



# **GUATEMALA: MAJOR HUMAN RIGHTS CHALLENGES STILL PENDING**

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW, 28TH SESSION OF THE UPR WORKING GROUP, NOVEMBER 2017

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# INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Guatemala in November 2017. In it, Amnesty International evaluates the implementation of recommendations made in the previous UPR, assesses the national human rights framework and the human rights situation on the ground, and makes recommendations to the government of Guatemala to address the human rights challenges mentioned in this report.

Amnesty International is concerned that the process to reform the judiciary appears to have stalled and so has the establishment of the National Commission for the Search for Victims of Enforced and Other Forms of Disappearance.

Amnesty International also raises concerns about continued impunity for past crimes, lack of independence of the judiciary, violence against women, attacks on human rights defenders, a surge in asylum applications by Guatemalans worldwide, and the death penalty.

# FOLLOW UP TO THE PREVIOUS REVIEW

During its second Universal Periodic Review (UPR) in 2012, Guatemala accepted a total of 112 recommendations, including to ratify international instruments,<sup>1</sup> to prevent violence against women,<sup>2</sup> to protect human rights defenders and journalists,<sup>3</sup> to ensure Indigenous Peoples' rights,<sup>4</sup> to eradicate poverty,<sup>5</sup> to abolish the death penalty,<sup>6</sup> to fight impunity and strengthen the justice system,<sup>7</sup> and to implement international recommendations.<sup>8</sup>

Regrettably, Guatemala also rejected important recommendations, including to ratify the International Convention for the Protection of All Persons from Enforced Disappearance,<sup>9</sup> and to

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review on Guatemala, (A/HRC/22/8), December 31, 2012, recommendations 99.1 (Spain), 99.3 (Honduras), 99.4 (Rwanda), 99.5 (Philippines), 99.6 (Philippines).

<sup>2</sup> A/HRC/22/8, recommendations 99.14 (Indonesia), 99.16 (Switzerland), 99.20 (Sri Lanka), 99.31 (Australia), 99.32 (Chile), 99.33 and 99.41 (Czech Republic), 99.34 (Honduras), 99.36 (Romania), 99.37 (Trinidad and Tobago), 99.38 (Singapore), 99.39 (Spain), 99.40 (Sweden), 99.42 (Greece), 99.43 (Thailand), 99.44 (Austria), 99.45 (Algeria), 99.47 (Qatar), 99.48 (Moldova), 99.49 (Iraq), 99.61 (Ireland), 99.104 (Bolivia).

<sup>3</sup> A/HRC/22/8, recommendations 99.52 (Czech Republic), 99.53 (Norway), 99.73 and 99.74 (Austria), 99.75 (Holy See), 99.76 (Iraq).

<sup>4</sup> A/HRC/22/8, recommendations 99.11 (Hungary), 99.94 (Slovenia), 99.103 (Trinidad and Tobago), 99.105 (Bolivia), 99.106 (Costa Rica), 99.107 (Greece), 99.108 (Holy See), 99.109 (Norway), 99.110 (Paraguay), 99.111 (Peru).

<sup>5</sup> A/HRC/22/8 recommendations 99.85 (Cuba), 99.86 (Ecuador), 99.91 (Paraguay).

<sup>6</sup> A/HRC/22/8 recommendation 99.1 (Spain), 99.2 (Ecuador), 99.3 (Honduras), 99.4 (Rwanda), 99.5 (Philippines), 99.28 (Romania), 99.29 (Slovakia).

<sup>7</sup> A/HRC/22/8 recommendations 99.18 (Netherlands), 99.59 (Finland), 99.63 (Spain), 99.64 (Singapore), 99.65 (United Kingdom), 99.66 (United States).

<sup>8</sup> A/HRC/22/8 recommendation 99.12 (Uruguay).

