths reported to 23,099.⁴¹ While that shows a downward trend, civil society organizations have voiced their concern that, owing to the pandemic, severe malnutrition cases appear to be on the rise in areas that were previously already critical. Furthermore, according to information in the public domain, four out of every 10 children diagnosed with severe malnutrition are aged between 12 and 24 months and constitute the hardest-hit group, while 2 out of every 10 are aged between 6 and 12 months.⁴² Civil society organizations point, in particular, to the Corredor Seco area as the place where severe malnutrition cases have increased; what is more, external consultations aimed at addressing that situation ended owing to the pandemic.⁴³

³⁷ Note from the Permanent Mission of Guatemala to the OAS, No. NV-OEA-M4-No.803-2020, October 23, 2020.

³⁸ The Ombudsman for Human Rights of Guatemala, Second Report on institutional actions in connection with the "COVID-19 Emergency", March 20-27, p. 37; Fourth Report on institutional actions in connection with the "COVID-19 Emergency", April 3-16, 2020, p. 31.

³⁹ The Ombudsman for Human Rights of Guatemala, Eighth Report on institutional actions in connection with the "COVID-19 Emergency", May 29- June 11, 2020, p. 51.

⁴⁰ World Food Programme and ECLAC, [The cost of the double burden of malnutrition - social and economic impact: Guatemala](#), September 2020, p. 39 and p. 23.

⁴¹ World Food Programme and ECLAC, [The cost of the double burden of malnutrition - social and economic impact: Guatemala](#), September 2020, p. 39 and p. 23.

⁴² Prensa Libre, [Se triplica la cifra de niños con desnutrición aguda en Guatemala](#), May 12, 2020

⁴³ Acción contra el Hambre, [La COVID-19 duplica el número de personas sin alimentos en Guatemala](#), June 15, 2020

34. Likewise, according to information in the public domain, there was a delay with updating the databases on children under the age of five with chronic malnutrition in the country. Nevertheless, this was possibly corrected by State institutions, given that the figures reported by the Ministry of Health are atypical compared to the way severe malnutrition behaved in previous years in Guatemala, since the report of the National Information System for Food and Nutritional Security (Siinsan) began in 2020 with an upsurge in cases that have since diminished.⁴⁴

35. In light of the above, the Commission and its REDESCA are concerned because the malnutrition figures referred to earlier are not dropping to desired levels; and even the hardest-hit areas continue to display extremely worrisome figures, in places where the most vulnerable are reportedly suffering disproportionately from the threat posed by the COVID-19 pandemic. For that reason, they call upon the State, as it pursues its multidisciplinary approach, to strive to mobilize as many resources as it can and to generate synergies among the different social actors (especially in the worst-affected areas, such as the Corredor Seco, making sure that the population affected participates in the identification of the most effective measures to be adopted. In addition, the REDESCA places itself at the State's disposal, as a part of the Commission specializing in issues germane to the recommendation under review, in order to lend technical assistance with strengthening public policies designed to eradicate malnutrition in Guatemala.

36. As regards the recommendation to **adopt urgent measures to ensure the economic, social, cultural, and environmental rights (ESCER) of the population, in particular the persons living in a situation of major exclusion**, the Commission and its REDESCA note that Government Decision 5-2020 of March 5, 2020 declared a "State of Public Disaster" (*Estado de Calamidad Pública*) throughout Guatemala due to the COVID-19 pandemic, and at the same time established the Ministry of Public Health and Social Assistance Plan to Prevent, Contain, and Respond to Coronavirus Cases in Guatemala. Thus, the State indicated that a series of financial transfer programs had been put in place to respond to the most pressing needs of those living in the most vulnerable circumstances.

37. Those programs include: the Family Bonus (*Bono Familia*) program, which, for three months, provides a monthly allowance of 1,000.00 quetzales, to families without electricity or who, based on their electricity bill since February 2020, consume less than 200 kWh. By May 31, 2020, 1,000,053 persons were recorded as eligible. Subsequent checking showed that 421,320 persons had benefited from the allowance. The bonus for persons working in the informal economy (*Bono al Comercio Popular*) consists of a 1,000.00 quetzales allowance. Municipal Mayors are supposed to send in a list guaranteeing that the beneficiaries are informal sector workers. The Funds are administered by the Ministry of Social Development. The Employment Protection Fund, which consists of delivering 75.0 quetzales a day to private sector workers temporarily deprived of work by COVID-19. This program is being executed while labor contracts are suspended owing to the health measures put in place by the Government. The

⁴⁴ Prensa Libre, [Se triplica la cifra de niños con desnutrición aguda en Guatemala](#), May 12, 2020

budget for this program reportedly amounts to 2,000 million quetzales. Contributions are transferred directly to workers via Banco Crédito Hipotecario Nacional (CHN).⁴⁵

38. Along similar lines, the State reported that 26 million quetzales had been allocated to health sector personnel, through a transfer to the MSPAS. An electricity subsidy was also arranged under Decree No. 12-2020 of the National Energy Institute (INE).⁴⁶ The State also pointed out that the Working Capital Credit Fund had been established through a congressional ruling in favor of businesses hit by the health crisis. Banco Crédito Hipotecario Nacional (CHN) is responsible for executing that budget, worth 2,730 million quetzales, under which loans of up to 250,000 quetzales will be granted. This Fund is geared to enabling traders and other companies to remain in business.⁴⁷

39. In this connection, the PDH sent an open letter to the Office of the President of the Republic, in response to actions taken by certain companies allegedly resorting to "total suspension of employment" (*suspensión colectiva total*), which, according to the PDH, amounted to abandonment of the working population and their families. For that reason the PDH asked the Executive Branch to apply the preambular paragraphs of the Labor Code and, in particular, the principle of the State acting as the guardian of workers' rights, and to use all the powers established by law to minimize economic impacts for workers.⁴⁸ In the same vein, the Ombudsman issued a series of recommendations to the Ministry of Health, pointing to specific cases that need to be addressed, such as expediting payment of doctors at the Provisional Hospital in the Industrial Park (*Hospital Temporal del Parque de la Industria*). The same ministry was likewise asked to take urgent steps to provide wages and protective gear for health sector personnel and to coordinate with the Guatemalan Social Security Institute on setting up the requisite quarantined area (*cordón sanitario*).⁴⁹

40. The Commission and its REDESCA also note the establishment of the economic support program for older persons (PAM). The State reported that, while this program has been in effect since 2005, in light of the COVID-19 pandemic the Ministry of Labor decided to incorporate 999 older adults and made the first transfer to that end on May 2. In May, another 2,000 new beneficiaries were added, under a budget increase for PAM of 59 million quetzales. That budget increase will make it possible to raise the number of older adults registered under the program by 8,400, and a similar increase is expected once a further 50 million quetzales are

⁴⁵ Note from the Permanent Mission of Guatemala to the OAS, No. NV-OEA-M4-No.803-2020, October 23, 2020.

⁴⁶ Note from the Permanent Mission of Guatemala to the OAS, No. NV-OEA-M4-No.803-2020, October 23, 2020.

⁴⁷ Note from the Permanent Mission of Guatemala to the OAS, No. NV-OEA-M4-No.803-2020, October 23, 2020.

⁴⁸ The Ombudsman for Human Rights of Guatemala, Second Report on institutional actions in connection with the "COVID-19 Emergency", March 20-27, p. 9.

⁴⁹ The Ombudsman for Human Rights of Guatemala, Eighth Report on institutional actions in connection with the "COVID-19 Emergency", May 29- June 11, 2020, p. 38.

added. According to the State. All in all, the program benefits some 104,000 older adults, who receive 400 quetzales a month.⁵⁰

41. The State also mentioned that it was implementing support programs to ensure that persons in vulnerable circumstances have access to food. Thus, it reported that "Juntos Saldremos Adelante" [Together we will Manage] Fund covers staples and foods, such as sugar, beans, corn flour, oil, and "incaparina."⁵¹ The inputs were donated by private organizations and companies. The State also used the Guatemalan Army to pack and distribute 200,000 cases to different parts of the country. The School Food program was also implemented by the Ministry of Education, which coordinated the delivery of school meals to pupils during the period in which classes were suspended, pursuant to Ministerial Decision 825-2020.⁵²

42. According to the State, that Decision enables Parents' Associations (OPF) to buy non-perishable foods during the health emergency for pre-primary and primary schoolchildren in public schools. The OPF received grants of 4.00 quetzales per pupil. Lists of foods and recommendations are drawn up to ensure optimal prices and quality and the OPF were given a specific safety protocol to follow for delivering the food, along with other measures needed for delivery and to guarantee continuity in the School Food Program. Every child enrolled in primary and pre-primary schools is entitled to his or her food ration under this program, to which 589.9 million quetzales have been allocated. Food Support and COVID-19 Prevention Program. This program provides baskets of staple foods or coupons to purchase food and is run, in rural areas, by the Ministry of Agriculture, Livestock, and Food (MAGA) and, in rural areas, by the Ministry of Social Development (MIDES). The budget envisaged totals 700 million quetzales: half for MIDES and half for MAGA.⁵³

43. Regarding the right to education, the Commission and the REDESCA take note of the implementation by the Ministry of Education of the "Aprendo en Casa" (I Learn at Home) strategy in response to quarantining (confinement) measures imposed as a result of the pandemic, with a view to ensuring continuity of the educational cycle. These sessions are transmitted on a daily basis for students in primary, basic, and diversified education by Channel 13 and the Government Channel (with sign language interpretation), as well as by community radio stations, public media, and in printed media. This strategy has been applied since March 30, 2020. By June 9, 2020, 618 teaching sessions had been recorded, with the support of over 195 teachers. For pupils with no access to TV or radio, Self-learning Guidelines and Exercise Books were issued to support a series of sequenced didactic strategies tailored to the National Basic Curriculum.⁵⁴ These measures need to be bolstered, paying particular heed to vulnerable segments of the population, such as indigenous peoples or the rural population, and taking into

⁵⁰ Note from the Permanent Mission of Guatemala to the OAS, No. NV-OEA-M4-No.803-2020, October 23, 2020.

⁵¹ Incaparina is a high-protein food made of corn and soybean flour etc. etc, used as a food supplement.

⁵² Note from the Permanent Mission of Guatemala to the OAS, No. NV-OEA-M4-No.803-2020, October 23, 2020.

⁵³ Note from the Permanent Mission of Guatemala to the OAS, No. NV-OEA-M4-No.803-2020, October 23, 2020.

⁵⁴ Note from the Permanent Mission of Guatemala to the OAS, No. NV-OEA-M4-No.803-2020, October 23, 2020.

consideration the technological divide in Guatemala and the lack of access to electricity in certain parts of the country.⁵⁵

44. Bearing in mind the information provided by the State, the Commission and its REDESCA note the efforts made, via a series of programs, to diminish the impacts of the pandemic on the population's enjoyment and exercise of ESCER, in line with IACHR recommendations. However, with respect to other ESCER, the State needs to continue taking steps to address the main ongoing concerns in Guatemala. As regards the right to water, based on information in the public domain, there are 858,586 households without running water, whose members have to purchase in from tanker trucks distributing it or else fetch it from natural sources, such as rivers or streams, or even use rainwater. The figures show more than 161,000 households using water from fountains or springs. Over 100,000 households opt to fetch it from a public fountain or well; more than 75,000 collect rain.⁵⁶

45. The Commission and its REDESCA is also concerned at the situation in rural areas, where, according to civil society organizations, 46% of the population is affected by the lack of sustained investment in sanitation. In those areas, more than 40% of the population has no access to any kind of sanitation services, which has an evident impact on their wellbeing and quality of life. While there is some mention of local governments working to improve sanitation, development in this field is precarious and hampered by a lack of facilities for processing waste water.⁵⁷

46. Finally, as regards the right to work and labor rights, the Commission and its REDESCA welcome the steps being taken by the State to safeguard the right to a decent wage of health workers and workers in other economic sectors in Guatemala. Nevertheless, they are concerned to note that, as 2020 drew to a close, the special allowance (bono) for health personnel had yet to be delivered.⁵⁸ They were likewise concerned about a lack of clarity regarding the implementation of health protocols in certain workplaces, including so-called "call centers," some of which were continuing to operate even after the quarantine shutdown had been declared. Thus, according to information furnished to the media by the Office of the Ombudsman for Human Rights (PDH), there had been complaints that in those centers, where some 100 people work in the same space, there was not enough antibacterial soap, masks, or alcohol gel.⁵⁹ According to information in the public domain, the informal sector was also hard-hit by the lack of measures to counteract the direct effects of the measures that State had to enforce to mitigate the spread of the virus.⁶⁰ The Commission and its REDESCA underscore the need to apply clear protocols enabling people to go about their work as safely as possible, reducing the risk of contagion, and guaranteeing people enjoyment of the right to work under safe and dignified conditions.

⁵⁵ Fundación Esquipulas. La Educación en tiempos de COVID-19, July 13. 2020.

⁵⁶ El Periódico, [Más de 858 mil hogares sin acceso a agua entubada](#), May 28, 2020

⁵⁷ Hábitat para la Humanidad, [Agua segura y saneamiento](#), March 25, 2020.

⁵⁸ Prensa libre, Salud: Atraso en pago de bono y proveedores pone en riesgo atención hospitalaria. December 17, 2020.

⁵⁹ Nómada, [Covid-19: La denuncias contra los call centers y el miedo de la economía informal](#), March 17, 2020

⁶⁰ Nómada, [Covid-19: La denuncias contra los call centers y el miedo de la economía informal](#), March 17, 2020

47. In light of the above, the IACHR and its REDESCA acknowledge the measures taken by Guatemala to implement the recommendations examined. Nevertheless, in view of the major socio-economic impacts of the health emergency triggered by COVID-19 and the challenges they pose with respect to inequality and the protection of ESCER, they consider that compliance with the recommendations has been partial and will continue to monitor them, paying particular heed to the observations issued by the Working Group on the Protocol of San Salvador.

B. Recommendations regarding Administration of Justice

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

48. Regarding the recommendation to **approve the constitutional reform on justice as soon as possible**, the State reported that Congress was continuing to make amendments to the Constitution. For its part, the PDH stressed that, even though a new Congress began its mandate in January 2020, thus far it had not revived discussion of the proposed reforms to the Constitution.

49. Concerning the appointment of high-court judges for the 2019-2024 tern, in February 2020, the Special Prosecutor's Office to Combat Impunity (FECI) disclosed the existence of illicit deals and influence peddling in the election process, stemming from secret meetings between Gustavo Alejos Cámbara (deprived of liberty on charges of Influence Peddling, Offering, and Soliciting or Accepting Bribes) and government officials, politicians, and candidates for positions on the Courts of Appeal and Supreme Court (CSJ), allegedly held to negotiate those positions. Faced with those facts, on February 24, 2020, the Public Prosecutors' Office (MP) filed an action for protection of a constitutional right (*amparo*) alleging irregularities in the drawing up of the lists of candidates. On February 26, the Constitutionality Court (CC) suspended the election process through a provisional amparo, which it rendered definitive on May 6, and ordered the MP to remit a report to Congress on candidates against whom complaints had been filed and who were facing criminal proceedings.⁶¹ The CC likewise ordered Congress to conduct a proceeding in keeping with the requirements established in Article 113 of the Constitution; to exclude from that procedure any professional whose suitability and honesty has been compromised; and to embark on a constitutional reform process that would guarantee an

⁶¹ The FECI presented that report on May 28, 2020. It contained circumstantial evidence of manipulation and influence peddling in the process of installing the commissions responsible for analyzing the records of candidates to high-court positions. That report included all the investigations under way against candidates to positions on Guatemala high courts. In that way, it transpired that 75 people aspiring to be appointed to high courts and 15 people already nominated to the Supreme Court of Justice are the subject of some criminal investigation or have yet to resolve pre-trial issues. At least 10 of those people had allegedly had direct contact with Mr. Gustavo Alejos. Observatorio de Independencia Judicial [Judicial Independence Observatory], [Informe de MP revela tráfico de influencias en la elección de cortes](#), 2020.

appropriate process for selecting and appointing judges for the various divisions of the Court of Appeals, other collegiate courts of equal standing, and the Supreme Court of Justice.⁶²

50. At the end of 2020, Congress was allegedly still delaying the election of CSJ and Appeals Court justices and refusing to comply with the judgment of the CC.⁶³ As a result, the current judges of the CSJ are continuing in their positions indefinitely, even though their mandate ended in 2019: a situation said to gravely impair the independence of the judiciary in Guatemala. In this regard, the State told the IACHR that "despite pressure put on the President of the Republic to resolve thus impasse, he has maintained a neutral stance, mindful of the competencies of the other institutions involved."⁶⁴

51. Within this context, the IACHR has been apprised of threats and attacks on the judicial independence of magistrates on the Constitutionality Court, based on expeditious processing and alleged abuse of the pre-trial procedure (*antejuicio*) aimed at intimidating and/or possibly removing them from their positions in reprisal for criteria they upheld when handing down judgments related to the High Courts election process.⁶⁵ As analyzed later in this report, (see below, E. Human Rights Defenders), such acts contravene the principle of judicial independence and gravely undermine the rule of law in Guatemala. In this respect, the State reiterated in its observations on the draft version of this report that "all Guatemalans enjoy the right to file complaints when they deem that there are acts that may constitute a crime. Filing complaints against public officials is just part of the citizen oversight that should be exercised in any democratic State."⁶⁶

52. The IACHR reiterates that the reform process represents a major opportunity for boosting the independence of justice operators in Guatemala. It therefore urges the Guatemalan State to forge ahead with the constitutional reform on justice, and to adopt it as soon as possible, while making sure that it abides by international standards in that field. In light of the above, the IACHR concludes that compliance with this recommendation is still pending.

53. **Regarding the recommendation to examine the factors limiting expeditious and effective access to justice and take corrective measures**, the IACHR observes major ongoing challenges impairing the population's access to justice, including high levels of insecurity, violence, and impunity. Thus, the 2020 Global Impunity Index ranked

⁶² Corte de Constitucionalidad [Constitutionality Court], "[Amparo, elección de Magistrados CSJ y Salas de Apelaciones](#)". Case File 1169-2020, May 06, 2020. Operative section

⁶³ WOLA, [Pronunciamiento conjunto. "Urgimos al Congreso de Guatemala a concluir el proceso de elección de cortes"](#), October 13, 2020. Impunity Watch, [Análisis del proceso de elección de cortes en el Congreso](#), October 5, 2020; DPLF, [¿Cómo evaluar la idoneidad ética de las personas aspirantes a la Corte Suprema de Justicia y a las Cortes de Apelaciones en Guatemala?](#). Recommendations to Congress regarding compliance with the constitutional judgment of May 6, 2020; Fundación Myrna Mack, [Comisiones Paralelas: Mecanismos de Cooptación de la Justicia](#), May 2020; No-Ficción; [Elección de la CSJ: la maquinaria de la impunidad está atrofiada](#), July 16, 2020.

⁶⁴ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 5.

⁶⁵ Meeting held on July 20, 2020 between the IACHR, the Human Rights Ombudsman, Magistrates of the Constitutionality Court, and other civil society organizations. Record kept at the IACHR.

⁶⁶ Observations by the Guatemalan State to the Draft Chapter V Report, Follow-Up on Recommendations Issued by the IACHR in Its Country and Thematic Reports, Third Follow-Up Report on Recommendations Issued by the IACHR on the Human Rights Situation in Guatemala of 2017, Ref. NV-OEA-M4-No.087-2021, February 3, 2021, p. 3.

Guatemala in 59th place out of a list of 69 countries, with the justice system figuring as the worst structural element. Among other factors, that assessment took into consideration the departure of CICIG and lack of progress toward strengthening the justice system's ability to investigate grave human rights violations.⁶⁷

54. The IACHR also received information regarding significant backtracking in the fight against corruption, due to alleged lack of independence on the part of the Public Prosecutors' Office vis-a-vis other government authorities, as well as a lack of support and actions tending to undermine the work of the FECI. For example, in September 2020, the Attorney General withdrew the FECI from the investigation into alleged crimes relating to the "alleged plot to take control of the Guatemalan Social Security Institute," in which senior government officials were reportedly involved. Moreover, the Attorney General herself filed administrative complaints against members of the FECI after they called for impeachment (*antejuicio*) of the Secretary General of the Office of the Presidency of the Republic.⁶⁸ The specific plight of justice system operators in Guatemala is addressed later on in this report (see below: E. Human rights defenders).

55. In relation to the Ministry of Public Prosecution's alleged lack of independence, the State pointed out in its observations on the draft version of this report that any official that works at this institution, as well as justice operators, can be subject to disciplinary complaints; this in order to uphold the values and principles that characterize the duties of criminal investigation and prosecution that the Ministry of Public Prosecution discharges.⁶⁹

56. As regards **ensuring that the amparo appeal mechanism and the application thereof in Guatemala meet inter-American standards on the subject**, the State acknowledged that the Political Constitution of the Republic needs amending, in order to bring it into line with regional and international human rights standards and constitutional rules. To that end, it has embarked on initiatives to amend Constitutional Decree-Law 1-86 of the National Constituent Assembly, "Law on Amparo, Habeas Corpus, and Constitutionality," regarding which the Constitutionality Court has issued a ruling or opinion. Nevertheless, "the highest constitutional tribunal in a series of concurrent proceedings has established specific norms limiting the abuse and malicious use of legal action for protection of constitutional rights/amparo (*en autos concordados, como normas específicas, ha limitado el uso abusivo y malicioso de la acción de tutela*)."⁷⁰ For its part, the PDH has underscored that no progress has been made with amending the Law on Amparo, Habeas Corpus, and Constitutionality. On the contrary, the still unfinished business of electing court judges exacerbated "improper use of the Amparo Law" and, in particular, the habeas corpus remedy as a tool for harassing and attacking justice operators and two CC judges, whose health

⁶⁷ That index looks at the country's installed capacity to see justice done and evaluates country data on the physical, juridical, and human resources at its disposal, by measuring, for instance, the number of police officers, judges, and magistrates, and assessing its anticorruption and transparency laws, prison infrastructure, and the budget allocated to each of those items. UDLAP [University of the Americas of Puebla in México], Impunity Levels in the World, Global Impunity Index 2020, August 2020, p. 196. El Periódico, "[Guatemala entre los países con mayor índice de impunidad](#)", August 23, 2020.

⁶⁸ Soy 502, "[Una solicitud a Giammattei provoca la salida del a FECI del caso IGSS](#)", September 14, 2020.

⁶⁹ Observations by the Guatemalan State to the Draft Chapter V Report, Follow-Up on Recommendations Issued by the IACHR in Its Country and Thematic Reports, Third Follow-Up Report on Recommendations Issued by the IACHR on the Human Rights Situation in Guatemala of 2017, Ref. NV-OEA-M4-No.087-2021, February 3, 2021, p. 3.

⁷⁰ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, pp. 10 and 11.

was impaired as a result.⁷¹ Given the above, the IACHR points out that no concrete progress has been made toward complying with this recommendation, which is therefore still pending.

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

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

57. Concerning the recommendation **"to approve Law 3590 to create the National Commission to Search for Victims of Forced Disappearance and to push forward the search for missing persons in accordance with international standards on the subject,** since November 2018, the Congressional Human Rights Commission began publicly debating the bill on the National System to Search for Missing Persons. For lack of progress on this front, in February 2020, representatives of a number of organizations of victims of the armed conflict repeatedly asked the President of the Human Rights Commission to resume discussion and approval of the bill, which was set to be examined in a third debate.⁷² Despite their pleas, the organizations stressed that the legislative body was doing nothing to advance processing of the bill.⁷³

58. As for efforts to push forward the search for missing persons, the IACHR received information regarding the failure to implement a National Plan to Search for Missing Persons and the lack of progress by the Public Prosecutors' Office with the investigation and search ordered by the I/A Court of H.R. in a series of judgments handed down against Guatemala. Civil society organizations likewise complained that funds for exhumation had been cut off following the shutting down of SEPAZ, so that now they were being performed by private organizations.⁷⁴ On this, the IACHR issues a reminder that it is incumbent upon the State to adopt the necessary measures to establish the truth of what happened to victims of forced disappearance, to ascertain their whereabouts, and to report back to family members.⁷⁵

⁷¹ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, p.12.

⁷² Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, p.12.

⁷³ Impunity Watch, Follow-up on IACHR recommendations on Guatemala, December 14, 2020, p. 21.

⁷⁴ Impunity Watch, Follow-up on IACHR recommendations on Guatemala, December 14, 2020, pp. 21 and 22.

⁷⁵ I/A Court H.R., Case of García and Family v. Guatemala. Merits, Reparations and Costs. Judgment of November 29, 2012, par. 132.

59. Given the above, the IACHR points out that no concrete progress has been made toward complying with this recommendation, which it regards as therefore still pending. The IACHR again urges the State to take all necessary measures to proceed to search for the missing persons as a priority, pursuant to inter-American standards in this matter.

60. With respect to the recommendation to **pass Law 3551 to provide solidity and certainty to the National Reparations Program (PNR)**, this year allegedly no progress has been made to ensure that the bill comes before Congress. On the contrary, the State is said to have made several moves to undermine the institutional underpinnings for peace and fulfillment of the commitments made with respect to victims of the armed conflict in Guatemala.

61. On July 30, 2020, "following an analysis of the peace and human rights commitments entered into with the signing of the Accord for a Firm and Lasting Peace in 1996 and the institutional arrangements derived from them," the head of the Executive Branch announced the decision to update the way it envisioned peace and human rights in the national and international context of 2020.⁷⁶ Thus, by signing various Governmental Decisions, it ordered the closure of the Secretariat for Peace (SEPAZ), the Secretariat for Agricultural Affairs (SSA), and COPREDEH, and their replacement by COPADEH.⁷⁷

62. The IACHR observes with concern that those changes were made without consulting the victims of the internal armed conflict, their family members, or civil society organizations. Moreover, those changes would appear to be part of a larger context in the past few years of a downgrading of the aforementioned institutions via cuts in their budgets. For their part, civil society organizations complained that the changes had been adopted by the government at a time when it could take advantage of restrictions on mobilizations/protests imposed in connection with the COVID-19 pandemic.⁷⁸ They also told the IACHR that shutting down SEPAZ violated the Law of National Reconciliation, which assigned to that body the function of coordinating and delivering assistance to the victims of the armed conflict. That action therefore allegedly also threatened the ability of Guatemala's new institutional framework for peace ("*Institucionalidad de la Paz*") -- comprising the National Reparations Program (PNR), the National Council for Implementation of the Peace Accords (CNAP), the National Women's Forum, and the Commission for Selecting Guatemala's Sacred Sites (COLUSAG) -- to operate and function.⁷⁹

⁷⁶ "El Gobierno de Guatemala reafirma y actualiza su compromiso con la paz y los derechos humanos" [The Government of Guatemala reaffirms and updates its commitment to peace and human rights]. Twitter account of the Government of Guatemala (@GuatemalaGob) [Publicación del 30 de julio de 2020](#).

⁷⁷ Ministry of the Interior, Governmental Decision No. 98-2020; Governmental Decision No. 98-2020; Governmental Decision No. 100-2020, July 30, 2020.

⁷⁸ Report on compliance with recommendations made by the Inter-American Commission on Human Rights regarding Transitional Justice and Reparation to Victims of the Internal Armed Conflict in Guatemala, published in its country report, December 2017, drawn up by the Centro de Análisis Forense y Ciencias Aplicadas (CAFCA), October 12, 2020, paras. 15-17.

⁷⁹ Impunity Watch, [La Paz en Riesgo \[Peace at Risk\]: Análisis del cierre de las Instituciones de la Paz en Guatemala \[Shutting down peace institutions in Guatemala\]](#), November 2020; Report on compliance with recommendations made by the Inter-American Commission on Human Rights regarding Transitional Justice and Reparation to Victims of the Internal Armed Conflict in Guatemala, published in its country report, December 2017, drawn up by the Centro de Análisis Forense y Ciencias Aplicadas (CAFCA), October 12, 2020.

63. As regards the PNR, Governmental Decision 98-2020 assigns it to the Ministry of Social Development (MIDES), "along with all the elements pertaining to its establishment and execution" mentioned in the Decision that gave rise to it.⁸⁰ While that reportedly does not alter the structure of the organization itself, organizations representing victims of the internal armed conflict complained that it distorts its core function of "ensuring dignity for victims and the communities that suffered human rights violations," particularly given that the PNR is totally different from the social programs run by the MIDES and "is not merely an economic aid program."⁸¹

64. Civil society organizations also denounced the absence of measures to protect the thousands of case files in the safekeeping of the PNR that will now be transferred to other units of the Executive Branch. Indeed, Governmental Decision 98-2020 provides that "all records, fact sheets, correspondence, certificates, files, historical archives and all the information they contain currently in the custody, archives and/or safekeeping of the Secretariat for Peace," its directorates, coordinating offices, units and dependencies must be delivered physically and in any other form of data storage to the Secretariat for Planning and Programming of the Office of the Presidency, as the body responsible for the administration, custody, and deposit thereof.⁸² According to information received by the IACHR, in October more than 50,000 files were transferred without safety precautions to a vault in the Ministry of Development in the capital owing to the closing of the 14 regional offices of the PNR⁸³. Likewise, the main headquarters of the PNR is reported to be at a standstill for lack of funding, so that, reportedly, no PNR reparations were delivered to victims of the internal armed conflict.⁸⁴

65. On numerous occasions, the IACHR has called upon the State to ensure that the PNR remains fully operational by endowing it with sufficient material and human resources for it to fulfill its mandate. However, the information received appears to indicate that the changes made by the State have further debilitated the PNR, marking a step backwards with respect to implementation of this recommendation. In that context, the IACHR urges the State to meet the obligations it entered into under both the Peace Accords and international human right law with respect to the right to truth, reparation, and access to justice. Doing so entails ensuring broad participation and effective dialogue with the victims, family members, civil society organizations, and other actors in connection with decisions relating to compliance with the Peace Accords and the institutional arrangements derived from them. In light of all of the above, the IACHR considers that compliance with this recommendation is still pending.

66. Concerning the recommendation to **reinforce actions to combat impunity for human rights violations committed during the internal armed conflict**, the State provided no information in its initial observations to the IACHR. Nor did the IACHR receive information

⁸⁰ Ministry of the Interior, [Governmental Decision \(Acuerdo Gubernativo\) No. 98-2020](#), July 30, 2020.

