



Mission DROI to Guatemala Febrero 2016

Some General figures about Guatemala

- Guatemala has one of the world's highest rates of violent deaths. Despite the decrease of killings in 2014 compared to 2013, the National Institute of Forensic Sciences (INACIF) registered 5.924 violent deaths (16 per day), and the rates in Guatemala City increased 8,8%.¹
- Since 2009, impunity has been decreasing in cases of life threats. Nevertheless it is still very high in cases of violence against Human Rights Defenders (HRDs). It is important to note the role that the International Commission Against Impunity in Guatemala (CICIG) and its coordination with the General Attorney in the fight against impunity regarding different corruption cases in the last months that concerned several public institutions.
- Guatemala has one of the worst poverty and inequality indicators America, with a Gini coefficient of 0,628. Half of the children under 5 suffer from chronic malnutrition² and more than 3 million people suffer from hunger, with indigenous peoples and peasants among the most affected. Despite the reduction of mortality attributable to undernutrition, still in 2014 the rates were high, 9.1 deaths per hundred thousand people³. The imposition of an economic model aimed at the eviction of indigenous and peasant population from the countryside in order to implement agricultural and extractive projects, mainly for export purposes, has devastating effects on the rights of the affected populations, namely the right to adequate food, the right to free, prior and informed consultation and to access to land and natural resources. The persecution of HRDs, especially those defending economic, social, cultural and environmental rights, opposing those projects, is also of particular concern⁴.
- CICIG's revelations about corruption and impunity structures within the State contributed to create a new situation of citizen participation and social protest since April 2015. In this new situation the leadership of students was remarkable as a newcomer on the political scene. On the other hand, the indigenous movement managed to take this new situation to position their historical demands on the democratization of state institutions. Such rejection of corruption and openness to renew and democratize the institutions There seem to be positive conditions for civil society - women's organizations, indigenous peoples and youth - to strengthen mobilization and influence who are well positioned to take advantage of the. During these demonstrations

¹ OHCHR in Guatemala, [Report of Activities in Guatemala for 2014](#).

² UNICEF, 2010.

³ National Institute of Statistics, [Indicators](#).

⁴ Report of the [Third International Fact-finding Mission on the Right to Food and the Situation of human rights defenders in Guatemala](#), 2015.

the citizens made several claims, among which the resignation of the then President Otto Perez Molina, and the cancellation of the elections, which finally took place between September and October 2015. Otto Perez Molina finally resigned and is currently in prison waiting to be tried for corruption. The new government will have to address these calls regarding changes of the Electoral and Political Parties Law, the Civil Service Law, the Law of State Contracts and the Constitution itself. Another request of the social movement was the organization of a Popular and Plurinational Constituent Assembly (*Asamblea Constituyente Popular y Plurinacional*) with the participation of indigenous peoples and social movements, to discuss changes to the Constitution.

Situation of Human Rights Defenders (HRDs)

- Despite the legal, political and institutional framework, the work of HRDs has become a risky activity that involves defamation, criminalization and prosecution. Between 2000 and 2014, 4.252 direct attacks against HRDs took place, 42% of them in the last three years, especially in the context of extractive and monoculture projects.⁵ Between January and June 2015, 337 attacks against defenders were recorded, and in 2014 a total of 805⁶. It should be noted that those who defend the rights of indigenous peoples and environmental rights are particularly targeted. Women HRDs represented 53% of the victims of the attacks perpetrated during the first half of 2015. Despite some progresses, a high level of impunity in cases of killings of HRDs remains. According to the CICIG there are still significant deficiencies in the investigation and prosecution in cases of attacks against HRDs.⁷
- For those defending the right to land, the situation is very critical and is worsened by structural issues generating conflict in the country, such as the failure in implementing the agrarian reform recognized as necessary by the Peace Accords, the re-militarization and lack of management of social conflict through criminalizing measures such as the "Ley de Tumulos", as well as structural discrimination against indigenous peoples, inequality and poverty and the systematic violation of the right to consultation, which is considered by the Guatemalan Constitutional Court as non-binding. In particular, communities that have taken action in defense of human rights, such as Santa Cruz Barillas, La Puya or San Rafael de las Flores and Mataquescuintla, have been subjected to repressive policies and mechanisms like unjustified and violent evictions or the excessive use of the state of siege⁸.
- The criminalization of social protest is a widespread phenomenon perpetrated by state and non-state actors, involving the use of the legal system in order to delegitimize, repress and weaken the human rights movement. An example of such criminalization is the frequent trumped-up accusations without any evidence against defenders for crimes they did not commit. The economic social and cultural (ESC) rights defenders are particularly targeted due to their firm

⁵ Ibid.