<sup>9</sup> A/HRC/22/8 recommendations 100.1 (Argentina), 100.2 (Mexico), 100.3 (France), 100.4 (Spain).

protect Indigenous Peoples' rights in the context of land disputes, mining projects and forced evictions.<sup>10</sup>

Guatemala also committed to redesign the human rights institutional system of Guatemala, continue with its policy agenda to strengthen the specialized justice system to protect women, develop policies and programmes to prevent armed violence in order to reduce violent deaths, develop a programme of protection for journalists, and continue with its permanent system to follow-up the recommendations.<sup>11</sup>

Some progress has been made with respect to the issues raised in the second UPR, such as the fight against impunity. However, these steps remain fragile and the constant threats to the independence of the judiciary remain a concern. In addition, there has been little action to give effect to recommendations to abolish the death penalty or address the situation of human rights defenders, and violence against women remains a major concern.

# THE NATIONAL HUMAN RIGHTS FRAMEWORK

A constitutional reform aimed at strengthening the independence of the judiciary and addressing structural obstacles that contribute to impunity was introduced in Congress in November 2016, following a national participatory dialogue on this issue which had taken place earlier in the year. However, as of March 2017 the project remains stalled as the members of Congress have been unable to reach consensus. Amnesty International is concerned over the lack of political will among certain sectors of Congress to maintain the original spirit of the reform which represents an opportunity to strengthen the justice system and fight against impunity.

Despite sustained efforts by human rights groups and relatives of the victims of human rights violations perpetrated during the internal armed conflict (1960-1996), Bill 3590 which was first presented to Congress in 2016, has yet to be approved. It would create a National Commission for the Search for Victims of Enforced and Other Forms of Disappearance. It is estimated that 45,000 persons were disappeared during the internal armed conflict. Guatemala has also still to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, which it signed in 2007.

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<sup>10</sup> A/HRC/22/8 recommendation 100.9 (Republic of Korea); 100.19 (Canada), 100.20 (Austria), 100.21 (Iraq), 100.22 (Ireland), 100.23 (Slovakia), 100.24 (Slovenia), 100.25 (Norway), 100.26 (Switzerland) and 100.27 (United States of America).

<sup>11</sup> A/HRC/22/8, Paragraph 102.

# HUMAN RIGHTS SITUATION ON THE GROUND

## IMPUNITY FOR PAST CRIMES

Since 2009, important steps towards accountability have been made in cases of human rights violations and crimes under international law perpetrated by military and police officers, including high-ranking officers, during the internal armed conflict in Guatemala between 1960 and 1996. For instance, the former Chief Detective of the now-defunct National Police, Pedro García Arredondo, was found guilty of the enforced disappearance of Edgar Saenz, a student. In 2015, he was also found guilty of orchestrating a fire in the Spanish Embassy that killed 37 people in 1980.

In 2016, two former military officials were found guilty of crimes against humanity for sexual and domestic enslavement and sexual violence against 11 Indigenous Maya Q'eqchi' women in the military base located in the community of Sepur Zarco during the internal armed conflict.<sup>12</sup>

However, efforts towards truth, justice and reparations remain reluctant in the vast majority of cases. In May 2013, the Constitutional Court nullified the sentence against former dictator Efraín Ríos Montt for genocide and crimes against humanity which had been issued 10 days earlier by High-Risk Tribunal A, and reverted the process to an earlier stage. Since then, the trial has been postponed and suspended on several occasions on procedural grounds.<sup>13</sup> When the trial restarted in March 2016, it was held behind closed doors because Ríos Montt had been declared mentally incompetent. However, in June 2016, the trial was again suspended.

In the Creompaz case, after several delays in the legal process,<sup>14</sup> the immunity of a member of Congress allegedly involved in grave human rights violations perpetrated in Militar zone 21, was finally lifted in March 2017. However, the arrest warrant is still pending.