⁸¹ [Comunicado de la Plataforma Nacional de Organizaciones de Víctimas del Conflicto Armado Interno](#), August 4, 2020.

⁸² Governmental Decisions 97-2020, 98-2020, and 99-2020 order the transfer of information from the institutions that are eliminated to the Secretariat for Planning and Programming of the Office of the President (SEGEPLAN). Article 3 of Governmental Decision 97-2020, Article 4 of Governmental Decision 98-2020, and Article 3 of Governmental Decision 99-2020.

⁸³ Meeting held on November 6, 2020 between the IACHR, the PDH, and civil society organization regarding the shutting down of SEPАЗ and the situation of the PNR. Record kept at the IACHR.

⁸⁴ Report on compliance with recommendations made by the Inter-American Commission on Human Rights regarding Transitional Justice and Reparation to Victims of the Internal Armed Conflict in Guatemala, published in its country report, December 2017, drawn up by the Centro de Análisis Forense y Ciencias Aplicadas (CAFCA), October 12, 2020, paras. 4 ff.

regarding actions taken to shelve Bill 5377, as instructed by the I/A Court of H.R. in its 2019 Order regarding the request for Provisional Measures and Supervision of Compliance with Judgment.⁸⁵

67. In the case regarding the sexual violence inflicted on women of the Maya Achí people in the department of Baja Verapaz, the IACHR takes note of the arrest, following deportation from the United States, of the arrest on January 29, 2020 of the eighth former civil defense patroller (PAC), whose pre-trial detention had been ordered owing to his alleged participation in the deeds committed. Intermediate stage hearings were held in September and October, and public trial hearings were scheduled to begin in January 2021. Despite the above, representatives of the victims reported that, since 2011, there has been scant progress with the proceedings and numerous legal battles have had to be fought to ensure the women's access to justice.⁸⁶

68. On March 3, 2020, the IACHR took note of the deportation to Guatemala of Gilberto Jordán, a former soldier identified as one of those responsible for the Las Dos Erres massacre. Civil society organizations welcomed that move and acknowledged that Guatemalan courts had acted quickly to bring him to trial in the midst of the pandemic. Nonetheless, they pointed out that, more than 37 years after the crimes were committed, the State has a duty to conduct the trial as expeditiously and diligently as possible pursuant to its international obligations.⁸⁷

69. In March, the IACHR was informed about the start of intermediate stage hearings in the criminal proceedings relating to the genocide against the Ixil People case. According to information received by the IACHR, the Public Prosecutors' Office charged the military with carrying out the massacres and other gross violations against the population of the Ixil region communities as part of the military's plan to exterminate the domestic enemy.⁸⁸ Against that backdrop, the IACHR was told of an alleged increase in attacks on, and defamation of, representatives of the victims and persons appearing in court during the hearings, in the form of discriminatory and racist comments on social networks, surveillance, acts of intimidation, and threats. Finally, on March 24, the hearings were reportedly suspended owing to restrictions imposed during the COVID-19 pandemic.⁸⁹

⁸⁵ I/A Court of H.R., Case of Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal; Case of Molina Theissen and 12 other cases v. Guatemala. Order of March 12, 2019.

⁸⁶ Asociación Bufete Jurídico Popular, Report to the IACHR on compliance with the recommendations issued in the Report on the Situation of Human Rights in Guatemala, November 9, 2020; Impunity Watch, [Caso Mujeres Achí \[Maya-Achí women case\]: Inicia etapa intermedia del proceso penal en contra del ex PAC Francisco CUXUM \[Intermediate stage hearings begin in the trial of former civil defense patroller Francisco CUXUM\]](#), September 23, 2020.

⁸⁷ CEJIL [Center for Justice and International Law]. ["Justicia para Las Dos Erres: exigimos que se desarrolle prontamente el proceso contra militar implicado"](#), March 5, 2020 CEJIL; ["Guatemala: Una deuda histórica a 38 años de la masacre de Las Dos Erres"](#), December 7, 2020. CEJIL; ["Juicio a Gilberto Jordán: Exigimos se garantice justicia para las víctimas y familiares de la masacre de Las Dos Erres"](#), July 29, 2020.

⁸⁸ Impunity Watch, ["Caso de genocidio contra el Pueblo Ixil durante la dictadura militar de Lucas García"](#), March 12, 2020.

⁸⁹ ACOGUATE, ["Genocidio Maya Ixil: el caso contra altos mandos militares del gobierno de Romeo Lucas García"](#), September 10, 2020.

70. At the same time, even though the forced disappearance case known as CREOMPAZ came to a standstill for most of the year (2020),⁹⁰ on December 9, the CC conducted a public visit to hear the arguments of the plaintiffs in the case, who asked for revocation of the ruling handed down in 2019 by the Femicide and Other Forms of Violence against Women Division of the Court of Appeals, ratifying the lower court's decision to refrain from hearing the victims' allegations of sexual violence. As of the date this report was finalized, the CC had not issued its judgment.⁹¹

71. Finally, the IACHR was advised that, on March 30, 2020, through a provisional amparo, three of those convicted in the Molina Theissen case asked to be granted house arrest "on humanitarian grounds" given the "real and imminent threat" they supposedly faced of being infected by COVID-19.⁹² Even though, on April 28, the Constitutionality Court suspended the processing of that amparo, on August 19, the Major Risk Division convened a hearing, ex officio, to once again review the measures ordering the deprivation of liberty of four of those convicted in the same case. Reportedly, the legal representatives of the family denounced that hearing as illegal inasmuch as the Code of Criminal Procedure establishes that, in crimes of aggravated rape and forced disappearance, for which Generals Manuel Antonio Callejas Callejas, Manuel Benedicto Lucas García, and Francisco Luis Gordillo Martínez were convicted, no alternative to incarceration is permitted.⁹³

72. The IACHR notes that on that same day, August 19, the Division resolves to dismiss the request for a review of the incarceration measure. The IACHR likewise observes the ruling of the Judge of High Risk Court A, who in March dismissed a similar petition on behalf of two persons accused in the CREOMPAZ case, who tried to be released from pre-trial detention owing to their alleged vulnerability to COVID-19.⁹⁴

73. In this regard, the IACHR issues a reminder that, pursuant to its Resolution 1/2020 "Pandemic and Human Rights in the Americas," in the case of persons convicted of gross human rights violations, the State must make assessment of prison benefits and alternatives to incarceration subject to more rigorous requirements and analysis, abiding strictly by the principle of proportionality and applicable inter-American standards that look at the legally protected interest, the seriousness of the facts of the case, and States' obligation to punish the perpetrators of such violations. Along those same lines, the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has stressed that the urgent measures to afford protection against COVID-19 should not be conducive to impunity for

⁹⁰ Human Rights Ombudsman (PDH), Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," received on October 30, 2020, p. 20.

⁹¹ Prensa Comunitaria, "[Caso Creompaz: el juzgamiento del delito de violencia sexual lo determinará la CC](#)", December 14, 2020; La Cuerda, "[Omitir delitos sexuales del Caso CREOMPAZ es revictimizante para las mujeres mayas que se atrevieron a romper el silencio](#)", December 11, 2020.

⁹² CDHAL, "[Comunicado: No a liberar militares condenados por delitos de lesa humanidad en Guatemala](#)", April 22, 2020.

⁹³ CEJIL, "[Guatemala: Corte IDH tramita solicitud de medidas de protección ante riesgo de que militares condenados por el caso Molina Theissen evadan la justicia](#)", August 17, 2020. Order of the Inter-American Court of Human Rights, Request for Provisional Measures and Supervision of Compliance with Judgment. Case of Molina Theissen v. Guatemala City, September 03, 2020

⁹⁴ La Hora, "[Caso Creompaz: Jueza rechaza libertad condicional para dos sindicados](#)", May 18, 2020; La Cuerda, "[Caso CREOMPAZ: ¡militares seguirán en prisión preventiva!](#)", May 19, 2020; See also:

persons convicted of serious human rights violations, crimes against humanity, genocide, or war crimes.⁹⁵

74. Although some progress was made in 2020 in proceedings related to gross human rights violations committed during the internal conflict, the information received by the IACHR indicates that, generally speaking, delays persist, in part owing to deliberate procrastination tactics. On those grounds, and in the absence of information about the shelving of Bill 5377, the IACHR considers that compliance with this recommendation is still pending.

75. Regarding the recommendation to **earmark sufficient resources to the Historical Archive of the National Police (AHPN)**, the State pointed out that in 2019 the Ministry of Culture and Sports had begun the process of institutionalizing the documentary resources making up the AHPN.⁹⁶ At the same time, according to information in the public domain, in March 2020 the CSJ granted a definitive amparo to the PDH to ensure safekeeping of the AHPN. In its resolution, the CSJ urged the Ministry of Culture and Sports to declare the AHPN a National Cultural Heritage and to devise and implement a plan to conserve and safeguard the Archive within no more than four months. It also ordered the Ministry of the Interior to refrain from taking steps jeopardizing the integrity of the Archive.⁹⁷

76. On October 7, in Ministerial Decision 934-20202, the Ministry of Culture and Sports announced that the Historical Archive of the National Police had been declared part of the Cultural Heritage of the Nation.⁹⁸ Nevertheless, the AHPN reportedly still has not been allocated the budget it needs to guarantee the continuity and sustainability of the archiving process as ordered by the CSJ.⁹⁹ The IACHR welcomes the above-mentioned declaration and urges the State to ensure that measures are adopted to facilitate the safekeeping and conservation of the AHPN, by endowing it with sufficient resources. Therefore, the IACHR considers that compliance with this recommendation is still pending.

D. Citizen Security

- Draft and implement public prevention policies, based on the root causes of violence and the high crime rates, in order to continue to bring these rates down substantially, and to ensure that Guatemalans live in a country free of violence.

⁹⁵ Office of the United Nations High Commissioner for Human Rights (OHCHR), [“COVID-19: “No excuse for impunity for those convicted of crimes against humanity” – UN expert on transitional justice](#), April 29, 2020.

⁹⁶ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, pp. 12.

⁹⁷ Prensa Libre, [“CSJ otorga amparo a la PDH para garantizar protección del Archivo Histórico de la Policía Nacional”](#), March 3, 2020; El Periódico, [“15 años del Archivo Histórico de la Policía Nacional”](#), July 6, 2020; El Periódico, [“Piden declarar el Archivo Histórico de la Policía Nacional como Patrimonio Cultural”](#), March 3, 2020.

⁹⁸ Ministry of Culture and Sports, [“Se declara Patrimonio Cultural al Archivo Histórico de la Policía Nacional”](#), October 7, 2020.

⁹⁹ Report on compliance with recommendations made by the Inter-American Commission on Human Rights regarding Transitional Justice and Reparation to Victims of the Internal Armed Conflict in Guatemala, published in its country report, December 2017, drawn up by the Centro de Análisis Forense y Ciencias Aplicadas (CAFCA), October 12, 2020, paras. 15-17.

- Continue with efforts to strengthen the PNC and withdraw the armed forces from duties of citizen security.
- Ensure the regulation and effective oversight of private security firms and their agents, registration and punishment of those who do not comply with requirements; as well as carry out strict gun control.
- Adopt specific measures to address the issue of lynching in the country.

77. Regarding the recommendation to **draft and implement public prevention policies in order to continue to bring rates of violence down**, the State underscored the decline in the homicide rate recorded in 2020 "as a result of the implementation of Citizen Security Strategies nationwide, coordinated by the Ministry of the Interior, and effective National Civilian Police (PNC) operations." Through July 31, 2020, the homicide rate was 16.6 per 100,000 inhabitants, a 28.7% decline compared to 2019, when the ratio was 23.3 homicides per 100,000 inhabitants. Nationwide, 1,425 homicides were reported in the same period: 35.25% percent fewer than in 2019. In the department of Guatemala, 460 homicides were recorded in 2020: a 51% decline.¹⁰⁰

78. In the first half of the year, a decline in total crime was also registered, mainly because of measures adopted to contain the spread of the global COVID-19 pandemic, such as partial work shutdowns, the curfew, and suspension of public transport.¹⁰¹ Nevertheless, during the same period of efforts to contain the spread of the COVID-19 virus, the information received by the IACHR appears to point to an increase in crimes of violence against women: for instance, there was a 26.3% increase in National Civil Police interventions in domestic violence cases.¹⁰² On this matter, the PDH told the IACHR that "the statistics regarding these crimes would need to be confirmed at the end of the year," because there were upsurges in violence after the Government lifted the state of emergency in September 2020.¹⁰³

79. The IACHR acknowledges the progress made with bringing rates of violence down in Guatemala in first half 2020. However, given the lack of information available on preventive public policies implemented by the State in the area of citizen security, the Commission considers that compliance with this recommendation is still pending.

80. As for the recommendation to **strengthen the PNC and withdraw the armed forces from citizen security duties**, the Guatemalan State stressed that, in accordance with the Innovation Plan, it had inaugurated new facilities in the National Civil Police's Special Skills

¹⁰⁰ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 17; Ministry of the Interior, "[Tasa de Homicidios a nivel nacional en 2020 continúa a la baja](#)", August 13, 2020.

¹⁰¹ The overall incidence of crime includes offenses registered by the PNC, which cover: cases of extortion, robbery, larceny, assault and battery, homicide, rape, and domestic violence, but not forced disappearances as they are not defined as a crime. PNUD Info Segura, [Analysis of the State of Violence and Citizen Security. First Semester 2020](#), October 1, 2020, p. 11.

¹⁰² PNUD Info Segura, [Analysis of the State of Violence and Citizen Security. First Semester 2020](#), October 1, 2020, pp. 11 ff.

¹⁰³ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, p.14.

Academy, which boasts classrooms for up to 32 students, a forensic and crime scene lab, dormitories for up to 40 women and 108 men, an electric power plant, a 17, 500 gallon water tank, and a waste water treatment plant.¹⁰⁴ It also pointed out that it was planning to recruit 3,000 new police officers, but that there had been delays in the selection process because the COVID-19 pandemic had prevented the gathering together of candidates for talks to prepare them for the job.¹⁰⁵

81. For its part, the PDH pointed out that the PNC did not recruit new members, despite having 60 million quetzales set aside to train new police officers in 2020. It also stated that the PNC reduced the number of officers assigned to its Professional Responsibility Office (ORP) from 675 to 644. The head of the ORP, however, considers that that Office needs to increase its current staff by 25% and that it needs to receive special training to fulfill its functions.

82. The State pointed out that citizen security tasks are mainly being performed by the Civilian National Police (PNC) and that participation by the Armed Forces has merely complemented them for limited periods of time in certain territories during states of emergency.¹⁰⁶ In this regard, the PDH indicated that there are no public protocols for coordination between police and army units on citizen security matters and, in particular, as a way to ascertain the extent of their participation during states of emergency. That would constitute failure to comply with the 2012 National Security Policy, which provided for the development of inter-agency intervention protocols.¹⁰⁷

83. In addition, the IACHR heard about the declaration of a state of emergency in the municipalities of Nahualá, Santa Catarina Ixtahuacán, and Santa Lucía Utatlán on May 30, 2020, as a result of conflicts ("*conflictividad*") between the inhabitants of Nahualá and those of Santa Catarina Ixtahuacán and because of the alleged illegal presence of arms in Santa Lucía Utatlán.¹⁰⁸ Later on, in July, Congress approved a request by the Executive to extend that state of emergency by another 30 days in the municipalities of Santa Catarina and Nahualá. According to the information available, between May 30 and June 24, the State reported arresting 97 people; 98 raids, six vehicles confiscated, and the seizure of arms and ammunition.¹⁰⁹

¹⁰⁴ The State reported that the Academy had modern technological equipment for teaching the 17 specialties pursued by the PNC. Courses would be provided in I.T, criminal investigation, techniques for combating cybercrime, enhancing citizen security, protecting human rights, and other subjects. Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 17.

¹⁰⁵ The State highlighted the fact that, to train a police officer 1,488 hours were devoted to training in human rights (240 hours to train an officer, 120 hours to train a deputy inspector, 120 hours to train an inspector, 192 hours to train a grade III officer (*Oficial III*), 72 hours to train a Grade II Officer, 72 hours to train a Grade I officer, 48 hours to train a deputy police commissioner, 72 hours to train a Commissioner, 48 hours to train a Commissioner General (*Comisario General*), and 72 hours to train candidates for jobs in any of the special police divisions. Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 17.

¹⁰⁶ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 17.

¹⁰⁷ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, p.12.

¹⁰⁸ "Mensaje del presidente @DrGiammattei desde Casa Presidencial" [Message from the President]. Twitter account of the Government of Guatemala (@GuatemalaGob) [Posted on May 30, 2020](#). Following that public announcement, Government Decree 10-2020 was published on the same day: May 30.

¹⁰⁹ El Periódico, "[Congreso pública prórroga de Estado de Sitio en municipios de Sololá](#)", July 9, 2020; La Hora, "[Congreso ratifica prórroga Estado de Sitio en dos municipios de Sololá](#)", June 27, 2020.

84. In that setting following the declaration of a state of emergency, civil society organizations complained of efforts to bring criminal charges against human rights defenders, of arbitrary arrests, and other abusive actions by members of the Army and the Civilian National Police. They also argued that those acts were disproportionately harming the indigenous population, women, and children.¹¹⁰

85. In addition to condemning these acts, the IACHR repeatedly told the Guatemalan State that emergency measures had to abide by international legal requirements. Moreover, those measures do not amount to a sustainable and effective response for addressing and resolving social or political conflicts.¹¹¹ Indeed, according to Article 27 of the American Convention, States may take measures temporarily derogating from their obligations "in the event of war, public danger, or other emergency that threatens the independence or security of a State Party." The adoption of such "states of exception" are exceptional and must be tailored to the needs of a situation being dealt with in a reasonable manner, without going beyond what is strictly necessary, so as to avoid extensions, disproportionate responses, or the misuse or abuse of power, because the arbitrary use of such states leads to the impairment of democracy and the curtailment of a series of human rights established in the American Declaration.¹¹²

86. Finally, the IACHR reiterates that it is essential to clearly distinguish between the functions pertaining to the armed forces, which are restricted to the defense of the nation's sovereignty, and those pertaining to the police forces, who alone are responsible for citizen security. The obligations entered into by States demand public policies on security and fighting crime that accord priority to a functional and efficient institutional structure. That structure must guarantee for the population the effective exercise of human rights relating to the prevention and control of violence and crime, including organized crime.¹¹³ For that reason, Guatemala needs to avoid militarizing public security and to continue taking the steps needed to bolster the PNC. In light of the above, the IACHR considers that compliance with this recommendation is still pending.

87. As for the recommendation to **ensure the regulation and effective oversight of private security firms and their agents**, the State told the IACHR that, through October 10, 2020, the General Directorate for Private Security Services had registered 158 private security providers and 20,064 private security agents. It also stressed that said Directorate supervises those firms in accordance with domestic regulations.¹¹⁴ On August 17, 2020, it conducted a webinar on Employer Obligations with respect to Health, Workplace Security, and Employers' Obligations, targeting providers of private security services. The PDH, for its part, reported that it has no updated information on measures implemented by the State to address this recommendation.¹¹⁵

¹¹⁰ UDEFEGUA, [Pronunciamiento "Rechazo al estado de sitio en tres municipios de Sololá, Guatemala"](#), July 3, 2020.

¹¹¹ IACHR Twitter Account (@CIDH). [Posted on June 15, 2020](#).

¹¹² I/A Court H.R., Habeas Corpus in emergency situations, Advisory Opinion OC-8/87 of January 30, 1987; judicial guarantees in states of emergency, Advisory Opinion OC-9/87 of October 6, 1987.

¹¹³ IACHR, [The Human Rights Situation in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 96.

¹¹⁴ Decree 52-2010, Law regulating private security services; Enabling regulations to the law, Government Decision 417-2013; Amendments to the in-house rules of procedure of the Ministry of the Interior, Government Decision 218-2012; In-house rules of procedure of the General Directorate for Private Security Services, Government Decision 219-2012.

¹¹⁵ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, p.12.

While the Commission observes a slight decline in the number of registered private security agents compared to the previous year, the State did not provide further information regarding actions taken to comply with this recommendation. Therefore, the IACHR considers that compliance with this recommendation is still pending.

88. As regards the recommendation to **adopt specific measures to address the issue of lynching in the country**, the State did not provide the IACHR with updated information. The PDH, for its part, stated that there is no public policy for addressing this issue.¹¹⁶

89. In 2020, the Mutual Support Group (GAM) reported that at least 1,757 lynchings had taken place nationwide between January 2008 and May 2020, resulting in the deaths of 361 people. Between January and June 2020, the organization registered 27 lynchings, leaving two people dead and 25 seriously injured. According to the information available, lynchings are a consequence of discontent among the population and of rejection of the Civilian National Police, the Public Prosecutors' Office, and the Judiciary.¹¹⁷ In one of the latest cases registered, on June 6, 2020, the IAHR condemned the violent death of Domingo Choc Chec, in the village of Chimay, Petén, who was burned alive after being accused of practicing witchcraft.¹¹⁸ The Public Prosecutors' Office is reportedly investigating the case with a view to throwing light on what happened and four individuals have allegedly been arrested.¹¹⁹

90. In light of the above and given the lack of information from the Guatemalan State on measures adopted to address and prevent lynchings in the country, the IACHR considers that compliance with this recommendation is still pending and urges the State to strengthen existing actions and take all other steps needed to foster significant reductions of these occurrences in Guatemala.

E. Specific Segments of the Population

Children and Adolescents

- With respect to the high rate of child institutionalization, implement measures to do away with institutionalization and review legislation, policies and practices to bring them into line with international standards, particularly, reinforcing social policies of support to families in order to help them to provide adequate care for their children, as well as social policies aimed at ensuring rights, such as health, education and nutrition, and taking into account the best interests of the child.

¹¹⁶ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, p.12.

¹¹⁷ El Periódico, "[Los linchamientos se mantienen en Guatemala pese a la pandemia](#)", July 29, 2020; La Vanguardia, "[Al menos 1.757 linchamientos han sucedido en Guatemala entre 2008 y 2020](#)", July 30, 2020.

¹¹⁸ IACHR Twitter account (@CIDH), [Publication of June 9, 2020](#).

¹¹⁹ Twitter account of the Public Prosecutors' Office (@GuatemalaGob) [Posted on June 7 2020](#).

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

91. As regards the recommendation to **implement measures to do away with child institutionalization and review legislation, policies and practices to bring them into line with international standards**, the IACHR observes that there are three components addressed in this recommendation, namely: (i) doing away with institutionalization; reviewing legislation, policies and practices to bring them into line with international standards; and (iii) in particular, reinforcing social policies of support to families in order to help them to provide adequate care for their children, as well as other social policies aimed at ensuring rights, such as health, education and nutrition, and taking into account the best interests of the child.

92. On this matter, the IACHR was informed that, in July 2020, at least 3,715 children and adolescents remained institutionalized in 147, public and private, "protection homes" (*hogares de protección*).¹²⁰ That amounts to a significant increase over the number in 2019, when the Commission was told of 715 institutionalized children and adolescents nationwide.¹²¹ Following the tragedy at the Virgen de la Asunción Home for Girls in March 2017, the Secretariat for Social Welfare of the Office of the President (SBSP) established at least 21 residential home, housing at least 812 children and adolescents.¹²² According to the information available, a 12-year-old girl died at one of these homes in June 2020.¹²³

93. The IACHR received information to the effect that the living conditions in these homes for children and adolescents are precarious. Many of them are reportedly still overcrowded and suffering from inadequate profiling (*perfilación inadecuada*) by the professionals making up the multidisciplinary team, causing emotional instability in some of the children and adolescents, conflicts among them and behavior jeopardizing their physical, psychological, and emotional integrity and development.¹²⁴ The IACHR was also apprised of disorientation due to judicial proceedings being held in other parts of the country; problems derived from lack of ties to the nuclear family; prolonged institutionalization; d lack of expertise with handling children with psychiatric issues or children addicted to psychoactive substances;

¹²⁰ La Hora, Press release, "[Guatemala con 3,715 niños y niñas en 147 hogares ¿Qué hacemos?](#)", August 6, 2020.

¹²¹ IACHR, Annual Report 2019, [Chapter V, Second Report on Follow-Up on Recommendations issued by the IACHR in its Report on the Situation of Human Rights in Guatemala](#), par. 113.

¹²² El Diario de Centroamérica, Press release "[SBS fortalece protocolo para protección en residencia de niñas, niños y adolescentes](#)", May 15, 2020. La Hora, Press release, "[A tres años del incendio que mató a 41 niñas; evasiones y denuncias persisten en casas de SBS](#)", March 3, 2020.

¹²³ La Hora, Press release, "[Guatemala con 3,715 niños y niñas en 147 hogares ¿Qué hacemos?](#)", August 6, 2020.

¹²⁴ La Hora, Press release, "[A tres años del incendio que mató a 41 niñas; evasiones y denuncias persisten en casas de SBS](#)", March 3, 2020.

and a lack of updated evaluations for treating children and adolescents needing psychological care with appropriate pharmaceuticals.¹²⁵

94. Prompted by the COVID-19 health emergency, the SBSP announced preventive measures, evaluated by its medical personnel, to contain the spread of COVID-19 in residential institutions.¹²⁶ Those sanitation measures would cover hygiene, such as frequent hand washing and taking temperatures every two hours. For its part, the PDH reported that the homes were complying with prevention and care protocols required by the pandemic.¹²⁷

95. The IACHR has not observed progress in terms of family law legislation or measures to do away with the institutionalization of children and adolescents since the adoption of its most recent report on the situation of human rights in Guatemala.¹²⁸ As for the lack of family support measures and social policies, the IACHR notes with concern the increase in the number of severe malnutrition cases in the country. As of July 2020, the National Food and Nutritional Security Information System reported 17,195 cases of acute malnutrition in children aged 0 to 5, which would be more than double the number for the same period in 2019.¹²⁹ According to the Ministry of Public Health and Welfare Services, 66% of cases -- some 11,350 children -- are found in children aged between 6 months and 2 years.¹³⁰ The departments with the highest chronic malnutrition indices are Escuintla, with 2,250 cases (a rate of 245.7 cases per 10,000 inhabitants), San Marcos, with 2,571 cases (158.1 cases per 10,000 inhabitants), El Progreso, with 280 cases (128.3 cases per 10,000 inhabitants), and Zacapa, with 315 cases (102.6 per 10,000 inhabitants)¹³¹. On the other hand, the number of reported child deaths from malnutrition fell from 19 in the first half of 2019 to 11 in the same period in 2020.¹³² According to UNICEF Guatemala, on average, some 40 children and adolescents are orphaned in Guatemala, as a result of the violent death of one or both parents.¹³³ In light of the above, the IACHR concludes that the present recommendation has been partially complied with.

96. Regarding the recommendation **to clearly regulate measures involving the removal of a child from his or her family for reasons of protection, on an exceptional basis and for the shortest length of time possible**, the Guatemalan State pointed out that the purpose of the Rules of Procedure adopted on September 10, 2010 for applying protective measures to

¹²⁵ La Hora, Press release, [“A tres años del incendio que mató a 41 niñas; evasiones y denuncias persisten en casas de SBS”](#), March 3, 2020.

¹²⁶ El Diario de Centroamérica, Press release [“SBS fortalece protocolo para protección en residencia de niñas, niños y adolescentes”](#), May 15, 2020.

¹²⁷ Government of Guatemala, the Secretariat for Social Welfare of the Office of the President of the Republic (SBSP), [“PDH confirma que SBS cumple con protocolos por COVID-19 en residencias de Protección”](#), June 13, 2020.

¹²⁸ IACHR, Situation of Human Rights in Guatemala, December 31, 2017.

¹²⁹ La Hora, Press release, [“Hay 17 mil casos de desnutrición aguda; más del doble que el 2019”](#), July 20, 2020. The Ministry of Health explained that the increase in cases was due to "a change in the measurement system implemented as of 2020. This does not mean that there are more cases, which cannot be confirmed, because the tool used to input data is different from that used years ago." No more information was provided as to whether the change is in the methodology for measuring, or only in "the tool used" to transfer the data automatically. La Hora, Press release, [“Hay 17 mil casos de desnutrición aguda; más del doble que el 2019”](#), July 20, 2020.

¹³⁰ La Hora, Press release, [“Hay 17 mil casos de desnutrición aguda; más del doble que el 2019”](#), July 20, 2020.

¹³¹ Government of Guatemala, Desnutrición aguda en menores de 5 años, hasta la 26ta semana epidemiológica. [Severe malnutrition in children under 5, up to the 26th epidemiological week. La Hora, Press release, [“Hay 17 mil casos de desnutrición aguda; más del doble que el 2019”](#), July 20, 2020.

¹³² La Hora, Press release, [“Hay 17 mil casos de desnutrición aguda; más del doble que el 2019”](#), July 20, 2020.

¹³³ La Hora, Press release, [“40 niños/niñas quedan en orfandad diariamente”](#), September 3, 2020.

children deprived of their family environment by courts competent to handle matters relating to rights of the child is to align judicial practice with the system for the comprehensive protection of children and adolescents, in the application of measures to provide protection and provisional shelter to children and adolescents deprived of their family environment.¹³⁴ Article 11 of those Rules of Procedure establishes the following:

*[Separation from the nuclear family] is a measure that must be regarded as a last resort, after all possibilities of the child or adolescent being looked after by his or her biological family, extended family, or another family have been exhausted. The competent judge shall see to it that the measure providing protection and shelter in public or private institutions devoted to caring for children and adolescents must be declared provisional and shall not exceed six months, as priority must be given to uniting the child with her or his biological family, extended family, or integrated into an adoptive family as a permanent solution.*¹³⁵

97. According to the information available, there are at least two 21 protection homes in which no fewer than 812 children and adolescents are currently institutionalized. According to data provided by the SBSP itself, around 90% of the children and adolescents in those institutions have families and ended up in those institutions for a variety of reasons ranging from violation of their rights, the need to provide them with State protection, and as a result of an order issued by a competent judge.¹³⁶ The IACHR notes that for a high percentage of children and adolescents in protective care homes separation from their families is the norm. In light of the above, the IACHR considers that compliance with this recommendation is still pending.

