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Acronyms

CC	Constitutional Court (Corte de Constitucionalidad)
CICIG	International Commission Against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala)
COPREDEH	Presidential Coordinating Committee for Executive Policy on Human Rights (Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos)
ESC	Central America Security Strategy (Estrategia de Seguridad de Centroamérica) [under SICA's Central America Security Commission (La Comisión de Seguridad de Centroamérica)]
IACHR	Inter-American Commission on Human Rights (Comisión Interamericana de Derechos Humanos—CIDH)
I/A Court HR	Inter-American Court of Human Rights (Corte Interamericana de Derechos Humanos—Corte IDH)
ILO	International Labour Organization
INE	National Statistics Institute (Instituto Nacional de Estadística)
INACIF	Guatemalan National Institute of Forensic Science (Instituto Nacional de Ciencias Forenses de Guatemala)
MP	Attorney General's Office (Ministerio Público) ¹
OHCHR	Office of the United Nations High Commissioner for Human Rights
PDH	Office of the Human Rights Ombudsman (Procuraduría de los Derechos Humanos)
PNC	National Civilian Police (Policía Nacional Civil)
PP	Patriotic Party (Partido Patriota)
SICA	Central American Integration System (Sistema de Integración Centroamericana)
UN	United Nations
UNDP	United Nations Development Programme
UNE	National Unity for Hope (Unidad Nacional de la Esperanza)
UN-HABITAT	United Nations Human Settlements Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime

¹ The *Ministerio Público* and its appointed head, the *Fiscal General*, are translated here as Attorney General's office and Attorney General respectively. The function of this office is derived from Guatemala's congressional law, Decree no. 40-94. Some translations use Public Ministry or Public Prosecutor's Office for *Ministerio Público*.

1. INTRODUCTION

The document presents a general overview of the human rights situation in Guatemala as it may affect the situation of persons originating from the country, who may, for reasons of their experiences in Guatemala, find themselves seeking asylum abroad. This document does not attempt to make any value judgment on the Guatemalan government or its policies or authorities but rather seeks to identify and describe, based on diverse and credible sources, situations affecting certain persons or groups that could give rise to the need for their international protection. Guatemala's high levels of crime and violence persist despite a variety of efforts by the government and others to diminish these. Vulnerable groups and individuals remain disproportionately targeted and affected by this situation. The State's limitations in protecting individuals and groups are acknowledged by the government as is the fact that sometimes State actors are complicit in such violence. The marked increase of organized crime activity in Guatemala is broadly documented as are indicators of how organized crime and related financial interests have infiltrated successive governments constituting what has been termed "parallel power structures" influencing government policies and practices over the years and especially limiting the effectiveness of Guatemala's justice system. Guatemala's indigenous population, a significant part of the population and disproportionately part of Guatemala's rural poor, is currently associated with social conflicts throughout the countryside where townspeople or rural villagers have protested certain economic uses of lands considered collective patrimony and therefore subject to Guatemala's commitments to respect the rights of indigenous peoples. These social conflicts potentially hinder the economic and foreign investment agenda of the Guatemalan government and one result has been the labeling of groups opposed to the government's economic agenda as politically suspect and more generally anti-government. Guatemala's long-lasting internal conflict, formally ended with the 1996 peace agreements, established both institutional structures and individual attitudes (strongly held beliefs about who is to blame for the conflict and the role of each actor in wartime) that permeate the institutional framework and the nature of public debate in evidence today.

Guatemalans continue to seek international protection particularly by heading north; in 2012 the number of new Guatemalan asylum cases in the United States of America (USA) (4,152 individuals) increased compared to the prior year and Guatemalans constituted the fourth largest group requesting asylum from the United States government. As the nature of these claims ranges from familiar or established situations historically meriting asylum to asylum cases describing displacement due to the action of drug trafficking groups, land takeovers, extortions (enforced through violence) from organized crime and gangs, or fear related to the increasing brutal violence toward women, this document seeks to provide a summary of such phenomena as well as ample reference to sources for further reading.

Note: The geographical/political division of *Departamentos* (*departamento* in the singular) is translated as "provinces;" Guatemala has 22 provinces.

2. BACKGROUND INFORMATION

Guatemala's government is a Republic, democratic, and representative, as established in its Constitution. Politically, it is a multi-party system. Its total population is close to 15 million people. Guatemala's Human Development Index (HDI) as measured by the United Nations Development Programme (UNDP) is the lowest in all of Spanish-speaking Latin America.² Its poverty level is high, particularly among rural and indigenous populations.³ In addition to Spanish, Guatemala has 21 language groups among Mayan people⁴ and specific ethnic identities are also held by Xinca and Garifuna (African-descended) people. At least 50% of the total population is considered Mayan.⁵

Inequalities deeply rooted in the past continue to this day. Exclusion and discrimination towards the sizeable indigenous population are evident in the country, alongside marked disparities in wealth and well-being. Significant features of Guatemalan society include the ethnic diversity of its population and the limited progress made in addressing human rights abuses past and present. The negative legacy of Guatemala's internal conflict (lasting from 1960 to 1996 when peace agreements concluded between the government and the guerrilla forces) still reverberates through the political system and is reflected in attitudes and actions of Guatemala's population. The current justice and human rights context remains characterized by an inefficient justice system, pervasive corruption, and high levels of uninvestigated and/or unsolved crime despite initiatives in recent years to reform and improve the justice system.

2.1 Recent Political Developments

a) The administration of Álvaro Colom (2008-2011)

In 2007, the country held general elections and Álvaro Colom won the presidency under his party, the National Unity for Hope (Unidad Nacional de la Esperanza – UNE). He described his government's stance as Social Democrat. His administration's official positions highlighted the value of indigenous peoples in a way atypical of previous politicians and indicated the intention to combat violence and common crime using different methods than those employed by his predecessors. Government slogans included "Guatemala has a Mayan face" and "violence is fought with intelligence."⁶ Colom's administration thus aimed to differentiate itself from the previous government headed by Óscar Berger (2004-2007) which was characterized by a high degree of influence exerted by the private sector and thus projected less connection to the rural poor.

From the outset of his term, Colom aimed to counteract the impunity and the failures in the justice system by nominating José Amílcar Velásquez Zárata to head the Attorney General's Office (Ministerio Público – MP), in July 2008, and by attempting to restructure the MP as an institution. By that time, the MP was publicly acknowledged to be infiltrated by organized crime and illegal clandestine groups wielding powers parallel to the State.⁷

² United Nations Development Programme/Programa de las Naciones Unidas Para el Desarrollo (UNDP/PNUD) (2012). Guatemala: ¿un país de oportunidades para la juventud? Informe nacional de desarrollo humano 2011/2012. Guatemala. http://www.pnud.org.gt/data/publicacion/INDH%202011_2012.pdf.

³ Ibid.

⁴ Academia de Lenguas Mayas de Guatemala. (February 5, 2013). "Comunidades lingüísticas." <http://www.almg.org.gt/comunidades-ling%C3%BC%C3%ADsticas.html>.

⁵ Minority Rights Group International (2008) "World Directory of Minorities and Indigenous Peoples - Guatemala : Maya." July 2008 <http://www.unhcr.org/refworld/docid/49749d163c.html>.

⁶ http://alhuso.files.wordpress.com/2008/11/colom_toma_posesion.pdf

⁷ Terms like "clandestine groups" and "parallel powers" are used in Guatemala to refer to the interrelated networks forged between drug traffickers/organized crime, the army, and the government.

