

65 YEARS
IACHR



OAS | More rights
for more people

Preliminary Observations

On-site visite to Guatemala

July 22 - 26, 2024

DOC. 124/24

OEA/Ser.L/V/II.doc.124/24
Approved on August 15, 2024
Original: Spanish

Inter-American Commission of Human Rights

Preliminary Observations

On-site visit to Guatemala

2024

www.iachr.org

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Members

Roberta Clarke

Carlos Bernal Pulido

José Luis Caballero Ochoa

Edgar Stuardo Ralón Orellana

Arif Bulkan

Andrea Pochak

Gloria Monique de Mees

Executive Secretary

Tania Reneaum Panszi

Chief of Staff

Patricia Colchero Aragonés

Assistant Executive Secretary for Monitoring, Promotion and Technical Cooperation

María Claudia Pulido Escobar

Assistant Executive Secretary for the Case and Petition System

Jorge Meza Flores

Special Rapporteur on Economic, Social, Cultural and Environmental Rights

Javier Palummo Lantes

Special Rapporteur for Freedom of Expression

Pedro Vaca Villarreal

I. Introduction

1. Below, the Commission presents its preliminary observations and recommendations following the completion of the *on-site* visit to Guatemala that took place between July 22 and 26, 2024. First, it will address the background and current context of democratic institutions in the face of the impact of impunity and corruption. Second, it analyzes the instrumentalization of the justice system, with special emphasis on the situation of justice operators and human rights defenders. Subsequently, the IACHR refers to the issue of memory, truth and justice for crimes committed during the armed conflict; the situation of freedom of expression; economic, social, cultural and environmental rights; as well as citizen security and the human rights of historically discriminated and excluded groups. Finally, the IACHR presents its preliminary conclusions and recommendations at the end of its visit.
2. The IACHR will prepare a country report in the coming months to further elaborate on these issues and present its final recommendations to the State of Guatemala.

II. Background and current context: the impact of impunity and corruption on Guatemala's democratic institutions

3. Before presenting its preliminary observations, the Commission considers it essential to refer to the context and background of its visit, which includes the legacy of serious human rights violations that have marked Guatemala's recent history, as well as their causes and consequences. Subsequently, it addresses the impact of impunity and corruption on democratic institutions in a scenario marked by social exclusion and inequality in the country, especially with respect to indigenous communities and peoples.

A. Legacy of the internal armed conflict

4. The IACHR has followed the human rights situation in Guatemala with special attention since its first years of operation, particularly in response to the grave human rights violations perpetrated during the internal armed conflict that took place between 1960 and 1996. This was characterized by the systematic execution of people, massacres, forced disappearances, rape, and scorched earth operations aimed at the at least partial elimination of the Maya people. Likewise, rape was a widespread, massive and systematic practice used by State agents as part of the counterinsurgency policy against women¹.
5. As established by the Commission for Historical Clarification (CEH) in its report "Guatemala, Memory of Silence", the internal armed conflict constituted a phenomenon whose explanation is multi-causal, the result of the convergence of a series of factors, such as structural impunity, the closing of political spaces, racism, the deepening of an exclusionary and anti-democratic institutionality, as well as the reluctance to promote substantive reforms that could have reduced structural conflicts. In this sense, the CEH concluded that "violence was fundamentally directed from the State, against the excluded, the poor and, above all, the Mayan population, as well as against those who fought for justice and greater social equality"².
6. In 1996, the signing of the Firm and Lasting Peace Agreement between the government of then President Álvaro Arzú and the Guatemalan National Revolutionary Unity (URNG) put an end to 36 years of civil war, representing an opportunity for profound change in Guatemala. The agrarian and land regulation situation, the elimination of discrimination, the recognition of the cultural identity and territories of indigenous peoples, as well as the attention to the different

¹ IACHR, *Situation of Human Rights in Guatemala*, OEA/Ser.LV/II. Doc. 208/17, December 31, 2017, para. 33.

² Commission for Historical Clarification. Guatemala, Memoria del Silencio "Tz Inil Natab'al", Conclusions and Recommendations, June 1999. p. 17.

social, cultural and economic aspects that perpetuated their historical exclusion were commitments assumed.

7. More than 25 years after their signing, these agreements have not been fulfilled and, on the contrary, there are severe setbacks that keep the victims and their families in a situation of abandonment and oblivion, ignored by the state apparatus. Likewise, a situation of impunity prevails with respect to the serious human rights violations of the past, as well as many of the factors that gave rise to the internal armed conflict, such as: the concentration of economic power in few hands, a weak state structure with few resources due to low tax collection, high levels of corruption and impunity, as well as the perpetuation of a context of discrimination, violence, racism and exclusion of indigenous peoples³.
8. During the visit, it was reported that indigenous peoples live in less favorable conditions than the rest of the population, with less access to basic services, electricity, sanitation, lack of decent housing conditions, limited labor and productive opportunities and obstacles to access to justice. This situation reflects the continuity of the context of exclusionary economic, cultural and social relations that gave rise to the internal armed conflict. In addition, there are evictions of Indigenous communities and internal displacement, the impact of natural disasters and climate change, the perpetuation of poverty and high rates of migration.

B. Fight against impunity and corruption

9. In its various reports since the time of the internal armed conflict, the IACHR has pointed out that the fight against impunity and corruption must be a priority for democratic governance. In this regard, the IACHR has repeatedly urged the Guatemalan State to commit itself to ensuring independence of justice operators and the dismantling of criminal networks, as well as parallel structures and

³ According to the latest National Population and Housing Census (2018), the total population of Guatemala is more than 17 million people. Of this total, 43.8% of the population is indigenous; and, of this percentage, 41.7% corresponds to the Mayan population.

powers that impede progress in this area to the detriment of the rule of law and the human rights of the population⁴ .

10. Over the past 20 years, through its monitoring work, the Commission has observed that corruption in Guatemala is structural and endemic, and manifests itself at all levels and in all territories. In its Resolution 1/17, the IACHR noted that corruption, "together with impunity, organized crime, intolerance and political violence, as well as the social exclusion of various sectors, represent a serious danger of regression in the effective enforcement of the rule of law and restrict the full enjoyment of human rights⁵ ". In its Resolution 3/23, the Commission called on Guatemala to reaffirm its commitment to combating impunity and corruption, strengthening the justice system and full respect for human rights, including through technical assistance and international cooperation⁶ " .
11. Between July 31 and August 4, 2017, the IACHR conducted its last *in loco* visit to the country and prepared the Report on the Situation of Human Rights in Guatemala⁷ . On the occasion, the IACHR noted that Guatemala was at the crossroads of adopting measures to resolve structural problems and guarantee the human rights of the Guatemalan people or, otherwise, it risked facing setbacks in this area and repeating episodes of serious human rights violations of the past.

⁴ Cf. IACHR, Report on the Situation of Human Rights in Guatemala, OEA/Ser.LV/II. Doc. 208/17, Dec. 31, 2017; IACHR, Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion, OEA/Ser.LV/II. Doc. 43/15, Dec. 31, 2015; IACHR, Justice and Social Inclusion: The Challenges of Democracy in Guatemala, OEA/Ser.LV/II.118, Doc. 5 rev. 1, Dec. 29, 2003; IACHR, Situation of Human Rights in Guatemala, OEA/Ser.LV/II.111, Doc. 21 rev.

⁵ IACHR, Human Rights and the Fight against Impunity and Corruption, adopted September 12, 2017, p. 2.

⁶ IACHR, Resolution 3/23 - Human Rights, the instrumentalization of the Justice System and the serious risks to the Rule of Law in Guatemala, Doc. 321, December 10, 2023. Resolution 7.

⁷ IACHR, Situation of Human Rights in Guatemala, OEA/Ser.LV/II. Doc. 208/17, December 31, 2017.