98. As regards the recommendation to **adopt public policies and legislative measures to implement a true model of full implementation of all rights of all children and adolescents**, the State pointed out that, since 2016, it has been working on the draft Management System for Comprehensive Care for Children and Adolescents to ensure that each complaint filed with the system is addressed in a comprehensive and disciplinary manner by "Rapid Response Teams," made up of a lawyer, a judicial assistant, a psychologist, a social worker, and a research specialist.¹³⁷ The main purpose of the system, according to the State, is to restore children's and adolescents' rights and ensure their all-round development within the nuclear or extended family, and to give them an opportunity to reframe their own future.¹³⁸

¹³⁴ Government of Guatemala, Secretariat for Foreign Affairs, Report by the State of Guatemala on compliance with the recommendations issued in the report entitled "Situation of Human Rights in Guatemala", adopted by the IACHR on December 31, 2017, to be included in the "Annual Report of the Inter-American Commission on Human Rights, Chapter V," October 23, 2020, p. 22.

¹³⁵ Government of Guatemala, Secretariat for Foreign Affairs, Report by the State of Guatemala on compliance with the recommendations issued in the report entitled "Situation of Human Rights in Guatemala", adopted by the IACHR on December 31, 2017, to be included in the "Annual Report of the Inter-American Commission on Human Rights, Chapter V," October 23, 2020, p. 22.

¹³⁶ La Hora, Press release, "[A tres años del incendio que mató a 41 niñas; evasiones y denuncias persisten en casas de SBS](#)", March 3, 2020.

¹³⁷ Government of Guatemala, Secretariat for Foreign Affairs, Report by the State of Guatemala on compliance with the recommendations issued in the report entitled "Situation of Human Rights in Guatemala", adopted by the IACHR on December 31, 2017, to be included in the "Annual Report of the Inter-American Commission on Human Rights, Chapter V," October 23, 2020, p. 23.

¹³⁸ Government of Guatemala, Secretariat for Foreign Affairs, Report by the State of Guatemala on compliance with the recommendations issued in the report entitled "Situation of Human Rights in Guatemala", adopted by the IACHR on

99. In addition, the State reported that the SBSP has the "Temporary Foster Families" program, which protects children and adolescents whose rights have been violated by placing them temporarily with a family in the best interests of the child, while respecting each child's social and cultural context and attempting to achieve family reunification or unification.¹³⁹ It further reported that in October 2019, the PGN adopted the Handbook of Rules and Procedures of the Inter-Agency Care Department of the Office of the Director of the Ombudsman's Office for Children and Adolescents,¹⁴⁰ which aims to set standards and supervise guidelines and procedures that promote the preservation of family unity and family reunification.¹⁴¹

100. The IACHR also received information to the effect that the system for comprehensive protection of the rights of children and adolescents in Guatemala had long been deficient and that, as a result of the COVID-19 health emergency, revealed even worse shortcomings.¹⁴² In particular, the Commission received information indicating that the State bodies responsible for this work, including those in the justice and health sectors, lack sufficient resources; in fact, some of their units are not even operating. Thus, the Commission heard of calls by the Guatemalan Congress for the State authorities responsible for children's rights to review their budgets and to focus on improving living conditions for the country's children and adolescents.¹⁴³ As of September 30, 2020, the Ministry of Health and Social Welfare had recorded 2, 596 COVID-19 infections among children and adolescents, and 30 deaths.¹⁴⁴

101. For its part, the PDH reported that no progress had been made with adopting public policies and legislative measures to establish a model for comprehensively guaranteeing the rights of children and adolescents and that there is still no authority in charge of public policies for children and adolescents, which makes it harder to pursue an all-round approach to the advancement of their rights. The PDH added that Congress still has not passed Bill No. 5285, which seeks to establish a System for the Comprehensive Protection for Children and Adolescents in Guatemala.¹⁴⁵ That being so, the PDG has called upon the State to expedite the setting up of the

December 31, 2017, to be included in the "Annual Report of the Inter-American Commission on Human Rights, Chapter V," October 23, 2020, p. 23.

¹³⁹ Government of Guatemala, Secretariat for Foreign Affairs, Report by the State of Guatemala on compliance with the recommendations issued in the report entitled "Situation of Human Rights in Guatemala", adopted by the IACHR on December 31, 2017, to be included in the "Annual Report of the Inter-American Commission on Human Rights, Chapter V," October 23, 2020, p. 23.

¹⁴⁰ PGN, "[Manual de Normas y Procedimientos Aprobado por el Procurador General de la Nación Según Acuerdo 146-2019](#)", October 23, 2019.

¹⁴¹ PGN, "[Manual de Normas y Procedimientos Aprobado por el Procurador General de la Nación Según Acuerdo 146-2019](#)", October 23, 2019.

¹⁴² CONACMI, "[2do Sondeo sobre el cumplimiento de los derechos de la niñez en Guatemala, en tiempos de COVID 19](#)", July 2, 2020, p. 9.

¹⁴³ Congreso de la República de Guatemala [Guatemalan Congress], "[Protección y bienestar de los niños y niñas del país, prioridad pe la actual IX Legislatura](#)", October 1, 2020.

¹⁴⁴ Procuraduría de Derechos Humanos [Office of the Ombudsman for Human Rights] [@PDHgt] (October 01, 2020). *En el marco de la conmemoración del Día del Niño@ el @PDHgt @JordanRodas manifiesta su preocupación porque la niñez y adolescencia enfrentan graves vulneraciones a sus #DerechosHumanos. Recomienda al @GuatemalaGob impulsar la creación del Sistema Nacional Protección de NNA* [Tweet]. Twitter. <https://twitter.com/PDHgt/status/1311661847309807616?s=20>

¹⁴⁵ Procuraduría de Derechos Humanos [Office of the Ombudsman for Human Rights] [@PDHgt]. (October 01, 2020). *En el marco de la conmemoración del Día del Niño@ el @PDHgt @JordanRodas manifiesta su preocupación porque la niñez y adolescencia enfrentan graves vulneraciones a sus #DerechosHumanos. Recomienda al @GuatemalaGob impulsar la creación del Sistema Nacional Protección de NNA* [Tweet]. Twitter. <https://twitter.com/PDHgt/status/1311661847309807616?s=20>. Congreso de la República de Guatemala [Guatemalan Congress], "[Protección y bienestar de los niños y niñas del país, prioridad pe la actual IX Legislatura](#)", October 1, 2020.

National System to Protect Children and Adolescents as the central authority responsible for safeguarding their rights.¹⁴⁶ The Commission notes that the State has reported that it has been moving forward with that system since 2016; however, it has not yet been established.¹⁴⁷ In light of the above, the IACHR considers that compliance with the present recommendation is still pending.

102. Regarding the recommendation to **put an end to the model of residential institutions for children and adolescents**, inasmuch as it runs counter to international standards, the State of Guatemala reported that it had implemented various measures to avoid institutionalizing children and adolescents as well as programs geared to ensuring that children whose rights are impaired for a variety of reasons are integrated into a family environment and not an institutional home/shelter.¹⁴⁸ According to the State, the Office of the Attorney General (*Procuraduría General de la Nación* - PGN) has implemented the "Management System for Care for Children and Adolescents," as a measure to avoid institutionalizing them by opting to locate and place them in a suitable family setting.¹⁴⁹

103. The IACHR has received information pointing to an increase between 2019 and 2020 in the number of institutionalized children and adolescents in Guatemala, be it in "safe protection homes" (hogares seguros de protección) or "residential houses" (casas residenciales). As of the date this Report was drawn up, reportedly there were more than 3,700 children and adolescents in homes and residential houses in Guatemala,¹⁵⁰ most of them in the latter.

104. Accordingly, the IACHR took note of the statement by the SBSP, who in March 2020 acknowledged the existence of overcrowding in the homes and voiced his intention not to open more homes because of the need to make changes to the system and thanks to the strengthening of the Temporary Foster Families Program.¹⁵¹ The IACHR also took note that, in December 202, the SBSP inaugurated a new residence, continuing the institutionalized child care model.¹⁵²

¹⁴⁶ Procuraduría de Derechos Humanos [Office of the Ombudsman for Human Rights] [@PDHgt] (October 01, 2020). *En el marco de la conmemoración del Día del Niño@ el @PDHgt @JordanRodas manifiesta su preocupación porque la niñez y adolescencia enfrentan graves vulneraciones a sus #DerechosHumanos. Recomienda al @GuatemalaGob impulsar la creación del Sistema Nacional Protección de NNA* [Tweet]. Twitter. <https://twitter.com/PDHgt/status/1311661847309807616?s=20>

¹⁴⁷ Government of Guatemala, Secretariat for Foreign Affairs, Report by the State of Guatemala on compliance with the recommendations issued in the report entitled "Situation of Human Rights in Guatemala", adopted by the IACHR on December 31, 2017, to be included in the "Annual Report of the Inter-American Commission on Human Rights, Chapter V," October 23, 2020, p. 23.

¹⁴⁸ Government of Guatemala, Secretariat for Foreign Affairs, Report by the State of Guatemala on compliance with the recommendations issued in the report entitled "Situation of Human Rights in Guatemala", adopted by the IACHR on December 31, 2017, to be included in the "Annual Report of the Inter-American Commission on Human Rights, Chapter V," October 23, 2020, p. 22.

¹⁴⁹ Government of Guatemala, Secretariat for Foreign Affairs, Report by the State of Guatemala on compliance with the recommendations issued in the report entitled "Situation of Human Rights in Guatemala", adopted by the IACHR on December 31, 2017, to be included in the "Annual Report of the Inter-American Commission on Human Rights, Chapter V," October 23, 2020, p. 23.

¹⁵⁰ La Hora, Press release, "[Guatemala con 3,715 niños y niñas en 147 hogares ¿Qué hacemos?](#)", August 6, 2020.

¹⁵¹ La Hora, Press release, "[A tres años del incendio que mató a 41 niñas; evasiones y denuncias persisten en casas de SBS](#)", March 3, 2020.

¹⁵² Government of Guatemala, Secretariat for Social Welfare of the Office of the President of the Republic (SBSP), "[Se estrena residencia con espacios abiertos y dignos](#)", December 9, 2020.

105. Based on the information it received, the IACHR observes backsliding with respect to compliance with this recommendation, compared to 2019. Therefore, the IACHR considers that compliance with this recommendation is still pending.

Women

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

106. Regarding the recommendation to **take decisive action to ensure access to justice for all women victims of violence and discrimination**, the State reported that, through the Institute for Care and Assistance for Women Victims of Crime, it is seeking to prepare mechanisms and policies to afford protection to women victims and strengthen referral, crime prevention, and victimization reduction networks. It also indicated that the Public Prosecutor's Office for Crimes against Women (*Fiscalía de la Mujer*) of the National Public Prosecutors' Office (*Ministerio Público*) provides specialized care from the moment a complaint is filed and has a Comprehensive Care Model used by a multidisciplinary team comprised of psychologists, social workers, women doctors, and prosecutors. In its report, the State also pointed out that women can use digital tools, such as the Panic Button, and can call 1572, to denounce all kinds of violence and cases of missing women, with a view to triggering an immediate search for them under the Isabel-Claudina Alarm law. Finally, through Circular 7-2020, the Public Prosecutors' Office adopted the roadmap for responding to complaints by rape (72 hours) or sexual assault victims during the COVID-19 pandemic state of emergency; as well as the roadmap for receiving complaints from women victims of physical and psychological violence.¹⁵³

107. In 2020, the IACHR observed widespread violence against women in all its manifestations. According to the data received, as of October 25, 2020, the Public Prosecutors' Office had registered 48,036 complaints of violence against women, including 17,774 cases of physical violence, 26,188 cases of psychological violence, 144 cases of economic/financial violence, and 354 femicides. In addition, there were 6,317 reports of rape, 3,136 cases of sexual assault, and 878 cases involving other sexual crimes against women, children, and adolescents.¹⁵⁴ As pointed out by the Women's Observatory in the Public Prosecutors' Office, "the crimes most

¹⁵³ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, pp. 18 and 19.

¹⁵⁴ Guatemalan Women's Group (Grupo Guatemalteco de Mujeres—GGM) and No Violence against Women Network (Red de la No Violencia contra las Mujeres—REDNOVI), Seguimiento sobre el cumplimiento de las recomendaciones Informe Situación de los Derechos Humanos en Guatemala [Follow-up on compliance with the recommendations of the Report on the Situation of Human Rights in Guatemala, pp. 2 ff.

frequently reported to Guatemala's Justice System are cries against children and women. In 2020, one third (33%) of all complaints concerned those two groups."¹⁵⁵ For its part, the National Forensic Sciences Institute (INACIF) reported that, between January 24 and October 2020, there had been 2,740 medical examinations of women victims of physical violence; 1,625 medical examinations in psychological violence cases; and 7,126 expert appraisals were conducted in connection with crimes of sexual violence. Of all those evaluations, 82% were practiced on girls, adolescents and persons of up to 30 years of age, which shows that young women are the principal targets of sexual violence.¹⁵⁶

108. In connection with the thematic hearing on "Sexual violence, forced pregnancies, and access to health care during the COVID-19 pandemic," civil society organizations complained that the measures to contain the spread of COVID-19 had a disproportionate negative impact on Guatemalan girls, adolescents, and women owing to the ban on public transportation services and the shutting-down of specific health care services. Through October 2020, more than 77,847 pregnancies were registered in girls and adolescents aged between 10 and 19, in a year when the number of unreported cases was allegedly higher. They also complained of a lack of measures to ensure effective access to justice in cases of sexual violence against women and girls.¹⁵⁷

109. For his part, the Human Rights Ombudsman told the IACHR about flaws in the Guatemalan State's response to cases of disappeared girls and women. He pointed out that, in 2020, the Ministry of Finance had failed to allocate the budget needed by the Public Prosecutors' Office to hire personnel to work full-time for the Directorate and Executive Secretariat of the Immediate Search for Missing Women Mechanism, thereby undermining the institutional progress made in the Public Prosecutor's Office for Crimes against Women with respect to care for women victims of violence. The lack of budget was allegedly also an obstacle to drawing up an institutional plan, to the assignment of sufficient and qualified personnel, and to the formation of local search teams to guarantee fast and effective procedures for prompt location of missing women.¹⁵⁸

110. The PDH also voiced its concern regarding the under-reporting of cases of missing women in the database of the Immediate Search for Missing Women Mechanism run by the Public Prosecutors' Office. According to the PDH, even though more indicators were now being incorporated into this database, there were still high levels of under-reporting of data on the ethnic origin, languages, occupation, nationality, and marital status of the women reported as missing. That reportedly made it harder to analyze the differential impact of this phenomenon on women from different peoples and areas in Guatemala, as well to analyze institutional, criminal analysis-related actions to address and prevent the disappeared women problem.¹⁵⁹

¹⁵⁵ Observatory of Women of the Public Prosecutors' Office, 2020.

¹⁵⁶ Guatemalan Women's Group (Grupo Guatemalteco de Mujeres—GGM) and No Violence against Women Network (Red de la No Violencia contra las Mujeres—REDNOVI), Seguimiento sobre el cumplimiento de las recomendaciones Informe Situación de los Derechos Humanos en Guatemala [Follow-up on compliance with the recommendations of the Report on the Situation of Human Rights in Guatemala, pp. 2 ff.

¹⁵⁷ IACHR, Public Hearing, [Sexual violence, forced pregnancies, and access to health care](#), PS No. 177, October 8, 2020, virtual.

¹⁵⁸ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, p.16.

¹⁵⁹ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, p.12.

111. Finally, the PDH reported a lack of coordination among Guatemalan State entities. In particular, the Judiciary allegedly failed to cooperate enough with the Public Prosecutors' Office to enable the latter to take all necessary steps to immediately look for and locate missing women. The Ministry of Foreign Affairs was also reportedly failing to respond to requests for information by the Public Prosecutors' Office regarding possible transborder movements of women reported as missing, which would jeopardize investigations geared to avoiding possible transfers of women to other countries.¹⁶⁰

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

113. Regarding the recommendation **to promote political participation of women and, in particular, indigenous and Afrodescendent women, in decision-making positions through the design and implementation of affirmative action measures**, the State reported that the Electoral Institute has the Department for the Political Advancement of Women (*Departamento de Promoción Política de la Mujer*), as well as others, such as the Departments of Social Inclusion, Promotion of Civic Commitment, Electoral Training and Civic Education, Inner Training, and Virtual Training (*Inclusión Social, Promoción Cívica, Capacitación Electoral y Educación Cívica, Capacitación Interna y Capacitación Virtual*), all of which are geared to fostering Guatemalan women's political participation. The State also reiterated the information it provided in 2019 regarding progress made between the General Elections of 2015 and those of 2019, when there was a 3 percentage point increase in the total number of women candidates.¹⁶¹ Given the lack of substantive progress with implementing this recommendation, the IACHR considers that compliance with it is still pending.

114. Regarding the recommendation **to include sexual crimes in all reparation and justice policies for victims of the armed conflict, in connection with the National Reparations Plan (PNR), and to design reparation measures so that the PNR can seriously address, without any discrimination, reports of sexual violence**, the State did not provide up-to-date information regarding compliance with this recommendation. Nor did the IACHR identify relevant information pointing to any progress in this regard. Therefore, compliance with this recommendation is still pending.

¹⁶⁰ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, p.12.

¹⁶¹ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, pp. 18 and 19.

Indigenous Communities

- Prior to granting concessions, licenses or permits for the exploration or exploitation of natural resources that affect the ancestral lands or territories of indigenous peoples and communities, carry out a prior, free and informed consultation, with a view to obtain consent, in keeping with Inter-American standards on the subject, and taking into account the characteristics, practices and customs of the indigenous peoples and communities involved.
- With respect to concessions previously granted or in the process of implementation, establish a mechanism to be able to assess the need for a change in the terms thereof in order to preserve the physical and cultural survival of indigenous communities and peoples. Adopt the measures necessary to ensure that the indigenous peoples and communities that have been suffering the effects of projects with no consultation have access to mechanisms that enable them to mitigate those effects and make adequate reparation for them in a culturally appropriate manner.
- Adopt immediate measures to protect collective intellectual property of indigenous women with regard to apparel and designs that represent their traditional identity.

115. Regarding the recommendation to carry out a prior, free, and informed consultation prior to granting concessions, licenses, or permits for the exploration or exploitation of natural resources that affect the ancestral lands or territories of indigenous peoples and communities, in 2020 the State informed the IACHR about courses of action by the Ministry of Energy and Mines to bolster opportunities for dialogue with indigenous authorities regarding mining and energy projects and capacity-building for officials regarding prior consultation.¹⁶²

116. According to the State, it began talks in February 2020, to follow up on commitments entered into during consultations with the Q'eqchi' people in 2017 concerning the Oxec I and Oxec II hydroelectric project. Also in February 2020, it had made overtures to the authorities of the Xinca People regarding the consultation process ordered by the Constitutionality Court with respect to the El Escobal mining project. The State also reported having met with authorities of the Ixil indigenous people of San Juan Cotzal with a view to initiating consultations.¹⁶³ As mentioned above, there were delays in following up on these meetings owing to restrictions imposed in connection with the COVID-19 pandemic.

117. The State also provided information regarding a series of training courses for Ministry of Energy and Mines personnel and officials in other government bodies regarding interpretation and conduct of prior consultation under ILO Convention No. 169 and about intercultural dialogue.¹⁶⁴ The State also reported that, given the lack of a legal framework governing consultations with indigenous peoples and bearing in mind the judgments handed down by the CC in this field, the State was drawing up Rules of Procedure for consultations with indigenous peoples. Also being drawn up was a proposal regarding the high-level institutional

¹⁶² Report of the State of Guatemala on Compliance with Recommendations issued in the Report on the "situation of human rights in Guatemala" approved by the IACHR on December 31, 2017, pp. 24.

¹⁶³ Report of the State of Guatemala on Compliance with Recommendations issued in the Report on the "situation of human rights in Guatemala" approved by the IACHR on December 31, 2017, pp. 24-5.

¹⁶⁴ Report of the State of Guatemala on Compliance with Recommendations issued in the Report on the "situation of human rights in Guatemala" approved by the IACHR on December 31, 2017, pp. 25-6.

arrangements to be put in place to oversee prior consultation processes with indigenous peoples.¹⁶⁵

118. The IACHR observes that the State has not provided information about actual consultations prior to the granting of natural resource exploration or mining concessions, licenses, or permits. While it is true that the State refers to talks in preparation for conducting consultations, the IACHR notes that the projects referred to were precisely those sued before the Constitutionality Court for failure to engage in prior consultations, resulting in the Court ordering consultations in respect of those and other projects that were consulted in advance.

119. At the same time, the IACHR takes note of information indicating that natural resource mining projects are continuing in indigenous territories without proper consultation processes and that they are violating the rights of indigenous peoples to their land, territories, ways of life, and forms of social organization. The OHCHR has pointed to delays in complying with the judgments of the Constitutionality Court ordering consultations regarding an energy project in the Ixil region and regarding the San Rafael mine, which affects the Xinca people.¹⁶⁶

120. Regarding the State's reference to the lack of a prior consultation law and initiatives to embark on and regulate one, the IACHR issues a reminder of the importance of these legislative or regulatory initiatives being duly consulted with the indigenous peoples. The IACHR takes note of information to the effect that several attempts by the State to regulate prior consultation had been rejected by the indigenous people because those attempts themselves had not been consulted with them in advance. According to a report by the Ombudsman for Human Rights (PDH), some indigenous peoples' authorities had asserted that the State must respect the community consultation processes carried out by the indigenous peoples themselves using their own organizational procedures and exercising their right to self-determination, particularly when those processes result in a rejection of extractive industry or hydroelectric or other projects on their territories. In addition, other authorities consider that what needs to be consulted is the mechanism to be used to approach indigenous communities with a view to conducting consultations, paying heed to indigenous peoples' different forms of organization.¹⁶⁷

121. The IACHR reiterates that the right to consultation includes, as a fundamental component, the right of indigenous peoples to be consulted regarding, and to participate in, the conduct of the consultation process to which they are entitled.¹⁶⁸ It also issues a reminder that prior consultation is not a tool for mitigating social conflict, but rather a procedure for ensuring

¹⁶⁵ Report of the State of Guatemala on Compliance with Recommendations issued in the Report on the "situation of human rights in Guatemala" approved by the IACHR on December 31, 2017, pp. 26.

¹⁶⁶ OHCHR, [Report of the United Nations High Commissioner for Human Rights on the situation of Human Rights in Guatemala](#), A/HRC/43/3/Add.1, 17 January 2020, para. 58.

¹⁶⁷ PDH, [Report by the Guatemalan Human Rights Ombudsman presented to the United Nations Committee on the Elimination of Racial Discrimination during the country review \(session 98/2019\)](#), March 2019, p. 10.

¹⁶⁸ IACHR. "Situation of Human Rights in Guatemala" OEA/Ser.L/V/II. December 31, 2017, par. 110. Citing I/A Court H.R., *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, paragraph 181. I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 133 to 137. I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008, Series C No. 185, par. 17.

the effective exercise of self-determination, with regard to activities carried out on the indigenous peoples' ancestral land and territories or that have an impact on the natural resources they contain. The conducting of consultations must respect that right and avoid reducing it to a mere formality that ignores the specific characteristics of the indigenous people or community concerned.¹⁶⁹ In light of the above, the IACHR concludes that compliance with this recommendation is still pending.

122. With respect to the recommendation about **amending the terms of the concessions granted or being implemented, and mitigating and making reparation for their impacts**, the State of Guatemala told the IACHR about a series of actions by different State entities in support of indigenous peoples in connection with the COVID-19 pandemic. However, it did not report any specific progress toward complying with this recommendation. For its part, the PDH pointed out that Congress still has not passed the Indigenous Peoples Law, required under Article 70 of the Constitution. It also emphasized its concern at the State's acquiescing to the excessive exploitation and use of the natural resources found in the territories of the indigenous peoples. As the PDH puts it, "the shortcomings of environmental impact studies result in a lack of guarantees to prevent damage to the environment; moreover, no account is taken of potential social impacts on the indigenous peoples, that is to say the direct impact on their identity and world view (*cosmovisión*)."¹⁷⁰

123. The IACHR remains concerned regarding the information it has received indicating that environmental impact studies (EIS) do not in fact guarantee mitigation of the environmental and social damage done by companies and that the Ministry of the Environment and Natural Resources (MARN) has not paid serious heed to the rights of indigenous peoples to manage their environment.¹⁷¹ The Commission notes the point made by the Human Rights Ombudsman that this is because EIS do not accurately reflect the negative impacts caused in the places in which projects are authorized.¹⁷²

124. The IACHR takes note of the information received regarding grave risks triggered by climatic events in areas in which hydroelectric projects have operated and the lack of Environmental Management and Contingency Plans that take those climatic impacts and appropriate mitigation measures into account. Thus, Maya communities in the Yichk'iss (Ixquis) microregion have warned about the risk posed by the increased water levels in the river (río Grande de Ixquis) and flooding in areas where there are infrastructure works related to the currently abandoned San Mateo and San Andrés hydroelectric projects. The Maya communities have complained of changes in the volume of water flow in rivers in the region ever since the start of hydroelectric project works.¹⁷³ The projects are the subject of claims filed with the Inter-American Development Bank's Independent Consultation and Investigation Mechanism (MICI), with which complaints have also been filed regarding the failure to conduct a full assessment of social and environmental impacts, the lack of proper consultation processes, water source

¹⁶⁹ IACHR, "[Situation of Human Rights in Guatemala](#)" OEA/Ser.L/V/II. December 31, 2017, par. 110.

¹⁷⁰ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, p.21.

¹⁷¹ IACHR, Annual Report 2019, *Chapter V, Second Report on Follow-Up on Recommendations issued by the IACHR in its Report on the Situation of Human Rights in Guatemala*, par. 139.

¹⁷² PDH, [Report by the Guatemalan Human Rights Ombudsman presented to the United Nations Committee on the Elimination of Racial Discrimination during the country review \(session 98/2019\)](#). March 2019, p. 10.

¹⁷³ AIDA, [Comunidades mayas, en riesgo por eventos climáticos agravados por proyectos hidroeléctricos](#), November 25, 2020.

contamination, impairment of sacred sites, and impacts on subsistence activities (with specific different impacts on indigenous women), and stepped up social conflict.¹⁷⁴

125. The IACHR reiterates that the obligation to establish mechanisms to evaluate changes to the terms of concessions granted or being implemented is rooted in the territorial rights of the indigenous peoples, inasmuch as it constitutes a fundamental prerequisite for the practice of their culture, spiritual life, and economic survival.¹⁷⁵ The Commission likewise reiterates that indigenous peoples "have the right to effective measures to mitigate adverse ecological, economic, social, cultural, or spiritual impacts of the implementation of development projects that affect their rights."¹⁷⁶ They are likewise entitled to reparation for damage done to their land, territories, and natural resources that have been confiscated, taken, occupied, used, or damaged without their free, prior, and informed consent.¹⁷⁷ In light of the above, the IACHR considers that compliance with this recommendation is still pending.

126. As regards the recommendation to adopt **measures to protect collective intellectual property of indigenous women with regard to apparel and designs that represent their traditional identity**, the IACHR points out that the State did not provide up-to-date information.

127. According to the 2019 OHCHR annual report, published in January 2020, following the judgment handed down by the Constitutionality Court in 2017 (case file no. 112 2016), which recognized the cultural rights of indigenous weavers over their textile designs, the National Council of Women Weavers and some indigenous deputies in Congress advocated for a law to protect the collective intellectual property rights of indigenous women weavers.¹⁷⁸

128. The IACHR issues a reminder that indigenous peoples have the right to full recognition and respect for the ownership, dominion, possession, control, development, and protection of their tangible and intangible cultural heritage and intellectual property, including its collective nature.¹⁷⁹ It also again points out that indigenous women are known as the guarantors of their culture. Accordingly, States must respect, protect, and provide guarantees for their traditional knowledge and forms of expression, irrespective of the forums or activities in which they are carried on.¹⁸⁰ In light of the above, the IACHR considers that compliance with this recommendation is still pending.

¹⁷⁴ IDB, Summary of [MICI-CII-GU-2018-0136](#).

¹⁷⁵ IACHR, Annual Report 2019, *Chapter V, Second Report on Follow-Up on Recommendations issued by the IACHR in its Report on the Situation of Human Rights in Guatemala*, par. 141; IACHR Arguments before the Inter-American Court of Human Rights in the Case of Sawhoyamaxa v. Paraguay. Cited in: I/A Court H.R. Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Judgment of March 29, 2006. Series C No. 146, par. 113.a

¹⁷⁶ American Declaration on the Rights of Indigenous Peoples. AG/RES. 2888 (XLVI-O/16) (2016), Article XXIX.5.

¹⁷⁷ United Nations Declaration on the Rights of Indigenous Peoples. Adopted by General Assembly resolution 61/295 (13 September 2007), Article 28.1.

¹⁷⁸ OHCHR, [Report of the United Nations High Commissioner for Human Rights on the situation of Human Rights in Guatemala](#), A/HRC/43/3/Add.1, 17 January 2020, para. 72.

¹⁷⁹ American Declaration on the Rights of Indigenous Peoples. AG/RES. 2888 (XLVI-O/16) (2016), Article XXVIII.1.

¹⁸⁰ IACHR, Annual Report 2019, *Chapter V, Second Report on Follow-Up on Recommendations issued by the IACHR in its Report on the Situation of Human Rights in Guatemala*, par. 144. IACHR, [Indigenous Women](#), par. 5.11.

Persons Deprived of Liberty

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

129. Regarding the recommendation **to implement in practice a model of juvenile justice that regards deprivation of liberty as a measure of last resort and for the shortest length of time possible, and with a rehabilitative instead of a punitive approach**, the State reported that the Secretariat for Social Welfare made a number of approaches to Juvenile Detention Centers and the Public Criminal Defender Institute (IDPP) with a view to seeking alternatives to incarceration for adolescents accused of other than life-threatening crimes. According to the information received, as of July 2020, 57 "evolving plans" (*planes evolutivos*) had been handed over to the Judge Overseeing Execution of Sentences of Adolescents at Odds with the Criminal Law for consideration of the possibility of changing deprivation of liberty to some other kind of punishment; in the end, 44 adolescents were spared incarceration.¹⁸¹

¹⁸¹ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 28.