Rise of organized crime and drug trafficking in Guatemala

The pivotal point for the proliferation of organized crime and parallel power groups was the signing of the Peace Accords in 1996. Clandestine security and intelligence structures that had operated under army control during the counter-insurgency war since the 1960s were not dismantled as a part of the peace process. This led to the emergence of new forms of violence linked to illegal businesses that these structures had managed during the armed conflict. These illegal networks controlled contraband, customs, immigration, and police agencies. In the 1990s and the early years of the 2000-2010 decade, information about the so-called Moreno Network revealed the pervasive reach of organized crime into society and government and documented the army's involvement in organized crime.⁸

After the signing of the Peace Accords, illegal businesses proliferated and organized crime structures burgeoned. Guatemala's rugged geography facilitates certain illegal and criminal activities such as extortion, kidnapping, vehicle robbery, illegal immigration, human trafficking, arms and drug trafficking, money laundering, and contract killings. These businesses took full root in the country and involved networks that extended from South America and other Central American countries to Mexico and the USA.⁹

In the 1980s and 1990s, drug trafficking had already begun to acquire notoriety through violent acts such as the murder of banker Edgar Gálvez Peña and serious accusations against military members and government officials under President Marco Vinicio Cerezo Arévalo (1986-1990) who were alleged to have links with the drug trade. However, it was not until Óscar Berger's and Álvaro Colom's presidential terms that drug trafficking fully erupted, infiltrating different public institutions, entering and controlling communities, and developing relationships with certain business sectors such as the transportation sector.¹⁰

In the last decade, the intensification of the drug war in Colombia led Colombian drug cartels to be edged out of the distribution sphere along the Central American route. Mexican drug cartels took over control of drug distribution and transport, gaining ground in the Central American isthmus and establishing themselves in the region with the support of local drug trafficking organizations. At the same time, the war against drugs undertaken by Mexican President Felipe Calderón drove Mexican cartels to set up and spread out in Central American territories, particularly in Guatemala; this has unleashed an unprecedented level of violence.

Under Berger's and Colom's successive administrations, Guatemala became not only a zone for north-south drug transit, but also an area for drug storage by Mexican drug traffickers. Meanwhile, weapons and "dirty" money travelled from north to south, with much of it staying in Guatemala. During Berger's term, high-profile cases showcasing the extreme levels of drug-related violence drew national and international public attention, such as the violent murder that took place in Guatemala in 2007 of three of El Salvador's elected representatives to the Central American Parliament (PARLACEN).¹¹

⁸ Peacock and Beltran (2003). *Hidden Powers in Post Conflict Guatemala, Illegal Armed Groups and the Forces Behind Them*. Washington D.C., Washington Office on Latin America (WOLA). September 2003. http://www.wola.org/publications/hidden_powers_in_post_conflict_Guatemala.

⁹ López (2010). *Guatemala's Crossroads: Democratization of Violence and Second Chances. Working Paper Series on Organized Crime in Central America.*, Woodrow Wilson International Center for Scholars, Latin American Program. December 2010. <http://www.wilsoncenter.org/sites/default/files/Lopez.Guatemala.pdf>.

¹⁰ Ibid.

¹¹ (2010). "Tribunal impone penas de 17 a 210 años en el caso Parlacen." *Prensa Libre*. December 2, 2010 http://www.prensalibre.com/noticias/Penas-anos-caso-Parlacen_0_382761760.html; Ministerio Público República de Guatemala (2010). *Ex Diputado sentenciado a 203 años de cárcel por caso PARLACEN*. Guatemala, Ministerio Público República de Guatemala. December, 2010. <http://www.mp.gob.gt/2010/12/ex-diputado-sentenciado-a-203-anos-de-carcel-por-caso-parlacen-2/>.

The appearance of the Zeta cartel at the start of Colom's term in 2008, heralded by bloody crimes and territorial disputes, marked a new pattern of drug distribution in Guatemala that had more to do with protecting routes than with taking over zones or territories. Hence, the Sinaloa Cartel (on the south coast), the Zetas (which at the time was the armed wing of the Gulf Cartel, positioned to dominate the central and northern areas), and the Gulf Cartel (in the north and northwest) took control of drug trafficking in Guatemala.¹² In 2010, the Zetas split definitively from the Gulf Cartel, and violence worsened. Local crime and drug trafficking organizations such as the Mendozas (in the northwest and north) and the Lorenzanas (in the west) contributed to the expansion, domination, and disputes related to the drug trade.

Various analysts concur that "the Zetas' increased presence in Guatemala probably results from a combination of push and pull factors: increased pressure against drug operations in Mexico and Colombia and the lure of lucrative drug routes across Central America."¹³ According to National Drug Intelligence Center (NDIC) data, 88% of the drugs used in the USA pass through the Central America-Mexico route; the region is gaining in importance for the trafficking of drugs, especially cocaine.¹⁴

According to investigations of the non-profit non-governmental International Crisis Group, in Guatemala, "the Zetas and other Mexican organisations are also drawn to the drug corridor running from Izabal on Guatemala's eastern border with Honduras and El Salvador through the central provinces of Alta Verapaz and north into Petén, which borders the Mexican states of Chiapas, Tabasco and Campeche. And they have battled with other trafficking groups for control of the province of Huehuetenango, which borders Mexico on the west."¹⁵

This was the context encountered by the International Commission Against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala – CICIG).¹⁶ This commission was created in December 2006 by the Berger government, the private sector, civil society organizations, and the United Nations (UN); it began functioning in January 2008 at the start of Colom's term.¹⁷ The CICIG's objectives, as noted by the World Bank, are:

"(i) to support, strengthen and assist Guatemala's State institutions in investigating and prosecuting crimes allegedly committed by illegal security forces and clandestine security organizations; and (ii) to establish mechanisms and procedures to protect Guatemalans' fundamental rights, including those rights guaranteed by international conventions to which Guatemala is a party."¹⁸

¹² International Crisis Group (2011). Guatemala: Drug Trafficking and Violence. *Latin America Report No. 39*. October 11, 2011. [http://www.crisisgroup.org/~media/Files/latin-america/39%20Guatemala%20-%20Drug%20Trafficking%20and%20Violence](http://www.crisisgroup.org/~/media/Files/latin-america/39%20Guatemala%20-%20Drug%20Trafficking%20and%20Violence).

¹³ Ibid.

¹⁴ La Red Centroamericana de Centros de Pensamiento e Incidencia, Ed. (2011). *Seguridad y crimen organizado transnacional: una propuesta de acción para Centroamérica = Security and transnational organized crime: a proposal for action for Central America*. Guatemala, Konrad Adenauer Stiftung. See also: (2012). *Posture Statement of General Douglas M. Fraser, United States Air Force Commander, United States Southern Command. U.S. Congress House Armed Service Committee*:

http://www.southcom.mil/newsroom/Documents/SOUTHCOM_2012_Posture_Statement.pdf. "The strongest single explanation for the high rates of violence in the region—and their apparent rise in recent years—is drug trafficking, principally the transport of cocaine from producer nations in the south to the consumer market in the United States. The drug trade contributes to the widespread availability of firearms, generates violence within and between drug cartels, and spurs further lawlessness by undermining criminal justice institutions." World Bank (2010). *Crime and Violence in Central America Volume II*. p. ii.

¹⁵ International Crisis Group (2011).

¹⁶ By 2004, the high degree to which hidden powers had infiltrated State structures and the violence undertaken against specific segments of the population impelled human rights organizations and the UN to create the Commission for the Investigation of Illegal Groups and Clandestine Security Organizations in Guatemala (Comisión de Investigación de Cuerpos Ilegales y Aparatos Clandestinos de Seguridad – CICIACS) to investigate the phenomenon. This entity did not prosper as such but the initiative evolved into what is now CICIG.