12. Between 2018 and 2020, the IACHR published three follow-up reports to the recommendations issued in its Country Report⁸. In 2021 and 2022, the Commission determined the inclusion of Guatemala in Chapter IV.B of its Annual Report, upon noting a severe deterioration of the rule of law, based on a series of interferences with the independence of the Judiciary, the criminalization of justice operators and other setbacks in the fight against corruption and impunity that seriously affected access to justice and the enforcement of human rights⁹.
13. In Chapter IV.B of the 2023 Annual Report, the Commission noted that the electoral process through which President Bernardo Arévalo was democratically elected was marred by actions that posed serious threats to the constitutional order and the rule of law. In its report, the Commission expressed its concern over a series of undue and arbitrary actions and interferences by the Public Prosecutor's Office, endorsed by the Judiciary, and without complaint from the Congress, which threatened to nullify the will expressed by the majority of the population¹⁰.
14. At the end of 2023, the social mobilizations called by ancestral authorities and indigenous communities in defense of democratic institutionality, together with the scrutiny of the international community, were decisive in ensuring a peaceful transition. In January 2024, following the change of government, President Arevalo expressed his commitment to human rights and the Inter-American system, in the fight against impunity and corruption, as well as his vision to increase the accountability and effectiveness of the public sector, promote reforms to address significant gaps in human development, the fight against poverty and

⁸ IACHR, Annual Report 2018, Chapter V. Follow-up report on recommendations made by the IACHR in the Report on the Situation of Human Rights in Guatemala; IACHR, Annual Report 2019, Chapter V, Second Follow-up Report on recommendations made by the IACHR in the Report on the Situation of Human Rights in Guatemala; IACHR, Annual Report 2020, Chapter V, Third Follow-up Report on recommendations made by the IACHR in the Report on the Situation of Human Rights in Guatemala.

⁹ IACHR, Annual Report 2022, Chapter IV.B, Guatemala, OEA/Ser.L/V/II. Doc. 50 rev. 1, April 1, 2023, para. 11; IACHR, Annual Report 2020, Chapter IV.B, Guatemala OEA/Ser.L/V/II. Doc. 64 rev. 1, May 26, 2022, para. 9.

¹⁰ IACHR, Annual Report 2023, Chapter IV.B, Guatemala, OEA/Ser.L/V/II. Doc. 386 rev. 1, December 31, 2023, Conclusions.

social inclusion. During the visit, the President reaffirmed this commitment to the IACHR and reported on some steps to move in that direction.

15. However, in the meetings held during the visit, individuals and groups from various sectors informed the IACHR about the existence of a deep-rooted hostility and resistance to the duly elected President and his vision of change and his challenge to the political, economic and military powers that seek to maintain structural impunity for crimes committed during the armed conflict as well as in current cases of corruption. Likewise, authorities at different levels referred to an environment of political polarization, obstruction and the consequent risks to governance in which the Legislative and the Judicial Branch play a predominant role.
16. The IACHR believes that strengthening democratic institutions and human rights is the task of the entire Guatemalan population and its institutions. Furthermore, it emphasizes that in order to develop a culture of tolerance, respect for the law and rejection of impunity, it is necessary to build consensus and accountability in all spheres, particularly in the Congress of the Republic. Therefore, the IACHR encourages the advancement of a democratic legislative agenda based on the principles of the right to political participación, equality and non-discrimination, accountability, as well as the fight against corruption and impunity.

III. Instrumentalization of the justice system

17. In the last seven years, the IACHR has observed a progressive deterioration of the rule of law and democratic institutions in Guatemala, among other factors, due to the instrumentalization of the criminal justice system against those who have been part of the fight against corruption and impunity. In its Resolution 3/23, the IACHR noted that the manipulation of the justice system for this purpose represents one of the most pressing challenges of democracies, since, under a

semblance of ‘legality’, the principle of separation of powers and judicial independence are deeply affected”¹¹.

18. The IACHR understands that criminalization consists of the improper and misuse of the criminal justice system through the manipulation of the punitive power of the State by State and non-State actors in order to hinder the legitimate work of journalists, human rights defenders and independent justice operators, or to persecute, intimidate and punish those who legitimately exercise the rights that are part of the civic and democratic space, such as freedom of expression, association and the right to assembly¹². According to the IACHR, this is manifested through the laying of multiple charges for spurious reasons against individuals, subjection to arbitrary and prolonged criminal proceedings, the application of fines and/or arbitrary detentions with or without conviction, the use of open or inapplicable criminal types to the specific case, charges that are disproportionate to the conduct that is the basis of the charge, the processing of spurious complaints, among other characteristics. In addition, criminalization has individual and collective effects, having a dissuasive effect on society¹³.
19. As indicated to the IACHR, the abusive use of criminal law intensified after the departure of the International Commission against Impunity in Guatemala (CICIG) in 2019. In particular, against justice operators who were investigated and charged for alleged crimes committed in the exercise of their duties¹⁴. Many of those targeted were part of the CICIG and the Special Prosecutor's Office against

¹¹ IACHR, Resolution 3/2023, Human rights, the instrumentalization of the justice system and the serious risks to the rule of law in Guatemala, approved December 10, 2023, p. 2.

¹² Cf. IACHR, Annual Report 2022, Chapter IV.B Guatemala, OEA/Ser.L/V/II. Doc. 50 rev. 1, April 1, 2023, para. 32 et seq.; IACHR, Criminalization of human rights defenders, OEA/SER.L/V/II. Doc. 49/15, December 31, 2015, para. 3.

¹³ Cf. IACHR, Protest and Human Rights. Standards on the rights involved in social protest and the obligations that should guide state response, OEA/Ser.L/V/II IACHR/RELE/INF.22/19, September 2019, para. 191.

¹⁴ Some of these crimes are: abuse of authority, breach of duties, conspiracy, influence peddling, illicit association, obstruction of justice, simulation of a crime, disclosure of confidential information, usurpation of functions, activities against the security of the nation, illegal detentions and resolutions in violation of the Constitution.

Corruption and Impunity (FECI). In the same situation are former prosecutors and other former prosecutors of cases related to the internal armed conflict and/or large-scale corruption, including those in charge of high-risk courts; and more recently the magistrates of the Supreme Electoral Tribunal (TSE). According to the information provided, in recent years, at least 50 justice operators went into exile due to criminal prosecution against them; 20 more were in prison; while former prosecutor Stuardo Campo is currently in detention.

20. According to the organizations and individuals with whom the IACHR met, this criminalization is animated by retaliation on the part of certain groups and power structures due to the investigations and prosecutions of acts of corruption and serious human rights violations carried out in the recent past by the FECI, the MP and High Risk Courts with the support of the CICIG. This with the active intervention of certain private actors such as, for example, the Foundation against Terrorism. At the same time, the Human Rights Ombudsman's Office would not comply with its constitutional mandate in cases of criminalization and arbitrary application of preventive detention.
21. In Guatemala, criminalization and harassment have extended to lawyers who acted as plaintiffs in corruption cases against state officials and/or who are currently defending criminalized justice operators. Likewise, this practice is used in a generalized manner against different groups, such as: legislators, journalists, students, teachers, members of political parties, public officials, the former human rights attorney and even against the President and Vice-President of the Republic. Members of indigenous, peasant and union organizations, as well as people who participated or participate in peaceful protests and social mobilizations in defense of democracy and the rule of law have also been affected.
22. During the visit, the Commission received abundant information on the abusive use of the criminal justice system against persons from different sectors of the population in different territories and departments. In the vast majority of the

meetings held, the IACHR received testimonies from a diversity of people under investigation by the Public Prosecutor's Office or who are afraid of being investigated, only for the legitimate exercise of their rights or functions. What they have in common was their criticism of the policies and conduct of certain branches of the state. Some stated that they had spent a long time in preventive detention for criminal charges arising from the defense of human rights, land and territory, or the exercise of freedom of expression, association and assembly. These arbitrary and punitive practices have reportedly caused profound and lasting damage to individuals, their families and communities, restricting their life projects and forcing many to live in hiding or in exile. Some people even indicated that criminal prosecution is used as a means of intimidation against those who have left the country.

23. In the meeting held with the Public Prosecutor's Office, the latter denied the existence of a criminalization practice, arguing that it has the legal mandate to investigate all the complaints it receives, without distinction of the person denounced, his position or profession. In this sense, the Public Prosecutor insisted that it is an autonomous and independent institution, which objectively applies the Guatemalan Constitution and laws.
24. However, based on the information provided by persons subjected to this practice, the IACHR identified at least five specific patterns that highlight the instrumentalization of criminal law and the lack of independence of the justice system, such as:
 - a. The filing of a high number of complaints against the same person, in many cases for the same facts, with the intention of making their legal defense more difficult. Among others, the Commission learned of cases of justice operators facing between 30 and 100 cases for carrying out their duties.