130. Separately, the IACHR received information to the effect that in September 2020 an agreement had been signed, at the behest of the Public Prosecutors' Office, between the SBSP, the Judiciary, the Public Criminal Defender Institute, the National Forensic Sciences Institute, and several ministries to create a Juvenile Criminal Justice Comprehensive Care Model (MAIJU).¹⁸² The idea behind that model is to establish an inter-agency mechanism providing comprehensive, differentiated, culturally appropriate care, with a gender perspective, for adolescents at odds with the law, and to provide opportunities for those adolescents to reintegrate with society.¹⁸³ The IACHR takes note of the adoption of that agreement and hopes to receive information in due course about steps taken to put it into practice.

131. The IACHR also received information indicating that the juvenile justice system in Guatemala is still shaped by a military mentality advocating punishments that does not prioritize processes favoring a policy geared to providing comprehensive guarantees for the rights of children and adolescents.¹⁸⁴ Information provided by the Office of the Ombudsman for Human Rights refers, for instance, to excessive use of force by the Civilian National Police (PNC) against children and adolescents during public demonstrations all over the country.¹⁸⁵

132. Accordingly, the IACHR issues a reminder that this recommendation is geared to implementing in actual practice a juvenile justice system that does not accord priority to incarceration. It will therefore keep close track of implementation of the aforementioned agreement announced by the SBSP. The IACHR therefore considers that so far compliance with this recommendation has been partial.

133. Regarding the recommendation urging the State to **adopt measures required to correct the excessive use of pre-trial detention, promote alternative measures, and repeal any legal provisions ordering compulsory use of pre-trial detention for a particular type of offense**, the State reported that, with a view to preventing COVID-19 infections and reducing overcrowding in prisons, as of July 2020, the Office of the Director General of the Penitentiary System (DGSP) had prepared 844 files on persons deprived of liberty which were presented to the Public Criminal Defender Institute (IDPP) and private legal representatives. Those files will be reviewed by the Sentence Execution Court (*Juzgado de Ejecución*), safeguarding the right to opt for early release. In addition, the DGSP approved the "COVID-19 Plan of Action" aimed at providing guidelines for preventing the spread of the coronavirus in prisons; diagnosing and providing prompt treatment for COVID-19 among the prison population and among the children under the age of 4 living with their mothers in penitentiaries; observing and monitoring

¹⁸² Secretariat for Social Welfare of the Office of the President of the Republic (SBSP), "Acuerdan implementar Modelo de Atención Integral de Justicia Penal Juvenil", September 8, 2020.

¹⁸³ Secretariat for Social Welfare of the Office of the President of the Republic (SBSP), "Acuerdan implementar Modelo de Atención Integral de Justicia Penal Juvenil", September 8, 2020.

¹⁸⁴ BICE, Oficina Internacional Católica de la Infancia, "Guatemala: Niñez sin rejas, niños en conflicto con la ley", June 11, 2020.

¹⁸⁵ Procuraduría de Derechos Humanos [Office of the Ombudsman for Human Rights]. Press release 251/20, "El Procurador de los Derechos Humanos, Jordán Rodas Andrade, condena el uso desproporcionado de la fuerza en contra de manifestantes pacíficos ayer en la Plaza de la Constitución y las detenciones y agresiones contra periodistas debidamente identificados, November 22, 2020.

cases and possible COVID-19 complications; lowering transmission of the virus among children deprived of liberty; and preventing the disease from spreading to visitors.¹⁸⁶

134. On October 9, 2020, the Ministry of the Interior approved a series of reforms to the New Penitentiary Management Model Unit (UNMGP), designed to regulate the use and implementation of computerized remote controls ("*Control Telemático*") to guarantee effective compliance with alternative measures, early release and parole. It also creates the Remote Oversight Center and the Remote Oversight Unit, also run by the UNMGP.¹⁸⁷ According to the PDH, implementation of remote oversight will help reduce overcrowding in the prisons administered by the Office of the Director General of the Penitentiary System.¹⁸⁸

135. While the IACHR acknowledges the steps taken by the Guatemalan State in connection with the COVID-19 pandemic to protect the life and integrity of persons deprived of liberty, in 2020 it observed still high pre-trial detention rates in the country's prisons. As of October 2020, all in all, 25,723 persons were deprived of liberty, 13,096 of whom were serving sentences, while 12,627 (1,529 women and 11,098 men) were in pre-trial detention.¹⁸⁹ Furthermore, the Commission has not been informed of any actions taken to correct the excessive use of pre-trial detention and to repeal the provisions requiring mandatory enforcement of pre-trial detention for certain types of offense. Therefore, the IACHR considers that compliance with this recommendation is still pending.

136. As regards the recommendation to **strengthen public criminal defense systems**, the State pointed out that, owing to the failure to adopt the General State Revenue and Expenditure Budget for Fiscal Year 2020, the funding established in the previous fiscal year continues in effect.¹⁹⁰ Thus, the funds allocated to the Public Criminal Defender Institute (IDPP) once again totaled Q217,354,000.00. Although there was no increase in the budget, the State underscored that, in first half 2020, there was a 11.6% decline in the number of cases handled and counseling sessions provided by the IDPP, compared to the previous year. In particular, there were 1,842 (5.0%) fewer cases of persons tried for crimes or misdemeanors, and there were 2,990 (65.4%) fewer cases of caring for victims and or members of their families. According to the information received, the reason for the decline in cases and services is that Courts and Tribunals are not functioning as regularly as they used to because of the COVID-19 pandemic.¹⁹¹

¹⁸⁶ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 28.

¹⁸⁷ Ministry of the Interior (*Ministerio de Gobernación*), [Ministerial Decision No. 200-2020](#), October 5, 2020, Article 3 bis.

¹⁸⁸ Human Rights Ombudsman (PDH), Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," received on October 23, 2020, p.22.

¹⁸⁹ Updated information on persons deprived of their liberty in the penitentiary system. Twitter Account of the Office of the Director General of the Penitentiary System (@DGSP). [Posted on October 05, 2020](#).

¹⁹⁰ Adopted by Governmental Decision No. 321-2019 of the Ministry of Finance, containing the breakdown of the budget pursuant to Congressional Decree No. 25-2018, Law of the General Revenue and Expenditure Budget of the State for Fiscal Year 2019, in effect for fiscal year 2020 (*con vigencia para el ejercicio fiscal 2020*). Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 29.

¹⁹¹ . Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 29.

137. For its part, the PDH reported a lack of support for the IDPP in terms of the technological resources and professional personnel required to adequately address all the criminal cases assigned to it. It also told the IACHR that, thanks to coordinated work by the two institutions and coordination with the Office Coordinating and Supervising Defense Attorneys (*Coordinadora y Supervisión de Defensores de Ejecución Penal*), by October 2020 more than 578 releases had been achieved by expediting remission of sentence cases processed by the IDPP.¹⁹²

138. Given the lack of concrete steps toward implementing this recommendation, the Commission concludes that compliance with it is still pending.

139. With respect to the recommendation to **implement judicial and prison information management systems at all detention facilities of the country, in order to correct the lack of an automated and unified system of registry of the proceedings of persons deprived of liberty**, the State did not present substantive information. For its part, the PDH pointed out that in 2020 it recommended to the body coordinating modernization of the justice system that there should be inter-agency coordination between the Public Criminal Defender Institute (IDPP), the Judges of the Judiciary's First Multi-person Sentencing Court, public prosecutors in the Public Prosecutors' Office (*Ministerio Público*), and its own Case Files Unit (*Unidad de Expedientes*), with a view to establishing an I.T. platform to oversee the proceedings of all persons deprived of liberty and the strategies needed to expedite sentence remission processes.¹⁹³

140. The IACHR observes that Guatemala has still not implemented an automated and consolidated judicial and penitentiary information management system, capable of registering all proceedings involving persons deprived of liberty and regrets that no progress toward implementing such a system has been made. The IACHR therefore considers that compliance with this recommendation is still pending.

141. As for the recommendation to implement on-premise hearings at prison facilities, in 2020 the Judiciary adopted Decision 35-2020, "Rules of Procedure governing Hearings in Real Time via Electronic Audiovisual Communication Media."¹⁹⁴ According to the information available, that Decision precludes criminal case hearings (*exceptúa el ramo penal*). The IACHR therefore considers that compliance with this recommendation is still pending.

142. With regard to the recommendation to **ensure that persons deprived of liberty are transferred from police stations and military bases to detention facilities meeting the minimum conditions compatible with the rights of persons deprived of liberty**, the State of Guatemala acknowledged that it is continuing to face major hurdles in that area, "so that urgent assessments are being conducted to identify among detainee populations those most

¹⁹² Human Rights Ombudsman (PDH), Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," received on October 23, 2020, p.23.

¹⁹³ Human Rights Ombudsman (PDH), Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," received on October 23, 2020, p.23.

¹⁹⁴ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, pp. 29 and 30.

exposed to risk, taking all especially vulnerable groups into account; reducing inmate populations and others deprived of liberty, wherever possible, by applying early, provisional, or temporary release of detainee regimes in cases in which it is safe to do so, fully bearing in mind appropriate non-custodial measures, as provided for in the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)."¹⁹⁵

143. Regarding compliance with this recommendation, the PDH underscored the need to allocate a sufficient budget to the Office of the Director General of the Penitentiary System with a view to improving conditions in Preventive and Sentencing Centers; hiring more administrative and operational personnel in prisons; and providing prison guards with the minimum conditions needed for them to perform their functions with dignity. The PDH also stressed that a revamping of detention center infrastructure is still needed, as it has been in a state of collapse for more than 20 years. Reportedly, at least the four regional sentencing centers to which the Guatemalan State committed itself in the Penitentiary Regime Law should be implemented in order to overcome the excess prison population and overcrowding problem.¹⁹⁶ Based on the information available, the IACHR concludes that compliance with this recommendation is still pending.

144. Regarding the recommendation urging the State to **change Guatemalan law against money laundering and the Criminal Code as indicated by the Commission**, the IACHR did not receive information regarding measures or progress registered by the Guatemalan State to comply with this recommendation. Therefore, the IACHR concludes that the recommendation has not been implemented.

Persons with Disabilities

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

145. As regards the recommendations to **investigate ex officio and punish those responsible for any violation of the personal integrity of persons with disabilities at**

¹⁹⁵ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 30.

¹⁹⁶ Human Rights Ombudsman (PDH), Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," received on October 23, 2020, p.24.

psychiatric institutions, and to establish an independent mechanism to oversee the institutionalization of patients at the Federico Mora Hospital in order to protect against acts of torture or mistreatment, in general, the Guatemalan State indicated that persons with disabilities at the “Dr. Federico Mora” Mental Health Hospital received appropriate treatment for their illnesses from medical staff specializing in psychiatry, neurology, internal medicine, and psychology, and from social workers, rehab personnel, and experienced nurses.¹⁹⁷

146. The Guatemalan State also provided information about measures adopted at the Dr. Federico Mora hospital in connection with the COVID-19 emergency. According to the information available, from the start of the pandemic, it activated alarms and took steps to prevent patients being exposed to the virus, following guidelines issued by the Ministry of Public Health and Social Welfare. It also reported that an Emergency Committee was formed that included doctors and other professionals at the Hospital and, together with the Risk Committee and Executive Board, coordinated actions to prevent cases.¹⁹⁸ A Risk Management Committee took over on April 21, 2020 to follow-up on the Hospital's in-house measures.¹⁹⁹ Finally, the State underscored the adoption of the following plans and protocols: the “Dr. Federico Mora” Mental Health Hospital's COVID-19 Emergency Plan; the “Dr. Federico Mora” Mental Health Hospital's COVID-19 Strategic Plan; the Protocol for Preventing COVID-19 Infections of the Penitentiary Psychiatry Unit; and the “Dr. Federico Mora” Mental Health Hospital's Penitentiary Psychiatry Unit Protocol for preventing, addressing, and treating COVID-19 infections.

¹⁹⁷ The State stressed that the hospital has resident doctors doing 24-hour shifts and a lead specialist on call to handle night-time, weekend, and holiday emergencies. In the event of pathologies that cannot be handled by the Hospital's own staff, patients are referred to emergency units at public hospitals following a protocol for presenting cases to the heads of the appropriate departments. Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 31.

¹⁹⁸ The State reported that initial actions taken during the prevention phase included: setting up the screening clinic; shutting down outpatient consultations; strict oversight of triage areas; a ban on visiting inpatients; a ban on entry of persons from outside the hospital; mandatory use of masks inside the institution; use of alcohol in gel; the fitting out of disinfection areas at the entrance to service departments; checks of any suspect symptoms in patients; daily meetings and coordinations with the Epidemiology Unit, the Emergency Committee, and the Risk Committee. Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, pp. 31ff.

¹⁹⁹ According to the State, considered it risky that the “Dr. Federico Mora” Mental Health Hospital employs nurses who also work in other institutions (more than half the paramedics), despite such measures as: stricter and more spaced-out shifts; a ban on rotation from one service to another; a ban on payment for shifts; detection of the personnel at highest risk (working in COVID-19 departments in different hospitals) and their assignment to services with less contact with inpatients, and the priority attaches to the use of protective gear. Follow-up measures included: setting up of a COVID-19 service department in the rehab area; activation of the Institutional Red Alert; activation of the Emergency Operations Center; activation of prevention protocols; detection and suspension of personnel with suspect symptoms; quarantining at home of personnel reported to have close contacts with COVID patients; disinfection of departments and areas; inter-agency coordinations for COVID-19 diagnose; screening of suspect patients; setting up of a COVID-19 service department in the rehab area; drawing up of a protocol for suggesting pharmaceuticals to treat COVID-19 patients; the use of complete protective gear for medical and paramedical personnel working in COVID areas; coordination with the Epidemiology Unit to classify departments free from COVID-19, based on national protocol criteria; rotation of medical staff to diminish the risk of infection; rotation and shifts for administrative personnel to lower risk and optimize the use of equipment for administrative staff to lower risk and optimize the use of personal protection kits; the introduction of cleaning of terminals (*terminales*) every 2 weeks, in all service departments, including entrance and administrative areas; monitoring and reporting of symptoms of patients in the COVID-19 area; coordination to tighten the monitoring and reporting of symptoms in patients; and the purchase of 50 antibody tests to be used on patients with symptoms. Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, pp. 31ff.

147. For its part, the PDH reported that no progress is being made toward the passing of a National Mental Health Law, as a result of which certain problems persist in Guatemala, such as the failure to assign responsibilities in the area of mental health and the dearth of proper mechanisms for protecting and providing preventive treatment for persons with disabilities. In February 2020, the PDH took steps to monitor the functioning and quality of services provided at the Federico Mora Hospital, as well as compliance with precautionary measures granted by the IACHR. It found that the following issues still need to be resolved: training in the custody of persons deprived of liberty who have mental disabilities; punishments for prison officers who break the rules; and the establishment of an independent mechanism as envisaged in the Convention on the Rights of Persons with Disabilities.²⁰⁰

148. The IACHR observes a lack of progress toward compliance with this recommendation. Therefore, the IACHR considers that compliance with this recommendation is still pending.

149. In connection with the recommendation to **create and establish community-based services for the patients of the Federico Mora Hospital, on the basis of the following measures: a) expeditiously define a strategy for the de-institutionalization of persons with disabilities, with a timeline, sufficient resources and specific evaluation measures; b) ensure the participation of persons with disabilities, directly and through the organizations representing them, in the design and implementation of said strategy, and c) allocate sufficient resources for the development of support services**, in 2020, the State did not provide information specifically relevant to compliance with this recommendation. For its part, the PDH pointed out that a roadmap for the de-institutionalization of persons with disabilities does exist; however, little has been done to implement it, above all for lack of political will on the part of such entities as the Secretariat for Social Welfare of the Office of the President and the National Council for Attending to Persons with Disabilities.²⁰¹ In light of the above, the IACHR concludes that compliance with this recommendation is still pending.

Human Rights Defenders

- Approve and implement on an emergency basis a public protection policy for human rights defenders. This policy should include implementation of a comprehensive protection program, and incorporate a model of risk assessment to make it possible to determine the particular protection needs of each defender, using, for example, a gender perspective or a focus on groups in an especially vulnerable situation.
- Hold public hearings or interviews where citizens, civil society organizations and other interested parties are able to learn the selection criteria of operators of justice, as well as challenge candidates and express their concerns or their support, in order to strengthen the independence of the operators of justice holding the high-level positions in the judiciary, the office of the prosecutor and the public defender's office.
- Adopt measures to ensure that operators of justice carry out their duties impartially and independently, respecting the principle of separation of powers and free of all threat or pressure. For this purpose, the State must strengthen the work of the

²⁰⁰ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, p.12.

²⁰¹ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, p.12.

Crimes against Operators of Justice Unit by recognizing the importance of its function in protecting the right of access to justice, as well as to due process.

- Ensure that the authorities or third parties do not manipulate the punitive power of the State and its organs of justice in order to harass human rights defenders and operators of justice. Likewise, authorities should refrain from making statements or assertions that stigmatize or discredit human rights defenders, journalists, ancestral authorities or leaders, who suggest that the authorities are acting improperly or illegally, when they are simply doing their job as human rights defenders. In this regard, the Commission calls on the State to advance in the drafting of guidelines against criminalization by the Office of the Attorney General.
- Ensure that human rights defenders are not subjected to criminal proceedings for unnecessarily summary and protracted periods of time. Additionally, the State of Guatemala should cease using arrest warrants as mechanisms of punishment or retaliation against human rights defenders.
- Take measures to prevent the use of criminal charges against human rights defenders aimed at keeping them from doing their job. Justice operators must consider, in response to the charges, whether or not the accused was acting in the capacity of a human rights defender, as well as the context of the facts, and in this way be able to identify whether the charges were used as a means of hampering their work as defenders. Likewise, the authorities in charge of the investigation of the crimes must make sure to gather the necessary evidence to determine whether there was unlawful conduct before they proceed to issue precautionary measures or formally open a case against the defenders.
- Establish specialized police and prosecutorial units with the necessary resources, training and specific investigation protocols in order to act in a coordinated fashion and respond with due diligence to the investigation of attacks on human rights defenders, establishing a hypothesis of the crimes and guidelines for the investigation thereof, taking into account vested interested that may have led to retaliation for the activities of the defender attacked. In this regard, the IACHR urges the State of Guatemala to adopt with urgency the General Instructions within the Office of the Public Prosecutor to guide prosecuting attorneys when investigating attacks on defenders.

150. Regarding the recommendation urging the State **to approve and implement on an emergency basis a public protection policy for human rights defenders that includes incorporation of a model of risk assessment to make it possible to determine the particular protection needs of each defender, adopting, for example, a gender perspective or a focus on groups in an especially vulnerable situation**, the State acknowledged that the policy formulation process " found itself inevitably suspended owing to the restrictions derived from the COVID-19 pandemic." Moreover, it stated that "it is analyzing the implications of the judgment by the Inter-American Court of Human Rights so as to better comply with it, in accordance with the desired participatory approach, republic model of government, and the rule of law. This process will be reactivated shortly and will be overseen by the Presidential Commission for Peace and Human Rights, COPADEH, in coordination with other State agencies."²⁰² For its part, the PDH reported

²⁰² Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, pp. 36 and 37.

that no progress was made in 2020 and that, since the start of President Giammattei's term, it had not been invited to follow-up meetings.²⁰³

151. The information at the IACHR's disposal also points to an increase in the number of attacks and assaults on human rights defenders in 2020. In particular, between January and September 2020, the Unit for the Protection of Human Rights Defenders of Guatemala (UDEFEFUGA) registered 844 attacks on defenders, mostly in the form of threats, surveillance, acts of intimidation, and harassment. That was said to represent a six-year high: 24 more cases than those registered in 2014 and 350 more than attacks in 2019.²⁰⁴ On December 15, the organization stated that the total had risen to 1,004 cases.²⁰⁵

152. In September, the IACHR condemned the murders of 8 human rights defenders in first half 2020. One of them, on June 6, 2020, according to information in the public domain, involved the burning alive in San Luis, Petén, of the q'eqchi indigenous leader and specialist in traditional Mayan medicine, Domingo Choc Che, who had been accused of witchcraft. On June 8, Alberto Cucul Cho, a land defender in Alta Verapaz, was murdered on his way to the Laguna Lachuá National Park, where he worked as a park ranger. On June 15, Medardo Alonzo Lucero, a defender of indigenous rights and territory and member of the La Cumbre ch'orti' community, in the municipality of Olopa, Chiquimula, was also murdered. Fidel López, a member of the Campeon Development Committee (CODECA) in the municipality of Morales, Izabal, was murdered on June 23. Abel Raymundo, a land and territory defender and deputy spokesperson (*Vocal II*) of the Lelá Chancó de Jocotán Community Council in Chiquimula, was murdered on July 20²⁰⁶

153. On August 10, Benoît Maria, a French citizen devoted to the defense of indigenous peoples in Guatemala, was also murdered in the Department of Alta Verapaz. The next day, August 11, Misael López Catalán was murdered. He was a community leader and member of CODECA in the Department of Jalapa. Carlos Mucú Pop, a q'eqchi' Maya indigenous leader in the community of Santa Rosa, Sayaxché, Petén, was murdered on August 16. In addition, community leader and pastor Carlos Enrique Coy has been reported missing since August 3, 2020.²⁰⁷ By the end of 2020, the IACHR warns with concern that the number of human rights defenders murdered was said to have risen to 15.²⁰⁸

154. On October 2, 2020, in connection with the public hearing "Impunity surrounding attacks and murders of defenders in Guatemala," the IACHR was told about

²⁰³ Human Rights Ombudsman (PDH), Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," received on October 23, 2020, p.24.

²⁰⁴ UDEFEGUA, "Aumento histórico en agresiones contra personas defensoras en Guatemala registra Udefegua", November 20, 2020.

²⁰⁵ Of the 1,004 total number of attacks, 338 (33.66%) were against human rights defenders; 530 (52.87%) against defenders; and 136 (13.54%) against collective bodies (*colectivos*), organizations, and/or communities. In that total, UDEFEGUA deploras 15 murders, and 22 attempted murders, of human rights defenders. UDEFEGUA, "[La consolidación autoritaria y el aumento de agresiones contra personas, organizaciones y comunidades defensoras de derechos humanos](#)", December 17, 2020.

²⁰⁶ IACHR, Press Release No. 215/20, [The IACHR Condemns Murders and Attacks Against Defenders in Guatemala](#). Washington, D.C., September 11, 2020.

²⁰⁷ IACHR, Press Release No. 215/20, [The IACHR Condemns Murders and Attacks Against Defenders in Guatemala](#). Washington, D.C., September 11, 2020.

²⁰⁸ UDEFEGUA, "Aumento histórico en agresiones contra personas defensoras en Guatemala registra Udefegua", November 20, 2020.

structural flaws in investigation, punishment, and reparation in cases involving assault and murder of human rights defenders, including a shortage of personnel in the Public Prosecutor's Office for Crimes against Activists and Defenders and the lack of training in how to enforce the national and international regulatory framework in that area. Civil society organizations likewise presented information regarding 52 cases of murders of human rights defenders documented between 2017 and 2019, two of which were archived and/or dismissed, 29 are still at the investigation phase, and only 6 have so far resulted in a conviction. The rest are at various stages in the criminal proceedings.²⁰⁹ Although, the Guatemalan State did not provide specific information regarding the figures cited during the hearing, it did say that it would send the IACHR information on the status of investigations into the reports of murders, assault, and threats. That information was delivered to the IACHR in a communication dated November 27, 2020.²¹⁰

155. According to that information, between 2017 and 2019, the Public Prosecutors' Office (MP) investigated 11 crimes against life and concluded that 4 involved murders, 6 homicide and coercion, and 1 severe injury. For its part, between January 1, 2019 and November 17, 2020, the Public Prosecutor's Office for Crimes against Activists recorded just one denunciation of murder, which was being investigated. In this regard, the State stressed that it has no idea regarding the source of the information presented to the IACHR and stated that it would be best to wait for the conclusion of the investigation and criminal prosecution process being conducted by the Public Prosecutor's Office for Human Rights (*Fiscalía de Derechos Humanos*) and its specialized agencies to determine whether the murder victims can be classified as human rights defender or if the motive for the crime had to do with their work. In the State's opinion, that assertion "does not cast doubt on the victims; it merely considers that while the investigation is under way, the Public Prosecutors' Office cannot for the time being accept those data as conclusions of the criminal investigation, but rather as a premise or important element that may contribute in certain aspect of the criminal investigation."²¹¹

156. As for the attack on human rights defenders, the State indicated that the information provided by the civil society organization does not specify individual cases in a way that would enable the State to report on them. In its own words: "the complexity underlying the complaint about criminal assault is being examined by the Criminal Analysis Directorate and the Directorate for Criminal Investigation of the Public Prosecutors' Office; given that UDEFEGUA has reported figures to the IACHR, the source for which is unknown to the State of Guatemala, they are being examined."²¹² For its part, between January 1, 2019 and November 17, 2020, the Public Prosecutors' Office recorded just one denunciation to the Public Prosecutor' Office for Human Rights of a criminal attack on a human right defender, which is currently at the investigation

²⁰⁹ Convergencia de Derechos Humanos, Report to the public hearing "Impunidad en las agresiones y asesinatos de personas defensoras en Guatemala", presented on October 2, 2020 in connection with the 177th period of session of the Inter-American Commission on Human Rights.

²¹⁰ State report amplified in connection with the 177th period of sessions on the Situation of Human Rights in Guatemala. Republic of Guatemala, Note NV-OEA-M4-No. 826-2020, November 27, 2020.

²¹¹ State report amplified in connection with the 177th period of sessions on the Situation of Human Rights in Guatemala. Republic of Guatemala, Note NV-OEA-M4-No. 826-2020, November 27, 2020. p.12

²¹² According to the Guatemalan State, the Investigation Oversight I.T. System in the Public Prosecutors' Office reports figures regarding complaints filed with the Public Prosecutors' Office (MP), based on information provided by district and municipal public prosecutor's offices throughout the republic. This could suggest that the Unit for the Protection of Human Rights Defenders of Guatemala (UDEFEGUA) used different crime classification systems to arrive at its figures for "attacks"; above all for defamation, of which UDEFEGUA reported 255 cases in 2020. State report amplified in connection with the 177th period of sessions on the Situation of Human Rights in Guatemala. Republic of Guatemala, Note NV-OEA-M4-No. 826-2020, November 27, 2020, p. 10.

phase, so that " it has not yet determined whether the ground for this complaint is that defender's work in defense of human rights." In that same period, the Public Prosecutor's Office registered 64 complaints of criminal attacks.²¹³

157. The IACHR issues a reminder that murders and other acts of violence against human rights defenders have a multiplier effect beyond the impact on the particular defender because, when the act of aggression is committed in reprisal for her or his activity, it has an intimidating effect on all those defending similar causes.²¹⁴ Accordingly, the State is duty-bound to take urgent steps to investigate acts of violence against defenders and to punish their perpetrators and instigators, as well as to prevent aggression and attacks against them. Those steps must include pursuing lines of inquiry under the hypothesis that the violence may have been perpetrated in connection with work in defense of human rights. Moreover, that investigation must be undertaken with due diligence, and be exhaustive, serious, and impartial.²¹⁵

158. The IACHR likewise reiterates to the Guatemalan State that a comprehensive policy of adequate and effective protection consists of adopting urgent measures to protect the life and integrity of defenders and pro-active steps to ensure the forging of contexts and environments free from violence and harassment. The State must likewise strive diligently to acknowledge the important part played by those who defend human rights in the forging of democracy and the rule of law, and it needs to foster recognition of that role in society as a whole.²¹⁶

159. In light of the above, the IACHR concludes that compliance with this recommendation is still pending. The IACHR calls upon the State to adopt whatever measures are needed to guarantee the right to life, integrity, and security of human rights defenders, especially indigenous leaders and defenders of land and territory who have been particularly hard hit by violence against such persons in Guatemala.²¹⁷

160. With respect to the recommendation to **hold public hearings or interviews where citizens, civil society organizations and other interested parties are able to learn the selection criteria of justice operators, as well as challenge candidates and express their concerns or their support, in order to strengthen the independence of the operators of justice holding the highest-level positions in the judiciary, the office of the prosecutor and the public defender's office**, the Guatemalan State pointed out that the judges and magistrates of the Supreme Court and Court of Appeals are selected and appointed as prescribed in the Constitution; the Law on Application Commissions (*Ley de Comisiones de Postulación* - Congressional Decree 19-2009); and the Judicial Career Law (Decree 32-2016 of the Guatemalan Congress), and in accordance with the principles of transparency, professional excellence,

²¹³ State report amplified in connection with the 177th period of sessions on the Situation of Human Rights in Guatemala. Republic of Guatemala, Note NV-OEA-M4-No. 826-2020, November 27, 2020, p. 11.

²¹⁴ IACHR, [Report on the Situation of Human Rights Defenders in the Americas](#), OEA/Ser. L/V/II.124 Doc. 5 rev.1, March 7, 2006, par. 43.

²¹⁵ CIDH, [Integral Protection Policies for Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 207/17, December 29, 2017, par. 14.

²¹⁶ CIDH, [Integral Protection Policies for Human Rights Defenders](#), OEA/Ser.L/V/II. Doc 207/17. December 2017, par. 344.

²¹⁷ IACHR, Press Release No. 215/20, [The IACHR Condemns Murders and Attacks Against Defenders in Guatemala](#). Washington, D.C., September 11, 2020.

objectivity, and disclosure (*publicidad*).²¹⁸ The IACHR analyzed the selection of justice operators in the section on recommendations with respect to the administration of justice. Based on that analysis, the Commission concludes that compliance with this recommendation is still pending.