¹⁷ Comisión Internacional contra la Impunidad en Guatemala (CICIG) (2011). *Por una Cultura de Legalidad*: http://cicig.org/uploads/documents/brochure/brochure_es.pdf.

¹⁸ World Bank (2010). *Volume II*, p. 106.

According to the World Bank:

“Illegal security groups and clandestine organizations in Guatemala have direct links to state agencies and are thus able to block judicial action against them, resulting in impunity. CICIG works with the [Guatemala Attorney General’s Office] and other justice-sector institutions to ‘investigate and dismantle violent criminal organizations believed responsible for the widespread crime and the paralysis in the country’s justice system.’ CICIG is headed by a commissioner appointed by the UN Secretary-General. The agreement stipulates that CICIG may join any criminal proceeding as an ad hoc prosecutor (querellante adhesivo) but also provides technical assistance to national justice sector agencies to strengthen their capacity.”¹⁹

Nevertheless, CICIG’s creation and presence in Guatemala have not been free of criticism. Politically conservative sectors and groups linked to organized crime were its primary detractors initially and remain its chief critics. In 2009, the CICIG tackled the most complex cases during the Colom government: the so-called “Rosenberg Case,” involving the death of lawyer Rodrigo Rosenberg. The CICIG investigated the case and determined it to be a situation where the victim had secretly arranged for his own killing while also orchestrating the blame to point toward then-President Álvaro Colom for the crime.²⁰ In solving this case, the CICIG rescued Colom from potential coup d’état scenarios that threatened his presidency. Meanwhile, the CICIG as an institution gained credibility and consolidated broader political space. However, conservative sectors intensified their criticism of the CICIG and quieted only when then-CICIG director Carlos Castresana resigned from his post.

In 2010, the investigation and judicial prosecution of those responsible for killing Attorney Rosenberg led the CICIG to investigate others, including the newly appointed head of the Attorney General’s Office (MP), Conrado Reyes, and his network within the MP of people linked to organized crime and parallel power groups. Reyes lasted only a few days in the post; appointed on May 25, 2010, he was removed by the Constitutional Court (Corte de Constitucionalidad – CC) on June 10, 2010. The CICIG’s investigations revealed how organized crime had infiltrated the MP and also exposed the extent to which these so-called parallel governing structures permeated other governmental institutions.²¹

These revelations in mid-2010 prompted broad debate about the future of the MP and the need to purge the institution of parallel power groups. The institutional crisis and ensuing chain of events led almost serendipitously to an unanticipated outcome: the appointment of Claudia Paz y Paz as Attorney General on December 9, 2010. Paz y Paz is a lawyer with a professional trajectory of legal analyses of human rights issues and recognized integrity in her conduct. Albeit a presidential decision, the appointment of Paz y Paz was aided by broad-based support from a diverse group of local and international groups that backed Attorney Paz y Paz due to her prestige in respecting and defending human rights. Coupled with the presence of CICIG, this change in the MP boded well despite the enormous obstacles remaining for institutionalized reforms or lasting change in the justice system.

¹⁹ Ibid. p. 106.

²⁰ Comisión Internacional contra la Impunidad en Guatemala (CICIG) (2010) "Condenados en sentencia de fecha 15 de julio de 2010." *Causa 01070-2009-00883 (Caso Rosenberg)*, July 15, 2010 <http://cicig.org/index.php?page=1070-2009-00883>; Comisión Internacional contra la Impunidad en Guatemala (CICIG) (2010). [press conference slides] *CICIG y la institucionalidad de Guatemala, Ministerio Público y otras instituciones del sistema de seguridad y justicia*. June 14, 2010. http://www.prensalibre.com/noticias/Conferencia-prensa-Cicig_PREFIL20100614_0002.pdf. For a journalistic account of the case, investigation, and aftermath, see: Grann (2011). "A murder foretold." *The New Yorker* (April 4, 2011).

²¹For example, in that same year, Carlos Quintanilla, then-head of the Secretariat for Administrative and Security Affairs (Secretaría de Asuntos Administrativos y de Seguridad – SAAS), was charged with placing recording devices in the offices of the President and the President’s wife, Sandra Torres. He resigned from his post in 2008 although charges were later dropped against him, a possible example of both infiltration in government structures and impunity when it comes to exposing such situations. López (2010).

Human rights and security conditions prior to the 2011 presidential elections

During Colom's term, violence had reached unprecedented levels since the height of the country's civil war. For example, 2009 had the greatest number of homicides since 1986: 6,498 in all, equivalent to a rate of 48 homicides per 100,000 inhabitants. Homicide figures gathered by the National Civilian Police (Policía Nacional Civil – PNC) and the National Statistics Institute (Instituto Nacional de Estadística – INE) demonstrate that from 1986 to 2008 the homicide rate rose 192%.²² Statistics comparing the number of homicides reported and the number that were resolved or led to convictions led to the oft-cited figure of 98% impunity, meaning that only 2% of cases were successfully investigated and brought to conclusion.²³

Among the key factors that generate crime and violence are drug trafficking, juvenile violence and gangs, and the widespread availability of weapons; weak justice systems constitute an additional aggravating factor, affirms the World Bank.²⁴

Despite efforts undertaken during Colom's period in office, human rights violations continued steadily. The United States Department of State emphasized in its 2010 human rights report that: "Human rights abuses included the following: the government's failure to investigate and punish unlawful killings committed by members of the security forces; widespread societal violence, including numerous killings; corruption and substantial inadequacies in the police and judicial sectors; police involvement in serious crimes, including unlawful killings, drug trafficking, and extortion; impunity for criminal activity; harsh and dangerous prison conditions; arbitrary arrest and detention; failure of the judicial system to ensure full and timely investigations and fair trials; failure to protect judicial sector officials, witnesses, and civil society representatives from intimidation; threats and intimidation against, and killings of, journalists and trade unionists; discrimination and violence against women; trafficking in persons; discrimination against indigenous communities; discrimination on the basis of sexual orientation and gender identity; and ineffective enforcement of labor laws and child labor provisions."²⁵

In 2011, the drug trafficking and human rights situation worsened. Amnesty International's year-end report emphasized the following, "Violations of the rights of Indigenous Peoples persisted. Some successful prosecutions were brought for human rights violations committed during the period of internal armed conflict (1960-1996). Human rights defenders were threatened intimidated and attacked."²⁶ The same report also emphasized that 631 women were homicide victims in 2011 and that the 2008 Law against Femicide and Other Forms of Violence against Women which, among other things, introduced special courts for violence against women, seemed to have had little impact on either reducing violence against women or holding those responsible to account.²⁷ The United States Department of State, in its 2011 human rights report, recapped the concerns of the prior year, adding: "The government increased its efforts to prosecute and punish officials in the security services and elsewhere in the government who committed crimes and abuses. However, impunity for crimes committed by government officials remained a widespread problem."²⁸ According to the non-governmental International Crisis Group: "President

²² Small Arms Survey and Centro de Recursos para el Análisis de Conflictos (CERAC) (2012). Guatemala en la encrucijada: Panorama de una violencia transformada. Restrepo and Tobón García. Bogota, Colombia, Geneva Declaration. http://www.genevadeclaration.org/fileadmin/docs/Guatemala_book/GD-Guatemala.pdf.

²³ Racota (2009) "International Commission against Impunity in Guatemala." *The Human Rights Brief*, December 4, 2009 <http://hrbrief.org/2009/12/international-commission-against-impunity-in-guatemala/>.

²⁴ World Bank (2010). Crime and Violence in Central America Volume I. pp. ii-iii.

²⁵ United States Department of State (2011). 2010 Human Rights Reports: Guatemala. *2010 Country Reports on Human Rights Practices*. April 8, 2011. <http://www.state.gov/j/drl/rls/hrrpt/2010/wha/154507.htm>.