- b. The filing and processing of anonymous and/or unfounded complaints, with the purpose of maintaining a climate of pressure, harassment and intimidation.
 - c. The use of open, ambiguous or clearly inadmissible criminal offenses for the facts denounced, for example, people who are not public officials are investigated for offenses pertaining to public officials; judges are prosecuted exclusively for the content of their sentences; defense attorneys are charged with the crime of obstruction of justice simply for doing their job; members of indigenous communities that ancestrally inhabit these territories are accused of usurpation or aggravated usurpation and usurpation of protected areas.
 - d. The abusive use of pretrial detention, including the charging of serious crimes that do not benefit from alternative measures; or the application of millionaire bonds that are impossible to pay.
 - e. Violations of due process and the right to defense through the use of dilatory practices in criminal proceedings or the denial of access to files; denying information on the cases in which a person is being investigated and hindering the production of exculpatory evidence. In addition, the IACHR was informed of pressures to resort to the use of the figure of "acceptance of charges" in the face of the imminent loss of liberty.
25. Given the pattern of criminalization of certain categories of persons, the IACHR urges the courts of justice, and especially the Supreme Court of Justice, as well as the Constitutional Court, to effectively fulfill their obligations and function of exercising control of constitutionality and conventionality to end and redress the abusive exercise of the punitive power of the State¹⁵, avoiding retaliatory actions and arbitrariness. As long as the criminalization of those who exercise their human rights does not cease and justice continues to be instrumentalized for

¹⁵Cf. IA Court H.R., Case of Gelman v. Uruguay. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of March 20, 2013, para. 88.

spurious purposes, Guatemala will not be able to overcome the structural problems that affect its democratic institutionalality.

26. In this same context, there is a widespread perception that, in order to rebuild public confidence in the independence of the Judiciary, the selection process for Supreme Court and High Court justices for the period 2024-2029 must be consistent with international standards and conform to the principles of equality, objectivity, transparency and accountability. The IACHR has pointed out that the objective of any process of selection and appointment of justice operators must be to select candidates based on personal merit and their professional capacity, according to the uniqueness and specificity of the functions they will perform. To this end, it is essential to establish objective criteria for the evaluation and qualification of the candidates in order to minimize the discretionality of the persons or bodies involved in the selection process. The State must establish safeguards so that the selection processes are not carried out based on particular interests that could further undermine the independence of the Judiciary.
27. Finally, given the information received on measures that have weakened judicial independence over the past seven years, the IACHR considers it urgent to adopt the necessary legal reforms to ensure the separation of the administrative and jurisdictional functions of the Supreme Court of Justice, in particular by strengthening and giving full autonomy to the Judicial Career Council, as originally established in Decree 32-2016.

IV. Human rights defenders

28. The situation of human rights defenders in Guatemala has been a constant concern for the IACHR, with emphasis on those who defend the rights of indigenous peoples, land ownership and the environment, and victims of the internal armed conflict. During its *on-site* visit, the Commission received reports that amount to a pattern of oppressive actions limit the rights of human rights defenders and put them in a situation of risk due to acts of violence and

aggression to which they are exposed, such as murders, threats, harassment, as well as criminalization and harassment, through the instrumentalization of the criminal justice system, which occur in a context of impunity.

29. According to the information received during the visit, the number of attacks and aggressions against human rights defenders has increased dramatically in recent years. In 2023, the Unit for the Protection of Human Rights Defenders in Guatemala (UDEFEUGUA) recorded a total of 9,496 attacks, in contrast to the 3,574 attacks recorded in 2022. In relation to these figures, it highlights that the murder of 77 people linked to the defense of the environment, land and its natural resources between the years 2012 and 2020; between 2019 and 2022, this figure would correspond to 32 people killed. These aggressions are usually part of a staggered pattern that begins with acts of harassment and intimidation, followed by threats or other physical aggressions and, in some cases, concluding with the deprivation of life. As indicated to the IACHR, most of these acts remain in impunity due to undue delays and the lack of due diligence and impartiality of the Public Prosecutor's Office in the investigation of the facts; for example, some cases are not investigated by the specialized agency for crimes committed against activists and human rights defenders of the Human Rights Prosecutor's Office because it does not consider the link of the victims with their work in defense of human rights.
30. With regard to criminalization, the IACHR was informed that the lack of guarantees of judicial independence and impartiality in Guatemala has resulted in the excessive and unjustified use of criminal law against human rights defenders, with unfounded criminal proceedings, arbitrary arrests and the prolonged use of pre-trial detention, particularly of indigenous leaders and authorities. According to the Comité Campesino del Altiplano (CCDA), in 2023, 1,080 judicial accusations were registered, mostly for usurpation, as well as arrest warrants against people defending their land, of which 363 were women. Likewise, during the visit, legal representatives of criminalized persons denounced suffering stigmatization and

threats in judicial hearings, unequal treatment, as well as discrimination and racism used against indigenous lawyers. In short, they reported having the double burden of defending their clients and themselves in the face of criminalization.

31. As part of its visit, the IACHR received information on progress in the design, implementation and approval of a public policy for the protection of human rights defenders in compliance with the judgment of the Inter-American Court in the case of *Defensor de Derechos Humanos v. Guatemala*. The IACHR recognizes these efforts and calls on the State of Guatemala to ensure that the implementation and design of this policy complies with the requirements established by the Inter-American Court, including ensuring the participation of human rights defenders, civil society organizations and experts in its development.
32. With respect to the Human Rights Ombudsman's Office (PDH), in different meetings, the IACHR was informed about the loss of independence of this institution. In 2022, the process for electing its head did not fully observe the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), particularly in relation to publicity, transparency, and the analysis of technical and objective criteria for approving the instruments for evaluating applicants. Since then, the PDH has not complied with its constitutional mandate to defend the human rights of the Guatemalan population; on the contrary, in the context of generalized criminalization observed by the IACHR, the work of the PDH has been characterized by the filing of legal actions that benefit the interests of groups and power elites interested in perpetrating impunity, which criminalize social protest or the legitimate exercise of human rights that are part of the civic space. For its part, the PDH informed to the IACHR that it respects judicial independence and the separation of powers in cases of judicialization.

V. Memory, truth, justice and reparation

33. During its visit, the IACHR met with relatives of victims and victims of serious human rights violations, who denounced the actions taken by previous governments in limiting access to justice and the right to truth in cases of the internal armed conflict, as well as the dismantling, in 2020, of the institutional framework created pursuant to the Peace Accords. All of this has exacerbated impunity for serious human rights violations.
34. They also expressed that they feel "relegated and abandoned" by the State and denounced that they have been waiting for more than 17 years for the approval of bill 35-90, which would create a commission to search for people who disappeared during the armed conflict. This situation has generated a feeling of frustration and re-victimization among those who suffered serious human rights violations. Of particular concern is the situation of the elderly, many of whom are in a serious situation of poverty, exclusion and deterioration of their health, and awaiting some measure of justice and reparation.
35. The Commission also learned of the impact of criminalization, along with the arbitrary removal and transfer of justice operators in different emblematic transitional justice cases under its responsibility.
36. For their part, State authorities informed the Commission about initiatives for the dignification of victims through the implementation of a new national plan. In this regard, the IACHR recalls that comprehensive reparations for victims and their families must be a priority of the State, and therefore the axes of this public policy must have a sufficient budget and an intersectional gender and ethnic-racial approach, especially in light of the heavy victimization of indigenous women in the country. At the same time, the IACHR considers it urgent to create or strengthen other institutions linked to transitional justice. In its case, the State should strengthen the Presidential Commission for Peace and Human Rights

(COPADEH), through the allocation of sufficient human and material resources, and the consolidation of its legal framework.