In 2015, in the context of monitoring compliance with its judgements, the Inter-American Court of Human Rights declared that Guatemala had not fulfilled its obligation to investigate 12 cases of

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<sup>12</sup> Amnesty International, *Guatemala: Conviction Of Military In Sexual Abuse Case, A Historic Victory For Justice*, 26 February 2016. Available at <https://www.amnesty.org/en/press-releases/2016/02/guatemala-conviction-of-military-in-sexual-abuse-case-a-historic-victory-for-justice/>

<sup>13</sup> Amnesty International, *Shameful decision to postpone Ríos Montt trial a new stain on Guatemala's justice system*, 11 January 2016. Available at <https://www.amnesty.org/en/latest/news/2016/01/shameful-decision-to-postpone-rios-montt-trial-a-new-stain-on-guatemala-s-justice-system/> and "Guatemala: Court ruling on Ríos Montt's case highlights flaws in justice system", 25 August 2015. Available at <https://www.amnesty.org/en/latest/news/2015/08/guatemala-court-ruling-on-rios-montt-s-case-highlights-flaws-in-justice-system/>

<sup>14</sup> CEJIL, *Organizaciones internacionales exhortan a que se garantice el acceso a la justicia de las víctimas del caso CREOMPAZ en relación con el antejuicio al congresista Edgar Justino Ovalle*, 17 February 2017. Available at <https://cejil.org/es/organizaciones-internacionales-exhortan-que-se-garantice-acceso-justicia-victimas-del-caso-creompaz> ; and *Prensa Libre*, *MP solicitó antejuicio contra diputado electo del FCN*, 6 January 2016. Available at <http://www.prensalibre.com/guatemala/justicia/edgar-ovalle-maldonado-mp-solicito-antejuicio-contradiputado-electo-de-fcn>

human rights violations committed between 1981 and 1999.<sup>15</sup> The Court identified structural obstacles to justice in several of the cases, such as lack of access to military information and delaying tactics employed by the defence lawyers, and required the State to present information on measures adopted to remove the obstacles, including through institutional and legal reform.

In addition, proceedings before national courts often take place in an atmosphere marked by intimidation and insults against the victims, NGOs, observers and journalists present at the proceedings. Individuals close to the military have also staged protests and posted banners accusing the victims and civil party organizations of lying, of being guerillas, or of attacking the army.<sup>16</sup>

## INDEPENDENCE OF THE JUDICIARY

Much remains to be done to fight impunity and corruption in more recent cases and to guarantee the independence of the judiciary. The 2014 selection process of magistrates was characterized by irregularities caused by various interests on the part of political and de facto powers prevailing over an objective and transparent evaluation of the candidates.<sup>17</sup> Judges and prosecutors regularly face threats and intimidation.<sup>18</sup>

Since 2014, some progress has been achieved in investigations into the involvement of high profile politicians, judges, and state employees in large-scale corruption networks, through the joint efforts of the Attorney General's Office and the Commission against Impunity (known as "CICIG" in Spanish), as well as a number of judicial decisions based in law. However, the cases are moving very slowly due to delaying tactics by the defence teams and other structural obstacles. The constitutional reform introduced in Congress in November 2016, aimed at

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<sup>15</sup> I/A Court H.R., 12 Guatemalan's Cases v. Guatemala. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 24, 2015. Available at [http://www.corteidh.or.cr/docs/supervisiones/12\\_casos\\_24\\_11\\_15.pdf](http://www.corteidh.or.cr/docs/supervisiones/12_casos_24_11_15.pdf)

<sup>16</sup> United Nations, *2014 Annual report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala* (A/HRC/28/3/Add.1) para. 26. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/002/93/PDF/G1500293.pdf?OpenElement> ; Open Society Justice Initiative, Internal Justice Monitor of Guatemala Trials, *Benedicto Lucas García Charged in Molina Theissen Case*, September 7, 2016. Available at <https://www.ijmonitor.org/2016/09/benedicto-lucas-garcia-charged-in-molina-theissen-case/> *Grave Crimes Case Brief: The Molina Theissen Case*, June 23, 2106. Available at <https://www.ijmonitor.org/2016/06/grave-crimes-case-brief-the-molina-theissen-case/>