²⁶ Amnesty International (2012). Amnesty International report 2012: The state of the world's human rights. http://files.amnesty.org/air12/air_2012_full_en.pdf. p. 160.

²⁷ Ibid. p. 161

²⁸ United States Department of State (2012). Guatemala. *Country Reports on Human Rights Practices for 2011*. <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186518>.

Colom took office in 2008 with the promise, like his predecessors, at least to slow the spiral of violence and to end impunity. However, his administration has been plagued by instability, corruption and a lack of capacity. There have been five interior ministers, two of whom are facing corruption charges, while two police chiefs have been arrested for connections to drug trafficking.”²⁹

b) The administration of Otto Pérez Molina (2012- the present)

Retired army general Otto Pérez Molina won the presidency in Guatemala’s elections at the end of 2011, with his new administration facing the same difficult circumstances plaguing prior administrations. Pérez Molina was elected as the candidate of the Patriotic Party (Partido Patriota – PP).

Pérez Molina’s presidency openly has ties to conservatives in the business sector and the number of appointees that are active or former members of the military is notable.³⁰ Among its main challenges, Pérez Molina’s new administration faced the urgent tasks of reducing crime and fighting the organized drug trade. In this context, in his inauguration address on January 14, 2012, the new President committed to improving security, explained as “controlling crime, combating organized crime, and restoring publicly shared spaces; comprehensive security was mentioned, along with a strengthening of the National Security System.”³¹

The United States Department of State noted part way into Pérez Molina’s first year in office that “Guatemala continues to face major challenges to successful development, including poverty, malnutrition, and vulnerability to economic fluctuations and natural disasters. The Guatemalan government also faces the challenges of corruption and the presence of transnational organized crime.”³² During his first year in office Pérez Molina undertook the formal request to the United Nations in order to renew the mandate of the International Commission Against Impunity in Guatemala (CICIG) for two additional years, until September 2015.

Continued official acknowledgements of organized crime’s hold on government

As December 2012 was drawing to a close, President Pérez Molina acknowledged in an interview granted to the EFE news agency that “corruption had infested” roughly 50% of the government and that organized crime had infiltrated the self-same entities created to combat that phenomenon. According to the president, “This is a reality that we cannot ignore” given that these groups have infiltrated such institutions as the Attorney General’s Office, the National Civilian Police, and other State offices.³³

²⁹ International Crisis Group (2011). Guatemala: Squeezed between crime and impunity. *Latin America Report*. No. 33. June 22, 2011. <http://www.crisisgroup.org/en/regions/latin-america-caribbean/guatemala/033-guatemala-squeezed-between-crime-and-impunity.aspx>.

³⁰ (2012). "Guatemala: Pérez Molina's business cabinet." *Latinnews.com*, <http://ns5.dta1.com/component/k2/item/49865-guatemala-p%C3%A9rez-molina%E2%80%99s-business-cabinet.html>; Asier (2012). "El gobierno del general Otto Pérez Molina. En el Gabinete que asumirá el próximo sábado hay militares, empresarios, miembros del partido, izquierdistas, excandidatos a la presidencia e intelectuales." *elPeriódico*. January 9, 2012 <http://www.elperiodico.com.gt/es/20120109/investigacion/206169/>; Gutiérrez Valdizán (2012) "Los alfiles en el tablero de Otto Pérez." *Plaza Pública*, March 18, 2012 <http://www.plazapublica.com.gt/content/los-alfiles-en-el-tablero-de-otto-perez>.

³¹ Fundación Myrna Mack (2012) "Aproximación a la situación de derechos humanos, seguridad y justicia en Guatemala." March 12, 2012. (translation by the author).

³² United States Department of State (2012). U.S. Relations with Guatemala. *Bureau of Western Hemisphere Affairs, Fact Sheet*. August 9, 2012. <http://www.state.gov/r/pa/ei/bgn/2045.htm>.

³³ Arrazola (2012) "Pérez Molina: el Estado está infestado por corrupción y crimen organizado." *EFE Agency*, December 29, 2012 <http://noticias.emisorasunidas.com/noticias/nacionales/perez-molina-estado-esta-infestado-corrupcion-crimen-organizado>. (translation by the author).

In the same interview, Pérez Molina asserted that drug traffickers and organized crime's infiltration of his government does not reach the very highest levels of government as these are "clean." Nevertheless, he warned that there are indications that such groups are linked to the different political parties in the country. According to the reporter "The president also recognized that the Mexican drug cartels Los Zetas, Sinaloa and del Golfo are entrenched in Guatemala and they dispute among them the control of territory used to move drugs." The President further affirmed that these groups: "...are responsible for the large-scale killings that have occurred in the past few months in the country and also for the increase in violent acts."³⁴

The statements by Perez Molina coincided with those made by the Attorney General (Fiscal General), Claudia Paz y Paz, who had said a few days prior that there are corrupt prosecutors and infiltration by criminal networks within the Attorney General's Office (MP) and throughout the justice system.³⁵ Both officials' declarations were made right after the assassination of government officials prompted by a dispute between drug traffickers. The MP's head prosecutor in the Chiquimula province, Irma Yolanda Olivares, and the local director for the First Lady's Social Works program, were brutally attacked and killed in southern Huehuetenango close to the Mexican border on December 23, 2012, along with others traveling with them.³⁶

The nature of the relation between drug traffickers and government officials within the Attorney General's Office were also described by Attorney General Paz y Paz. She indicated that in the past two years, "the collaboration between assistant prosecutors and the Los Zetas group have been uncovered as well as ties with other drug trafficker groups, the leaking of information to favor criminal rings dedicated to stealing [commercial] goods, and the existence of assistant prosecutors that receive payment in order to favor one or another party in a case...Also, there are known cases of judicial system employees that collaborate with drug traffickers such as a case where one such official resigned in order to ally herself with the Los Zetas group."³⁷ "Organized crime has the capacity to intimidate or corrupt because of the amount of money it wields," concluded Paz y Paz.³⁸ Other observers have noted how the Central American regional governments cannot hope to match the sheer amount of resources wielded by organized crime groups.³⁹

Controversial deployment of the military alongside police and accusations toward grassroots protests

Part of the strategy of the new government, elected with the campaign promise of applying an "iron fist" to crime, was proposing a greater military presence as a part of combined forces that include National Civilian Police officers, soldiers, and military officials that participate together in the security plan through "task forces" (fuerzas de tarea) that combat different crimes and illicit businesses such as femicide, kidnappings, contract killings, contraband, vehicle robbery, and organized crime. In addition to the army, those participating in the plan organized under the Ministry of Interior are the PNC Directorate, specialized MP agents, and Attorney General Paz y Paz.

³⁴ Ibid.

³⁵ De Leon (2012). "Claudia Paz: redes criminales se han infiltrado en el MP: Han descubierto filtración de datos al narcotráfico o para favorecer a las partes en procesos." *Siglo Veintiuno*. December 26, 2012

<http://www.s21.com.gt/nacionales/2012/12/26/claudia-paz-redes-criminales-se-han-infiltrado-mp>. To exemplify the process of purging those in league with organized crime, a case from April 2013 is reported by the Attorney General's office here: Ministerio Público República de Guatemala (2013) "Capturados piloto del MP y agente de la SGAIA." April 2, 2013

<http://www.mp.gob.gt/2013/04/capturados-piloto-del-mp-y-agente-de-la-sgaia/>.

³⁶ Ministerio Público República de Guatemala (2012) "Fallece Fiscal de Chiquimula del Ministerio Público en ataque armado." December 24, 2012 <http://www.mp.gob.gt/2012/12/fallece-fiscal-de-chiquimula-del-ministerio-publico-en-ataque-armado/>.