37. In this same context, the IACHR visited the Historical Archive of the National Police and observed that it continues to operate under precarious conditions, lack of budget and staff limitations, reflecting the lack of prioritization by the State to safeguard historical memory. The Commission urges the State to guarantee the human and material resources necessary for its operation and, in particular, to digitize and classify the materials in its custody and make them accessible to the population within a reasonable period of time, given their value in clarifying the truth, access to justice, and reparation and dissemination of the memory of this context. Access to information about the atrocious crimes of the past and about the persons responsible and the structures that facilitated or promoted them is fundamental for the non-repetition of this violence.

VI. Freedom of expression

38. During its visit, the IACHR received information and testimonies about a restrictive and risky environment for the exercise of freedom of expression and freedom of the press in Guatemala. Since the last *on-site* visit in 2017, at least 13 murders of journalists were documented, many of which remain in impunity due to the lack of diligent and effective investigations. In addition, reports were received of threats, obstacles in access to information, restrictions on journalistic coverage, criminalization, economic pressures on media outlets and attacks on social networks through "*netcenters*." These actions have particularly affected journalists and media outlets that investigate cases of corruption, abuses of power and human rights violations, and have generated an environment of fear and self-censorship, forcing numerous journalists into exile.
39. This occurs in a context of the aforementioned questions about the lack of judicial independence and the instrumentalization of the criminal justice system to silence critical voices. Of particular concern is the case of journalist José Rubén Zamora,

founder of *El Periódico*, who has been detained since July 2022. Since then, the IACHR has received complaints of torture and inhumane detention conditions, as well as serious violations of due process, such as the prolonged use of pretrial detention, the criminalization of his lawyers, limitations on the right to defense and unjustified postponements of court hearings, which even occurred during his visit. The IACHR highlights that, on May 17, 2024, the Working Group on Arbitrary Detention of the United Nations Human Rights Council concluded that his detention lacks a legal basis, results from the exercise of his right to freedom of expression, does not comply with international standards of fair trial, and is discriminatory on the grounds of political opinion. It therefore determined that "the appropriate remedy would be to release Mr. Zamora immediately and to grant him an effective right to compensation and other reparation, in accordance with international law"¹⁶.

40. On the other hand, during its visit, the Commission observed serious obstacles to the work of indigenous radio stations and community journalists in Guatemala. In El Estor, it received complaints about judicial persecution through the abusive application of the criminal offense of "theft of fluids"¹⁷, through which work equipment has been raided. In addition, it heard testimonies about the criminalization of community journalists covering issues such as environmental degradation in ancestral territories as a result of monocultures and mining, eviction of communities, lack of humanitarian assistance for displaced persons and the excessive use of public force in social demonstrations, and illegal economies. Community media also reported disadvantages and unequal

¹⁶ UN, Human Rights Council, Working Group on Arbitrary Detention, Opinion No. 7/2024, concerning José Rubén Zamora Marroquín (Guatemala), A/HRC/WGAD/2024/7, 17 May 2024.

¹⁷ According to the last approved amendment to Article 249 of the Guatemalan Penal Code, "Whoever unlawfully steals electrical energy, water, gas or power from an installation or any other fluid belonging to another, will be punished with a prison term of two to four years". Cf. Congress of the Republic of Guatemala, Decree Number 8-2023, reforms published in the *Diario de Centroamérica* on April 3, 2023.

conditions in auctions for broadcasting frequencies in which they face economic groups and traditional media.

41. The IACHR also notes pending challenges for the implementation of the measures ordered by the Inter-American Court in the case of the *Maya Kaqchikel Indigenous Peoples of Sumpango*. During the visit, organizations reported that the State has not made progress in the reforms for the legal recognition of community radio stations and the granting of licenses and frequencies. The Commission considers it essential that positive measures be adopted to allow indigenous communities to operate their radio stations without interference or persecution, and to guarantee pluralism of information.
42. Finally, during the visit, the IACHR met with students, faculty and administrative staff of the Universidad de San Carlos de Guatemala (USAC) who have been criminalized for their participation in the protests that took place in 2022 in defense of university autonomy following allegations of irregularities by the current rector of the university. These people denounced threats, including threats of gender violence, intimidation on campus, and disciplinary and administrative actions against them, such as suspensions and expulsions of students, dismissal of staff and fines, among other facts, which would have forced them to interrupt their daily lives and even to go underground. It was reported that more than 80 people have disciplinary proceedings against them and another 27 have arrest warrants for crimes such as "aggravated usurpation", "illicit association" or "depredation of cultural property". Likewise, in different meetings, the IACHR was informed of the impact that the instrumentalization of criminal law in this case would have on the democratic institutionality due to the intention to criminalize the President and the Vice President of the Republic accused of supporting the protests.
43. The IACHR emphasizes that academic freedom and university autonomy are essential for the production and dissemination of knowledge, and are a

fundamental component of the right to freedom of expression. Therefore, it urges the State to fully respect the right to freedom of peaceful assembly in the university context, as well as to refrain from restricting and criminalizing the legitimate exercise of this right.

VII. Economic, social, cultural and environmental rights (ESCR)

44. Regarding the situation of ESCR, the IACHR observed during its visit the persistence of structural and historical challenges that limit adequate living conditions for the majority of the population, especially for groups in a historical situation of exclusion, especially indigenous peoples as well as Afro-descendant and rural communities¹⁸.
45. High levels of poverty and inequality, structural discrimination and structural corruption limit access to fundamental rights¹⁹. This situation is registered in a context of preponderance of private interests in social and agrarian conflicts, as well as due to the difficulties in implementing fiscal policies in the context of the weakening of democratic institutionality in the country. All this restricts access to essential rights such as water and sanitation, health, education, food, work, social security and the right to a healthy environment.
46. According to World Bank data, Guatemala is the largest economy in Central America in terms of population -estimated at 17.3 million- and economic activity, with a gross domestic product (GDP) of US\$ 92.7 billion, even registering economic growth above the average for Latin American and Caribbean (LAC) countries²⁰. However, this growth has not translated into a reduction in poverty

¹⁸ While 63.2% of households would suffer multidimensional deprivation, this percentage would be 86.1% for the Xinka people and 82.3% for the Maya people. Cf. Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Guatemala, Human Rights Council, 55th session, 26 February to 5 April 2024, paragraph 18.

¹⁹ On the impact of corruption on human rights and the factors conducive to this phenomenon, see IACHR, Corruption and Human Rights: Inter-American Standards, OEA/Ser.L/V/II. Doc. 236, Dec. 6, 2019, paras. 115- 119.

²⁰ World Bank, Guatemala, *Fact sheet*. Updated as of April 4, 2024.

and malnutrition rates. In 2023, 55.1% of the population lived in poverty. According to the World Bank, this figure is among the highest in the region. Guatemala's Human Capital Index score (0.46 in 2020) remains below the average for LAC countries and the rate of chronic child malnutrition (47%) is among the ten highest in the world²¹.

47. This situation is aggravated by the serious impacts of the climate emergency in the country, some of which were observed during the visit. According to some studies, Guatemala is one of the 10 countries in the world most affected by climate change²². In addition, the Commission notes with concern an institutional framework with significant gaps and limitations that prevent guaranteeing the right to a healthy environment, the proper management of water resources and the protection of biodiversity.
48. The contamination of more than 90% of Guatemala's water sources is of concern. Particularly noteworthy is the environmental problem and contamination of the Motagua River, Guatemala's largest watershed, which covers 96 municipalities. This contamination, which has national and extraterritorial impacts, derives from tons of garbage and plastic waste that flow from the Las Vacas River to the Motagua River. This is due to the absence of a water law, lack of regulation and control of business activities, as well as the inoperability of the Regulations for the Discharge and Reuse of Wastewater and Sludge Disposal²³. The IACHR visited the Chinautla River, in the municipality of Santa Cruz, department of Guatemala, which is part of the Motagua River basin, where it observed the serious problem of contamination and its profound impacts on biodiversity, the environment and

²¹ World Bank, Guatemala, *Fact sheet*. Updated as of April 4, 2024.

²² OXFAM, *In the last six years, extreme hunger has doubled in the 10 countries most affected by climate change*, September 2022.