<sup>17</sup> United Nations, *2014 Annual report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala* (A/HRC/28/3/Add.1) para. 18, 20, 21. International Commission against Impunity (CICIG) Press release 037, October 17, 2014. Available at <http://www.cicig.org/index.php?mact=News.cntnt01.detail,0&cntnt01articleid=565&cntnt01returnid=1351> and Press release 041, November 7, 2014. Available at <http://www.cicig.org/index.php?mact=News.cntnt01.detail,0&cntnt01articleid=569&cntnt01returnid=67>

<sup>18</sup> United Nations, *2014 Annual report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala* (A/HRC/28/3/Add.1), para. 19; *2015 Annual report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala* (A/HRC/31/3/Add.1), para. 14; Briefing notes "Propuesta de reforma constitucional en Guatemala y amenazas hacia Fiscal General", October 7, 2016 ; and Press release OACNUDH-Guatemala resalta la importancia de garantizar la independencia judicial y llama al Estado a garantizar la protección de las juezas y los jueces, January 11, 2017. Available at <http://www.oacnudh.org.gt/documentos/comunicados/11012017OACNUDHComunicadodeprensaIndependenciaJudicial.pdf> See also I/A Commission Human Rights, Precautionary measure 366/16 – Miguel Ángel Gálvez y familia, Guatemala, August 21, 2016, available at <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC366-16-ES.pdf> and precautionary measure 497/2016 – Thelma Esperanza Aldana Hernández and Family, July 22, 2016, available at <http://www.oas.org/es/cidh/decisiones/pdf/2016/MC497-16-ES.pdf>

consolidating recent efforts towards justice and accountability and strengthening the independence of the judiciary, has yet to be approved.

## VIOLENCE AGAINST WOMEN

The level of violence against women in Guatemala remains alarmingly high. The National Institute of Forensic Science registered 774 violent deaths of women in 2014, 766 in 2015, and 739 in 2016,<sup>19</sup> and carried out examinations into 6561 sexual assaults against women in 2014, and 6930 in 2015.<sup>20</sup> According to the Attorney General's Office, violence against women ranks first in the number of complaints filed.

According to a study published by CICIG in 2014, impunity prevails in 80-97% of the cases of femicide and violence against women.<sup>21</sup> Although the number of sentences issued by special courts on femicide and violence against women has increased,<sup>22</sup> these courts do not exist in every department of Guatemala.

Between 2014 and 2015, the Inter-American Court of Human Rights issued two judgements against Guatemala related to the femicides of 16-year-old María Isabel Véliz Franco and 19-year-old Claudina Vélasquez Paíz.<sup>23</sup> In both cases, the State was declared responsible for the lack of immediate measures to protect and search for the missing women and for the lack of an exhaustive and effective investigation after their bodies were found bearing signs of sexual violence. Guatemala has yet to fully comply with the measures ordered in these judgements.

The high levels of child and adolescent pregnancies are of particular concern; they highlight the need for institutional measures to prevent sexual violence and ensure access to adequate health services, information and sexuality education.<sup>24</sup> Between January and August 2015, the Observatory on Sexual and Reproductive Health reported 4,431 cases of pregnancies among girls

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<sup>19</sup> National Institute of Forensic Science (INACIF), *Datos numéricos, información anual*. Available at: [http://www.inacif.gob.gt/index.php?option=com\\_content&view=article&id=97&Itemid=18](http://www.inacif.gob.gt/index.php?option=com_content&view=article&id=97&Itemid=18)

<sup>20</sup> Grupo Guatemalteco de Mujeres, compilation of data from INACIF on examinations on women, 2013 to 2015.