³⁷ De Leon (2012). December 26, 2012 (translation by the author).

³⁸ Ibid.

³⁹ (2012). *Posture Statement of General Douglas M. Fraser, United States Air Force Commander, United States Southern Command*.

The army's participation in tasks that fundamentally correspond to the police has been heavily criticized, particularly in cases that involve large groups of protesters and in which military intervention has been associated with human rights violations. The case that led the President to backtrack on military participation in situations involving protesting civilians was the October 2012 case known as the Totonicapán Massacre or the Alaska Case. Following the investigations carried out by the CICIG and the MP, members of the military were being tried in 2013 for their involvement in the deaths of six inhabitants who were shot while participating in a large-scale street protest against proposed government legislation and rising electricity prices.⁴⁰

A February 2013 study about the shooting deaths in Totonicapán conducted by the International Crisis Group concluded that:

*"It was a tragedy that appeared to show not only the dangers of using the army to maintain public order but also the rising tensions within impoverished indigenous communities. Although President Otto Pérez Molina initially denied military responsibility for the shooting, he did the right thing by allowing prosecutors to conduct a thorough investigation. Now the government must step up efforts to reform and strengthen the national police, establishing clear benchmarks for the military's withdrawal from law enforcement. To minimize the risk of new confrontations, it must also address the legitimate demands of indigenous communities for access to electricity, education and land, as well as their right to be consulted about decisions that affect their culture and livelihoods."*⁴¹

For some observers, this case is an example of the increasing tendency of the government as well as the business sector to red-bait or otherwise delegitimize movements and organizations that oppose the government-backed economic model based on natural resource extraction, particularly in regions inhabited by indigenous peoples. As community-based opposition to natural resource extraction projects and hydroelectric dam construction has grown, governmental and business sectors increasingly have made public statements to the press to suggest that current grassroots activism is inherently "terrorist" in nature alternatively suggesting that drug trafficker influence is involved or that the sentiments are manipulated and/or funded by outsiders and specifically international entities. For example, on May 1, 2012, in the context of a conflict generated from local opposition to a hydroelectric dam project in the town of Santa Cruz Barillas in the Huehuetenango province, President Otto Pérez Molina initially affirmed that drug-trafficking was behind the unrest and later accused protesting townspeople of receiving "funding" from international organizations, though he provided no details. "We have information that there are resources that are not domestic, that are from other international organizations that want to come to provoke the Army," he stated.⁴²

⁴⁰ Comisión Internacional contra la Impunidad en Guatemala (CICIG) (2012) "Caso Alaska: Se mantiene el delito de ejecución extrajudicial." *Comunicado de Prensa 094*, December 3, 2012

<http://cicig.org/index.php?mact=News.cntnt01.detail.0&cntnt01articleid=308&cntnt01returnid=34>.

(2013). "Envían a juicio un coronel y ocho soldados por caso Totonicapán." *elPeriódico*. February 14, 2013

http://www.prensalibre.com/noticias/justicia/Envian-juicio-coronel-soldados-Totonicapan_0_865713709.html.

⁴¹ International Crisis Group (2013). Totonicapán: Tension in Guatemala's Indigenous Hinterland. *Latin America Report*. No. 47. February 6, 2013. <http://www.crisisgroup.org/en/regions/latin-america-caribbean/guatemala/047-tononicapan-tension-in-guatemalas-indigenous-hinterland.aspx>.

⁴² (2012). "Organizaciones y pobladores rechazan declaraciones de Pérez." *elPeriódico*. May 4, 2012

<http://www.elperiodico.com.gt/>.

Months prior, in March 2012, two conservative journalists accused the Swedish Embassy of financing “terrorist” and “destabilizing groups” upon reviewing the embassy’s support to certain indigenous and social organizations.⁴³ The Swedish embassy in turn accused the journalists of defamation but the net effect was to create the specter of international interference in domestic affairs in a way that potentially delegitimizes grassroots groups as manipulated by outsiders and equates any international concern for Guatemalan human rights issues with opposition to Guatemala’s conservative sectors. For example, a high-profile Guatemalan behind an organization called the “Foundation against Terrorism” (Fundación contra el Terrorismo) has brought cases to the Attorney General’s Office and publicized through the media his charges that several individuals (journalists, government officials, intellectuals, etc.) speaking out in favor of the prosecution of human rights violators are not doing so in pursuit of justice but rather are driven by leftist ideologies and the quest for revenge. In 2013, the Foundation Against Terrorism and affiliated individuals stepped up a public campaign using radio interviews and paid newspaper supplements to name names and print photos of high profile individuals (including current government officials and Nobel Laureate Rigoberta Menchu). In this context, an anonymous document showed photos of 46 individuals stating that current and future generations “must remember their faces” and be in charge of “giving out punishment to these traitors to the peace.”⁴⁴ One result of the media attention is that human rights defenders express renewed fear of persecution; that they are targeted because their causes, regardless of the actual content, are painted as inextricably linked to leftist ideas or the armed revolutionary groups of the past.⁴⁵

Indigenous organizing and State responses

Guatemala ratified the International Labour Organisation (ILO) Convention 169 in 1996 as a step to improve the lives of its indigenous citizens and in partial compliance toward the Peace Accords signed that same year. The UN Committee on the Elimination of Racial Discrimination document emitted in March 2010, however, singles out Guatemala’s lack of compliance with the Convention in the areas of indigenous peoples retaining land rights or being duly consulted “prior to the exploitation of natural resources located in their territories.” The Committee reiterated concern:

“at the fact that the State party continues to allow indigenous peoples to be dispossessed of land that has historically belonged to them, even though title to the property in question has been duly recorded in the appropriate public registries, and that indigenous peoples’ right to be consulted

⁴³ Hernandez. (2012). "Sentir vergüenza ajena." *Plaza Pública*, <http://www.d6.plazapublica.com.gt/content/sentir-verguenza-ajena>.

⁴⁴ No Somos Genocidas. (2013). "Los Rostros de La Infamia." <http://www.scribd.com/doc/139335438/Los-Rostros-de-La-Infamia>. (translation by the author). The same website has compiled several similar documents circulated electronically and/or published as newspaper supplements in Guatemala during April and May 2013.

⁴⁵ (2012) "Fundación contra el Terrorismo pide capturas por manifestaciones en Totonicapán." *Emisoras Unidas 89.7*, October 15, 2012 <http://noticias.emisorasunidas.com/noticias/nacionales/fundacion-contra-terrorismo-pide-capturas-manifestaciones-toniticapan>; Fundación contra el Terrorismo (2012). *Conferencia de prensa 15 de octubre de 2012, Declaración y Comunicado*. A document labeled as a report prepared for the government but otherwise anonymous indicates that rural organizations that “promote social conflict...and detract from private investments in Guatemala” also emphasizes European government and other international support to local groups, see: (2012). Organizaciones que promueven la conflictividad social en Guatemala: Redes de organizaciones locales e internacionales que promueven la conflictividad social, atentan contra el Estado de Derecho y desestiman la inversión privada en Guatemala. *Informe preparado para el Presidente de la República y autoridades gubernamentales en materia de seguridad, justicia y desarrollo energético*. March 2012. For a summary of concerns expressed by human rights defenders about this situation, see: Albizures (2013). "Opinión: Unificar fuerzas sociales, Atrás de todo está la oligarquía que se ha apropiado del país." *elPeriódico*. February 28, 2013 <http://www.elperiodico.com.gt/>. For the perception that indigenous leaders and activists are specifically targeted see: Velásquez Nimatuj *ibid.* "Opinión: Represión selectiva." March 25, 2013 <http://www.elperiodico.com.gt/es/20130325/opinion/226296/>.