⁶ Annual Report El Acompañante, UDEFEGUA 2015 and [Six-months report](#), January-June, UDEFEGUA 2015.

⁷ OHCHR in Guatemala (note 1).

⁸ Observatory for the Protection of Human Rights Defenders (OMCT-FIDH), "[Smaller than David. The struggle of Human Rights Defenders in Guatemala](#)", together with the documentary available here: <https://www.youtube.com/watch?v=SXrOMIOfreo>. See also the 2014 Annual Report of the Observatory "[We are not afraid](#)". [Land rights defenders: attacked for confronting unbridled development](#)".

opposition to large-scale economic projects. While the social and political situation of 2015 and the "democratic spring" showed that the state does allow social protest, it also showed that it is possible only in certain cases: the reaction of the state is very different and stronger when the protests and demonstrations are against big economic projects of national interest.

- In reaction to the obstacles that the defense of human rights represent for the interests of corporate sectors, national slandering campaigns against defenders have been put in place, questioning their work without any funded reason.
- Guatemala has several national mechanisms to carry out actions of acknowledgement and protection of human rights defenders and their work: the Human Rights Ombudsman (*La Procuraduría de DDHH, PDH*); the Support Institute for the Analysis of Attacks against Human Rights Defenders (*la Instancia de Análisis de Ataques contra Defensores de Derechos Humanos*), the Presidential Human Rights Commission (*La Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos, COPREDEH*); the Human Rights Unit within the Specialist Division for Criminal Investigations (*la Unidad de Derechos Humanos de la División Especializada de Investigaciones Criminales, DEIC*); the Protection Program for Journalists in Guatemala (*el Plan/Programa de Protección del Periodista en Guatemala*), etc. Nevertheless, none of these mechanisms proved to be effective enough, as the worrying data on aggressions against HRDs dramatically show. In 2014, the Inter-American Court of Human Rights (IACtHR), in its ruling on the case of *Human Rights Defender and Others v. Guatemala*, ordered the State of Guatemala to implement a public policy to protect HRDs, to be elaborated in collaboration with those directly concerned by protection measures, ensuring a comprehensive and inter-institutional perspective as well as sufficient financial and human resources.

Accordingly, we recommend you urge the authorities of Guatemala to:

- **Effectively implement the ruling of the IACtHR in the case *Human Rights Defender and others v. Guatemala*, by putting into place a public policy to protect human rights defenders and creating effective protection mechanisms that can guarantee their physical and psychological integrity.**
- **Repeal the "*Ley de Tumulos*" which could be used to prohibit the legitimate right to peaceful assembly and demonstration.**
- **Respect the due process and guarantee the principles of legality and proportionality in the application of Criminal Law, particularly in cases against human rights defenders.**

Women's rights

- In 2014, 774 violent deaths of women were reported. In the same year, 1400 convictions for femicide were registered, compared to the 779 happened in 2013, and courts specialized on femicide were created in 11 departments. Nevertheless, not all women in Guatemala have access to these specialized courts, particularly women living in remote rural areas. Moreover, there are still shortcomings in addressing violence against women in the ordinary courts, since a gender perspective is often not included in investigations and discriminatory stereotypes largely

predominate. These shortcomings seriously affect women's legal certainty as well as their right to effective judicial protection.⁹

Accordingly, we recommend you urge the authorities of Guatemala to:

- Guarantee to all women access to courts, especially to those specialized in violence against women and femicide.**
- Guarantee that judicial and investigative authorities include a gender perspective when investigating and prosecuting for crimes of violence against women and femicide.**

Indigenous peoples' rights

- The protection of indigenous peoples, their territories and the respect of their traditions are recognized by the Guatemalan Constitution.¹⁰ Nevertheless, these provisions are not respected. The promotion of a development model based on the exploitation of natural resources through extractive megaprojects such as mining, hydroelectric or monoculture plantation, for the benefit of the domestic and foreign business sector is contrary to the vision of development of indigenous communities, peasants and other rural populations. This development model causes grabbing of natural resources in a densely populated country, limiting the access and control on them of the communities, with consequent impacts on human rights and conflict escalation. Moreover, in most cases the state systematically fails to fulfil its duty to carry out a prior, free and informed consultation with the communities affected by megaprojects, as enshrined in the ILO Convention No. 169, the UN Declaration the Rights of Indigenous Peoples and the article 63 of Decree 12-2002 of the Municipal Code.
- It is worth mentioning that in many cases European investment companies are involved in violations committed against indigenous peoples and human rights defenders, especially in the context of mega-projects, for instance the Spanish company Hidralia Santa Cruz Barillas / Huehuetenango.