<sup>21</sup> International Commission against Impunity in Guatemala (CICIG), *Sistema de Medición de la impunidad en Guatemala año 2015*, page 47. Available at: [http://www.cicig.org/uploads/documents/2015/Docto\\_SisMedImp\\_20160414.pdf](http://www.cicig.org/uploads/documents/2015/Docto_SisMedImp_20160414.pdf)

<sup>22</sup> United Nations, *2016 Annual report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala* (A/HRC/34/3/Add.1) para. 55. Available at [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/34/3/Add.1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/3/Add.1)

<sup>23</sup> I/A Court H.R., *Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 19, 2014. Series C No. 277. Available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_307\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_307_esp.pdf); [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_277\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_277_ing.pdf); and *Case of Velásquez Paíz et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 19, 2015. Series C No. 307. Available at [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_307\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_307_esp.pdf)

<sup>24</sup> United Nations, *2016 Annual report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala* (A/HRC/34/3/Add.1) para. 59. Available at [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/34/3/Add.1](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/3/Add.1)



under 14 years of age, and 64,398 pregnancies among adolescents aged 15–19.<sup>25</sup> Between January and July 2016, 38,758 pregnancies among girls aged 10-19 were registered.<sup>26</sup>

## HUMAN RIGHTS DEFENDERS

Human rights defenders are left to carry out their activities in an extremely hostile environment. According to the Guatemalan NGO, Unit for the Protection of Human Rights Defenders in Guatemala (UDEFEGUA), 14 murders and seven attempted murders of human rights defenders were registered between January and November 2016. Impunity remains the rule in most cases of threats and attacks against defenders, as investigations to determine the possible perpetrators of these attacks have remained stalled for years.

Defenders working on rights related to land, territory and the environment are among the most targeted, facing continuous threats, intimidation, attacks, smear campaigns and stigmatization, including by state officials.<sup>27</sup> The attacks often occur in the context of social conflicts in reaction to projects to explore or exploit natural resources, as well as to their effects on the lives of people and communities living nearby, such as their right to water. These conflicts are triggered by a number of factors, including violations of the right of Indigenous Peoples and Afro-descendants to free, prior and informed consent.<sup>28</sup> The authorities have failed to address smear campaigns and stigmatization against defenders which contribute to violence against them and undermine the presumption of innocence of defenders suspected of or prosecuted for alleged crimes.

The justice system is regularly misused to criminalize human rights defenders, in an attempt to break up movements and organizations, wearing down the defenders and removing them from the public arena. The case of seven defenders of the right to water in northern Huehuetenango is an example of such abuse. Despite the fact that there was no evidence to support the charges against them, they were held in pre-trial detention for over a year and a half until a court ordered their immediate release in July 2016.

On 30 April 2014, three members of La Puya Peaceful Resistance were convicted of coercion, threats and illegal detention despite the lack of evidence presented by the prosecution. Their appeal against this decision is currently pending.

Guatemala has yet to implement the comprehensive public policy for the protection of human rights defenders ordered by the Inter-American Court of Human Rights in 2014 in the judgement *Human Rights Defender vs Guatemala*.<sup>29</sup>

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<sup>25</sup> Observatory on Sexual and Reproductive Health (OSAR), *Pregnancies among 10-14 years old girls*, January to August 2015. Available at [http://www.osarguatemala.org/Archivos/PDF/201510/289\\_21.pdf](http://www.osarguatemala.org/Archivos/PDF/201510/289_21.pdf) ; and *Pregnancies among 15 and 19 years old girls*, January to August 2015. Available at [http://www.osarguatemala.org/Archivos/PDF/201510/289\\_19.pdf](http://www.osarguatemala.org/Archivos/PDF/201510/289_19.pdf)