161. Regarding the recommendation to **adopt measures to ensure that operators of justice carry out their duties impartially and independently, respecting the principle of separation of powers and free of all threat or pressure, strengthening to that end the work of the Crimes against Operators of Justice Unit by recognizing the importance of its function in protecting the right of access to justice, as well as to due process**, the State submitted no specific information on implementation of this recommendation. For its part, the PDH complained that "judicial independence has been seriously impaired by groups seeking to continue influencing the selection and election of court officers" and underscored, in particular, impairments of the independence of Constitutionality Court (CC) magistrates by the introduction of impeachment (*antejuicio*) requirements and improper use of personal exposure in reprisal for their work.²¹⁹

162. In 2020, the IACHR was told that fast-track processing and alleged abuse of the impeachment procedure against CC magistrates was designed to intimidate them and/or possibly remove them in reprisal for the criteria they have followed in their rulings, particularly in connection with the process of electing judges to the Supreme Court of Justice and Courts of Appeal of the Guatemalan judiciary. Accordingly, in communiqués on June 30²²⁰ and August 14,²²¹ the IACHR voiced its concern at the impeachment proceedings brought against the CC magistrates. Furthermore, on November 18, the IACHR was apprised of a new impeachment procedure brought before Congress against magistrate Gloria Patricia Porras Escobar and magistrate Francisco José de Mata Vela, both of whom are beneficiaries of precautionary measures granted by the IACHR. Subsequently, on November 30, the Congressional Board (*Junta Directiva*) convened an immediate plenary session to hear that matter "within the 8-day deadline" established by law. That same day, through a provisional amparo filed by the Office of the Ombudsman for Human Rights, the CC ordered the suspension of those proceedings and of

²¹⁸ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, pp. 13 ff.

²¹⁹ Human Rights Ombudsman (PDH), Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," received on October 23, 2020, p.27.

²²⁰ According to information in the public domain, on June 26, the Supreme Court of Justice of Guatemala admitted the procedure and ordered the remission to Congress of the impeachment proceedings against the Constitutionality Court magistrates: Gloria Porras, Bonerge Mejía, Francisco de Mata Vela, and Neftaly Aldana. Those proceedings reportedly sought to remove the judicial immunity protection that those justice operators are legally entitled to by virtue of their office. Essentially, the rationale for the impeachment proceedings was based on the allegation that the aforementioned magistrates had used arguments contrary to the Guatemalan Constitution in their resolutions in connection with the election of judges to the Supreme Court of Justice and Courts of Appeal of the Judiciary in Guatemala. The IACHR takes note of the provisional amparo granted by the Constitutionality Court, suspending the impeachment proceedings. IACHR, Press Release No. 156/20, [IACHR expresses concern for impeachment proceedings against four judges of the Guatemalan Constitutional Court](#), Washington, D.C., June 30, 2020.

²²¹ Based on information in the public domain, on August 7 the Public Prosecutors' Office (MP), decided, through the Public Prosecutor's Office for Administrative Offenses, to file new impeachment applications against the following judges of the Constitutionality Court: Bonerge Amílcar Mejía Orellana, Gloria Patricia Porras Escobar de Pacheco, José Francisco De Mata Vela, María Cristina Fernández García, José Mynor Par Usen, and Neftalí Aldana Herrera. According to the MP, those complaints had been filed for the following "possible crimes": violation of the Constitution, resolutions violating the Constitution, breaches of duty, influence peddling, unlawful association, disclosure of confidential or proprietary information, and malfeasance in office. The above was when they "issued a resolution on a matter they were inextricably part of." IACHR, [Press release no. 199/20, IACHR Urges Threats to the Independence of Constitutional Court Judges in Guatemala to Cease](#), Washington, D.C., August 14, 2020.

subsequent criminal proceedings against both magistrates. The IACHR was told that the impeachment proceeding in question had been filed "unusually quickly" by the CSJ.²²²

163. The State indicated in its observations on the draft report that "although it is true, complaints against some justices of the Constitutional Court have been filed and *antejuicio* proceedings [preliminary proceedings to ensure that there is probable cause to bring criminal charges against a judge or officer of the court] have been initiated, the State cannot run roughshod over international normative frameworks that it has ratified at a universal and regional level or its domestic legislation by depriving Guatemalans of exercising their right to file complaints when they deem there are acts that may constitute crimes, and even less so when this is done as part of citizen oversight that characterizes any democratic State." The State indicated that to prevent abuses in filing complaints against those who hold public office, the Constitution has provided for the legal construct of the *antejuicio* as a guarantee, the purpose of which is to prevent arrest and criminal court proceedings without there first being a decision by the competent authority that rules on whether prosecution should be brought. To this end, the relevant proceedings must take place in keeping with the provisions of the Law regarding *antejuicios*—i.e., Decree 85-2002 of the Congress of the Republic. Thus, the State pointed out, the petition for an *antejuicio* cannot be considered as a repressive measure against judicial independence.²²³

164. In connection with the impeachment proceedings, the Inter-American Commission reiterated to the Guatemalan State that international law prohibits establishing as grounds for disciplinary action or, in this case, impeachment, actions taken based on the legal opinion or criterion expounded by justice operators in a resolution in the exercise of their judicial function. Accordingly, the IACHR reiterates that one of the key aspects to consider in resolutions establishing sanctions against justice operators is that the investigations and disciplinary sanctions imposed may under no circumstances be substantiated by the legal judgment expressed in any of their resolutions.²²⁴

165. The Commission has established that the effective exercise of rights and freedoms in a democratic society requires a legal and institutional order in which the law prevails over the will of the rulers and of private individuals, and in which there are judicial controls on the constitutionality and legality of the exercise of public power. For that reason judges, unlike other government officials, enjoy more robust guarantees in exercising their judicial powers, especially independence in the performance of their functions. This guarantee acts as a corollary

²²² Observatorio de Independencia Judicial, [Nuevo antejuicio malicioso en contra de la CC](#), November 27, 2020.

²²³ In keeping with what has been reported, the abovementioned provisions stipulate that any petition for an *antejuicio* must be filed with a first-instance judge, who will present it to the Supreme Court of Justice so the latter may then send the petition to the competent body. In this specific case—i.e., justices of the Constitutional Court—the institution legally responsible for hearing the matter is Congress. The Congress is to create an investigative committee to review the case and determine whether the facts thereof provide sufficient evidence to deem that a crime has been committed—this, without prejudging guilt or innocence—to subsequently bring it to the full chamber of the Congress to rule on whether the *antejuicio* is admissible. For this purpose, a vote of two-thirds of all members of Congress is required. Accordingly, only after Congress decides whether there are grounds for an investigation, would criminal proceedings be brought and it would be the Ministry of Public Prosecution that determines the appropriateness of conducting said investigation. Furthermore, it would be the judicial branch, through first-instance judges, that would hear the facts that apparently constitute a crime and subsequent to the proceedings would issue the pertinent judgment, which could be a conviction or acquittal. Observations by the Guatemalan State to the Draft Chapter V Report, Follow-Up on Recommendations Issued by the IACHR in Its Country and Thematic Reports, Third Follow-Up Report on Recommendations Issued by the IACHR on the Human Rights Situation in Guatemala of 2017, Ref. NV-OEA-M4-No.087-2021, February 3, 2021, pp. 4 and 5.

²²⁴ IACHR, [Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/Ser.L/V/II. Doc. 44, December 5, 2013, par. 216.

to the right to access justice to which everyone is entitled and it translates for judges into an appropriate appointment process, irremovability from office, and a guarantee of freedom from pressure.²²⁵

166. In addition, in 2020, civil society organizations complained of stepped-up attacks and finger-pointing against FECCI personnel and the head of it, Juan Francisco Sandoval. One example of that was the establishment of a special Public Prosecutor's Office to investigate more than 40 complaints against him.²²⁶ They went on to say that the Public Prosecutors' Office was reportedly continuing to encourage the criminalization of other judges and independent public prosecutors who supported the work done by the CICIG in Guatemala. Thus far, seven public prosecutors investigating politically and financially influential criminal structures are said to have fled the country because of impairments of, and risks to, their personal security.²²⁷

167. Against this backdrop of acts of hostility, harassment, surveillance, and threats, on April 8, 2020, the President of the Inter-American Court granted protection measures for three public prosecutors in the Special Prosecutor's Office to Combat Impunity (FECCI).²²⁸ On September 2, 2020, the Inter-American Court decided to revoke said measures, when, in light of the principle of complementarity, it reviewed the information presented by the Guatemalan State about the protection measures provided to three prosecutors of the FECCI.²²⁹ The State highlighted this decision in its observation as a welcome development regarding the activities it has undertaken to protect the safety of judicial operators.²³⁰

²²⁵ IACHR, [Guarantees for the Independence of Justice Operators: Towards Strengthening Access to Justice and the Rule of Law in the Americas](#), OEA/Ser.L/V/II. Doc. 44, December 5, 2013, par. 24.

²²⁶ Plaza Pública, ["Hay 47 acusaciones contra Juan Francisco Sandoval. Esta es la lista de los que lo denuncian"](#), October 13, 2020. Insight Crime, ["Fiscal general de Guatemala arremete contra su propia fiscalía anticorrupción"](#), October 14, 2020; Impunity Watch, [Follow-up on IACHR recommendations on Guatemala](#), received on December 14, 2020.

²²⁷ Report presented at the Public Hearing, [The role of public prosecutor's offices in the protection of human rights in Latin America.](#), Hearing held on December 4, 2020 in connection with the 178th period of session of the Inter-American Commission on Human Rights.

²²⁸ Among other considerations, it deemed it essential to bolster "the security arrangements for Public Prosecutors "A" and "B" and to set up proper security arrangements for Deputy Prosecutor "C". Those security and protection details must be ideal and effective to counter the risks they currently face. They must be adopted by common accord and in coordination with the beneficiaries, and they should not be provided by security guards who, according to the beneficiaries, are involved and part of the threat. I/A Court H.R. Case of Ruiz Fuentes et al. v. Guatemala. Provisional Measures. Adoption of Urgent Measures. Order of the President of the Inter-American Court of Human Rights of April 8, 2020, paras. 28ff.

²²⁹ Among said measures the following are noteworthy: "(a) The three prosecutors of the FECCI have security details; (b) The security details are provided by the Ministry of Public Prosecution, as requested by the victims' representatives, and the State has pledged to continue doing this; (c) Agents of the Ministry of Government and the Civilian National Police are not part of these security details;(d) Recent risk analyses conducted have led to changes in the security details; and (e) Even when representatives allege that the security details have flaws or difficulties and that possible causes of risk have not been assessed, it is the responsibility of the State, in compliance with its obligation to protect the aforementioned prosecutors' human rights, to review these shortcomings and implement changes that are necessary to effectively protect them." I/A Court H.R., Case of Ruiz Fuentes et al. v. Guatemala. Request for Provisional Measures and Monitoring Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of September 2, 2020, paragraph 39.

²³⁰ Observations by the Guatemalan State to the Draft Chapter V Report, Follow-Up on Recommendations Issued by the IACHR in Its Country and Thematic Reports, Third Follow-Up Report on Recommendations Issued by the IACHR on the Human Rights Situation in Guatemala of 2017, Ref. NV-OEA-M4-No.087-2021, February 3, 2021, p. 3.

168. Later on, in a resolution on September 2, 2020, the I/A Court H.R. pointed out that threats and other acts against public prosecutors had increased as criminal investigations in the *Ruiz Fuentes v. Guatemala*. The Court likewise recognized the existence of a direct link between progress with the criminal investigation, involving former government officials, and the increased risk for those three public prosecutors in the FECI. That risk climbed in February 2020 following formal criminal indictment and the start of the intermediary phase of the proceedings against the accused.²³¹ Among other incidents, on February 10, 2020, when one of the prosecutors was on his way from his home to the Court to attend a hearing in the case, "the vehicle transporting him with his driver and a security officer was intercepted by two PNC patrol cars." Three policemen -- "acting in a hostile, aggressive manner, and pointing their weapon directly at the inside of the vehicle, ordered the driver to identify himself and all those inside to get out." One of the police officers said "that they were there on direct instructions from a vice-minister of the interior to arrest them. After being detained for a long time, finally, the police let them go on their way."²³²

169. One of the patterns reportedly exhibited with respect to the surveillance and constant tracking of public prosecutors is the publication on social networks of photographs taken when they are engaging in private activities or are in private residences abroad, and the dissemination even of photographs of them in their own homes. It has been said that, since 2019, one of the Twitter users said to regularly publish such photographs calls himself the "la Panel Blanca" [White Van], which has a heavy connotation of hostility and psychological harassment owing to the use of such vehicles in the commission of gross human rights violations in the past in Guatemala.²³³ On this, the Inter-American Court has itself ascertained the existence of publications that persistently threaten, denigrate, selectively harass, and incite hate through social networks, disparaging the work of prosecutors in the Special Prosecutor's Office to Combat Impunity (FECI) and making it, and the pile of --some still active -- criminal complaints filed, look delinquent.²³⁴

170. Finally, in 2020, the Inter-American Court of Human Rights ordered extra supervision of the judgment in the *Ruiz Fuentes* case, since it considered that the current hostilities against public prosecutors in the FECI "could trigger fear and mistrust among them and directly impair their investigative work." Accordingly, the Court recalled that "States, in order to guarantee due process, must facilitate all necessary means to protect operators of justice from harassment and threats that are intended to hinder the investigation, prevent the truth of the facts from being known and concealing those responsible for them, because, otherwise, they would have a threatening and intimidating impact on investigators, seriously impairing the

²³¹ I/A Court H.R. Case of Ruiz Fuentes et al. v. Guatemala. Request for Provisional Measures and Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 2, 2020, par. 32.

²³² I/A Court H.R. Case of Ruiz Fuentes et al. v. Guatemala. Request for Provisional Measures and Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 2, 2020, par. 6.

²³³ On this, see Inter-American Court of Human Rights, "Blanca Panel"[White Van] case (Paniagua Morales et al.) v. Guatemala, Judgment of March 8, 1998 (Merits).

²³⁴ In connection with the request for provisional measures, the State maintained that the aforementioned publications were an expression of the "exercise of the right to freedom of expression." Nevertheless, the Court stated that, inasmuch as it has been denounced that they derive from acts of surveillance and systematic harassment, it becomes necessary to avoid these acts becoming geared to frightening and intimidating prosecutors and disrupting their work. I/A Court H.R. Case of Ruiz Fuentes et al. v. Guatemala. Request for Provisional Measures and Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 02, 2020.

effectiveness of investigations. That becomes just another way to perpetuate impunity and prevent disclosure of the truth of what happened."²³⁵

171. Based on the above, the IACHR finds a lack of measures to ensure that justice operators go about their work impartially and independently. It therefore considers that compliance with this recommendation is still pending.

172. As regards the following three recommendations: **(i) Ensure that the authorities or third parties do not manipulate the punitive power of the State and its organs of justice in order to harass human rights defenders and operators of justice. Likewise, authorities should refrain from making statements or assertions that stigmatize or discredit human rights defenders, journalists, ancestral authorities or leaders, who suggest that the authorities are acting improperly or illegally, when they are simply doing their job as human rights defenders. In this regard, the Commission calls on the State to advance in the drafting of guidelines against criminalization by the Office of the Attorney General; (ii) Ensure that human rights defenders are not subjected to criminal proceedings for unnecessarily summary and protracted periods of time. Additionally, the State of Guatemala should cease using arrest warrants as mechanisms of punishment or retaliation against human rights defenders; (iii) Take measures to prevent the use of criminal charges against human rights defenders aimed at keeping them from doing their job and ensure that the authorities in charge of the investigation of the crimes must make sure to gather the necessary evidence to determine whether there was unlawful conduct before they proceed to issue precautionary measures or formally open a case against the defenders**, in general, the State indicated that "it acknowledges the important work they do, so that at no point were restrictions imposed on the exercise of their rights, a situation that ought not to be fudged or manipulated when criminal or unlawful acts are committed under the guise of fighting to protect human rights."²³⁶

173. In the period under review, the Commission ascertained the continuation of efforts to incriminate human rights defenders in order to restrict the work they do. According to the information received, in 2020, there were 65 acts of incrimination, including the filing of allegedly groundless complaints and unlawful arrest. Such acts and complaints are reportedly also leveled against social leaders, members of campesino organizations, and defenders of the environment and indigenous territories.²³⁷

174. Among other cases, the ACHR received information about community leaders Bernardo Caal and Samuel Choc, who are reportedly victims of criminal prosecution in reprisal for fighting for the rights of their peoples and the environment. According to the information available, Bernardo Caal Xol, a Q'eqchi' Maya community leader, was convicted in November 2018 on charges of aggravated robbery and illegal detentions. On November 30, 2018, he filed an appeal, which was resolved two years later owing to the unjustified refusal of 19 judges to hear the case. Moreover, in its resolution, the Court decided to increase his sentence to imprisonment. In the case of Samuel Choc, an indigenous authority in Las Mercedes, Chisec (Alta Verapaz)

²³⁵ I/A Court H.R. Case of Ruiz Fuentes et al. v. Guatemala. Request for Provisional Measures and Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 2, 2020, par. 41.

²³⁶ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, pp. 35.

²³⁷ Convergencia de Derechos Humanos, Report to the public hearing "Impunidad en las agresiones y asesinatos de personas defensoras en Guatemala", presented on October 2, 2020 in connection with the 177th period of session of the Inter-American Commission on Human Rights.

accused by the Tecnoservicio Agroindustria, S.A. palm oil company of aggravated unlawful land occupation (*usurpación agravada*), illegal detentions, and instigation to commit crime, his trial resumed on October 28. Reportedly, Samuel Choc's case was characterized by attacks, stigmatization, and racism on the part of the corporate plaintiff during the proceedings, with the acquiescence of the court.²³⁸

175. The IACHR also received information regarding persecution, surveillance, and defamation campaigns by both State and non-State entities, stigmatization, sexual violence, and incrimination against women human rights defenders. Thus, the IACHR was apprised of the case of María Cuc Choc, a woman defender of the rights to land and territory and of women's rights accused since 2018 by a private company of the crimes of illegal detention, threats, and aggravated encroachment (*usurpación agravada*). In 2020, she was put on trial for the same offenses. The whole process has allegedly been going on for three years, without her legal situation being resolved. According to information in the public domain, for more than 2 years and 8 months the hearings were unjustifiably suspended at the request of the private company's attorney²³⁹. Then, on June 18, 2020, human rights defender Helen Mack was also denounced for her work fighting impunity, and the proceeding before the public prosecutor reportedly continues to this day. On September 29, 2020, in connections with the previous day's commemoration of the decriminalization of abortion, Congressional deputies Julio Lainfiesta and Anibal Samayoa, together with the Asociación la Familia Importa (the Family Matters Association) filed a complaint against defenders of sexual and reproductive rights.²⁴⁰

176. The IACHR also received information about the alleged arbitrary detention and subsequent release of Mrs. Roxana Coronado, a teacher at the Human Rights Office of the Archbishopric of Guatemala (ODHAG), and of three family members of hers. According to the information received, on November 21 Mrs. Coronado was arbitrarily arrested by the PNC in connection with protests in the Plaza de la Constitución, in Guatemala City. According to the information available, the Public Prosecutors' Office (MP) asked that Mrs. Coronado and her next of kin be charged with the crimes of "unlawful attack" (*atentado*), breach of the peace (*desorden público*), "unlawful assembly and demonstrations," and "plundering cultural assets" (*depredación de bienes culturales*) and accused of having taken part in violent incidents in the Guatemalan Congress, even though they were not there at the time. On November 22, the judge declared that the charges of unlawful attack, breach of the peace, and unlawful assembly and demonstrations were groundless. Nevertheless, they were not released until the following day, November 23, when the judge also declared that there was also no merit to the charge of "plundering cultural assets."²⁴¹

²³⁸ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," received on October 30, 2020, pp. 11 ff.

²³⁹ La Cuerda, "[Dos años de retraso y cinco minutos de razonamiento: Juez envía María Cuc Choc a juicio](#)", September 12, 2020; Guatemalan Women's Group (Grupo Guatemalteco de Mujeres—GGM) and No Violence against Women Network (Red de la No Violencia contra las Mujeres—REDNOVI), Seguimiento sobre el cumplimiento de las recomendaciones Informe Situación de los Derechos Humanos en Guatemala [Follow-up on compliance with the recommendations of the Report on the Situation of Human Rights in Guatemala], October 28, 2020, pp. 12 ff.

²⁴⁰ Perspectiva, "[Denuncian promoción de aborto casero](#)", September 29, 2020; Guatemalan Women's Group (Grupo Guatemalteco de Mujeres—GGM) and No Violence against Women Network (Red de la No Violencia contra las Mujeres—REDNOVI), Seguimiento sobre el cumplimiento de las recomendaciones Informe Situación de los Derechos Humanos en Guatemala [Follow-up on compliance with the recommendations of the Report on the Situation of Human Rights in Guatemala], October 28, 2020, pp. 12 ff.

²⁴¹ OMCT, "[Guatemala: Detención arbitraria y posterior puesta en libertad de la Sra. Roxana Coronado y tres miembros de su familia](#)", November 26, 2020.

177. The Commission reminds the Guatemalan State that incriminating human rights defenders poses a complex dilemma (*obstáculo complejo*), particularly since it impairs the free exercise of defense of human rights in various ways.²⁴² Thus, owing to the nature of the impairments entailed when unjustified criminal suits are filed against defenders, a State indulging in that practice may find itself internationally responsible for violating several rights protected under inter-American instruments, when it fails to honor its obligations to respect and guarantee rights involved by virtue of the incrimination.²⁴³

178. Finally, the IACHR observes that practices involving the stigmatization of human rights defenders in order to discredit their work continue to this day. For example, on April 16, 2020, the landowners' association (*Asociación de Finqueros*) of Alta Verapaz published a communique linking the Campesino Highlands Development Committee (CCDA) and its leader, Mrs. Lebia Artola, to organized crime. They also insinuated that the Committee had ties to organizations that use violent methods to defend their interests.²⁴⁴ In that regard, the Commission reiterates that repeated stigmatizing statements may exacerbate hostility and intolerance in various segments of the population, which could threaten the life and personal integrity of a defender, increasing his or her vulnerability, because government officials or some sectors in society could interpret them as instructions, incitement, authorization, or support for attacks on a defender's life, bodily integrity, or other rights.²⁴⁵

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

180. As regards the recommendation to **establish specialized police and prosecutorial units with the necessary resources, training and specific investigation protocols in order to act in a coordinated fashion and respond with due diligence to the investigation of attacks on human rights defenders, and to adopt with urgency the General Instructions within the Office of the Public Prosecutor to guide prosecuting attorneys when investigating attacks on defenders**, the State told the IACHR that violations and mistreatment of human rights defenders are registered by the Public Prosecutor's Office for Human Rights of the Public Prosecutors' Office (MP).²⁴⁶ Furthermore, the Guatemalan State specified that as soon as it receives a complaint it starts processing it and following up on it within the Public Prosecutors' Office. At the same time, through the PNC's Division for the Protection of Persons and Safety, it conducts a risk assessment to determine the victim's specific security

²⁴² IACHR, [Criminalization of the Work of Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, par. 16.

²⁴³ IACHR, [Criminalization of the Work of Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, par. 80.

²⁴⁴ FIDH, [Guatemala: Estigmatización y difamación contra el CCDA y la Sra. Lesbia Artola](#), April 28, 2020.

²⁴⁵ IACHR, [Criminalization of the Work of Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, par. 85.

²⁴⁶ The Public Prosecutor's Office for Human Rights is, in turn, comprised of various Prosecuting Units, each of which examines the cases that correspond to its function or activity. Those Units are: The Special Prosecutor's Unit for Crimes against members of Trade Unions; the Prosecutor's Unit for Crimes against Human Rights Activists; the Prosecutor's Unit for Crimes against Justice Operators; the Prosecutor's Unit for Crimes against Journalists; and the Prosecutor's Unit for Discrimination Offenses. Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 35.

needs, be they for personal, peripheral, or peak times [*tipo cordillera*] protection. At the same time, depending on the type of aggression and the whereabouts of the human rights defender, the case is remitted immediately to a forensic doctor for a forensic medical report, witnesses' statements, and reports to institutions.²⁴⁷ This is done pursuant to various regulatory instructions, including the *General Instruction approving the protocol for investigating crimes committed against human rights defenders, No. 05-2018*.²⁴⁸

181. At the same time, following up on the public hearing "Impunity for Assaults and Murders of Defenders in Guatemala," the Guatemalan State underscored the store laid by the *Protocol for Investigation Crimes Committed against Human Rights Defenders*, which derives from General Instruction 05-2018. Based on it, each Public Prosecutor's Office uses a guideline for receiving complaints, investigating, and prosecuting crimes committed against human rights defenders. That guideline also establishes criteria to be applied as of receipt of the complaint, what public prosecutor's offices should do at the crime scene, and a plan for investigation, criminal analysis, and processing of the evidence. It also identifies the investigation process, depending on the type of human rights defender, via which the Public Prosecutors' Office should take steps to guarantee access to justice for the victims and their family members.²⁴⁹

182. In the communication received by the Commission, the State reported the following outcomes from implementation of Protocol 05-2018 in the 2018-2020 period: institutionalization of the specific criteria and instruments for use in criminal investigations of crimes against human rights defenders; the Guide to Investigating Crimes committed against Human Rights Defenders; adaptation of the I.T. system in the Public Prosecutors' Office (MP) for registering complaints relating to crimes connected with the internal armed conflict; a more robust case management model; training for public prosecutors and technical personnel in the use of tools and of the Guidelines for Investigating Crimes Committed against Human Rights Defenders' and the establishment of two Specialized Public Prosecutor's Offices for criminal investigation of crimes committed against human rights defenders.²⁵⁰

183. Finally, the Guatemalan State underscored the training and dissemination work carried out regarding the Attorney General's Instruction 05-2018, through educational processes

²⁴⁷ In the case of offenses against life, in addition to proper due diligence protection of the crime scene, statements are taken from witnesses; forensic experts are asked to provide expert opinions; other experts are requested to provide genetic, technical/graphic, serological, chemical, psychological, psychiatric, acoustic, documentary, physical-chemical, ballistic, cultural, gender, socio-economic, semiotic, journalese-sensitive, and other specialized reports. In addition, reports are requested from a number of public and private institutions, recordings of telephone calls based on GPS coordinates, telephone records (*desplegados telefónicos*), criminal analyses, as well as reports and studies by national and international human rights institutions or organizations, and so on. Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 35.

²⁴⁸ The instruments referred to by the Guatemalan State also include: General Instruction for applying criminal investigation methodology, General Instruction 01-2006; General Instruction on How to Use the Procedures Manual for Processing Crime Scenes, *General Instruction 07-2006*; *General Guidelines for Regulating the Genetic (ADN) Analysis Requirement by Public Prosecutors' Office personnel, General Instruction 09-2006*; *Receipts, Recording, and Transfer of Information relating to Processing of the Crime Scene, General Instruction 12-2006*; *General Instruction for Strengthening Cooperation between the Public Prosecutors' Office and the National Police in Criminal Investigation Proceedings, Instruction 05-2007*; *General Guidelines for Processing Violent Death Crime Scenes, General Instruction 06-2007*. Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 35.

²⁴⁹ State report amplified in connection with the 177th period of sessions on the Situation of Human Rights in Guatemala. Republic of Guatemala, Note NV-OEA-M4-No. 826-2020, November 27, 2020, p. 16.

²⁵⁰ Public Prosecutor's Office for Crimes against Justice Operators and Members of Trade Unions (Decision 70-2019 of the Attorney General and Head of the Public Prosecutors' Office - MP); Public Prosecutor's Office for Crimes against Journalists (Decision 69-2019). Expanded report by the State in connection with the 177th period of sessions on the Situation of Human Rights in Guatemala. Republic of Guatemala, Note NV-OEA-M4-No. 826-2020, November 27, 2020, p. 17 ff.

and training for public prosecutors and operational and administrative personnel in each District and Municipal Public Prosecutor's Office. Those educational processes are managed by the Training Unit in the Public Prosecutors' Office (MP), which runs the "Training Trainers" (*Formador de Formadores*) program of crash courses in human rights, methodologies, and innovative tools that help establish criteria and profiles for human rights defender victims. In addition, the Public Prosecutor's Office for Human Rights has fostered round table discussions with district and municipal public prosecutors on applying General Instruction 5-2018. They serve to define intervention criteria, especially in cases involving crimes against life, and for handling social conflict situations.²⁵¹

184. For its part, the PDH reported that the Ministry of the Interior terminated the Body for Analyzing Patterns of Attacks against Human Rights Defenders by not renewing its mandate. It further underscored the debilitating blow dealt to institutional underpinnings for human rights by the elimination of COPREDEH and failure to apply General Instruction 5-2018 in the investigations into attacks on human rights defenders. In the same vein, civil society organizations complained about ignorance of General Instruction 5-2018 at the departmental and municipal level (with the exception of the Specialized Public Prosecutor's Office). They also stated that it is not applied in all cases of crimes committed against human rights defenders.²⁵²

185. Based on its assessment, the IACHR concludes that compliance with this recommendation is still partial. It also urges the State to continue efforts to promote enforcement of General Instruction 5-2018 nationwide, so as to combat impunity of crimes committed against human rights defenders in Guatemala.

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

- Adopt measures to prevent the causes of the forced migration of persons, as well as adopt measures of protection, humanitarian assistance and lasting solutions for internally displaced persons and ensure the right of migrants and persons with the need for international protection to leave the territory.
- Adopt specific legislation at the federal and state level to address internal displacement in keeping with the Guiding Principles on Internal Displacement.
- Amend Article 50 of the Code of Migration in keeping with human rights norms and standards in order to ensure that persons requiring international protection are never returned to a country where their life, safety and liberty are in jeopardy.
- Regulate the Code of Migration and other norms relating to persons in the context of human mobility in keeping with the norms and standards of the Inter-American human rights system, in the framework of a participatory process with civil society organizations and other relevant stakeholders.
- Ensure access to justice for migrants and their families, as well as implement measures to search for and identify missing migrants.
- Implement effective measures to ensure the effective enjoyment of the human rights and reintegration of deported and returning persons.

²⁵¹ State report amplified in connection with the 177th period of sessions on the Situation of Human Rights in Guatemala. Republic of Guatemala, Note NV-OEA-M4-No. 826-2020, November 27, 2020, p. 17.

²⁵² *Convergencia de Derechos Humanos*, Report to the public hearing "Impunidad en las agresiones y asesinatos de personas defensoras en Guatemala", presented on October 2, 2020 in connection with the 177th period of session of the Inter-American Commission on Human Rights.