Accordingly, we recommend you urge the authorities of Guatemala to:

- Respect indigenous peoples' rights, particularly the right to a prior, free and informed consultation as enshrined in the ILO Convention N 169, ratified by the State of Guatemala.**
- Adopt legislative and other measures to guarantee and strengthen the mechanisms in place for monitoring the activities of transnational enterprises in the following ways: ensuring that those companies with registered domicile in the Guatemalan territory or under its jurisdiction are obliged to monitor and study the human rights impact of their investment projects; regularly monitoring compliance with their due diligence relating to human rights through regular meaningful participation of local population and affected communities, including land rights defenders.**

⁹ OHCHR in Guatemala (note 1).

¹⁰ Articles 66-70 of the Guatemalan Constitution.

- Adopt national policies that allow fair access to land, that guarantee land tenure, and that respect the protection of unwritten, traditional and customary land rights, without forced evictions. To achieve this, it would be necessary to carry out the agrarian reforms foreseen in the Peace Agreements. Moreover, review the definition of the crime of usurpation in the Penal Code, and deal the majority of cases of possession within civil justice system, to avoid criminalization of rural communities.

Right to Food¹¹

- Despite the existence of different plans, programmes and policies addressing hunger, the right to food of more than 3 million people in Guatemala is infringed. Children, women, indigenous and populations living in rural areas are the most affected. The lack of institutional coordination and focus on structural problems are the main obstacles to the eradication of hunger and malnutrition. An example of this serious situation is the case of Camotán. Between April and May 2013, a judge of the Department of Zacapa condemned the State of Guatemala for the violation of the right to food, the right to life, health, education and housing of three boys and two girls. In the aforementioned rulings, he ordered the state institutions to carry out a series of measures of redress. However, these measures have not been implemented yet.¹²
- Rural and indigenous populations lack access to and control on natural resources. The expansion of industrial monocultures, like palm oil or sugar cane, and other extractive projects forced the eviction of small-scale farming, causing rural and indigenous populations to be deprived of the access to their land and livelihoods. Additionally, water and land pollution generated by these projects have a negative impact on the health, life and food sovereignty of those communities.

Accordingly, we recommend you to urge the authorities in Guatemala to:

- Promote policies and mechanisms of access to land and control of natural resources, in order to guarantee food sovereignty, respecting the specific characteristics of rural communities and integrating a gender perspective able to increase the equality and sustainability of such policies.**
- Recognize and treat hunger and malnutrition as a problem of national interest, addressing the historical and structural problems that generate it through a human rights-based approach.**
- Guarantee a better coordination and strengthening of the different government offices responsible for implementing policies and programmes to eradicate hunger and malnutrition.**
- Guarantee the correct and full implementation of the rulings recognizing the State's responsibility for the violation of the right to food of five children in Camotán.**

Independence of Justice

¹¹ Between November and December 2014, the International organizations Act Alliance EU, CIDSE, CIFCA, FIAN, REL-UITA and La Via Campesina carried out the third International fact finding mission on the right to food and situation of human rights defenders. You can find here the [report](#) of the mission and its [executive summary](#).

¹² For more information, see the report of the International Fact-finding Mission (note 11) and the [report](#) of FIAN on the monitoring of the rulings' implementation.

- In 2014 the nominating committees (*Comisiones de Postulación*) carried out the selection process to appoint the highest judicial authorities. In this process we witnessed the absence of objective and transparent criteria for assessing the merits, skills, expertise and reputation of the candidates. The recommendations made by the UN High Commissioner for Human Rights, the Special Rapporteur on the independence of judges and lawyers and the Inter-American Commission of Human Rights to prevent such situation were not taken into consideration, nor were the Guidelines issued by the Constitutional Court, in line with international standards. A series of attacks and threats against judges and prosecutors who were involved in high-impact cases took place, as well as several slandering campaigns on social media discrediting their work.