²³ On May 30, 2024, the Constitutional Court provisionally suspended articles 2, 3, 4 and 24 *bis* of Governmental Agreement 236-2006, rendering inoperative the Regulation on Wastewater Discharge and Reuse and Sludge Disposal; this regulation is the only environmental norm that regulates wastewater discharges in the country.

the human rights of the communities that depend on it, including the Mayan Poqomam people. Meanwhile, in Livingston, Garífuna organizations denounced the impact of the contamination of the Motagua River on the health of the population and stressed that the river carries solid waste that accumulates at its mouth in Puerto Barrios, proliferating diseases such as dengue fever.

49. The Commission believes that overcoming these structural challenges requires compliance with human rights standards in the business sphere, as well as the State's regulatory and oversight obligations. In this regard, during the visit, the IACHR was informed about initiatives and actions by some actors in the business sector to advance free competition, the fight against corruption, the application of the United Nations Guiding Principles on Business and Human Rights, and environmentally friendly production processes. However, it received testimonies on the role of economic elites and some private actors in corruption, land and natural resource grabbing, leading to multiple social and agrarian conflicts. Information was also gathered on the budgetary and technical limitations faced by some government agencies, such as the Ministry of the Environment and Natural Resources, in fulfilling their control and oversight responsibilities, especially in relation to the contamination of water resources.
50. In this context, the IACHR received with concern information on the violation of human rights and a healthy environment, as well as the eviction and displacement of ethnic and peasant communities in the context of extractive activities and monocultures. Likewise, on the stigmatization and criminalization of rural communities, indigenous peoples, and land and environmental defenders. The Commission warns of the asymmetry of power of these communities vis-à-vis private actors in judicial processes and investigations, particularly with respect to the processes in charge of the Prosecutor's Office of Usurpation and the actions implemented in the framework of the cooperation agreement between the Public

Ministry and the Observatory of Property Rights²⁴ , together with the lack of an institutional framework for an effective and independent approach to agrarian, social and environmental conflicts.

VIII. Violence and citizen security

51. In the framework of the IACHR visit, the Guatemalan State acknowledged that Guatemala has faced a long history of violence that deeply affects society. In this regard, it noted that some of the factors contributing to this problem are poverty, economic inequality, gender inequality, and lack of opportunities; the aftermath of the internal armed conflict, as well as the lack of justice and reconciliation that has exacerbated social tensions and encouraged a culture of revenge and retaliation. Likewise, the proliferation and strengthening of organized crime groups that have transformed Guatemala into a strategic point for drug trafficking; in particular, the activities of these groups such as kidnappings, murders and extortion. All of the above, in a context of institutional weakness of the justice system, limited access to education, scarce job opportunities and the proliferation of a culture of violence, among others.

52. Despite the above, during the visit, the State indicated to the IACHR that, in the last two years, it registered a decrease in different indicators with respect to crimes such as theft, injuries and homicides. In relation to this crime, the authorities stated that, as of July 19, 2024, a total of 1,446 homicides were registered at the national level, of which 63% are concentrated in four departments: Guatemala, Escuintla, Izabal and Santa Rosa. In terms of evictions, the State acknowledged challenges in the implementation of existing protocols, as well as reports of the participation of private security agents. The Commission also received reports of civil society regarding very high levels of violence against women, including sexual violence, most of which is characterized by impunity.

²⁴ This cooperation agreement was signed between the Public Prosecutor's Office and the Observatory of Property Rights on March 17, 2021. In October 2021, the Attorney General inaugurated the Prosecutor's Office against Usurpation Crimes.

53. During the visit of the IACHR, the Guatemalan State reaffirmed that the National Civil Police is responsible for protecting the life, physical integrity, security of persons and guaranteeing peaceful coexistence, the free exercise of rights and freedoms, as well as preserving order and public safety; having as a guiding framework the national legislation, and the "Police Model of Integral Community Security", among other instruments. The state also emphasized that, since 2016, the Army does not participate in citizen security tasks that correspond to civil authority. Finally, it recognized the need to strengthen the PNC through sufficient resources, human rights training and the implementation of actions to combat structural corruption.
54. As will be analyzed below, during its various meetings, the IACHR received abundant information on the human rights violations affecting the population as a result of violence and insecurity in the country, with greater impact on excluded groups, such as indigenous peoples and peasant communities, among others. This scenario is aggravated by factors such as impunity, lack of confidence in the institutions responsible for imparting and administering justice, structural corruption, the participation of private security agents in security tasks, as well as the weakening of key units of the Public Ministry or their instrumentalization in favor of private or particular interests.

IX. Groups historically discriminated against

55. The following is a brief description of the situation of indigenous peoples, persons in human mobility, persons deprived of liberty, Afro-descendant persons and peoples, women and LGBTI persons, children and adolescents, and persons with disabilities, based on the main patterns recorded during the visit.

A. Indigenous peoples

56. In Guatemala, structural ethno-racial discrimination perpetuated by economic and/or political powers has translated into the instrumentalization of the state

apparatus and the justice system against indigenous peoples' access to land, territory and their natural resources. During its visit, the IACHR received information and testimonies about the lack of mechanisms for the recognition and titling of ancestral lands that -without carrying out processes of prior, free and informed consultation- allows the advance of hydroelectric, mining and oil companies and monocultures (such as oil palm) for the exploitation of their resources and their consequent contamination, instrumentalized by the actions of the Public Ministry and the Judiciary. This structure of dispossession is intensified in Garifuna territories whose form of territorial transmission is mainly oral.

57. The Commission also heard a large number of testimonies throughout the territory of indigenous leaders who have been criminalized for their role in the defense of the land and the environment, who are charged with different criminal offenses ranging from damage to property belonging to others and obstruction of public roads to kidnapping, usurpation and aggravated usurpation authorizing evictions, even where such evictions are carried out without prior notice and also without taking into account the historical claim of the communities on the ownership of the land.
58. In Alta Verapaz, the Commission received information of entire communities with arrest warrants against them and arrests recorded, including when people were leaving dialogue tables with the government. In Guatemala City, Maya Ch'orti' de Olopa indigenous authorities from the Department of Chiquimula reported on the impact of mining activities in their territory and the prosecution of their leaders. In Sololá and Quetzaltenango, indigenous persons and ancestral authorities informed the IACHR that they have been criminally accused of crimes such as illicit association, instigation to commit crimes or serious crimes that do not enjoy alternative measures , among them, members of the Maya Mam people of San Pablo, San Marcos. This situation was also evidenced during the visit to Petén with respect to the communities of Laguna Tigre and Sierra de Lacandón (communities in protected areas), as well as the communities of Laguna Larga, Santa Elena Rio Salinas and the Mayan Q'eqchi people of the village of San Luis,

municipality of Poptún. In the municipality of El Estor, the Commission observed the impact of evictions, criminalization and the Felix mining project on the Q'eqchi people; in particular, the Commission visited the community of Santa Rosita, where more than 30 Q'eqchi families evicted in May 2024 are housed.

59. Regarding evictions, the IACHR received consistent information on the excessive use of force by police officers, as well as the participation of private security agents; who, in addition to expelling people, burn homes, crops, personal items, and kill or steal animals. As a result, many communities are forcibly displaced, deprived of access to basic services and subjected to situations of extreme poverty. All of the above, without access to justice and with a differentiated and disproportionate impact on children and adolescents, women, the elderly and people with disabilities. In this context, civil society organizations expressed their concern about the actions of the Prosecutor's Office against the Crime of Usurpation in collaboration with judicial authorities for the benefit of private interests, through criminalization, eviction and dispossession of land from indigenous communities, causing their internal displacement in conditions incompatible with international standards.

B. People in human mobility

60. Guatemala has been characterized as a country of origin, transit, destination and return of people in human mobility. During its visit, the IACHR observed the cross-border dynamics of human mobility in the region. In particular, it visited the city of Tecún Umán, municipality of Ayutla, department of San Marcos, on the border with Mexico, the Rodolfo Robles Bridge, the banks of the Suchiate River, and the Scalabrian Missionaries' Migrant House, and met with persons in transit. In addition, the Commission visited the reception centers for returnees in Guatemala City and Tecún Umán.
61. In this context, the IACHR received information on the structural causes that generate the forced migration of persons. These include widespread violence,

organized crime, gender-based violence, and climate change. It was also informed about the phenomenon of internal displacement and the lack of recognition by the government, as well as the absence of regulation. At the same time, it observed the transit of people in human mobility through the country and warned of the risks they face on the migratory route. These people are victims of robbery, extortion and kidnappings, threats, physical and psychological violence and sexual violence against women, girls and LGBTI people, mainly by agents of the National Civil Police (PNC).