- Ensure that expansionist business and development activities are carried out in keeping with international human rights standards, analyzing legal aspects, potential social conflicts, environmental and social impacts, the right to consultation, the conduct of authorities and corruption, as well as their repercussions in the short and long term. The Guatemalan State must exercise adequate oversight of business activities in order to comply with its international obligations.
- Ensure that evictions are conducted only in observance with human rights norms and standards and with the principles of exceptionality, legality, proportionality and suitability, in order to promote social wellbeing and by ensuring solutions for the evicted population, such as restitution and return, resettlement and rehabilitation or fair compensation.
- Pursuant to the Peace Accords, promote the creation of an agrarian and environmental jurisdiction within the judicial apparatus through enactment by the Congress of the Republic of the respective law.
- Adopt measures to ensure the protection of the dignity, life and security of the evicted persons, by ensuring at a minimum access to food, potable water and sanitation, lodging, clothing, access to medical services, means of subsistence and access to justice, as well as ensure access to humanitarian assistance and independent monitoring.

186. The IACHR recommended to the Guatemalan State that it **adopt measures to prevent the causes of the forced migration of persons, as well as adopt measures of protection, humanitarian assistance and lasting solutions for internally displaced persons and ensure the right of migrants and persons needing international protection to leave the territory.** The Guatemalan State did not provide information regarding this recommendation.

187. On this, the Commission has recognized that forced migration from Honduras, El Salvador, and Guatemala poses one of the region's principal human rights challenges,²⁵³ especially in the area of migration. For its part, the PDH -- as part of its follow-up on the treatment of persons returned or deported in connection with the COVID-19 pandemic --has reportedly identified the following as some of the main reasons why Guatemalans migrate: i) lack of employment; ii) reuniting of the family; iii) threats and intimidation; iv) extortion; v) violence and insecurity; vi) recruitment; and vii) lack of access to education.²⁵⁴

188. In addition, the United Nations World Food Programme pointed out that poor harvests as a result of drought have been driving forced migration from Guatemala, El Salvador, Honduras, and Nicaragua. It also points out that an in-house report by the United States Customs and Border Protection Agency acknowledged that the shortage of crops in Guatemala was an overwhelming factor behind Guatemalans' forced migration to seek asylum in the United States.²⁵⁵

189. Along those same lines, the Commission observes that the number of Guatemalan asylum-seekers and refugees continues to increase. Thus, the most recent UNHCR figures show that by end-2019 there were 22,774 refugees of Guatemalan origin abroad and

²⁵³ IACHR, Press release O27/20 - [IACHR Urges El Salvador, Guatemala, Honduras, and Mexico to Guarantee the Rights of Migrants and Refugees Traveling Through the Region](#), Washington D.C., February 7, 2020.

²⁵⁴ PDH, [Situación de personas guatemaltecas deportadas y la atención recibida durante emergencia de COVID-19](#), Guatemala, September 9, 2020.

²⁵⁵ Democracy Now, [U.N.: Climate-Fueled Droughts in Central America Driving Migration](#), January 23, 2020.

1119,536 asylum requests by persons of Guatemalan origin pending a decision.²⁵⁶ Those figures are 19.03% and 37.5% up, respectively, on the figures for 2018.²⁵⁷ The latest International Organization for Migration (IOM) figures, for their part, show that in September 2019, there were 80,400 Guatemalan migrants.²⁵⁸

190. Against that backdrop, the IACHR reiterates to the State that it has a duty to abide by the general obligations to respect and guarantee the human rights of all persons under its jurisdiction and, in particular, a duty to prevent their impairment, which entails generating and securing conditions such that its nationals are not forced to migrate, and to remedy the causes triggering migration flows.²⁵⁹ In light of the above, the IACHR concludes that compliance with this recommendation is still pending.

191. Regarding the recommendation to **adopt specific legislation at the federal and state level to address internal displacement in keeping with the Guiding Principles on Internal Displacement**, the Commission notes that the State did not provide in its follow-up report on the recommendations made. On this matter, the most recent figures put out by the Internal Displacement Monitoring Center (IDMC) record 26,000 new natural disaster-related displacements in the first half of 2020.²⁶⁰ However, it pointed out that data on displacement in Guatemala are too incomplete for a reliable calculation, one major lacuna being data on people experiencing internal displacement at a given point in time.²⁶¹

192. On the other, a recent report on internal displacement related to violence, based on information compiled between 2010 and 2019, found that lacunae in current policy on internal displacement due to violence include: i) a lack of legal and social recognition of the effects of violence on forced movements; ii) mistrust among victims, preventing them from filing complaints; iii) under-recording of crimes triggering displacement; iv) the lack of mechanisms for attending to victims; v) corruption and impunity' and vi) the impact of projects.²⁶² According to information in the public domain, the IACHR notes that the Guatemalan State has still not passed specific legislation comprehensively addressing the internal displacement phenomenon. In light of the above, the IACHR concludes that compliance with this recommendation is still pending.

193. Regarding the recommendation to **amend Article 50 of the Code of Migration in keeping with human rights norms and standards**, the IACHR notes that, this time, the State did not send information about progress made in 2020. The PDH, for its part, stated that no

²⁵⁶ UNHCR, [Global Trends 2019](#), p. 79.

²⁵⁷ UNHCR, [Global Trends 2018](#), p. 71.

²⁵⁸ Migration Data Portal, [Total of international migrants at mid-year 2019](#), September 18, 2019.

²⁵⁹ IACHR, [Human Rights of Migrants, Refugees, Stateless Persons, Victims of Human Trafficking and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System](#), OEA/Ser.L/V/II Doc. 46/15, December 31, 2015, par. 148.

²⁶⁰ IDMC, [Internal displacement 2020: Mid-year update](#), p. 6.

²⁶¹ According to the IDMC, the new displacement figures stem from an estimate of internal displacement movements during the year. They include individuals displaced more than once, while the total number (also known as "stock") of internally displaced persons corresponds to the total number of persons living in an internal displacement situation at a specific point in time. See: IDMC, [Vacíos de datos sobre desplazamiento interno causado por violencia en El Salvador, Guatemala y Honduras](#), August 12, pp. 5 y 12.

²⁶² Instituto de Investigación y Proyección sobre Dinámicas Globales y Territoriales, *Un éxodo que no se nombra. Aproximaciones al desplazamiento forzado interno por violencia en Guatemala (2010-2019)*, Guatemala, 2020, pp. 90, 91, and 92.

procedures had been initiated in connection with Amendment of Article 50 of the Code of Migration.

194. Based on the information available, the Commission concludes that compliance with this recommendation is still pending. The IACHR also reminds the State of its duty to abide by the principle of non-refoulement, including the ban on rejecting applicants at the border and indirect refoulement, with regard to anyone seeking asylum or another form of international protection.²⁶³

195. In addition, the Commission recommended that the State **regulate the Code of Migration and other norms relating to persons in the context of human mobility in keeping with the norms and standards of the Inter-American human rights system, in the framework of a participatory process with civil society organizations and other relevant stakeholders**. In this regard, in its reply to the IACHR, the State made no mention of actions to follow up on the recommendation.

196. The PDH pointed out that the National Migration Authority has published rules of procedure governing the Guatemalan Institute of Migration (IGM) that need to be aligned with international protection standards in this field given that certain lacunae (which it did not specify) had been identified.²⁶⁴ It also reported that the process of transitioning of the General Directorate of Migration (as a dependency of the Ministry of the Interior) to the IGM, pursuant to the provisions of the Code of Migration, was completed on August 3, 2020. Despite that, the PDH specified that the IGM's in-house protocols had not yet been issued. It also indicated that the internal charter (*Reglamento Orgánico Interno*) of the IGM was adopted through Decision 2-2020 of the AMN.²⁶⁵

197. On this, the Commission notes that, based on the information available, it is not possible to ascertain whether adoption of the aforementioned charter took place within a participatory process with civil society organizations and other stakeholders. The IACHR therefore considers that compliance with this recommendation has been partial.

198. The Commission also recommended that the State **ensure access to justice for migrants and their families, as well as implement measures to search for and identify missing migrants**. In its report, the State pointed out that the Code of Migration establishes that migrants who are victims of trafficking in persons have readily available access to assistance guaranteeing that their special needs are recognized. It added that, through its Care for Migrants Section, the Public Criminal Defender Institute (IDPP) provides technical, legal, and other professional assistance to Guatemalan or foreign migrants registered in Guatemala with a view to ensuring compliance with international minimum human rights standards. The State also

²⁶³ IACHR, [Resolution 04/19, Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons, and Victims of Human Trafficking](#), December 7, 2019, Principle 6. IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 240.

²⁶⁴ PDH Inputs by the Human Rights Ombudsman to the Inter-American Commission on Human Rights, following up on compliance with the recommendations of the report on the situation of human rights in Guatemala in 2017, October 2020, p.33.

²⁶⁵ PDH Inputs by the Human Rights Ombudsman to the Inter-American Commission on Human Rights, following up on compliance with the recommendations of the report on the situation of human rights in Guatemala in 2017, October 2020, p.33.

pointed out that every month a report is sent to the embassies concerned, regarding migrants being advised by the IDPP.²⁶⁶

199. For its part, the PDH specified that Guatemalan institutions have not set up search mechanisms. It also drew attention to the lack of access to the consular network's search mechanisms and to the fact that it only performs administrative acts to request information. The PDH added that transnational search and investigation mechanisms exist, such as Mexico's External Support Mechanism, but the Guatemalan authorities had not joined it.²⁶⁷

200. The IACHR takes note of the measures reported by the State geared to moving toward compliance with the recommendation. Based on the foregoing analysis, the IACHR considers that this recommendation has been partially implemented. The Commission likewise encourages the State to continue taking steps to guarantee migrants' access to justice and to search for and identify missing migrants.

201. Regarding the recommendation geared to **implement effective measures to ensure the effective enjoyment of the human rights and reintegration of deported and returning persons**, the Commission notes that the State did not provide information.

202. For its part, the PDH pointed out that, in connection with the COVID-19 pandemic, it checked out a number of shelters fitted out to accommodate returned or deported migrants.²⁶⁸ While it ascertained favorable conditions for attending to returned or deported migrants, it reported ongoing problems in that regard, including, notably: i) difficulty eliciting information about procedures and communicating with family members; ii) lack of proper controls to ensure physical distancing in the adapted areas; iii) poor hygiene arrangements; and (iv) insufficient funding to ensure proper hygiene. It also stated that, in the installations set up at the La Aurora International Airport, no security precautions were in place to prevent violence against women and children because sex and age had not been taken into account in the distribution of facilities.²⁶⁹

203. The PDH also pointed out that, during the COVID-19 emergency, the National Support Council for Guatemalan Migrants (CONAMIGUA) merely mitigated the discomfort of Guatemalan migrants deported from the United States and Mexico, despite having a budget allocated to lend them support.²⁷⁰

²⁶⁶ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 38.

²⁶⁷ PDH Inputs by the Human Rights Ombudsman to the Inter-American Commission on Human Rights, following up on compliance with the recommendations of the report on the situation of human rights in Guatemala in 2017, October 2020, p.34.

²⁶⁸ For instance: at the La Aurora International Airport, specifically, the areas set aside for returned and deported persons, the Ramiro de León Carpio temporary shelter, and the Nuestras Raíces [Our Roots] shelter/homes in both Guatemala City and Quetzaltenango.

²⁶⁹ PDH Inputs by the Human Rights Ombudsman to the Inter-American Commission on Human Rights, following up on compliance with the recommendations of the report on the situation of human rights in Guatemala in 2017, October 2020, pp.35 and 36.

²⁷⁰ PDH Inputs by the Human Rights Ombudsman to the Inter-American Commission on Human Rights, following up on compliance with the recommendations of the report on the situation of human rights in Guatemala in 2017, October 2020, p.29.

204. Regarding this recommendation, IGM figures indicate that through May 2020 Guatemala had received 23,595 persons either deported or returned by air or overland from Mexico and the United States.²⁷¹ For its part, the Ministry of Foreign Affairs (MINEX) reports that through September 2020 16,759 persons coming from the United States had availed themselves of the Dignified, Safe, and Orderly Repatriation Program.²⁷²

205. At the same time, the Commission became aware of the stigma attached to migrants returned or deported to Guatemala during the COVID-19 pandemic, who were rejected by their communities out of fear of infection with the coronavirus.²⁷³

206. In that connection, Guatemala's National Committee for Migrations (MENAMIG) pointed to the need for a comprehensive policy to attend to, assist, and protect returned migrants, aimed at discerning and addressing their needs, developing institutional approaches, and creating transparency regarding this group of returned migrants.²⁷⁴ For its part, the Children's Refuge Association (*Asociación Refugio de la Niñez*) stated that it had worked with the Secretariat for Social Welfare (SBS) and the Office of the Attorney General (*Procuraduría General de la Nación* - PGN) on looking after unaccompanied migrant children. It indicated that as of September 3, 2020, it had identified 1,134 unaccompanied children and adolescents sent back to Guatemala from Mexico and the United States.²⁷⁵ Of them, 59 tested positive for COVID-19.²⁷⁶ It further stated that one of the challenges with looking after them is some communities' fear of becoming infected and, hence, their rejection of those children.²⁷⁷

207. Based on its assessment, the IACHR considers that compliance with this recommendation has been partial. At the same time, it urges the State to redouble its efforts to adopt the measures needed to ensure that returned or deported persons are able to exercise and enjoy their human rights.

208. Regarding the recommendation to **ensure that expansionist business and development activities are carried out in keeping with international human rights standards**, the IACHR observes that appears not to have provided follow-up information. In this regard, the PDH pointed out that the Guatemalan State had not complied with its function of preserving, protecting, and enhancing the environment because it had continued to authorize

²⁷¹ IGM, [Guatemaltecos deportados procedentes de Estados Unidos de América y México, Informe estadístico cuantitativo enero-mayo 2020](#), Guatemala, p. 2.

²⁷² MINEX, [Guatemaltecos deportados vía aérea de Estados Unidos de América – septiembre](#), September 5, 2020.

²⁷³ Prensa Libre, [Cardenal Álvaro Ramazzini: La falta de solidaridad con los deportados es increíble](#), April 20, 2020. AP, [Migrantes deportados enfrentan hostilidad por el coronavirus](#), May 4, 2020. Revista Gato encerrado, [“¡Los llevan o los quemamos!”: el dramático retorno de los migrantes a sus comunidades](#), May 18, 2020.

²⁷⁴ Information provided in connection with the presentation by the PH on the [Situación de personas guatemaltecas deportadas y la atención recibida durante emergencia de COVID-19 \[Situation of Guatemalans who were deported and treatment received during the COVID-19 emergency\]](#), Guatemala, September 9, 2020.

²⁷⁵ Information provided in connection with the presentation by the PH on the [Situación de personas guatemaltecas deportadas y la atención recibida durante emergencia de COVID-19 \[Situation of Guatemalans who were deported and treatment received during the COVID-19 emergency\]](#), Guatemala, September 9, 2020.

²⁷⁶ Information provided in connection with the presentation by the PH on the [Situación de personas guatemaltecas deportadas y la atención recibida durante emergencia de COVID-19 \[Situation of Guatemalans who were deported and treatment received during the COVID-19 emergency\]](#), Guatemala, September 9, 2020.

²⁷⁷ Information provided in connection with the presentation by the PH on the [Situación de personas guatemaltecas deportadas y la atención recibida durante emergencia de COVID-19 \[Situation of Guatemalans who were deported and treatment received during the COVID-19 emergency\]](#), Guatemala, September 9, 2020.

expansionist single-crop projects, without complementary, social, economic, environmental, and cultural studies of how said projects operate and function.²⁷⁸

209. The Commission notes that, based on available information in the public domain, it is not possible to ascertain progress toward complying with this recommendation. That being so, the IACHR considers that compliance with this recommendation is still pending.

210. Regarding the recommendation to ensure that evictions are conducted only in observance with human rights norms and standards and with the principles of exceptionality, legality, proportionality and suitability, in order to promote social wellbeing and by ensuring solutions for the evicted population, the Commission notes that, in its report, the State did not provide substantive information. For its part, the PDH reportedly pointed out that in recent months there have been extrajudicial evictions, especially in the departments of Baja Verapaz and Alta Verapaz, without the State putting protections in place for the families and indigenous communities affected.²⁷⁹ In a similar vein, the Commission voiced its concern at the eviction of 40 Q'eqchi' families from the Cubilguitz estate, located in the department of Alta Verapaz. At the same time, it observed with concern the violence associated with land disputes and the violence unleashed by criminal gangs in that region, as factors triggering eviction and forced displacement, and it urged the State to conduct an ethnically and racially sensitive investigation and to punish those responsible.²⁸⁰ In light of the observations in this section, the IACHR considers that compliance with this recommendation is still pending.

211. The IACHR also recommended that the State **promote the creation of an agrarian and environmental jurisdiction**. On this, the Commission notes that in its report the State apparently did not include information regarding compliance with this recommendation. Furthermore, information in the public domain suggests that the Guatemalan State has not yet promoted the creation of an agrarian and environmental jurisdiction. In light of the above, the IACHR considers that compliance with this recommendation is still pending.

212. Finally, the Commission recommended that the State **adopt measures to ensure the protection of the dignity, life and security of the evicted persons**. Regarding that recommendation, the Commission observes that the State did not provide substantive information. For its part, the PDH pointed out that COPREDEH would be responsible for coordinating the actions described in this recommendation, except that it had ceased operating on July 30, 2020.²⁸¹

213. In this regard, through its various monitoring mechanisms, the IACHR had kept track of forced evictions in Guatemala, and of their impact, particularly on the most vulnerable.

²⁷⁸ PDH Inputs by the Human Rights Ombudsman to the Inter-American Commission on Human Rights, following up on compliance with the recommendations of the report on the situation of human rights in Guatemala in 2017, October 2020, p.37.

²⁷⁹ PDH Inputs by the Human Rights Ombudsman to the Inter-American Commission on Human Rights, following up on compliance with the recommendations of the report on the situation of human rights in Guatemala in 2017, October 2020, p.38.

²⁸⁰ IACHR [@CIDH]. (August 18, 2020). *La @CIDH expresa grave preocupación por el desalojo violento de 40 familias q'eqchi' en Cubilgüitz, Alta Verapaz, ocurrido el #15Agosto* [Tweet]. Twitter. <https://twitter.com/CIDH/status/1295851953495445506>

²⁸¹ PDH Inputs by the Human Rights Ombudsman to the Inter-American Commission on Human Rights, following up on compliance with the recommendations of the report on the situation of human rights in Guatemala in 2017, October 2020, p.38.

Likewise, as the Commission had pointed out, evictions are often related to lack of legal certainty with respect to land, especially the lack of land demarcation procedures.²⁸²

214. In that context, in 2020, the IACHR granted a precautionary measure on behalf of Poqomchi' Mayan indigenous families in the Washington and Dos Fuentes communities.²⁸³ That precautionary measure was in addition to measures of that nature adopted in connection with the execution of forced evictions, granted in 2011²⁸⁴, 2017²⁸⁵, and 2018.²⁸⁶ Here, the Inter-American Court has established that the plight of internally displaced persons can be construed as a de facto state of lack of protection that obliges States to adopt pro-active measures to undo the effects of that state of weakness, vulnerability, and defenselessness, including in respect of private third parties' actions and practices.²⁸⁷

215. In light of the analysis of the information available, the IACHR concludes that compliance with this recommendation is still pending.

Afrodescendants

- Create institutions to formulate and conduct policies for persons of African descent by means of a National Plan of Action.

216. Regarding the recommendation to **create institutions to formulate and conduct policies for persons of African descent by means of a National Plan of Action**, the State did not provide information to assess compliance with it.

217. In this regard, in the course of its monitoring work, the IACHR found official sources stating that the Office of the Vice President in the Guatemalan Government met with the garífuna community of Livingston with a view to establishing coordinated steps to promote the economic, cultural, and social development of that segment of the population.²⁸⁸ However, there appear to be no other records denoting significant progress with respect to this recommendation.

²⁸² IACHR, [Situation of Human Rights in Guatemala](#), OEA/Ser.L/V/II. Doc. 208/17, December 31, 2017, par. 215ff. CIDH, [Annual Report, Chapter V "Guatemala"](#), 2018, par. 183. CIDH, [Annual Report, Chapter V "Guatemala"](#), 2019, par. 197.

²⁸³ IACHR, [Resolution 67/2020, PM 306/20 - Poqomchi' Mayan Indigenous Families of Washington and Dos Fuentes communities](#), Guatemala.

²⁸⁴ CIDH, MC 121/11 - 14 Q'echi Indigenous Communities of the Municipality of Panzos, Guatemala.

²⁸⁵ IACHR, [Resolution 36/2017, PM 412-17, Settlers evicted and displaced from the Laguna Larga Community](#), Guatemala.

²⁸⁶ IACHR, [Resolution 3/2018, PM 860-17, Settlers evicted and displaced from the Laguna Larga Community](#), Guatemala. CIDH, [Resolution 7/2018, PM 872/17 - Families who have been evicted and displaced from the Maya Q'eqchi' community Nueva Semuy Chacchilla, Guatemala](#), Guatemala. CIDH, [Resolution 43/2018, PM 44/18 - Families of the Maya Q'eqchi' community La Cumbre Sa'kuxhá](#), Guatemala.

²⁸⁷ I/A Court H.R. Case of Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal v. *Guatemala*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 30, 2016. Series C No. 328; (I/A Court of H.R. Judgment, Members of the Village of Chichupac and Neighboring Communities of the Municipality of Rabinal), par. 173.

²⁸⁸ Government of Guatemala, Office of the Vice President, [Gira de trabajo del vicepresidente Guillermo Castillo](#), September 18, 2020

218. In connection with the COVID-19 pandemic, the IACHR welcomes the "Plan to prevent, contain, and respond to cases of coronavirus (COVID-19) in Guatemala," which establishes guidelines in the face of the imminent risk to the population.²⁸⁹ The Commission urges the State of Guatemala to include ethnic/racial groups, such as Afrodescendants and tribal peoples, in all health policies implemented, and to adopt an intercultural perspective.

219. Along the same lines, the IACHR reminds Guatemala to espouse institutional plans to monitor the impact of the COVID-19 pandemic on persons of African descent; and to include in the records of persons affected by this pandemic disaggregated data on ethnic/racial origin, gender, disability, nationality, and age.²⁹⁰

220. Likewise, the Commission reiterates the need to implement basic income measures and temporary shelters to Afrodescendants and tribal communities living in poverty and extreme poverty, especially those in rural and outlying areas. In light of the above, the IACHR concludes that compliance with this recommendation is still pending.

Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons

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

221. Regarding the recommendation **to adopt the necessary measures to discourage intolerance and abolish any type of law that discriminates against persons based on their sexual orientation, gender identity or expression**, in 2020 the Guatemalan State did not provide information of substance concerning steps taken to comply with this recommendation.

222. The Commission acknowledges, on the other hand, the actions undertaken by the Office of the Ombudsman for Human Rights to discourage intolerance toward LGBTI persons in Guatemala. That includes the work of the Ombudsman himself, of defenders attached to the Office, and of the Office for the Defense of Sexual Diversity, which has striven to promote and defend the rights of LGBTI persons in the country.²⁹¹ Along those lines, the Office of the PDH has

²⁸⁹ Government of Guatemala, Ministry of Public Health and Social Welfare, [Plan para la prevención, contención y respuesta a casos de Coronavirus \(COVID-19\) en Guatemala](#), March 2020.

²⁹⁰ IACHR, [Press release 92/20 - IACHR and its Special Rapporteurship on ESCER calls on the States to guarantee the rights of Afro-descendant Persons and prevent racial discrimination in the context of the COVID-19 pandemic](#), Washington, D.C., April 28, 2020.

²⁹¹ work being done in this area includes, inter alia, the facilitation of training courses on the subject for public administration personnel; and following up on cases of violence based on prejudice regarding sexual orientation and gender identity or expression. PDH, [PDH lleva a cabo acciones de Educación en Materia de Derechos Humanos](#), October 22, 2020; [PDH lleva acciones de educación en materia de Derechos Humanos](#), (Educador de la Auxiliatura realizó taller virtual acerca de los "Derechos de las personas LGBTI", fue dirigido a estudiantes de la Universidad Rafael Landívar), October 29, 2020; [PDH participa](#)

also take steps to boost institutional support for LGBTIQ+ persons, with a particular emphasis on transgender women,²⁹² from a social inclusion perspective.²⁹³ The PDH has also spoken out on several occasions to highlight the human rights plight of LGBTI persons and to call for their protection and recognition.²⁹⁴ However, the IACHR notes with concern that, in reaction to those measure, the Ombudsman and the specific office defending sexual diversity were met with a campaign to discredit them, including threats of destitution and summoning by Congress because some members of Congress considered that defending the human rights of LGBTI persons "is not a pretty sight for children and adolescents."²⁹⁵

223. Here, the IACHR reminds the Guatemalan State that a key factor in eradicating the social stigma and cultural discrimination against LGBTI persons found in the countries of the Americas are positive public statements by senior State officials, inasmuch as the State plays a crucial part when it comes to orienting the social change needed to combat discrimination and social prejudices.²⁹⁶

224. At the same time, the Commission is worried that Bill 5272, known as the "Bill to Protect Life and the Family," is still before Congress, after a second debate on August 28, 2018 and a prolonged period of uncertainty as to its eventually being passed.²⁹⁷ That Bill seeks to introduce regulations and amendments to, among other things, "protect the right to life, the family, the institution of marriage between a man and a women, freedom of conscience and expression, and the right of parents to provide guidance to their children on sexuality issues." Thus, Bill No. 5272 seeks to introduce rules banning comprehensive sex education, including teaching about comprehensive sexual diversity and the gender perspective in either public or private schools. According to statements by civil society organizations, uncertainty as to whether the Bill will be passed or not in itself constitutes a threat to compliance with the State's international obligations with regard to equality and nondiscrimination.²⁹⁸

[en clausura de curso de derechos humanos para la población LGBTI y personas con VIH](#), November 26, 2020; PDH, [169/20 El Procurador de los Derechos Humanos, Jordán Rodas Andrade, condena los hechos de violencia en contra de personas LGBTIQ+, y demanda que estos crímenes no queden impunes](#), August 4, 2020.

²⁹² PDH, [PDH continúa con el acompañamiento a la Red Multicultural de Mujeres Trans](#), October 23, 2020; [PDH brinda acompañamiento a la Red Multicultural de Mujeres Trans](#), November 17, 2020.

²⁹³ PDH, [PDH brinda acompañamiento respecto del proceso de investigación de las condiciones socioeconómicas de mujeres trans](#), October 22, 2020, y [PDH participa en inauguración de "Comedor Comunitario Jackeline Sánchez"](#), October 6, 2020.

²⁹⁴ PDH, [100/20 Ante el cierre del Albergue Puerta de Esperanza y la vulnerabilidad de personas en situación de calle](#), el Procurador de los Derechos Humanos de Guatemala, Jordán Rodas Andrade, May 24, 2020; PDH, [90/20 El Procurador de los Derechos Humanos, Jordán Rodas Andrade, recomienda a las autoridades pertinentes atender a la población en condición de calle](#), May 18, 2020; PHD, [50/20 El Procurador de los Derechos Humanos de Guatemala, Jordán Rodas Andrade en el marco del Estado de Calamidad ante la Pandemia de Covid-19, Coronavirus realiza recomendaciones a instituciones gubernamentales derivadas de las supervisiones y monitoreos realizados](#), April 3, 2020.

²⁹⁵ Soy 502, [Congreso cita al PDH por utilizar bandera multicolor en redes](#), July 7, 2020.

²⁹⁶ IACHR, [Advances and Challenges with regard to Recognition of the Rights of LGBTI persons in the Americas](#), 2018, par. 71.

²⁹⁷ Publinews, [Diputados con opiniones encontradas sobre citación de PDH al Congreso](#), July 8, 2020; HRW, [Violencia y discriminación contra las personas LGBT en El Salvador, Guatemala y Honduras y obstáculos al asilo en Estados Unidos](#), October 7, 2020.

²⁹⁸ Agencia Presentes, [Guatemala 2020: Pandemia, subregistro de violencia y redes LGBT+](#), December 23, 2020.

225. On this, the IACHR reiterates that the right to education and training is a guarantee for all persons', and especially children's and adolescents', full and harmonious development. The IACHR likewise takes note that the text proposed in the Bill defines the family as comprising a man and a woman, and includes an amendment to the Civil Code to introduce an explicit ban on same-sex marriage.

226. Regarding the definition of family envisaged in Bill No. 5272, the Commission has repeatedly asserted that a restricted and stereotype notion of the concept of family ignores currently recognized international standards on the subject and arbitrarily excludes diverse families, such as one-person families, grandparent families, and same-sex couples, all of which merit equal protection under the American Convention. The IACHR points out that the restricted type of interpretation fosters an environment that propitiates discriminatory speech and attitudes toward LGBTI persons. Accordingly, the concept of family cannot be restricted only to stereotypes based on binary -- man-woman -- concepts of gender, or on normative heterosexual orientations. The IACHR reiterates that the concept of family needs to be construed as broadly as possible so as to guarantee recognition of diverse emotional ties and respect people's sexual orientation and gender identity and protection for the children pertaining to those families.²⁹⁹ Taking into consideration the information received during the previous year, the IACHR considers that compliance with this recommendation is still partial.

227. Regarding the recommendation to **act with due diligence to prevent, investigate, punish and provide reparation for any type of violence committed against LGBTI persons**, the State underscored the existence of the "Manual for PNC Facilitators for Attending to the LGBTI Population" as well as training courses for police officers, conducted together with civil society organizations, without specifying the number or type of such training courses provided in 2020.³⁰⁰

228. The Commission welcomes these initiatives, inasmuch as they are in line with its repeated calls for the adoption of protocols and training courses for policemen and other State security agents responsible for law enforcement that address human rights and the rights of persons with non-normative sexual orientations and gender identities, with a view to eradicating abuses and violence based on prejudice.