<sup>26</sup> Observatory on Sexual and Reproductive Health (OSAR), *Pregnancies among 10-19 years old girls*, January to July 2016. Available at [http://www.osarguatemala.org/osartemporal/Archivos/JPG/201609/289\\_22.jpg](http://www.osarguatemala.org/osartemporal/Archivos/JPG/201609/289_22.jpg)

<sup>27</sup> Amnesty International, *“We are defending the land with our blood: defenders of the land, territory and environment in Honduras and Guatemala (AMR 01/4562/2016)*, September 1, 2016. Available at <https://www.amnesty.org/es/documents/amr01/4562/2016/es/>

<sup>28</sup> Amnesty International, *Mining in Guatemala: Rights at risk (AMR 34/002/2014)*, September 2014, page 9. Available at <http://www.amnesty.ca/sites/amnesty/files/mining-in-guatemala-rights-at-risk-eng.pdf> ; and *“We are defending the land with our blood”: defenders of the land, territory and environment in Honduras and Guatemala (AMR 01/4562/2016)*, 1 September 2016, page 16.

<sup>29</sup> I/A Court H.R., *Case of Human Rights Defender et al. v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283.

Despite regular discussions with the government since 2012 on the urgent need to create a protection program for journalists, such a programme has not yet been implemented.<sup>30</sup>

## PEOPLE ON THE MOVE

Economic and social exclusion and long-standing discrimination against marginalized and Indigenous Peoples are dominating factors for migration from Guatemala,<sup>31</sup> along with high levels of violence and insecurity pushing people to flee in search of safety, including children. Although homicide rates have declined marginally over the last few years,<sup>32</sup> Guatemala remains one of the most violent countries in the region, and impunity continues to undermine public trust in local authorities and the justice system.

Between 2014 and 2015, asylum applications from Guatemalans worldwide increased by 81% to reach a total of 16,707.<sup>33</sup> The surge in asylum applications by Guatemalans and in unaccompanied minors arriving at the United States southern border reflects the increasing number of people fleeing the country and seeking protection. Of the nearly 69,000 total unaccompanied children apprehended at the United States border in 2014, 17,057 were Guatemalan citizens.<sup>34</sup> After a lull in 2015, the numbers surged again and Guatemalan children now comprise the biggest group of arrivals with 18,913 detained at the United States border in 2016.<sup>35</sup> In a statement in April 2016, UNHCR considered the current situation in the Northern Triangle to be a protection crisis: “We are particularly concerned about the rising numbers of unaccompanied children and women on the run who face forced recruitment into criminal gangs, sexual and gender-based violence and murder”.<sup>36</sup>

Citizens deported back to Guatemala over the last few years who sought or could have applied for asylum but did not due to various obstacles to accessing asylum in Mexico and the United States, face serious risks to their life and physical integrity on return. The number of Guatemalan

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<sup>30</sup> Office of the Ombudsman (known as “Procuraduría de los Derchos Humanos” in Guatemala), Press release El Procurador de los Derechos Humanos insta al Gobierno a implementar a la brevedad el Programa de Protección a Periodistas, February 1, 2017. Available at <http://www.pdh.org.gt/biblioteca/sala-de-prensa/file/1451-comunicado-el-procurador-de-los-derechos-humanos-insta-al-gobierno-a-implementar-a-la-brevidad-el-programa-de-proteccion-a-periodistas.html?start=10>

<sup>31</sup> Amnesty International, *Home Sweet Home? Honduras, Guatemala and El Salvador's role in deepening refugee crisis* (AMR 01/4865/2016), October 14, 2016, pages 9, 12, 14, 17, and 18. Available at <https://www.amnesty.org/en/documents/amr01/4865/2016/es/>

<sup>32</sup> In 2016, the National Institute of Forensic Sciences (INACIF) recorded 5,459 murders. This is down slightly from 2015 at 5718 and from 2012 at 6025. Murder rate calculated using homicide statistics from INACIF, available at [www.inacif.gob.gt/index.php?option=com\\_content&view=article&id=97&Itemid=18](http://www.inacif.gob.gt/index.php?option=com_content&view=article&id=97&Itemid=18)

<sup>33</sup> Amnesty International, *Home Sweet Home? Honduras, Guatemala and El Salvador's role in deepening refugee crisis* (AMR 01/4865/2016), 14 October 2016, page 25.