62. During the visit, the IACHR also received information on serious cases of rape against women and girls on the move, committed by groups of people, including police officers. Likewise, civil society organizations expressed concern about the disappearance of Guatemalan migrants on their migratory route, and the lack of response from the State to search for them and eventually repatriate their bodies. The IACHR recalls that the State has the obligation to guarantee the human rights of the people who make up the mixed migratory movements that transit through Guatemala. In particular, it is the State's duty to prevent human rights violations; to investigate and punish the persons involved, especially if the participation of State agents is identified; to ensure the regularization of the persons transiting through Guatemala; and to guarantee access to international protection procedures, thus avoiding the precariousness of the irregular situation of these persons and the consequences thereof.
63. With regard to returnees, although the Commission notes progress in strengthening the institutional capacity to receive them and provide them with guidance in a coordinated manner between different government and civil society agencies, it notes with concern that these people face the same conditions that forced them to move originally. Although civil society organizations, with the support of international agencies, provide accompaniment and reintegration services, the State lacks such policies. Having such policies in place is crucial in

order to have an impact on preventing secondary movements of people returning to Guatemala, especially forced ones, as well as ensuring their reintegration.

C. Persons deprived of liberty

64. In Guatemala, the situation of detainees is characterized by overcrowding, with a prison population that exceeds 200% of its capacity. This is the result of a criminal policy that prioritizes incarceration through the excessive use of pretrial detention, which rate reaches 47%, as well as the regulatory impossibility of applying alternative measures to pretrial detention for certain crimes. Among these crimes are those related to organized crime, such as extortion and those contained in the Law against Drug Trafficking. Likewise, this policy is reflected in the obstacles to access benefits such as the remission of sentences due to insufficient programs or administrative difficulties, and in the continued detention of persons who have served their sentences, due to the lack of resources to pay the fines imposed.
65. In addition, incarcerated persons face deplorable detention conditions, which were verified by the IACHR during its visits to centers in Guatemala City and Cobán. In particular, it learned of the insufficient number of guards, deteriorated infrastructure, poor health care and insufficient water supply. The Commission was also informed of the obligation to pay money to the PNC for the entry of goods, including medicines, and the lack of social reintegration programs. It is also of concern that, of the 32 detention sites, 9 are administered by the PNC, which means that the Penitentiary Service lacks information on the people in these spaces. These conditions disproportionately affect women and children and adolescents who live with their mothers.

D. People of African descent

66. The IACHR takes note of the state recognition of Afro-descendant persons and peoples, which includes persons who self-identify as Afro-Guatemalan, Garifuna, and English-speaking Creoles. During its visit, the IACHR received information on

the possible statistical reduction of this ethnic-racial group in the 2018 census²⁵. In this regard, these peoples denounced that the data collection variable was not carried out by ethnic-racial self-identification but by regional location, which would have left out Garifuna and Creole people residing outside the department of Izabal. Along these lines, the absence of representation of Afro-descendants in decision-making spaces was reported, due to the lack of affirmative actions to ensure special quotas for this ethnic-racial group in the different levels of public authorities of the State.

67. The Commission observed that Afro-descendants continue to face obstacles in the access and effective enjoyment of their economic, social, cultural and environmental rights. During their visit to Livingston, leaders expressed concern about the risk of extinction of the Garifuna community, due to the precariousness of livelihoods and development that affects their cultural integrity. They emphasized the lack of emergency health care and the intermittency of basic public services such as water and electricity, putting at risk the survival of the community, particularly children, adolescents and ancestral authorities. They highlighted the possible disappearance of their own language in 20 years, as well as the lack of policies with budget allocation for the preservation of their traditions.

E. Women

68. Guatemalan society is structured in unequal power relations between men and women, as well as towards people who do not identify or are not perceived under the hetero-cisnormative pattern. This structural discrimination results in high levels of violence, often perpetrated with extreme cruelty, against women, girls and adolescents. This is aggravated by the intersection with other vulnerability factors, such as ethno-racial, socioeconomic background and sexual orientation and

²⁵ National Institute of Statistics Guatemala, XII National Population Census and VII Housing Census. Results 2018. December, 2019, page. 25.

gender expression. Institutional weaknesses, lack of accountability, the culture of tolerance of inequalities and corruption also contribute to impunity.

69. In this context, the 2023 National Survey of Household Quality and Well-being (ENCABIH) revealed that 48.8% of women have suffered some type of gender-based violence at least once in their lives. Added to this figure is the alarming number of 206 violent deaths of women, girls and adolescents registered by civil society in the first six months of 2024, of which 44% have been categorized as femicides. The United Nations Development Program (UNDP) recorded around 19 cases of sexual violence against women and girls per day during 2022. Of these cases, 9.6% corresponded to girls between 0 and 12 years old, including an intersex girl. According to data from the National Institute of Forensic Sciences of Guatemala (INACIF), in 2023, 6,610 expert examinations were performed for sexual crimes, of which 32% were performed on girls aged 0 to 17 years (2,136). The Commission heard repeatedly that violence against women and girls is the most prevalent of all forms of violence in Guatemala.
70. Despite the progress achieved with the adoption of the Law against Femicide and other Forms of Violence against Women, during its visit, the Commission was informed about a pattern of impunity in cases of violence against women, as well as the lack of budget and support from the State for the mechanisms of justice and care for victims and their families. Although the Public Prosecutor's Office indicated having 12,453 convictions in cases of gender-based violence against women between 2017 and 2021, during the visit, civil society organizations reported that 768,552 complaints were dismissed between 2018 and April 2024.
71. With regard to sexual and reproductive rights, the Commission was informed of the need to move forward with policies and legal reforms to address the high rate of maternal and infant mortality. The criminalization of abortion²⁶ and the

²⁶ The Guatemalan Penal Code criminalizes abortion in all cases, except in cases of threat to the life of the pregnant woman (Articles 133 to 140).

deficiencies of maternal health services continue to expose women to the risk of being prosecuted, and have led victims of sexual violence and girls to forced pregnancy and high mortality risks in the context of obstetric emergencies.

72. Finally, civil society organizations informed the IACHR of the need to strengthen the institutional framework for the protection of women's rights, including the Presidential Secretariat for Women (SEPREM), the Office for the Defense of Indigenous Women and the National Coordinator for the Prevention of Violence against Women (CONAPREVI). During its visit, the Commission also observed that the Comprehensive Support Centers for Women Survivors of Violence (CAIMUS) do not have sufficient resources for their operation.

F. LGBTI people

73. In Guatemala, violence disproportionately impacts people with diverse sexual orientation, gender identity and/or expression and sexual characteristics. According to information received during the visit, during the year 2024, civil society has documented 19 violent deaths with extreme cruelty of LGBTI people, mostly gay men, bisexual men and trans women. In 2023, the number reached 34 cases, which represented a 20% increase compared to previous years. However, these values continue to be underestimated due to the lack of official data on discrimination, as well as disaggregated statistics on complaints, investigations, prosecutions or convictions in cases of bias-based violence. The right to gender identity is not recognised in Guatemala and neither is there a comprehensive law that prohibits discrimination on the basis of LGBTI status perpetrated by state and non-state actors. As reported to the Commission, generalized and bias-motivated violence is one of the main drivers of forced internal displacement, migration and the search for international protection of LGBTI persons.

G. Children and adolescents

74. During its visit, the IACHR was informed about the structural challenges in access to DESCA that particularly affect children and adolescents, which is reflected in the high rate of child poverty, and especially poverty experienced by indigenous children, and chronic malnutrition. Civil society organizations also referred to the impact of violence and crime on children's rights, such as human trafficking, forced recruitment by organized crime groups and sexual exploitation.
75. Despite the lack of resources of the Secretariat of Social Welfare (SBS), the lead agency for children, the IACHR recognizes the efforts of the Subsecretariat of Protection of the SBS to provide care to child and adolescent victims of various forms of violence, including those recruited by gangs or maras. However, the lack of coordination among the various public institutions to assist this population is of concern. Also of concern is the prevalence of institutionalization of children for reasons of poverty or the alleged consumption of substances without the corresponding medical certifications.