229. Furthermore, the Commission takes note of information furnished by the office of the PDH to the effect that the National Forensic Sciences Institute (INACIF) acted on the recommendations previously formulated by the PDH and provided training to its personnel in 2020, as did the Public Prosecutors' Office. The PDH likewise reported that INACIF had amended the forms used when attending to victims and had included a field for identifying lesbians, gays, bisexual, transsexual, transgender, travesti, intersex, and other persons, which fits in with the duty to exercise due diligence when investigating violence based on prejudice toward LGBTI persons.

230. According to information provided by PDH, the Civilian National Police reported that, between January 1 and October 15, 2020, there were 14 cases in which the PNC provided assistance to persons identifying themselves as LGBTI at its Offices for Caring for Victims. Along the same lines, between January 1, 2020 and August 31, 2020, the Public Prosecutors' Office

²⁹⁹ IACHR, Towards the Effective Fulfillment of Children's Rights: National Protection Systems, OEA/Ser.L/V/II. Doc. 296/17, 2017. Par. 408.

³⁰⁰ Republic of Guatemala, Report of the State of Guatemala on compliance with the recommendations issued in the report entitled "Situation of Human Rights in Guatemala", of the IACHR, 2020, pp. 39-40.

notified the PDH of 74 complaints filed by persons describing themselves as LGBTI, in which the main crimes denounced, along with others, were discrimination (13), light injuries (12), threats (11), and homicide (6). The PDH expressed concern to the Commission at the lack of progress made with investigations into cases involving violence against LGBTI persons and the lack of sentences handed down in such cases.³⁰¹

231. The Commission observes the dearth of State information regarding concrete initiatives to prevent, investigate, punish, and make reparation for violence against LGBTI persons, even given (*incluso denotándose a [sic] existencia de*) the existence of databases that could be used systematically to analyze the violence and the State's response. Nevertheless, despite the lack of State initiatives to gather systematic and disaggregated information with which to study these kinds of violent acts and adopt strategic measures for dealing with them, the Commission has been apprised of various initiatives by civil society organizations to document reports on acts of violence in the country, including the observatory of the Guatemala's National Sexual Diversity and HIV Network. The IACHR has acknowledged the fundamental part and historical role played by civil society in gathering data, but it reiterates that it is States that should establish mechanisms for receiving information from these groups and work together, in a participatory manner, with civil society to analyze and devise laws, policies, and programs and take decisions.

232. For that reason, and to progress toward compliance with this recommendation, the Commission calls upon the State to redouble efforts and allocate sufficient resources for systematically collecting and analyzing statistics regarding the prevalence and nature of the violence and discrimination based on prejudice against LGBTI persons or persons perceived to be LGBTI. Access to information and disaggregated statistics constitutes an essential tool for gauging the effectiveness of measures to prevent, punish, and eradicate violence against LGBTI persons and for formulating any changes needed in government policies.

233. Without prejudice to the above, the IACHR has become aware of information in the public domain concerning various acts of particularly cruel violence against LGBTI persons or persons perceived to be LGBTI.³⁰² According to the data available, the Violent Deaths Observatory of the National Diversity Network reported at least 19 crimes against LGBTI persons. The victims were reportedly six transgender women, one trans man, 11 gay men, and a bisexual man. The IACHR notes that 13 of those acts were perpetrated during the COVID-19 pandemic emergency.³⁰³

234. One of the cases reported was that of Luisa Ávila Sumpala³⁰⁴, a transgender woman who, according to forensic reports, had suffered sexual and other physical violence, before being stoned in Mazatenango in January 2020³⁰⁵; others were the murders of Stephanie

³⁰¹ Human Rights Ombudsman, Follow-up on compliance with the recommendations contained in the "Report on the Situation of Human Rights in Guatemala 2017," Communication to the IACHR, received on October 24, 2020.

³⁰² PDH, [142/20 En el marco de la conmemoración del Día del orgullo LGBTIQ+, el Procurador de los Derechos Humanos, Jordán Rodas Andrade, recomienda al Estado de Guatemala fortalecer las acciones para el reconocimiento de los derechos humanos de las personas LGBTIQ+](#), June 28, 2020; El Periódico de Guatemala, [Entendamos la violencia contra las personas LGBT](#), December 10, 2020; Visibles, [Violencias contra la población LGBTIQ+](#), 2020.

³⁰³ Agencia Presentes, [Guatemala 2020: Pandemia, subregistro de violencia y redes LGBT+](#), December 23, 2020.

³⁰⁴ PDH, [2/20 El Procurador de los Derechos Humanos de Guatemala, condena el violento asesinato de Luisa Ávila Sumpala, mujer trans en Mazatenango, Suchitepéquez](#), January 2, 2020.

³⁰⁵ Trans Day of Remembrance, [Jennifer \(sic\) Ávila Sumpala](#), June 1, 2020.

Cardona Matías³⁰⁶ and Mafer Marbella Santos³⁰⁷, and the armed attack by a security guard on Nataly Ramos.³⁰⁸ The IACHR was also apprised of -- and vehemently condemned -- the murder of Jazmín, a transgender Salvadoran woman seeking asylum, who had reportedly left her country of origin owing to persecution and violence based on her gender identity and expression.³⁰⁹ In this regard, the Commission reminds the State of its obligation to provide comprehensive protection of the rights of all persons under its jurisdiction, guaranteeing the life and integrity of asylum-seekers, and to adopt in its policies a gender, diversity, and intersectionality approach. The IACHR further calls upon the State to adopt measures to halt the violence against transgender women and trans and gender-diverse people in general, in light of the recommendations contained in the report on Transgender and Gender-Diverse Persons and their ESCER.

235. In addition, the Commission voices special concern about reports of acts of violence in the department of Izabal, of which, according to information in the public domain, there were a total of 6 in 2020.³¹⁰ Of those, the IACHR highlights the murder of Luis Fernando Reyes García,³¹¹ who was collaborating at the time with authorities regarding the case of the murder of a transgender woman, Luisa Sandoval Lemus, in the same town on March 2, 2020³¹²; and the murders of Rudy Josué Guerra Cardona and José Alexis Ramirez Chinchilla.³¹³ The Commission urgently calls upon the State to take actions based on the principle of due diligence to provide for an investigation into the causes of these acts of violence in Izabal, punish those responsible, and take steps to prevent a recurrence of such acts.

236. The IACHR also underscores the murder of trans activist Hanss Acevedo, a member of the "Transformación" transgender men's group (*Colectivo de hombres trans Transformación*),³¹⁴ and the vicious multiple assault on a male couple in San Cristóbal, Mixco, in the department of Guatemala³¹⁵.

237. In this regard, the Commission reiterates the duty of the State to prevent, investigate, try, punish, and make reparation for crimes committed against LGBTI persons or persons perceived as such with all due diligence, pursuing lines of inquiry that take into account the victims' gender identity/expression, (real or perceived) sexual orientation, and sexual characteristics, as possible motives for the acts of violence. The IACHR stresses the obligation of the State to condemn and adopt a public stance repudiating acts of violence and discrimination

³⁰⁶ Agencia Presentes, [Asesinan a trans de 32 años](#), March 23, 2020.

³⁰⁷ Agencia Presentes, [Falleció Marbella, trans de 28 años](#), April 21, 2020.

³⁰⁸ Agencia Presentes, [Un guardia de seguridad intentó asesinar a una joven trans en Guatemala](#), July 27, 2020.

³⁰⁹ IACHR, [The IACHR resolutely condemns the murder of a Salvadoran transgender woman in Guatemala City](#), August 5, 2020; UNHCR, [Death of transgender asylum seeker in Guatemala highlights increased risks and protection needs for LGBTI community](#), August 6, 2020; Washington Blade, [Transgender Salvadoran woman who fled to Guatemala murdered](#), August 17, 2020.

³¹⁰ Agencia Presentes, [Guatemala 2020: Pandemia, subregistro de violencia y redes LGBT+](#), December 23, 2020.

³¹¹ PDH, [69/20 El Procurador de los Derechos Humanos, Jordán Rodas Andrade, condena los hechos de violencia en contra de personas LGBTIQ+ en Guatemala, Izabal y Escuintla](#), April 23, 2020.

³¹² Agencia Presentes, [Balean a Joven Gay en Guatemala](#), April 7, 2020.

³¹³ Agencia Presentes, [Doble Crimen de Odio de una pareja gay en Guatemala](#), May 21, 2020.

³¹⁴ Agencia Presentes, [Asesinaron a dos activistas LGBT en Guatemala](#), January 15, 2020.

³¹⁵ Yahoo Noticias, [Investigan un ataque homofóbico contra una pareja en Guatemala](#), August 11, 2020; Soy502, [PNC investiga a agentes por no auxiliar a pareja en San Cristóbal](#), August 13, 2020.

bases on sexual orientation, gender identity and expression, physical diversity, and sexual characteristics.³¹⁶

238. At the same time, the Commission is worried that trans women sex workers have suffered even more than others violations of their human rights during the COVID-19 pandemic, rendering them especially vulnerable to acts of violence.³¹⁷ Here, the IACHR reiterates its call to the State to reinforce guarantees of economic, social, cultural, and environmental rights during lockdown and other measures to contain the pandemic and to eradicate the stigmatization and discrimination to which these persons are exposed, as a means of preventing the structural conditions that render them vulnerable to violence.³¹⁸

239. Based on the information contained in the foregoing paragraphs and bearing in mind that the State did not provide information pointing to any significant progress with respect to investigation, punishment, and reparation for violence, the IACHR concludes that compliance with the present recommendation is still pending.

240. Regarding the recommendation to **adopt the necessary legislative measures and policies to prevent violence, discrimination and prejudice against persons because of their sexual orientation, diverse gender identity and expressions or whose bodies depart from male and female standards**, the State apprised the Commission about the project involving strengthening inter-agency work to defend the rights of LGBTI persons in the Public Criminal Defender Institute (IDPP), where the idea is to implement the Care and Action Protocol for IDPP personnel aimed at guaranteeing the Human Rights of the LGBTI population. The Commission notes that said institution also has a section specializing in care for LGBTI persons charged with committing a crime, where the main objective is to provide them with technical and professional legal assistance.³¹⁹

241. The IACHR welcomes the existence of care and action programs to guarantee nondiscrimination of LGBTI persons needing legal aid services within the sphere of competence of the IDPP. The Commission reiterates that these kinds of protocol should be extended to the justice administration system and include judges, public prosecutors, and employees at all levels of the system, including the Public Defenders' Office.³²⁰

242. The IACHR also takes note of information furnished by the State regarding signs of progress in this area within the Ministry of Public Health and Social Welfare, reflected in the Manual to Reduce Stigma and Discrimination, the 2017-2021 National Strategic Plan to address HIV, and the 2016-2030 Comprehensive and Differentiated Health Care Strategy for Trans Persons in Guatemala, developments that the Commission commends.

³¹⁶ IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), 2015; and IACHR, [Advances and Challenges with regard to Recognition of the Rights of LGBTI persons in the Americas](#), 2018.

³¹⁷ Nómada, [El desafío de las mujeres trans y trabajadoras sexuales en la crisis del coronavirus - Nómada, Guatemala](#), Mar 26, 2020; y Agencia Presentes, [Un guardia de seguridad intentó asesinar a una joven trans en Guatemala](#), July 27, 2020.

³¹⁸ IACHR, Press Release N° 272/20. [IACHR calls on States to guarantee the human rights of women engaged in sex work in the context of the pandemic](#), November 12, 2020.

³¹⁹ Report of the State of Guatemala on Compliance with Recommendations, Ref. NV-OEA-M4-No.803-2020, October 23, 2020, p. 39.

³²⁰ IACHR, [Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas](#), 2015, par. 474.

243. However, despite the Care Strategy for Transgender Persons, the information available indicates that neither the document providing instructions to health care personnel in this matter nor the document regulating that strategy have been approved by the Ministry of Health authorities, leading the Sexual Diversity Defenders' Office in the PDH to recommend that those documents be expedited to ensure that transgender persons receive comprehensive care in the public health system.³²¹

244. More broadly, the IACHR is worried at the lack of a law or regulations acknowledging the right to gender identity: a key factor for fully guaranteeing the rights of trans and gender-diverse persons and an essential step for preventing discrimination and violence born of prejudice.³²² It is likewise worried at the lack of a law against hate crimes punished prejudice-based violence against people because of the sexual orientation, gender identity or expression, and sexual characteristics. Moreover, the Commission notes the total absence of information about the human rights of intersex persons.

245. The State also reported the existence of the Comprehensive Education in Sexuality (EIS) program of the Ministry of Education, which deals with ways to address homophobic harassment or homophobic bullying at school, mindful that it is a form of behavior that "mistreats, denigrates, and subordinates anyone who departs from the norm, the stereotype, especially those who appear to have a non-heterosexual orientation." The Commission commends the existence of this program and reiterates that the sensitization and education of children and adolescents plays a fundamental part in promoting a cultural change that fully accepts sexual and bodily diversity and fosters acceptance of diverse sexual orientations and gender identity.³²³

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

Freedom of Expression³²⁴

- Acknowledge, from the highest levels of government, the legitimacy and value of the work of journalists, and condemn attacks committed in retaliation for the exercise of freedom of expression.
- Investigate crimes committed against journalists completely, effectively, and impartially. Additionally, in cases involving the murder of journalists, establish the motive and judicially determine any possible connection to journalistic activity and freedom of expression. The authorities should not rule out the practice of journalism as a motive for the attack and/or assault before the investigation is completed.
- With respect to the program for the protection of journalists and media workers—the creation of which was announced by the President of the Republic during the visit—ensure that its content is consistent with the international parameters, in broad and effective consultation with civil society organizations, journalists, and media workers.

³²¹ Agencia Presentes, [Guatemala 2020: Pandemia, subregistro de violencia y redes LGBT+](#), December 23, 2020.

³²² IACHR, [Report on Trans and Gender-Diverse Persons and Their Economic, Social, Cultural, and Environmental Rights](#), August 7, 2020, rec. 2.

³²³ IACHR, [Advances and Challenges with regard to Recognition of the Rights of LGBTI persons in the Americas](#), 2018, par. 58.

³²⁴ This section of the report was prepared by the Office of the Special Rapporteur for Freedom of Expression.

- Take measures to guarantee the exercise of freedom of expression, plurality, and diversity in the digital transition process. Among other things, bring the license access, renewal, and revocation processes into line with the inter-American standards.
- Promote a pluralistic approach to information and multiple points of view by fostering the full enjoyment of freedom of thought and expression, access to the media, and diversity in media ownership and sources of information through, among other things, transparent licensing systems, and, as appropriate, effective regulations that prevent the improper concentration of media ownership.
- Adopt the legislative measures and public policies to recognize and ensure community media outlets' access to radio and television frequencies and licenses; in the meantime, abstain from criminally prosecuting community radio stations.
- Enact special, clear, and precise laws to regulate advertising at each level of government. Such provisions should clearly define government advertising and establish appropriate penalties for their violation. The Office of the Special Rapporteur reiterates that government advertising should never be allocated by the States to reward or punish media outlets for their editorial and news content.
- Ensure that its administrative laws and practices are compatible with the prohibition against the participation of the armed forces in public safety operations, in particular, the control of violence at social protests. Limit budget allocations to matters concerning national defense.

247. With regard to the recommendation to acknowledge, from the highest levels of government, the legitimacy and value of the work of journalists, and condemn attacks committed in retaliation for the exercise of freedom of expression, in its report the Guatemalan State underscored that both Article 35 of the Political Constitution and the Law on Expression of Thought (*Ley de Emisión del Pensamiento*, or free expression), Decree Law No. 09, protected the right to free expression, establishing that "expressing thought in any way is free, and under no circumstances may any guarantee or surety (*fianza o caución*) be demanded for the exercise of this right, nor may it be subject to prior censorship [...]."³²⁵

248. Likewise, the State pointed out that, during a solemn session of Congress on September 14, 2020, President Alejandro Giammattei stated that "freedom is one of our most precious assets because it gives us the joy of thinking and expressing ourselves fearlessly and without coercion. There would be no point in talking about freedom of thought, if we are unable to express what we think, but expressing ourselves carries a grave responsibility we must take seriously. The forging of ideas, ideologies, and different ways to grasp our reality is a core part of freedom of expression. There is a limit to freedom of expression and that limit is the truth."

249. Nonetheless, the Commission and its Special Rapporteurship discern an ongoing tendency in Guatemala to stigmatize and disparage journalists and media that are critical of the Government. That tendency originates at the highest levels of authority, posing a risk to the free practice of journalism and downplaying the State's obligation to "espouse a public discourse that

³²⁵ Republic of Guatemala, Report of the State of Guatemala on compliance with the recommendations issued in the report entitled "Situation of Human Rights in Guatemala" of the IACHR, of December 31, 2017. Received on October 23, 2020.

helps prevent violence against journalists."³²⁶ On the contrary, stigmatizing statements expose journalists to a heightened risk of acts of violence³²⁷ and render them even more vulnerable than they otherwise would be by virtue of their profession, because such statements may even be construed by individuals or groups as encouraging the commission of acts of violence or acts obstructing their work as journalists.³²⁸ This state of affairs has continued under the new Government, subsequent to President Giammattei's swearing in on January 14, 2020, particularly with respect to media coverage during the COVID-19 pandemic.

250. It is especially worrisome for the IACHR and its Special Rapporteurship that, in a press conference on January 20, shortly after the start of the new Government, the Executive queried the journalistic work of Marvin del Cid, who writes for Prensa Libre, stating: "It strikes me that this gentleman has it in for us (*nos las trae*). Yes, he does [...] because he has devoted himself to conducting a series of investigations based on who knows what and we personally think he is getting beyond himself. I can document that for you with your last four investigations that speak for themselves (*que llevan dedicatoria*). If only I knew who is telling you to investigate us in that manner." This statement was made in connection with the journalist's investigations regarding persons in high place and part of the President's circle.³²⁹

251. In addition, in March, when leaving Congress, the Head of the Executive Branch doused journalists at the entrance with an anti-bacterial spray, saying it was an "anti-journalist" spray.³³⁰ A few days later, referring to the curfew about to be imposed, he said: "I would love to impose a curfew on the media, but one can't."³³¹ In the same vein, on April 11, he announced that he would only disclose the sex and age of persons infected with the coronavirus, so as to prevent the press from publishing sensitive information about patients. "just to cause a scandal,"³³² a charge that the press denied. He also accused the press of attempting to sow division in relation to the measures taken to address COVID-19³³³ and that he was the most-criticized President ever for doing what he was elected to do, even though there were just "20 morons" (*20 pelones*)

³²⁶ United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests](#).

³²⁷ IACHR. Special Rapporteurship for Freedom of Expression [Silenced Zones: Highly Dangerous Areas for the Exercise of Freedom of Expression](#). OEA/Ser.L/V/II CIDH/RELE/INF.16/17, March 15, 2017. Par. 158.

³²⁸ I/A Court H.R. *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194. Paras. 142, 143, and 148, and *Case of Perozo and others v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195. Paras. 154, 155, and 160.

³²⁹ Prensa Comunitaria. January 22, 2020. [Presidente Giammattei ataca a periodista que investigó a sus asesores](#); Article 19. January 24, 2020. [Organizaciones en favor de la libertad de expresión condenamos actuación del presidente de Guatemala, en el caso del periodista Marvin Del Cid](#).

³³⁰ Noticias Telemundo/YouTube. March 19, 2020. [Presidente de Guatemala es criticado por supuesta "broma pesada"](#); La Silla Rota. March 20, 2020. [Presidente de Guatemala "desinfecta" a periodistas por COVID-19](#).

³³¹ Publinews. March 21, 2020. [Giammattei: "Yo quisiera ponerle toque de queda a los medios, pero no se puede"](#); Reporteros sin Fronteras (RSF). May 08, 2020. [Guatemala: "¡No, no se debe poner en toque de queda a los medios!"](#).

³³² Nómada. April 12, 2020. [Presidente Giammattei: la prensa no es su enemiga, deje de ocultar los datos del COVID-19](#); APNews. April 13, 2020. [Guatemala: Periodistas denuncian acoso y censura de gobierno](#).

³³³ LaHora. August 14, 2020. [Giammattei dice: "Yo jamás dije que la responsabilidad no era mía"](#); Asociación de Periodistas de Guatemala (APG) [Guatemala Press Association]. November 29, 2020. *Estudio de situación de la libertad de expresión en Guatemala 2020. Un año desolador para la prensa en Guatemala*. P. 16. Available at: https://twitter.com/APG_1947/status/1333050665573167104

opposed to what he was doing, thanks to the "fake news" he claims was published against him.³³⁴ Other authorities have also come out against journalists working for La Hora and a caricaturist at Prensa Libre.³³⁵

252. At the same time, regarding statements by the Executive referring to "freedom of expression has a limit and that limit is the truth," the IACHR and its Special Rapporteurship recall that the inaccuracy of a piece of piece of information or lack of objective reflection of the truth is not, in itself, illegitimate nor does it cease to be protected by freedom of expression. First, it is necessary to distinguish between concrete facts that can be factually proven and value judgments. In the case of the latter, which are also covered by the right to freedom of expression, it is not possible to talk about veracity of the information.³³⁶

253. Second, regarding facts that can be proven, the Inter-American Court has established, ever since Advisory Opinion OC-5/85 on Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, that requiring a system practicing oversight of the right to expression purportedly to guarantee the correctness and veracity of the information a society receives may be a source of gross abuses and, ultimately, violates the right to information enjoyed by that same society.³³⁷ Such a requirement not only triggers self-censorship, inhibits social communicators, and limits the maximum flow of information in a society; it also entails imposing an understanding of the truth in accordance with the will of the State, when it comes to deciding on the limits to the right of expression. The Commission has likewise held that a provision obliging a critic of government officials to guarantee statements of fact has worrisome consequences for criticism of government conduct, and it has considered that the accuracy of news in general is a goal better achieved through positive government measures, such as guaranteeing the plurality of information, than by the imposition of sanctions for information deemed to be "inaccurate" or "lacking veracity."³³⁸

254. In light of all of the above, the IACHR observes that compliance with this recommendation is still pending.

255. With regard to the recommendation to **investigate crimes committed against journalists completely, effectively, and impartially; and in cases involving the murder of**

³³⁴ Spy502. October 15, 2020. [Giammattei: "No ha habido Presidente tan atacado como yo"](#); Asociación de Periodistas de Guatemala (APG). November 29, 2020. *Estudio de situación de la libertad de expresión en Guatemala 2020. Un año desolador para la prensa en Guatemala*. P. 16. Available at: https://twitter.com/APG_1947/status/1333050665573167104

³³⁵ La Hora, May 28, 2020. [Felipe Alejos contesta con narrativa de video anónimo publicado en enero](#); "Una cosa es la libertad de expresión y otra es burlarse de una persona que lucha por su vida. [One thing is freedom of expression; quite different is mocking a person fighting for his life.] Es francamente repudiable esta caricatura. [This caricature is frankly loathesome.] Exijo que el PDH @JordanRodas condene públicamente esto como una violación a la dignidad humana. [I demand that the PDH @JordanRodas publicly condemn this as a violation of human dignity.] Qué vergüenza @prensa_libre publicar esto". [Shame on you, @prensa_libre, for publishing this.] Twitter account of Congressman Álvaro Arzú @AlvaroArzuE. [July 30, 2020-9:42 AM](#).

³³⁶ I/A Court H.R. *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 02, 2008. Series C No. 177. Par. 93; and *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009, Series C No. 193. Par. 124.

³³⁷ I/A Court H.R. *Compulsory membership in an association prescribed by law for the practice of journalism (Articles. 13 and 29 of the American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985 Series A, No. 5. Par. 77.

³³⁸ IACHR. Annual report for 2001. Report of the Special Rapporteur for Freedom of Expression. Chapter IV (Media ethics) OEA/Ser.L/V/II. 114. Doc. 5. Rev. April 16. 2002. Paras. 13 and 14. For its part, Principle 7 of the Commission's Declaration of Principles on Freedom of Expression establishes that "Prior conditioning of expressions, such as truthfulness, timeliness or impartiality, is incompatible with the right to freedom of expression recognized in international instruments." IACHR. [Declaration of Principles on Freedom of Expression](#).

journalists, to establish the motive and judicially determine any possible connection to journalistic activity and freedom of expression, the IACHR highlights the creation, in December 2019, of the Public Prosecutor's Office for Crimes against Journalists, a Specialized Prosecutor's Office (*Fiscalía de Sección*) with a view to strengthening and guaranteeing the Guatemalan press' right to freedom of expression. That Public Prosecutor's Office will be responsible for "taking cognizance of, investigating, and prosecuting crimes committed against journalists when the acts in questions are to restrict their human rights in the performance of their functions, acts of intimidation, harassment, or reprisal against their activity."³³⁹ According to the Public Prosecutors' Office (MP), active files in the Unit for Crimes against Journalists in the Public Prosecutor's Office for Human Rights will be transferred, under supervision and with all due records, to the specialized (sectional) Public Prosecutor's Office.³⁴⁰

256. While the IACHR and the Special Rapporteurship welcome the establishment of a specialized sectional Public Prosecutor's Office that had previously consisted of a Unit attached to the Public Prosecutor's Office for Human Rights, they underscore that the State did not report on any progress with the investigations into murders and other crimes against journalists in 2020, or about advances achieved in the first year since the new Office was created. In that context, the IACHR highlights the fact that, even though --despite virtual hearings in some cases³⁴¹ -- the pandemic has delayed criminal investigations and hearings, Guatemala still exhibits high rates of impunity for crimes committed against journalists exercising their profession, and has done for years, which severely inhibits exercise of freedom of expression and has especially dire consequences for democracy, which depends on a free, open, and dynamic exchange of ideas and information.³⁴² At least 23 journalists were murdered between 2007 and 2020 for reasons allegedly linked to their professional work, with little discernible progress having been made in the corresponding investigations and identification of those responsible.³⁴³

257. During 2020, the Special Rapporteurship was apprised of three murders of journalists for reasons that could be related to their work. On March 3, 2020, a young journalist called Bryan Leonel Guerra died following an armed attack on February 27 in Chiquimula, Guatemala. According to information in the public domain, he had received death threats via

³³⁹ Public Prosecutors' Office (*Ministerio Público*). December 06, 2019. [Ministerio Público inauguró Fiscalía de Delitos contra Periodistas](#); DW. December 07, 2019. [Guatemala inaugura Fiscalía que investigará delitos contra periodistas](#).

³⁴⁰ Public Prosecutors' Office (*Ministerio Público*). December 06, 2019. [Ministerio Público inauguró Fiscalía de Delitos contra Periodistas](#).

³⁴¹ Prensa Libre. May 26, 2020. [Coronavirus: pandemia atrasa procesos penales hasta 2024](#); Prensa Libre. June 29, 2020. [Audiencias virtuales: así conocen algunos jueces los debates](#).

³⁴² IACHR. Special Rapporteurship 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. 12/13. December 31, 2013. Par. 287.

³⁴³ IACHR. [Annual report for 2015. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Situation of Freedom of Expression in the Hemisphere) OEA/Ser.L/V/II. Doc. 48/15. December 31, 2015; IACHR. [Annual report for 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: Situation of Freedom of Expression in the Region. OEA/Ser.L/V/II. Doc. 22/17. March 15, 2017; CIDH. [Annual report for 2017. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: Situation of Freedom of Expression in the Region. OEA/Ser.L/V/II. Doc. 210/17. December 31, 2017; IACHR. [Annual report for 2018. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: Situation of Freedom of Expression in the Region. OEA/Ser.L/V/II. Doc. 30. March 17, 2019 IACHR. [Annual report for 2019. Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: Situation of Freedom of Expression in the Region. OEA/Ser.L/V/II. Doc. 5. February 24, 2020. The Rapporteurship received information regarding at least two murders of journalists in 2020 that could be related to their work as journalists. See also, UNESCO. Director-General's report on the safety of journalists and the danger of impunity. CI-20/COUNCIL.32/4. October 27, 2020. Annex B, pp. 11-12. Available in English at: <https://unesdoc.unesco.org/ark:/48223/pf0000374700?posinSet=2&queryid=59f40786-004d-4e02-b22a-3c5f3fef2291>

social networks. The Public Prosecutors' Office announced that an investigation into the murder had begun,³⁴⁴ with no progress reported thus far. On November 10, two unidentified individuals shot Mario Ortega outside his home in the southwestern city of San José. He died of his wounds four days later. Ortega had founded San José Total, a TV channel and digital news service, where he was also a reporter in charge of covering local social and political issues. He, too, had reportedly been threatened. Determination of a link between the crime and the journalist's work is in the hands of the Guatemalan authorities, who said they had begun investigations.³⁴⁵

258. Regarding the obligation to see justice done with respect to murders committed in prior years, the IACHR notes progress in relation to criminal proceedings derived from the murder of journalists Danilo Zapón López and Federico Salazar in 2015, when they were working as correspondents for *Prensa Libre* and *Radio Nuevo Mundo* in Mazatenango, in the department of Suchitepéquez. According to information in the public domain, the trial against the person accused of having instigated the crime, Congressional Deputy Julio Antonio Juárez Ramírez, began on November 16, 2020 before Higher Risk Court "B"³⁴⁶, following indictment by the Public Prosecutor's Office and the close of the intermediate stage in the proceedings.³⁴⁷ The start of the trial was brought forward, as it had originally been scheduled to begin in January 2020.