<sup>34</sup> US Customs and Border Protection, *Southwest Border Unaccompanied Alien Children FY 2014*, available at [www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2014](http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2014)

<sup>35</sup> US Customs and Border Protection, *United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016*, available at [www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016](http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016)

<sup>36</sup> Northern Triangle refers to the Central American governments of Honduras, Guatemala and El Salvador. United Nations High Commissioner for Refugees, *UNHCR calls for urgent action as Central America asylum claims soar*, 5 April 2016, available at [www.unhcr.org/news/latest/2016/4/5703ab396/unhcr-calls-urgent-action-central-america-asylum-claims-soar.html](http://www.unhcr.org/news/latest/2016/4/5703ab396/unhcr-calls-urgent-action-central-america-asylum-claims-soar.html)

deportees from Mexico rose by 188% between 2010 and 2015,<sup>37</sup> as part of Mexico's newly implemented strategy known as the Southern Border Plan. While Guatemala has invested in improving the immediate reception conditions, there is no comprehensive mechanism or protocol in place to identify and address the protection needs of deportees sent back to the same conditions they had fled, leaving many of them exposed to great danger,<sup>38</sup> and key institutions, such as the National Council for Attention to the Guatemalan Migration, continue to be embroiled in controversy and corruption scandals.<sup>39</sup>

## THE DEATH PENALTY

No executions have taken place in Guatemala since 2000. The last death sentence was commuted by the Supreme Court of Justice in 2012.

In February 2016, the Constitutional Court held that provisions in Article 132 of the Penal Code, providing for the death penalty for certain circumstances of aggravated murder, were unconstitutional.<sup>40</sup> Since November 2016, an action challenging the constitutionality of the death penalty has been pending before the Constitutional Court.

Meanwhile, the death penalty remains a punishment under the Guatemalan legislation for terrorism-related offences resulting in death, kidnapping not resulting in death and other offences resulting in death, and it is regularly referred to by political actors as a tool for dealing with public security issues.

At least four draft laws which would have facilitated the resumption of executions have been introduced since 2012; the last one, which was introduced in February 2017, is still pending in Congress. Draft Law 5100 aimed at abolishing the death penalty, is also pending in Congress since July 2016.

# RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

## AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF GUATEMALA TO:

### IMPUNITY FOR PAST CRIMES

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<sup>37</sup> Amnesty International, *“Home Sweet Home? Honduras, Guatemala and El Salvador’s role in deepening refugee crisis”* (AMR 01/4865/2016), 14 October 2016.

<sup>38</sup> Amnesty International, *“Home Sweet Home? Honduras, Guatemala and El Salvador’s role in deepening refugee crisis”*, (AMR 01/4865/2016), 14 October 2016.

<sup>39</sup> The National Council for Attention to the Guatemalan Migration (known as “CONAMIGUA” in Spanish) and the General Migration Direction were recently involved in scandals highlighting corruption and irregular nomination process. See Amnesty International, *Home Sweet Home? Honduras, Guatemala and El Salvador’s role in deepening refugee crisis* (AMR 01/4865/2016), October 14, 2016, page 37 and Prensa Libre, *Corte deja en suspenso elección de autoridades de Conamigua* March 2017, Available at <http://www.prensalibre.com/guatemala/justicia/cc-ampara-a-tres-diputados>

<sup>40</sup> Constitutional Court of Guatemala, judgment 1097-2015, delivered on 22 March 2016. Available at <http://181.174.117.21/cc/wp-content/uploads/2016/11/1097-2015.pdf>

- Ensure prompt, independent, impartial and effective investigations into all allegations of human rights violations committed during the internal armed conflict and bring those responsible to justice;
- Adopt all necessary measures to overcome structural obstacles that hamper the investigations and trials;
- Approve the establishment of a National Commission for the Search for Victims of Enforced and Other Forms of Disappearance, and ensure it has adequate resources to carry out its work effectively;
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

#### INDEPENDENCE OF THE JUDICIARY

- Adopt all necessary measures to consolidate recent efforts in the fight against impunity, including legislative, institutional and structural measures to strengthen the effectiveness and independence of the justice system.