*prior to the exploitation of natural resources located in their territories is not fully respected in practice....*⁴⁶

The United Nations High Commissioner for Human Rights noted that her office in Guatemala during 2012 was monitoring 39 social conflicts “linked to land, extractive and/or monoculture projects, environment threats and labour issues.”⁴⁷ The majority of these 39 cases are in indigenous areas. In addition, the High Commissioner noted statistics provided by the Guatemalan Agrarian Affairs Secretariat that as of October 2012, that office was monitoring more than 1,200 land conflicts involving more than one million people and that 81% of those involved were indigenous.⁴⁸

In December 2012, James Anaya, UN Special Rapporteur on the Rights of Indigenous Peoples, publicly presented the UN Report on the Rights of Indigenous Peoples in regard to Guatemala. Anaya noted that the high degree of social conflict in Guatemala around the approval and implementation of extractive and other large-scale projects on indigenous territories cannot be addressed without also addressing the key issue of rights to lands and territories.⁴⁹ The Rapporteur had expressed the following in his 2011 report:

*“It appears evident that the indigenous peoples in Guatemala have not been duly consulted previous to [government] approval of extractive projects that could affect them directly. The absence of consultation has been a fundamental factor, although not the only one, in the conflictive climate that currently exists in Guatemala in regard to extractive and other kinds of projects in lands considered to be traditionally indigenous.”*⁵⁰

In the December 2012 press conference in Guatemala, Anaya reiterated: “The collective element of indigenous peoples’ rights to their lands and resources is absent from public policy and practice when approving extractive projects and other types of projects.” The Special Rapporteur also expressed concern about the indiscriminate use of states of alert as a response to specific periods of conflict and for excessive lengths of time. “A state of alert should only be used in exceptional cases that seriously affect the ability to maintain public order, and not as a mechanism that enables security forces to carry out other functions such as investigating complaints or defending business interests.”⁵¹

⁴⁶ United Nations Committee on the Elimination of Racial Discrimination (2010). CERD/C/GTM/CO/12-13. May 19, 2010. Available from corresponding link to pdf posted on: <http://www2.ohchr.org/english/bodies/cerd/cerds76.htm>.

⁴⁷ Office of the High Commissioner on Human Rights. (2013). "Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala." <http://reliefweb.int/report/guatemala/annual-report-united-nations-high-commissioner-human-rights-addendum-report-united>.

⁴⁸ Secretaría de Asuntos Agrarios de la Presidencia de la República (2012) "Reporte Estadístico de los Conflictos Agrarios, 5 de noviembre de 2012." November 12, 2012 http://issuu.com/secretariadeasuntosagrarios/docs/informe_conflictos_octubre_2012.

⁴⁹ Juárez (2012). "Relator de la ONU advierte por conflictividad social en Guatemala: Invita a resolver acceso a la tierra de pueblos indígenas." *La Hora*. December 19, 2012 <http://www.lahora.com.gt/index.php/nacional/guatemala/actualidad/170612-relator-de-la-onu-advierte-por-conflictividad-social-en-guatemala>.

⁵⁰ Office of the High Commissioner on Human Rights (2011). Informe del Relator Especial de Naciones Unidas sobre los derechos de los pueblos indígenas, James Anaya. March 4, 2011. http://www2.ohchr.org/english/issues/indigenous/rapporteur/docs/GuatemalaIP16th_AUV.pdf.

see II.A.14, page 11. (translation by the author)

⁵¹ Juárez (2012). December 19, 2012 (translation by the author)

Important progress on judicial proceedings brought against high-ranking army officials for 1980s abuses and crimes (transitional justice cases)

After many years of individuals and groups attempting to bring high-profile individuals accused of participation in Guatemala's past human rights abuses, especially those from the 1980s that were amply documented, several cases moved forward in the court system after years of delays.⁵² A summary on important results to date of this process prior to 2013:

The [Attorney General's Office] has succeeded in bringing other prosecutions related to the internal armed conflict, though most have been against low-level officials. In the past five years, the [Attorney General's Office] in Guatemala has achieved historic convictions for forced disappearances. In addition, various (at least 28) soldiers have been convicted for their involvement in murders or massacres during the civil war. At least 18 of these have been convicted of crimes against humanity in addition to various counts of murder.

Some more senior security officials have been convicted, though their numbers are limited. In December 2009, Guatemalan courts convicted Colonel Marco Antonio Sanchez Samayoa for the enforced disappearance of eight family members in the El Jute massacre of October 1981, and on August 22, 2012 a Guatemalan court convicted former Police Chief Pedro Garcia Arredondo of forced disappearance and crimes against humanity (torture). Other related cases are ongoing or pending.⁵³

In 2011, Former army generals Héctor Mario López Fuentes, Oscar Mejía Victores and José Mauricio Rodríguez Sánchez were charged with "planning and overseeing genocide, organized sexual violence and the forced transfers of populations between 1982 and 1983."⁵⁴ In 2012, the genocide case against Rodríguez Sanchez was combined with the proceedings against former President of Guatemala and retired General José Efraín Ríos Montt for his alleged role in the human rights violations taking place during his administration. In January 2013 the judge presiding over one of the courts handling cases that are designated as "high risk," (Tribunal Primero B de Mayor Riesgo), Miguel Ángel Gálvez, ruled that the case against both Ríos Montt and Rodríguez Sánchez, would move forward with charges of acts of genocide and crimes against humanity, after determining that there was sufficient evidence to consider these charges in the case of massacres carried out in the region where the Ixil-speaking indigenous group is concentrated.⁵⁵ In March 2013, despite attempts by the defense to have the trial delayed or dismissed, proceedings began with much international attention given the unusual circumstance of a head of state being tried for genocide in the courts of his own country.⁵⁶ The six-week trial took place hearing from

⁵²See: Human Rights Watch (2012). World Report 2012: Guatemala. January 22, 2012. <http://www.hrw.org/world-report-2012/guatemala>. Also: Office of the High Commissioner on Human Rights. (2013). "Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala."

⁵³Open Society Justice Initiative. (2013). "The trial of Efraín Ríos Montt & Mauricio Rodríguez Sánchez: Trial background." <http://www.riosmontt-trial.org/trial-background/>. "On September 20 [2013], a Guatemalan tribunal convicted the former director of the National Police of Guatemala, retired Col. Héctor Bol de la Cruz, and his subordinate Jorge Alberto Gómez López for the 1984 disappearance of student and labor leader Edgar Fernando García. The verdict broke new ground... by condemning senior police officials for their role in ordering, overseeing, and then concealing the crime." See: Doyle. (2013). "'Intellectual Authors' of Guatemalan Forced Disappearances Convicted." *Unredacted*, <http://nsarchive.wordpress.com/2013/09/23/intellectual-authors-of-guatemalan-forced-disappearances-convicted/>.

⁵⁴ Amnesty International (2012). P. 161.

⁵⁵ (2013). "Ríos Montt enfrentará juicio por genocidio y delitos de lesa humanidad." *Prensa Libre*. January 28, 2013.