259. According to the information available and based on investigations by the Public Prosecutors' Office, the deputy had hired the assassins to murder Danilo Zapón López for an article published on the former's issues with the tax authorities. The motive for the crime was thus allegedly to avoid tarnishing the politician's image in Congress, and an alleged disagreement about the nomination of the candidate for the position of Mayor of Cuyotenango. The target of the attack had reportedly been only Zapón López, but Federico Salazar, a colleague of his, with him at the time, also died in the attack.³⁴⁸

260. At the same time, the investigations being conducted by the Public Prosecutor's Office for Crimes against Journalists into the murder of journalists Álvaro Alfredo Aceituno López and Hamilton Hernández Vásquez and members of their families were transferred to the Special Public Prosecutor's Office against Impunity (FECI). The investigations will be conducted at the FECI office in Quetzaltenango, the department where the crimes were committed. According to

³⁴⁴ IACHR. Special Rapporteurship for Freedom of Expression July 01, 2016. [Press Release No.R52/20, Office of the Special Rapporteur condemns the murder of journalist Bryan Guerra and calls on the State of Guatemala to expedite the creation of a protection mechanism for journalists.](#) La Hora. March 04, 2020. [MP investiga muerte de comunicador en Chiquimula.](#)

³⁴⁵ *Comité para la Protección de Periodistas* (CPI), November 20, 2020. [Matan a disparos al periodista guatemalteco Mario Ortega](#); La Hora. November 14, 2020. [PDH condena asesinato de periodista Mario Ortega](#). For its part, the Public Prosecutors' Office pointed out that "via the Municipal Agency of Puerto de San José, in coordination with the Public Prosecutor's Office for Crimes against Journalists, they are investigating the armed attack on journalist Mario Ortega." Official Twitter account of the Public Prosecutors' Office of Guatemala @MPguatemala. [November 12, 2020-7:42 AM.](#)

³⁴⁶ La Hora, November 04, 2020. [Caso Periodistas: FECI recusa a jueza señalada de reunirse con G. Alejos](#); elPeriódico. November 17, 2020. [Se inicia juicio contra exdiputado por asesinato de periodista](#); ChapinTV. November 26, 2020. [Continúa el juicio contra el exdiputado Julio Juárez.](#)

³⁴⁷ CICIG. [Informe de Cierre. El Legado de justicia en Guatemala.](#) 2019; elPeriódico. May 28, 2019. [Sindicado por asesinato de dos periodistas mazatecos declara en audiencia bajo reserva parcial](#); Prensa Libre. June 04, 2019. [Exdiputado Julio Juárez es enviado a juicio por asesinato de periodista de Mazatenango](#); Guatevisión. June 04, 2019. [Exdiputado Julio Juárez enfrentará juicio por muerte del periodista Danilo López](#); La Hora. June 04, 2019. [Exdiputado Julio Juárez es enviado a juicio por crimen contra periodistas.](#)

³⁴⁸ elPeriódico. June 04, 2019. [Suspendido diputado Julio Juárez va a juicio por la muerte de un periodista de Suchitepéquez](#); Soy505 June 04, 2019. [Diputado enfrentará juicio por asesinato de periodistas](#); elPeriódico. November 17, 2020. [Se inicia juicio contra exdiputado por asesinato de periodista.](#)

information in the public domain, "FECCI was strengthened by the incorporation of the Directorate of Criminal Investigations, crime analysts, and financial analysts, as well as support personnel." It was "created to receive and follow up on investigations started by CICIG."³⁴⁹

261. For its part, the IACHR did not receive information regarding specific pronouncements by senior government officials regarding this environment of murders and attacks on journalists and the media for doing their jobs. In contrast, the Special Rapporteurship observes that civil society reported at least 124 acts of aggression against journalists and the media in 2020. Thus, cases were recorded in Guatemala of obstacles to accessing sources in connection with coverage of the COVID-19 pandemic, threats, including death threats, attacks on women journalists, the filing of defamation lawsuits, physical assault, arbitrary arrest, censorship, cyber-attack, verbal and material assault, and judicial and other harassment. Furthermore, as mentioned above, two journalists were murdered.³⁵⁰

262. The Special Rapporteurship was apprised of several instances of aggression, arbitrary arrests, and threats for reasons that could be linked to practice of the journalism. Notable cases include threats against journalists Sonny Figueroa y Marvin del Cid, in which the former was detained on orders of an officer who had previously tried to intimidate him, although he was later released and two police officers were arrested as being allegedly responsible for misuse of authority; and the arbitrary arrest of community journalist Anastasia Mejía, while she was covering protests. After being held for some 38 days without an order for pre-trial detention, she was ordered subject to house arrest.³⁵¹ The IACHR finds the above worrisome because of the lack of appropriate measures for preventing it and the lack of protection for communicators and media.

263. The IACHR issues a reminder that States should ensure that crimes against freedom of expression are investigated and handled through independent, swift, and effective judicial procedures. As pointed out on other occasions, failure to punish the perpetrators and instigators of murders, assaults, threats, and attacks on journalists related to their work fosters the commission of new crimes and triggers a notorious reaction of self-censorship, thereby severely undermining the possibility of a genuinely open, uninhibited, and democratic debate.

264. In light of the above, the IACHR concludes that compliance with this recommendation has been partial.

³⁴⁹ Emisoras Unidas. September 30, 2020. [Trasladan a FECCI de Quetzaltenango investigación sobre asesinato de periodistas](#); Publinews. September 30, 2020. [FECCI Quetzaltenango investigará asesinato de dos periodistas](#).

³⁵⁰ Asociación de Periodistas de Guatemala (APG) [Guatemalan Press Association]. November 29, 2020. *Estudio de situación de la libertad de expresión en Guatemala 2020. Un año desolador para la prensa en Guatemala*. Available at: https://twitter.com/APG_1947/status/1333050665573167104; DW. November 29, 2020. [Más de 100 agresiones a la prensa en Gobierno de Alejandro Giammattei](#); Artículo 19. November 30, 2020. [Guatemala: la prensa sujeta a la violencia](#).

³⁵¹ Asociación de Periodistas de Guatemala (APG) [Guatemalan Press Association]. November 29, 2020. *Estudio de situación de la libertad de expresión en Guatemala 2020. Un año desolador para la prensa en Guatemala*. Available at: https://twitter.com/APG_1947/status/1333050665573167104; Artículo 19. December 08, 2020. [Periodistas de Guatemala reciben amenazas a través de un mensaje dejado en su domicilio](#); Listín Diario. September 13, 2020. [Detienen por "escándalo" a periodista que investiga al Gobierno de Guatemala](#); Prensa Libre. October 19, 2020. [Aprehenden a policías que capturaron al periodista Sonny Figueroa](#); IACHR. Special Rapporteurship for Freedom of Expression July 01, 2016. [Press Release No.R258/20. The Office of the Special Rapporteur considers inadmissible the delay in the detention process of indigenous journalist Anastasia Mejía Triquis in a pandemic context and calls on the State of Guatemala to respect and guarantee her right to personal liberty and due process of law](#); teleSUR. October 29, 2020. [Envían a arresto domiciliario a comunicadora guatemalteca](#).

265. Despite a commitment reiterated by the State of Guatemala since 2012 and ratified by President Alejandro Giammattei³⁵² to establish a **program to protect journalists and social communicators**, the IACHR and its Special Rapporteurship observe that thus far nothing has come of those commitments. During the on-site visit by the IACHR from July 31 to August 4, 2017, and on numerous occasions, both the IACHR and its Special Rapporteurship have recommended to the State that it establish a program to protect journalists and media workers in Guatemala, due to the violence and attacks they have been the brunt of in that country for over a decade and they have underscored certain guidelines that need to be taken into account when designing and running journalist protection programs.³⁵³

266. The State informed the IACHR that "through the National Civil Police Division for the Protection of Persons and Security [DPPS] protection is provided based on risk assessments [...] [and a determination is reached regarding] the specific security measures the victim needs for his or her personal, peripheral, or peak times [*tipo cordillera*] protection.³⁵⁴ While the IACHR considers such measures useful, it stresses the importance of creating a special protection mechanism, owing to the particular circumstances surrounding violence against journalists in Guatemala. As pointed out in previous reports,³⁵⁵ although the Special Rapporteurship received a draft decree from the Government on February 21, 2018 purportedly setting the program in motion and sent the Government a technical analysis and a series of recommendations, no progress was made and no concrete prevention and protection steps taken with respect to violence against journalists in 2020. In light of the above, the IACHR concludes that compliance with this recommendation is still pending.

267. Regarding the recommendation **to take measures to guarantee the exercise of freedom of expression, plurality, and diversity in the digital transition process. Among other things, to bring the license access, renewal, and revocation processes into line with the inter-American standards**; although the State, in its Report for 2019, provided general information about the constitutional and legislative framework in force, underscoring that there were sufficient guarantees for the exercise of freedom of expression, "including the use of digital technologies such as the Internet and social networks,"³⁵⁶ it did not provide information updated to 2020 on the status of compliance with this recommendation. Nor has the IACHR been able to identify the adoption of any other measure indicating progress in this area. Therefore, in view of the lack of up-to-date information, the IACHR concludes that compliance with said recommendation is still pending.

268. Regarding the recommendation **to promote a pluralistic approach to information and multiple points of view by fostering the full enjoyment of freedom of thought and expression, access to the media, and diversity in media ownership and sources of information through, among other things, transparent licensing systems, and,**

³⁵² El Periódico. June 17, 2020. [Programa de protección de periodistas](#).

³⁵³ IACHR. Annual report for 2018. Chapter V (Guatemala) OEA/Ser.L/V/II. Doc. 30. March 17, 2019 Par. 227; Office of the Special Rapporteur for Freedom of Expression. July 01, 2016. [Press Release No.R52/20, Office of the Special Rapporteur condemns the murder of journalist Bryan Guerra and calls on the State of Guatemala to expedite the creation of a protection mechanism for journalists.; La Hora](#).

³⁵⁴ Republic of Guatemala, Report of the State of Guatemala on compliance with the recommendations issued in the report entitled "Situation of Human Rights in Guatemala" of the IACHR, of December 31, 2017. Received on October 23, 2020.

³⁵⁵ IACHR. Annual report for 2018. Chapter V (Guatemala) OEA/Ser.L/V/II. Doc. 30. March 17, 2019 Paras. 224 and 225; IACHR, 2019 Annual Report. Chapter V (Guatemala) OEA/Ser.L/V/II. Doc. 5. February 24, 2020. Par. 238.

³⁵⁶ Republic of Guatemala, Report of the State of Guatemala on compliance with the recommendations issued in the report entitled "Situation of Human Rights in Guatemala", of the IACHR, received on January 21, 2020.

as appropriate, effective regulations that prevent the improper concentration of media ownership, the State did not inform the IACHR of the adoption of concrete measures in 2020 to advance and/or comply with this recommendation. Nor do the IACHR and its Special Rapporteurship discern improvements in Guatemala with regard to the excessive levels of concentration in the ownership and control over audiovisual media, especially open television, observed during the on-site visit to the country in 2017.³⁵⁷

269. As mentioned in an earlier report, according to an investigation published on July 30, 2018 by Plaza Pública, five large media groups allegedly control radio and television in Guatemala. The Albavisión, Emisoras Unidas, Radio Grupo Alius, Radio Corporación Nacional (RCN), and Nuevo Mundo groups together use 39.77% of the Frequency Modulation (FM) band. A similar concentration is found with ownership of radio stations.³⁵⁸ Thus, concentration of ownership of commercial media, to the detriment of community media, persists and did not change in 2020.

270. Since its first pronouncement on the matter, the Inter-American Court of Human Rights pointed out, in Advisory Opinion No. 5 of 1985, that any monopoly of the ownership or administration of the media is banned, in any guise, and it recognized that States must actively intervene to avoid concentration of ownership of the media.³⁵⁹ Furthermore, the IACHR recalls that concentration of the media in just a few hands has a negative impact on democracy and freedom of expression, as noted in Principle No. 12 of the Declaration of Principles on Freedom of Expression of the IACHR: "Monopolies or oligopolies in the ownership and control of the communication media must be subject to anti-trust laws, as they conspire against democracy by limiting the plurality and diversity which ensure the full exercise of people's right to information." Accordingly, the IACHR concludes that compliance with this recommendation remains pending.

271. Regarding the recommendation to **adopt the legislative measures and public policies to recognize and ensure community media outlets' access to radio and television frequencies and licenses, and, in the meantime, to abstain from criminally prosecuting community radio stations**, the State did not apprise the IACHR of concrete steps to comply with this recommendation. Nor have the IACHR and its Special Rapporteurship observed progress with regard to the obligation assumed on numerous occasions by the Guatemalan State to legally recognize the community radio-broadcasting sector and to proactively take steps to allocate radio spectrum to that sector.

272. The Rapporteurship voiced its concern at the raid carried out, without a judicial warrant, at the Xyaab' Tzuultaq'a community radio in September 2019 and the unsuccessful attempt to seize its equipment, perpetrated by the Public Prosecutors' Office, police and military personnel in El Estor, Izabal, after a state of emergency (*Estado de Sitio*) had been declared. The authorities were unable to confiscate the radio station's equipment because, fearing a raid by the authorities, station personnel had decided to remove it from the premises as a precaution.³⁶⁰

³⁵⁷ IACHR. "[Situation of Human Rights in Guatemala](#)" OEA/Ser.L/V/II. Doc. 208/17. December 31, 2017. Par. 301.

³⁵⁸ IACHR. Annual report for 2018. Chapter V (Guatemala) OEA/Ser.L/V/II. Doc. 30. March 17, 2019 Paras. 240 and 241; Plaza Pública. July 30, 2018. [Radio y TV en Guatemala: pocas manos concentran muchas frecuencias](#).

³⁵⁹ I/A Court H.R. Compulsory membership in an association prescribed by law for the practice of journalism (Arts. 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985 Series A, No. 5. Paras. 33-34; IACHR. [Annual report for 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter VI \(Freedom of Expression Standards for Free and Inclusive Broadcasting\)](#). OEA/Ser.L/V/II. Doc. 51. December 30, 2009, par. 117.

³⁶⁰ El Periódico. September 30, 2019. [Relator de la CIDH condena allanamiento a radio comunitaria Izabal](#).

273. The raid was carried out against a radio that broadcasts in the q'eqchi, language, in FM, and via an Internet site, and reaches a sizable audience among the local and nearby indigenous community. Government authorities themselves used it to inform the local population regarding a number of topics. Due to the raid, the station did not broadcast until January 2020, to the detriment not just of the communities but also of the government entities that used it. "For many inhabitants, this community medium is especially important because of lack of access to the Internet or telephone network, but also because, unlike corporate TV or radio media, this station transmits in their mother tongue and helps transmit their oral culture."³⁶¹ A few month after broadcasting had resumed, there were protests by persons purporting to be fired employees of the local nickel mine outside the premises occupied by the radio station and the Defenders' Office, because the workers accused them of being responsible for the dismissals going on in the company. The protesters hurled insults at the personnel of both entities and threatened to invade the premises. Later, "the community radio staff denounced that before and after the threats uttered by the alleged mine employees, there were defamatory campaigns, with insults and racist messages, against them on social networks,"³⁶² accusing them of spreading the coronavirus in the municipality, as a "rebel radio," a "guerrilla radio." In addition, the radio again had to suspend broadcasting for a month, between around the end of July and mid-August, due to the declaration of a state of alert (*Estado de Prevención*) in the area.³⁶³

274. At the same time, the IACHR and its Special Rapporteurship note that, to this day, no progress has been made with regard to either the community communication media act, a part of Bill 4087, or any other initiative to legalize community radios, adopt any measures on their behalf, or grant them radio spectrum frequencies. The above, as well as the raid, confiscation of equipment, and the start of lawsuits against community radios operating without licenses, will be analyzed by the Inter-American Court of Human Rights in the *Kaqchikel Maya Indigenous Peoples of Sumpango et al. v. Guatemala*, following the IACHR's referral of its report on the merits on April 3, 2020.

275. In this regard, ever since 2000, the IACHR and its Special Rapporteurship have been making recommendations to the Guatemalan State focusing on two main aspects: the need for a fairer and more inclusive legal framework for radio broadcasting and decriminalization of broadcasting without a license in the country. It is worth stressing, moreover, that, in connection with the COVID-19 pandemic, community radios have become more important, in that "indigenous community radios are the main medium for informing, educating, motivating, and organizing indigenous communities in their own languages, in a culturally relevant manner, using their own insights and know-how, to prevent and address the COVID-19 pandemic" and to enable them to participate and take decisions with respect to the pandemic.³⁶⁴

³⁶¹ Asociación de Periodistas de Guatemala (APG) [Guatemalan Press Association]. November 29, 2020. *Estudio de situación de la libertad de expresión en Guatemala 2020. Un año desolador para la prensa en Guatemala*. P. 63.

³⁶² Asociación de Periodistas de Guatemala (APG) [Guatemalan Press Association]. November 29, 2020. *Estudio de situación de la libertad de expresión en Guatemala 2020. Un año desolador para la prensa en Guatemala*. P. 64.

³⁶³ Asociación de Periodistas de Guatemala (APG) [Guatemalan Press Association]. November 29, 2020. *Estudio de situación de la libertad de expresión en Guatemala 2020. Un año desolador para la prensa en Guatemala*. Pp. 62 to 64. Available at: https://twitter.com/APG_1947/status/1333050665573167104

³⁶⁴ For example, Nakój radio broadcast in the kaqchikel Mayan language the safety measures needed to avoid infection in Santo Domingo de Xenacoj. See, *Salud con Lupa*. July 30, 2020. [Guatemala: una radio comunitaria traduce la pandemia a los mayas de Xenacoj](#); Cultural Survival. May 27, 2020. [COVID-19 y las radios comunitarias indígenas](#).

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

277. Regarding the recommendation to **enact special, clear, and precise laws to regulate advertising at each level of government**, the State informed the IACHR in previous years' reports, that government advertising is allocated strictly in accordance with the rules established in the State Contracts Act and abides by the highest information quality standards and competitiveness in the requirements set in the requisite tenders (*la concurrencia de los requisitos establecidos en las bases de oferta que se requiere*), taking care to observe transparency and to keep the population informed of matters of national interest, and never seeking to reward or punish the editorial or informational content of the media.³⁶⁵ Nevertheless, the IACHR observes that the State did not report any concrete measures adopted in 2020 to reduce the levels of concentration or espouse regulatory proposals in line with inter-American standards.. In light of the lack of substantive information, compliance with the recommendation is still pending.

278. Regarding the recommendation to **ensure that its administrative laws and practices are compatible with the prohibition against the participation of the armed forces in public safety operations, in particular, the control of violence at social protests, and to limit budget allocations to matters concerning national defense**, the State reported that, pursuant to the "Government's Innovation and Development Plan," new installations of the Specialties Academy (*Escuela de Especialidades*) of the Civilian National Police were inaugurated, where a series of courses will be taught, including classes on criminal investigation, combating cybercrime, citizen security, and the protection of human rights. The State also pointed out that "citizen security tasks are mainly being performed by the Civilian National Police (PNC) and that participation by the Armed Forces has merely complemented them for limited periods of time in certain territories during states of emergency."³⁶⁶ However, the IACHR notes that the State did not report any more concrete steps taken to comply with this recommendation.

279. The State pointed out that, through Government Decision 5-2020 on March 5, 2020, the President declared the whole of the national territory in a "State of Public Emergency" (*Estado de Calamidad Pública*, literally "disaster"), as a result of the COVID-19 pandemic, which ended on October 1, 2020.³⁶⁷ While the aforementioned decree did not limit the right to freedom of expression, it did restrict, inter alia, freedom of movement (transportation) and the right of assembly and demonstration.³⁶⁸ Likewise, the IACHR and its Rapporteurship note that during 2020, states of emergency and alert were declared in a number of municipalities, with a view to combating organized crime, a move interpreted in some sectors as a pretext for repressing social

³⁶⁵ Republic of Guatemala, Report of the State of Guatemala on compliance with the recommendations issued in the report entitled "Situation of Human Rights in Guatemala", of the IACHR, received on January 21, 2020.

³⁶⁶ Republic of Guatemala, Report of the State of Guatemala on compliance with the recommendations issued in the report entitled "Situation of Human Rights in Guatemala" of the IACHR, of December 31, 2017. Received on October 23, 2020.

³⁶⁷ Republic of Guatemala, Report of the State of Guatemala on compliance with the recommendations issued in the report entitled "Situation of Human Rights in Guatemala" of the IACHR, of December 31, 2017. Received on October 23, 2020. See also, CNN Español. March 05, 2020. [Giammattei decreta el estado de calamidad en Guatemala como prevención ante el coronavirus](#); Prensa Libre. September 30, 2020. [Giammattei anuncia el fin del estado de Calamidad y llama a cumplir y exigir que se cumplan los protocolos](#)

³⁶⁸ Republic of Guatemala. Government Decision 5-2020. Published on March 6, 2020 in Diario de Centro América. Available at: <https://www.contraloria.gob.gt/wp-content/uploads/2020/07/Decreto-Gubernativo-5-2020-COVID-19.pdf>

movements and curtailing the right to protest. The states of emergency declared also restricted the rights to freedom of movement, freedom to demonstrate, and assembly, and others.³⁶⁹ The states of public disaster, emergency, and alert were all grounded in the Public order Act of 1965.

280. The IACHR and its Special Rapporteurship note various social protests in Guatemala in 2020 against measures adopted by the Government in connection with the COVID-19 pandemic, due to lack of access to food, and, in particular, the protests during November triggered by the people's outrage at the adoption by Congress of the national budget for 2021.

281. As a sign of protest and citizens' demands at the lack of access to food owing to health measures ordered because of the pandemic, a number of people and families placed white flags outside their homes, white flags being a symbol of hunger. That reaction originated in the small community of Patzún, some 50 kilometers from Guatemala City, and was replicated in other parts of the capital and the country, as well as in El Salvador.³⁷⁰

282. A victims' march, a kind of "funeral procession," and the blocking off of streets, were other reactions to government policies to prevent the spread of the coronavirus and to the lack of social and economic support to help people deal with the health crisis.³⁷¹ In a similar vein, doctors and health sector personnel declared themselves to be in a general assembly to draw attention to failure to pay salaries and to the shortage of equipment and medical supplies for their safety and for patient care. "Most people's response was to decry the doctors, as well as the government's claims that the hospitals had supplies."³⁷²

283. Another particular concern of the IACHR and its Special Rapporteurship was the repression, arrests, attacks on journalists, and excessive use of force to put down the protests that began in various parts of Guatemala on November 21,³⁷³ against adoption of the 2021 budget. While that event detonated the protests, supplementing it were "demands rejecting corruption, questioning of the actual use of resources that were supposed to be used to fight the COVID-19 pandemic, and, more broadly, a social, economic, and political crisis being dramatically exacerbated by the hurricane season."³⁷⁴ Huge crowds were drawn to the protests, only to be

³⁶⁹ DW, July 19, 2020. [Guatemala decreta estado de sitio en cinco municipios contra el crimen organizado](#); Insight Crime. July 27, 2020. [Guatemala impone estado de sitio con el pretexto de combatir el crimen organizado](#). La Hora, February 05, 2020. [Giammattei decreta Estado de Prevención en Chimaltenango](#); Prensa Libre. January 17, 2020. [Alejandro Giammattei declara estado de Prevención en Mixco y San Juan Sacatepéquez](#); Republic of Guatemala. Government Decision 1-2020. Published on January 17, 2020 in Diario de Centro América. Available at: https://www.minfin.gob.gt/images/downloads/leyes_acuerdos/DECRETO1-2020_220120.pdf

³⁷⁰ El Diario. April 24, 2020. [Las banderas blancas, símbolo del hambre, empiezan a asomarse en Guatemala](#); Reuters. May 21, 2020. [Con banderas blancas, salvadoreños y quatemaltecos piden comida durante crisis por coronavirus](#).

³⁷¹ Artículo 19. August 31, 2020. [Bajo sentencia: la censura en Cuba, Guatemala y Honduras](#); EFE. April 29, 2020. [Un "cortejo de víctimas" desfila en Guatemala en protesta contra el Gobierno](#); Radio Bilingüe. May 15, 2020. [Drástico cierre económico por coronavirus genera protestas en Guatemala](#).

³⁷² Artículo 19. August 31, 2020. [Bajo sentencia: la censura en Cuba, Guatemala y Honduras](#); CNN Español. June 10, 2020. [Médicos de pacientes de covid-19 en Guatemala exigen sus salarios](#); Prensa Libre. June 30, 2020. [Coronavirus: cuáles son las primeras anomalías detectadas por la nueva ministra de Salud](#).

³⁷³ BBC. November 21, 2020. [Las protestas en Guatemala que provocaron un incendio en las instalaciones del Congreso](#); BBC. November 23, 2020. [Protestas en Guatemala: 3 claves para entender las movilizaciones que acabaron con el Congreso en llamas](#); Prensa Libre. December 03, 2020. [5D. Anuncian nuevas manifestaciones este sábado contra el Congreso y el Gobierno](#); teleSUR. December 09, 2020. [Bloquean carreteras de Guatemala en protesta contra el Gobierno](#); CNN. December 10, 2020. [Varios grupos de manifestantes protestarán para pedir la renuncia del presidente de Guatemala](#)

³⁷⁴ IACHR. November 23, 2020. [Press release 281/20. IACHR Condemns Excessive Use of Force and Urges Investigation of All Forms of Violence During Social Protests in Guatemala](#).

pummeled indiscriminately with excessive use of force, including tear gas, fire-hosing, and beatings, along with arbitrary arrests. The Special Rapporteurship was apprised of attacks by individuals and/or police against at least seven journalists going about their work of covering the protests. Particularly noteworthy were the attacks on documentary film-maker Melissa Mencos, who was beaten and detained by the police, albeit later released when it was recognized that, as a journalist, she should not have been arrested; feminist journalist Jovanna García, who encountered a hooded man screaming "feminist infiltrator" at her, who hit her in the abdomen with an iron bar; and photojournalist Carlos Sebastián, who was hit by police batons on several parts of his body, including a blow to the head which caused serious injury.³⁷⁵

284. The IACHR and its Special Rapporteurship issue a reminder that the State has an obligation to respect, guarantee, and protect the right to freedom of expression and to peaceful protest, for all inhabitants of the country, and to assist the exercise of those rights in accordance with the principles governing a democratic society. Likewise, the State has the duty to ensure that journalists and media workers reporting on public demonstrations are not arrested, threatened, assaulted, or limited in any manner in their rights as a result of practicing their profession. Their work materials and tools shall not be destroyed or confiscated by the authorities. Protection of the right to freedom of expression requires authorities to ensure that the necessary conditions are in place for professionals working for the press to be able to cover events of obvious public interest, such as the above-mentioned social protests.³⁷⁶

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

III. CONCLUSIONS

1. The Commission reiterates the recommendations it made in its 2017 Country Report. More than three years after it was issued, the IACHR acknowledges the information provided by the State, particularly the information regarding progress with respect to citizen security and measures relating to children and adolescents in general, and migrant children and adolescents. At the same time, a comprehensive analysis of the information received reveals a significant number of recommendations for which compliance is still pending. The IACHR calls upon the State to guarantee implementation of the recommendations formulated in the report on its visit to the country.

2. The Commission ascertains that in 2020 actions tending to weaken the institutional underpinnings of human rights in Guatemala were stepped up, including the attempt to cut the budget assigned to the Office of the Human Rights Ombudsman, ongoing pronouncements against its work by the country's most senior authorities, and attempts to remove the Ombudsman from office for exercising his mandate. The Inter-American Commission is also worried at the disappearance of COPREDEH and its replacement by another entity (COPADEH) with no guarantee that the latter will be assigned the budgetary and human

³⁷⁵ IACHR. November 23, 2020. [Press release 281/20. IACHR Condemns Excessive Use of Force and Urges Investigation of All Forms of Violence During Social Protests in Guatemala](#); La Vanguardia. November 29, 2020. [Al menos cinco periodistas heridos durante las protestas en Guatemala](#); teleSUR. November 29, 2020. [Periodistas resultan heridos al cubrir protestas en Guatemala](#); Prensa Libre. November 24, 2020. [Las fotos que tomó el periodista Carlos Sebastián antes de ser agredido por la policía el #21N](#); Soy502. November 22, 2020. [#21N: Testimonio de Melissa Mencos, la documentalista detenida](#).

³⁷⁶ United Nations Special Rapporteur on the Protection and Promotion of the Right to Freedom of Opinion and Expression and the Special Rapporteur for Freedom of Expression of the OAS Inter-American Commission on Human Rights. September 13, 2013. [Joint declaration on violence against journalists and media workers in the context of protests](#).

resources, as well as an appropriate legal framework, needed to take over the functions and responsibilities of COPREDEH.

3. Especially worrisome, too, are the attacks on the independence of the judiciary in the form of complaints against, or impeachments of, magistrates of the CC, especially in connection with the High Courts election process, as well as the attacks on, and incrimination of, independent judges and public prosecutors who supported the work of CICIG in Guatemala or who continue to go about their work, including the public prosecutors in FECI. In that context, the IACHR regrets the lengthy delay by Congress with appointing High Court judges for the 2019-2024 term, as well as the lack of progress toward guaranteeing a constitutional reform of the justice system. Apart from undermining the principle of judicial independence, these deeds and omissions gravely impair the rule of law in Guatemala.

4. The IACHR likewise observes a lack of effective measures to comply with the recommendations regarding transitional justice and reparation for the victims of the internal armed conflict. In particular, it voices its concern at the decision by the Executive to "update" the approach to peace and human rights in Guatemala, which translated into the elimination of the Secretariat for Peace (SEPAZ) and weakening of institutions safeguarding peace, including the National Reparations Program. The IACHR regrets the lack of broad participation and effective dialogue with the victims, family members, civil society organizations, and other stakeholders in connection with decisions relating to compliance with the Peace Accords and the institutional arrangements derived from them.

5. The IACHR condemns the increase in attacks and aggression against human rights defenders, especially indigenous leaders and defenders of land and territory in Guatemala. In the year covered by this report, those acts allegedly resulted in the murder of at least 15 people. The IACHR is likewise concerned at information it has received of serious structural flaws in the investigation and punishment of attacks on, and murders of, human rights defenders, as well as the lack of reparation for victims and family members. Such flaws are reportedly helping perpetuate impunity for those crimes.

6. In connection with the global COVID-19 pandemic, the Commission recorded impairments of the right to freedom of expression and access to economic, social, cultural, and environmental rights, as well as of the human rights of groups who have historically suffered discrimination, especially children and adolescents, women, and indigenous peoples. Likewise, the Commission voices its concern at harm done to those groups in connection with the state of emergency declared by the Executive in 2020, particularly in the form of arbitrary arrests and other misuse of authority by members of the Army and Civilian National Police.

7. The IACHR reiterates its commitment to keeping close track of the human rights situation in Guatemala and of compliance with the recommendations made in its Country Report. Furthermore, the Commission expresses its readiness to work with the Guatemalan State in the quest for solutions to the problems and challenges identified in this report and to lend it support with complying with its international human rights obligations.