#### VIOLENCE AGAINST WOMEN

- Implement effective and co-ordinated measures to prevent violence against women, especially against young women and girls;
- Strengthen efforts to carry out prompt, impartial and effective investigations into all forms violence against women and to bring those responsible to justice;
- Adopt effective measures to address the high levels of pregnancies among girls and adolescents, and ensure their effective access to sexual and reproductive health services and education programs.

#### HUMAN RIGHTS DEFENDERS

- Recognize publicly the legitimacy of the work of human rights defenders and ensure their effective protection through comprehensive strategies;
- Immediately end the misuse of the justice system to intimidate, harass and discredit human rights defenders, and initiate prompt, thorough and impartial disciplinary and criminal investigations against those suspected of misusing the justice system to criminalize human rights defenders;
- Initiate timely, independent, impartial and effective investigations into threats and attacks against human rights defenders and bring those responsible to justice;
- Develop and implement public policies to protect defenders in line with the criteria set out by the Inter-American Court of Human Rights;<sup>41</sup>
- Address structural causes of social conflicts related to the exploration and exploitation of natural resources, on the basis of respect for the human rights of Indigenous Peoples and Afro-descendants, including their rights to territory and a healthy environment, and ensure their rights are guaranteed when planning and implementing such projects.

#### PEOPLE ON THE MOVE

- Assume central responsibility for the protection of deportees while ensuring the necessary resources in light of the increased numbers of deportees;
- Implement effective procedures in consular services and receptions centres to identify deportees at risk and provide them protection, with particular attention to vulnerable

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<sup>41</sup> I/A Court H.R., Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 28, 2014. Series C No. 283.

groups such as children, Indigenous Peoples, women and LGBTI individuals;

- Ensure that all reception, reintegration and protection programmes for deported migrants take into consideration the rights and specific protection needs of women, Indigenous Peoples, LGBTI persons and unaccompanied children.

#### THE DEATH PENALTY

- Establish an official moratorium on execution and abolish the death penalty for all crimes.

# ANNEX

## AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE<sup>42</sup>

*Mining in Guatemala: Rights at risk* (Index: AMR 34/002/2014), September 2014.

*Americas: Defending Human Rights in the Americas: Necessary, Legitimate and Dangerous* (Index: AMR 01/0003/2014), 9 December 2014.

*Urgent Action, Human Rights Defender repeatedly threatened* (Index: AMR 34/3013/2015) 4 December 2015.

*Guatemala: Decision to take Creompaz Case to Trial an Advance for Justice* (Index: AMR 34/4218/2016), 8 June 2016.

*"We are defending the land with our blood: defenders of the land, territory and environment in Honduras and Guatemala* (Index: AMR 01/4562/2016), 1 September 2016.

*Home Sweet Home? Honduras, Guatemala and El Salvador's role in deepening refugee crisis* (Index: AMR 01/4865/2016), 14 October 2016.

*Guatemala: Young Human Rights Defender shot dead* (Index: AMR 34/5144/2016), 15 November 2016.

*Guatemala: Congress Should Build on New Momentum for Abolition as Country's Highest Court Considers Issue of Death Penalty* (Index: AMR 34/5782/2017), 27 February 2017.

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<sup>42</sup> All these documents are available on Amnesty International's website:  
<https://www.amnesty.org/en/countries/americas/guatemala/>

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