Accordingly, we recommend you urge the authorities of Guatemala to:

- **Conduct an integral review of the legal and constitutional framework in order to guarantee the independence of justice, in line with international standards.**
- **Guarantee that judges, prosecutors and judicial officers are allowed to freely carry out their duties, particularly those dealing with cases of human rights violations.**

Transitional Justice

- Since the conviction of the former general and former head of state Efraín Ríos Montt for genocide and crimes against humanity and its subsequent cancellation in 2013, the re-opening of the trial for genocide has been constantly postponed, always under the threat of possible amnesties. The advanced age of Mr. Ríos Montt and his deteriorating health may contribute to fact that the new trial never takes place, leaving the crimes he committed in total impunity.
- On February 1, 2016 the ground-breaking trial in the Sepur Zarco case is due to start. It is a case concerning sexual violence, domestic servitude and sexual slavery committed against a group of Mayan women *Q'eqch'i* of the Sepur Zarco community (located at the boundary between Alta Verapaz and Izabal) in 1982 during the internal armed conflict. This case is emblematic since it considers sexual violence as a weapon of restraint in armed conflict.
- On January 6, 2016, the Guatemalan authorities arrested 18 senior military officers, accused of crimes against humanity and enforced disappearances. Among them retired generals Benedicto Lucas García and Manuel Antonio Callejas y Callejas, known to have held positions of responsibility during the armed conflict and to be involved in various corruption cases. The alleged crimes were committed as part of the military operations conducted in Cobán, between 1981 and 1988, and some of those acts played a role in the Maya Achi genocide. Civil society organizations welcomed these arrests and recognized the efforts done by justice officers, namely the Public Prosecutor and the Attorney General. Similarly, we urge the judicial authorities to conduct the process respecting impartiality and judicial independence, ensuring the due process and safety of all parties taking part in it.

Accordingly, we recommend you urge the authorities of Guatemala to:

- **Strengthen the courts and tribunals investigating and prosecuting cases of human rights violations and ensure that the perpetrators of those crimes will be brought to justice, as a way to prevent impunity. Furthermore, guarantee that the national legislation is interpreted in line with the principle of inadmissibility of amnesties in cases of grave human rights violations, according to international law.**
- **Guarantee the independence of the judiciary and the respect of the principles of due process and rule of law.**
- **Establish measures to ensure the physical and psychological integrity of the surviving victims, their families, communities and groups supporting them, as well as of the judicial officers, prosecutors and complainants, in order to prevent defendants from using their influence on the authorities to seek impunity.**

Torture and prison conditions ¹³

- Despite the creation of a National Mechanism for Prevention of Torture (MNPT), the lack of appropriate and sufficient allocation of financial resources within the national budget entails a serious lack of operational effectiveness. Furthermore, there is no national registry of victims of torture in place.
- Despite the ruling of the Constitutional Court¹⁴ calling for adapting the definition of torture in national legislation to be in line with regional and international standards, there is an excessive delay in the submission of the Bill before the Parliament. Such concern has also been expressed by the United Nations Committee Against Torture (UN CAT) in its last Concluding Observations¹⁵.
- Prison conditions are a major concern, since they often amount to cruel, inhumane and degrading treatment. The high degree of overcrowding in centers of detention is due, among other factors, to the absence of adequate measures for a fair treatment of prisoners, as well as to the insufficient use of alternative punitive measures, associated with the abuse of pretrial detention as the main form punishment. This is contrary to the international standards, such as the Tokyo Rules, stating that preventive imprisonment should be the last resort in order to respect the rights of people subjected to any kind of detention. In addition, there are insufficient appropriate measures, also from a financial perspective, to create and adequately monitor separate centers of deprivation of liberty for women, juveniles, and for the protection and treatment of detainees with mental illnesses.

Accordingly, we recommend you urge the authorities of Guatemala to:

- **Strengthen financial resources in order to effectively make the National Mechanism for Prevention of Torture operational and create a registry of victims of torture in the country.**
- **Present as soon as possible a Bill to adequately categorize the crime of torture according to international and regional standards, as stated in the ruling of the Constitutional Court and as**

¹³ See the [Joint Press Release](#) of OMCT and UDEFEGUA.

¹⁴ File 1822-2011, ruling of 17 of July 2012.

¹⁵ See [Concluding Observations](#) of the UN CAT (6-31 of May 2013).

recommended by the UN CAT.

- Establish adequate measures and allocate both human and financial resources in order to guarantee a fair treatment of the detainees, including the creation of adequate centers of deprivation of liberty for women, juveniles and detainees with mental illnesses. Additionally, use more punitive measures that are alternative to imprisonment, and do not abuse of preventive detention as the main mean of punishment, as required by international standards, including the Tokyo Rules.