H. Senior citizens

76. The Inter-American Commission was informed about the situation of poverty and abandonment of older persons due to age and the intersection of other factors of exclusion such as ethnicity and race, as well as challenges related to the lack of implementation of comprehensive care policies, access to social security and the right to health. The Commission also received testimonies on the differentiated impact on the human rights of this group due to violence and insecurity, evictions and displacement, and even cases of criminalization of elderly defenders of land and territory.

I. People with disabilities

77. Persons with disabilities face a long history of discrimination and inequality rooted in Guatemala's historical and social structures. Despite constitutional advances

and legislative projects for the recognition of their rights, including the law that recognizes legal capacity and offers support and safeguards, definitions of disability based on the medical model are still maintained in the country's domestic legislation. Discrimination and the validity of such laws generate processes of social exclusion for about 10.4% of the population with disabilities, according to the 2018 census. In addition, they are exposed to violence that especially affects women and girls, who represent 53% of these people.

78. According to civil society organizations, discrimination has hindered the access of these people to rights such as education and health, which have been marked by the deficiency of public policies focused on the human rights paradigm. In relation to the right to employment, despite the existence of specific programs for labor inclusion, these programs have weaknesses due to the lack of accessibility and reasonable accommodation. In the scenario of high violence against women and girls, those with disabilities end up being victims of forced sterilization, according to the United Nations. However, the absence of official data on the crimes suffered by these people hinders the design and implementation of public policies for access to ESC rights, as well as due diligence against the perpetrators of gender-based violence.

X. Conclusions

79. Since its last visit to the country in 2017, the rule of law and democratic institutionality in Guatemala have severely deteriorated. During its visit, the IACHR observed that the persistent instrumentalization of the criminal system against those who have participated in the fight against impunity and corruption has undermined the principle of separation of powers and judicial independence. It also noted that criminalization is a generalized phenomenon that affects all persons who participate in the civic and democratic space, with the purpose of favoring a context of corruption, lack of accountability, and structural impunity. The

instrumentalization of the penal system for these purposes and under the patterns recorded represents one of the greatest risks to democratic stability in Guatemala.

80. Guatemala continues to face a series of structural human rights challenges, exacerbated by high levels of poverty, inequality, structural discrimination and social exclusion. The IACHR notes that the persistence of impunity and corruption exacerbates these problems, affecting historically excluded groups. During its visit, the IACHR found that indigenous peoples and Afro-descendants, as well as peasant communities, continue to face much worse living conditions than the rest of the population. People in human mobility face a generalized situation of abuses, extortion and human rights violations. The IACHR also verified the high levels of violence and impunity against women, girls and LGBTI persons; the risk of cultural extinction of the Garifuna people; overcrowding and serious detention conditions in prisons; as well as the exclusion of the elderly and persons with disabilities from national policies. It also warned that a context of restrictions on freedom of expression, access to information and lack of legal recognition of community radio stations persists.
81. More than 25 years after the signing of the Peace Accords, the failure to comply with these agreements has resulted in severe setbacks for the rights of the victims of the armed conflict and in a situation of impunity with respect to the serious human rights violations of the past. The IACHR is alarmed by the dismantling of the institutional framework for peace, particularly when the factors that gave rise to the internal armed conflict persist. Among these is the need to reform the agrarian legal and institutional framework to put an end to the lack of protection and dispossession suffered by peasant populations, as well as indigenous and Afro-descendant peoples. During its visit, the IACHR observed the impact of evictions on their rights, as well as patterns that demonstrate the manipulation of the state apparatus in favor of economic elites and private actors.

-
82. The IACHR warns that democratic governance, accountability and the possibility of confronting the country's structural problems are seriously hindered by a legislative branch that resists generating new alliances and political agreements that benefit democracy and the human rights of the population. This resistance seeks to maintain a climate conducive to structural impunity and the consolidation of privileges and perks for power groups. A democratic legislative agenda based on the principles of equality and non-discrimination, accountability, and the fight against corruption and impunity is urgently needed.
83. Given the erosion of democratic safeguards, the IACHR believes there is an urgent need to restore citizen confidence in public institutions, the system of administration of justice and democratic values. Access to independent, impartial and effective justice was a crucial aspect of the 1996 Peace Accords. For this reason, the Commission calls for the principle of judicial independence to prevail over particular interests, for the benefit of the Guatemalan people.

XI. Recommendations

84. In the case of Guatemala, the IACHR recalls that the American Convention is part of the block of constitutionality recognized in Articles 44 and 46 of its national Constitution, therefore, all branches of government must comply with the obligations voluntarily undertaken in the international human rights instruments to which it is a party.
85. In this regard, and in accordance with the provisions of Article 41 of the ACHR, the IACHR presents the following preliminary recommendations to the State of Guatemala:

Corruption and human rights

1. Implement a national action plan to prevent, investigate and punish acts of corruption with a time frame, expected results and that seeks to strengthen the applicable legal framework, access to information, auditing and control systems in

entities, protection of those involved in investigations and proceedings, and education of public officials on the effects of this phenomenon.

Human rights institutional

2. Take measures to ensure that, in the short term, the functioning of the Office of the Human Rights Ombudsman is in accordance with its constitutional mandate for the protection of the human rights of the Guatemalan population, as well as with the Principles relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (the Paris Principles) and international standards.
3. Implement a mandatory and periodic training plan for the staff of the Presidential Commission for Peace and Human Rights (COPADEH), increase its operating resources and strengthen its legal framework so that it becomes a permanent body in order to optimize the fulfillment of its function of advising and coordinating actions and mechanisms for the effective enforcement and protection of human rights and compliance with governmental commitments derived from the Peace Agreements.

Justice system

4. Cease arbitrary criminalization against justice operators, human rights defenders, legislators, journalists, students, teachers, members of political parties, public officials, as well as against members of indigenous, peasant and union organizations and affected groups at risk.
5. Immediately grant alternative measures to the deprivation of liberty in favor of all persons who are in pretrial detention, criminalized for the exercise or defense of human rights, or for their journalistic work, and cease all types of persecution and reprisals against them.

6. Conduct an independent review of the functioning of the Public Prosecutor's Office and its impact on human rights, taking into account widely publicized allegations of lack of objectivity.
7. Generate conditions for the care and return of exiled persons, including a comprehensive reparation plan.
8. Adopt the necessary legal reforms to ensure the separation of the administrative and jurisdictional functions of the Supreme Court of Justice, in particular by strengthening and giving full autonomy to the Judicial Career Council, as originally established in Decree 32-2016; as well as to strengthen the autonomy and independence of the Supreme Electoral Tribunal.
9. Guarantee the necessary conditions for the operation of the Nominating Commissions to integrate the list of candidates for the Supreme Court of Justice (CSJ) and the Chambers of the Court of Appeals, so that they can carry out the selection process with sufficient time to meet the legally established deadline and in accordance with Inter-American standards, under criteria based on merit and professional skills, and free from undue interference of any kind.

Human rights defenders

10. Urgently approve and implement a public policy for the protection of human rights defenders in compliance with the sentence issued by the Inter-American Court of Human Rights.
11. Train justice operators in human rights and standards on the rights of defenders, in order to avoid the unjustified use of criminal law against them, including the excessive use of arrest warrants and prolonged pretrial detention as a mechanism of intimidation, punishment or retaliation against these groups.
12. Ensure the implementation of Instruction 5-2018 that contemplates the Protocol for the Investigation of Crimes Committed against Human Rights Defenders, in

order to guarantee that the investigation of these crimes is carried out in accordance with the standards on the matter.

Memory, truth, justice and reparation

13. Re-establish the institutional framework derived from the Peace Accords. In particular, establish the National Plan for the Dignification of Victims of the Internal Armed Conflict and Reparation through the design and implementation of a line of action with differential gender and ethnic-racial approaches, with an adequate budget for its operation and sustainability, and which has defined expected results in the short, medium and long term, as well as an internal evaluation and follow-up plan.
14. Create a National Institution dedicated to the Search for Victims of Enforced Disappearances and provide it with sufficient resources to carry out its mandate.
15. To complete the classification and digitization of the archives related to the internal armed conflict within a reasonable period of time by the National Civil Police Archive, ensuring sufficient human and financial resources for this purpose.