⁵⁶ (2013). "Se adelanta juicio a José Efraín Ríos Montt." *Prensa Libre*. February 21, 2013; (2013). "Corte detiene juicio contra Ríos Montt." *Prensa Libre*. March 9, 2013 http://www.prensalibre.com/noticias/justicia/Corte-detiene-juicio-Rios-Montt_0_879512249.html. Malkin (2013). "In Effort to Try Dictator, Guatemala Shows New Judicial Might." *The New York Times*: A6. March 17, 2013.

over 90 witnesses and dozens of experts despite interruptions prompted by the defense's approach of deploying administrative and judicial mechanisms to slow or halt the proceedings. The three-judge panel, headed by Yassmin Barrios, announced their verdict and sentencing on May 10, 2013. Rodríguez Sánchez was acquitted and Ríos Montt convicted of genocide and crimes against humanity, sentencing him to eighty years in prison. A 718-page written judgment and sentence was presented one week later. Three days after that, Guatemala's Constitutional Court issued a ruling to roll back the trial leaving the judicial process in temporary limbo.⁵⁷

In the context of the judicial proceedings against Ríos Montt and other members of Guatemala's military, different organizations and individuals directly or indirectly associated with human rights work have reported threats and harassment and sources close to the process indicate that judges involved with the case are considered at risk. In 2013, the Inter-American Court on Human Rights ordered precautionary measures for the three judges that ruled on the Ríos Montt case in April of 2013 while also citing their previous cases related to both human rights and drug trafficking.⁵⁸ On May 24, 2013, the Attorney General confirmed that one of the three prosecutors on the case had left the country without describing the circumstances of his departure.⁵⁹

2.2 Regional Background

The high and growing levels of violence in Central America and the open presence of drug trafficking organizations in the region, present since the 1990s as the armed conflicts in the region diminished, led the Central America Security Commission (Comisión de Seguridad de Centroamérica), part of the Central American Integration System (Sistema de Integración Centroamericana – SICA), to present a Security Strategy for Central America in 2007.⁶⁰ The stated aim was to establish “a regional ideal instrument, to create a safer environment for the people and goods, promote sustainable human development through investments and activities related to its components, crime reduction, violence prevention, rehabilitation, reintegration and institutional strengthening.”⁶¹ In September of 2010, the Central America Security Strategy (ESC) was updated “given the increasing transnational nature of organized crime activities in the SICA countries and the increased wave of violence in the region.”⁶² The ESC was approved in early 2011.

⁵⁷ One analysis summed up the situation one month after the verdict had been annulled: “Currently, the legal proceedings are in disarray—the Constitutional Court is considering various petitions seeking the former *de facto* president's amnesty; the initial trial court was forced to disqualify itself; and a new trial court was finally assigned, but has indicated it is in no rush to hear the case, and has its plate full until April 2014. The Constitutional Court also re-affirmed its decision to partially nullify the trial, in another divided 3-2 resolution (a “clarification” or *aclaration*).” Open Society Justice Initiative. (2013). “One month after Guatemala's Constitutional Court intervenes to challenge Ríos Montt genocide conviction: Amnesty back on the table, new trial court booked till mid-2014, and Ríos Montt back home.”, <http://www.riosmontt-trial.org/2013/06/one-month-after-guatemalas-constitutional-court-intervenes-to-challenge-rios-montt-genocide-conviction-amnesty-back-on-the-table-new-trial-court-booked-till-mid-2014-and-rios-montt-back-ho/>.

⁵⁸ AP (2013). “CIDH ordena proteger a jueces.” *elPeriódico*. August 8, 2013

<http://www.elperiodico.com.gt/es/20130808/pais/232450/>; Inter-American Commission on Human Rights (IACHR) (2013) “MC 125/13 - Iris Yassmín Barrios Aguilar y otros, Guatemala.” June 28, 2013 <http://www.oas.org/es/cidh/decisiones/cautelares.asp>.

⁵⁹ Montenegro (2013) “Sale del país fiscal que conoció juicio por genocidio.” *Emisoras Unidas* 89.7, May 24, 2013 <http://noticias.emisorasunidas.com/noticias/nacionales/sale-pais-fiscal-que-conocio-juicio-genocidio#>.

⁶⁰ The Central America Security Commission has its origins in the regional governments being convened by the countries in the Contadora Group in the decade of the 1980s when establishing democratic rule in several Central American countries and resolving internal conflicts were at stake in the region. Those efforts have had to evolve to face current problems that democratic rule did not resolve. For further background, see: Sistema de la Integración Centroamericana (SICA). (2013). “Comisión de Seguridad de Centroamérica CSC.” Retrieved March 1, 2013, http://www.sica.int/csc/csc_breve.aspx.

⁶¹ Secretariat General of the Central American Integration System (SG-SICA) (2011). Central American Security Strategy. Adopted by the Central American Security Commission April 8, 2011.

http://www.europarl.europa.eu/meetdocs/2009_2014/documents/dcam/dv/ca_security_s_/ca_security_s_en.pdf. p.3

⁶² *Ibid.* p. 3

As outlined, the Central America Security Strategy has among its goals: “To develop policies, programs, strategies and actions in order to prevent the following: Youth Violence, Gender Violence, Armed Violence, Human Trafficking, Local Management of Security and improve Disaster Risk Reduction, particularly regarding Climate Change.”⁶³

One of the important components of the 2011 strategy document is the section on “Law Enforcement” outlining activities meant to address the commission of crimes in areas common to the region overall: organized crime, drug trafficking, deported individuals with criminal records, gangs, contract killings (sicariato), femicide, illicit arms trafficking, terrorism, and corruption.⁶⁴

In this security strategy, the United States government plays an important role.⁶⁵ A study carried out by a United States Congress research unit analyzes the security situation shaping the region in the following terms:

“Central America faces significant security challenges. Criminal threats, fragile political and judicial systems, and social hardships such as poverty and unemployment contribute to widespread insecurity in the region. Consequently, improving security conditions in these countries is a difficult, multifaceted endeavor. Because U.S. drug demand contributes to regional security challenges and the consequences of citizen insecurity in Central America are potentially far-reaching, the United States is collaborating with countries in the region to implement and refine security efforts.”⁶⁶

This same United States Congress study outlines the criminal threats and general context facing the Central American region noting that the repressive campaigns launched against drug trafficking in Colombia and Mexico and the military operations against Mexican cartels help explain increasing violence in the Central American countries. According to the study:

“Well-financed drug trafficking organizations (DTOs), along with transnational gangs and other organized criminal groups, threaten to overwhelm Central American governments. Counternarcotics efforts in Colombia and Mexico have put pressure on [drug trafficking organizations] in those countries. As a result, many [drug trafficking organizations] have increased their operations in Central America, a region with fewer resources and weaker institutions with which to combat drug trafficking and related criminality. Increasing flows of narcotics through Central America are contributing to rising levels of violence and the corruption of government officials, both of which are weakening citizens’ support for democratic governance and the rule of law. [Drug trafficking organizations] are also increasingly becoming poly-criminal organizations, raising millions of dollars through smuggling, extorting, and sometimes kidnapping

⁶³ Ibid. p. 4

⁶⁴ Ibid. pp. 5-6

⁶⁵ As described in the United States Congress study, titled Central America Regional Security Initiative: Background and Policy Issues for Congress, the United States’ assistance to the region to address organized crime and drug trafficking is summarized: To address growing security concerns, the Obama Administration has sought to develop collaborative partnerships with countries throughout the Western Hemisphere. In Central America, this has taken the form of the Central America Regional Security Initiative (CARSI). Originally created in FY2008 as part of the Mexico-focused counterdrug and anticrime assistance package known as the Mérida Initiative, CARSI takes a broad approach to the issue of security, funding various activities designed to support U.S. and Central American security objectives. In addition to providing the seven nations of Central America with equipment, training, and technical assistance to support immediate law enforcement and interdiction operations, CARSI seeks to strengthen the capacities of governmental institutions to address security challenges as well as the underlying economic and social conditions that contribute to them. Since FY2008, Congress has appropriated \$466.5 million for Central America through Mérida/CARSI. The Obama Administration has requested an additional \$107.5 million for CARSI in FY2013.”