Freedom of expression

16. Implement a mechanism for the protection of journalists that aims to guarantee the life and integrity of those at risk, that incorporates a differential gender approach, and that articulates inter-institutional actions for a comprehensive and effective response.
17. Implement a national plan to investigate with due diligence and sanction restrictions to freedom of expression, including acts of violence, threats, judicial harassment and undue pressures against journalists and the media, based on a prior objective diagnosis, a line of action, expected results and internal evaluation mechanisms.

18. Adapt domestic regulations to: (i) legally recognize community radio stations; (ii) ensure the reservation of the radio spectrum for their proper operation; (iii) establish a simplified procedure for the granting of licenses and equitable access to the media; and (iv) prevent discrimination and undue concentration in media ownership, according to the standards of the judgment *Maya Kaqchikel Indigenous Peoples of Sumpango v. Guatemala* of the Inter-American Court of Human Rights.

Economic, social, cultural and environmental rights

19. Adopt a national public policy that, based on the maximum available resources, effectively combats poverty and inequality in order to guarantee the protection of ESCR through a differentiated and intersectional approach with respect to the most vulnerable and historically discriminated populations in the country. This policy must contemplate measures in the economic and fiscal sphere, as well as for the fight against corruption and state capture in the short, medium and long term, through the establishment of monitoring and periodic evaluation mechanisms.
20. Regarding water and environmental protection: a) approve a Water Law that provides an adequate framework for water resource management; b) design and implement a national policy to address climate change and ensure environmental and biodiversity protection; c) approve new regulations for solid waste and wastewater management, compatible with the protection of a healthy environment. The adoption of these three measures should be carried out through a participatory process with the communities, articulated between all levels of government and with the proper regulation and supervision of business activities.
21. Take measures to guarantee human rights in the area of business activities, ensuring access to information, participation and access to justice for communities, especially indigenous peoples, Afro-descendants and peasants. In this context, it is essential to prevent, investigate and punish undue interference by business actors in judicial processes.

Indigenous peoples

22. Implement a national mechanism that involves all entities of the three branches of government that are competent and culturally appropriate for the recognition, regulation and collective titling of ancestral and/or traditionally occupied lands, in accordance with international standards. This mechanism must have clear regulations, an operating budget, and an action plan with concrete activities, including those aimed at avoiding the execution of eviction orders until the processes of recognition, regulation and collective titling of the lands, territories and natural resources of indigenous and tribal peoples are completed. Evictions should be a measure of last resort and if ordered, their execution must comply with human rights standards.
23. Adopt regulations on consultation protocols, in accordance with current international standards, in order to obtain the free, prior and informed consent of indigenous and tribal peoples in those measures that could have a direct or indirect impact on them.

People in human mobility

24. Adopt a national public policy aimed at preventing the structural causes of forced migration of persons or, if necessary, ensuring the reintegration of persons returning to the country. This measure should be based on a robust and objective internal diagnosis, should include lines of action to be taken by all national entities competent to address the problem, expected results in the short, medium and long term, and internal monitoring and evaluation mechanisms.
25. Draft and approve a law aimed at protecting, providing humanitarian assistance and durable solutions to internally and forcibly displaced persons and preventing this type of displacement, based on a prior diagnosis that quantifies this population, as well as the causes and typologies of this problem.

Persons deprived of liberty

26. Adopt a national criminal policy aimed at significantly reducing prison overcrowding in the country. The formulation of this policy should be based on a reliable prior diagnosis of the current situation of overcrowding, and clearly indicate the actions to be implemented and the expected results. To this end, the policy should contain concrete actions aimed at:
- i. reduce the use of pretrial detention and guarantee its strict application in accordance with the principles of exceptionality, legality, proportionality and reasonableness, which includes reviewing the situation of persons currently in pretrial detention;
 - ii. repeal the legislation that prevents the application of alternative measures by type of crime;
 - iii. promote the creation and application of alternatives to both pretrial detention and imprisonment, ensuring a gender perspective and differentiated and multicultural approaches through the trial;
 - iv. removing economic requirements that prevent people from regaining their freedom; and
 - v. immediately release all persons who have served their full prison sentences, regardless of their ability to pay the fines imposed as an accessory penalty.
27. Guarantee detention conditions compatible with human dignity and with respect for the differentiated approaches derived from gender, disability, or any other risk factor. To this end, it is essential to ensure that all persons detained in the country are housed in centers under the responsibility of the Penitentiary System, as well as to guarantee in such spaces:

- i. the adoption of measures to combat corruption;
- ii. provide adequate, specialized and quality medical care; and,
- iii. implementing effective social reintegration programs, with emphasis on work and education.

People of African descent

28. Include in national, regional and local data collection systems the Afro-descendant statistical variable, including the subcategories of Garifuna, English-speaking Creole and Afro-Guatemalan self-identification.
29. Adopt special and urgent measures for the targeted attention of the Garifuna and Creole population in the areas of health, education and culture with an intersectional and intercultural perspective.

Women

30. Implement a national plan of attention and investigation of violence against women, guaranteeing a gender focus that recognizes and addresses the particularities of the victims, and that is based on a prior objective diagnosis. This plan should include an increase in the operating budget and human resources of the National Coordinator for the Prevention of Domestic Violence and Violence against Women (CONAPREVI), as well as of the institutions in charge of attention to cases of gender violence, and establish a mandatory periodic training plan for its staff aimed at increasing their capacity in the exercise of their functions.
31. Implement a national awareness-raising plan with a pedagogical scope, and an ethnic-racial and intercultural approach, to raise awareness of the importance of eradicating discrimination and violence based on gender, gender identity and sexual diversity that is integrated by a communication campaign throughout the territory and by social advocacy actions. This plan must be based on a previous

diagnosis, and must contain concrete actions, as well as expected results and internal monitoring mechanisms.

32. Take the necessary measures to adapt the regulatory framework of the Guatemalan State to the Inter-American standards on sexual and reproductive rights of women, girls and adolescents.

LGBTI people

33. Adopt and implement a national plan to investigate bias-based violence against LGBTI people and establish a national system for collecting and analyzing data on reports of violence or discrimination. Data should be disaggregated by gender, sexual orientation, gender identity and expression, and sexual characteristics, to ensure effective monitoring, implementation, and evaluation of policies and measures adopted in this regard.
34. Adopt a law or amend existing legislation in order to guarantee equality and non-discrimination of LGBTI people, particularly in terms of their economic, social, cultural and environmental rights.

Children and adolescents

35. Implement a national public policy as a matter of urgency to reduce the high rate of chronic child malnutrition according to a previous diagnosis, concrete actions and expected results in the short, medium and long term.
36. Adopt a national public policy aimed at preventing all types of violence against children and adolescents in all areas of their lives, including the family and the community, and to ensure their immediate protection and restitution of rights, especially for those recruited by organized crime groups, including their safe reintegration into their communities. This policy should be based on a prior diagnosis, concrete actions and expected results in the short, medium and long term.

-
37. Guarantee the budgetary sufficiency of the institutions that make up the child and adolescent protection system, as well as human and material resources, especially of the Social Welfare Secretariat. In addition, establish an action plan to promote inter-institutional coordination among the various state agencies involved in the protection of this population.

Senior citizens

38. Accede to the Inter-American Convention on the Protection of the Human Rights of Older Persons. In the meantime, use this instrument as a reference for the elaboration and implementation of public policies with a human rights approach for older persons.

People with disabilities

39. Review domestic laws and regulations that refer to definitions of disability based on the medical model and modify them so that they are in line with the social and human rights model.
40. Adopt a national public policy to reduce the physical, communicative, attitudinal and symbolic barriers that hinder the full exercise of the DESCRA rights of persons with disabilities in Guatemala. This policy should be based on a previous diagnosis, concrete actions and expected results in the short, medium and long term.

65 YEARS
IACHR