⁶⁶ Meyer and Ribando Seelke (2012). Central America Regional Security Initiative: Background and Policy Issues for Congress. CRS Report for Congress, Prepared for Members and Committees of Congress. Washington D.C., Congressional Research Service. February 21, 2012. <http://www.fas.org/sgp/crs/row/R41731.pdf>.

*Central American migrants. Given the transnational character of criminal organizations and their abilities to exploit ungoverned spaces, some analysts assert that insecurity in Central America poses a potential threat to the United States.”*⁶⁷

This same study describes efforts by Central American governments to address these challenges and improve security conditions:

“Governments in the “northern triangle” countries of Central America have tended to adopt more aggressive approaches, including deploying military forces to help police with public security functions and enacting tough anti-gang laws. Governments in other countries have emphasized prevention activities, such as intervention programs that focus on strengthening families of at-risk youth. Central American nations have also sought to improve regional cooperation, given the increasingly transnational nature of the threats they face.”

Concern for the regional expansionism and strengthening of the organized crime and drug-trafficking networks, as described by the United States government, was clearly asserted at the Extraordinary Meeting of the Heads of State and Government of the Central American Integration System (SICA) and Mexico, held in San José, Costa Rica, on February 20, 2013. At that meeting, the importance of complying with the Central America Security Strategy was reiterated, which entails coordinated work to advance and secure financing for projects that are part of the Strategy.⁶⁸

As noted in a World Bank study on crime and violence in the region:

*“It is important to note that many of the issues facing Central America transcend regional boundaries as well. Demand for drugs emanates from Europe and the United States; drugs are trafficked mainly by Colombian and Mexican cartels; deportees are sent back to the region from the United States; many weapons that are trafficked are sourced from the United States.”*⁶⁹

The World Bank study adds:

“No regional strategy in these areas can hope to succeed without significant support from the OECD [Organisation for Economic Co-operation and Development] countries, particularly the [USA]. This support has frequently been lacking, especially for weapons control and deportees. Recently however, there is increasing recognition in the [USA] that strategies to interdict the flow of drugs from south to north must be supported by greater efforts to restrict the flow of guns in the reverse direction. In the area of deportees, more can be undertaken by the [USA] in order to minimize the negative impact of deportees on crime in Central America such as better notification and support for re-integration programs in Central America. These interventions have the potential not only to reduce crime in Central America, but also to put a dent in international crime syndicates as well as gangs that conduct business in the United States.”

The same study also comments that: “...Central American countries will require significant support from OECD countries to rethink the overall approach to drug policy, as their own resources are clearly overwhelmingly inadequate to take on the drug cartels, which in any case is likely to increase violence.”

⁶⁷ Ibid.

⁶⁸ Sistema de la Integración Centroamericana (SICA) (2013). Declaración de la Reunión Extraordinaria de Jefes de Estado y de Gobierno de los Países del Sistema de la Integración Centroamericana (SICA). San Jose, Costa Rica. February 20, 2013. See also: Sistema de la Integración Centroamericana (SICA) (2013). Comunicado conjunto de los Jefes de Estado y de Gobierno de los Países del Sistema de la Integración Centroamericana (SICA). San Jose, Costa Rica. February 20, 2013.

⁶⁹ World Bank (2010). Crime and Violence in Central America Volume II. pp. 120-121.

A 2012 United Nations Office on Drugs and Crime (UNODC) study, focused on how transnational organized crime is affecting Central America, makes the point that it is the local and international drug traffickers and not the actual flow of cocaine that creates the violence affecting local populations:

*“The groups involved in transnational organized crime can be divided into territorial groups and trafficking (transportista) groups. Territorial groups, such as the Guatemalan crime families, focus on maintaining control over a geographic area and taxing all criminal activity therein, including drug trafficking. Some display of violence is necessary to maintain this control. Transportistas, in contrast, prefer to fly under the radar, simply moving contraband from place to place, paying tribute to territorial groups when necessary. Some territorial groups, known locally as tumbadores, focus on robbing transportistas of their cargo, and are a major source of violence. Finally, one type of territorial group, street gangs known as maras, have little connection to the transnational drug trade, and focus primarily on extortion and other local power struggles.”*⁷⁰

The UNODC study further describes how

*“Cocaine trafficking is currently the most lucrative organized crime activity in Central America, but it is far from the only one. Both territorial groups and the maras prey on migrants moving northward, who may be very vulnerable. The recent economic downturn has reduced the flow of smuggled migrants, but those who continue to make the journey north are subject to a range of abuses, including being held for ransom. Some migrants are sexually exploited, particularly as they reach Guatemala and southern Mexico. Organized crime groups may also deal in firearms, either stolen or bought from corrupt officials. Military weapons are smuggled both northward and southward. In many ways, the territorial groups act like a state within the state, and can easily move into other forms of criminality should their current portfolio of activities prove unprofitable.”*⁷¹

In March 2012, the U.S. Air Force Commander in charge of the U.S. Southern Command emphasized the regional and hemispheric, indeed, global crisis rooted in the organized crime networks operating in Central America indicating:

*“In many parts of our hemisphere—but most acutely in Central America—transnational organized crime has evolved into a volatile and potentially destabilizing threat to both citizen and regional security. ...Lack of rule of law and widespread impunity provide fertile ground for illicit trafficking and unchecked criminal violence.”*⁷²

2.3 Legal Framework

Guatemala’s constitution (Article 46) stipulates the preeminence of international law as follows: “It is established as a general principle that in the matter of human rights, treaties and conventions accepted and ratified by Guatemala have preeminence over the juridical internal order or domestic law”. Guatemala’s current constitution dates from 1985 and includes reforms from 1993. A recent development was Guatemala’s ratification of the Rome Statue of the International Criminal Court in 2012, thereby accepting the court’s jurisdiction. This constitutes a significant advance in the area of human rights as a potential tool to prevent new human rights violations and combat impunity from the past.

⁷⁰ United Nations Office on Drugs and Crime (UNODC) (2012). Transnational Organized Crime in Central America and the Caribbean: A threat assessment. Vienna, Austria, UNODC. p. 11

⁷¹ Ibid. p. 13

⁷² (2012). Posture Statement of General Douglas M. Fraser, United States Air Force Commander, United States Southern Command.

Guatemalan legal aid, legal analysis and human rights organizations advocate for remedies for what are considered imperfections in current laws as well as point out where new legislation could be developed.⁷³ In the past five years new legislation has addressed the important topics of combating sexual violence and human trafficking for sex, femicide, and organized crime. The Office of the United Nations High Commissioner for Human Rights (OHCHR) sums up (as of late 2012) important pending legislation as follows in its annual report:

*16. Draft laws relevant to human rights protection in the areas of security and justice, including reforms to the Statutory Law of the Attorney General's Office, amparo (writ of protection), impeachment, arms and ammunitions and the National Reparations Programme and the creation of a search commission for victims of enforced disappearance are still pending in Congress. So is a bill on migrants, which includes fundamental human rights principles and moves away from an approach based solely on national security.*⁷⁴

One of the partial peace agreements (signed in 1994) that forms part of the Guatemala peace process that culminated in December 1996 was focused specifically on populations uprooted by the years of conflict, among them refugees and different categories of internally displaced persons. One specific law that resulted from the call for assistance and needs for protection articulated in that agreement was temporary legislation simplifying the requirements to recover personal documentation lost or never obtained as a consequence of mass displacement and the destruction of vital records registries in many parts of the country. The same law provided a mechanism for documenting a presumed death given the legal limbo for relatives of "missing" ("disappeared") persons presumed to have been seized and killed by security forces. This law also gave definitions for "internal displaced," "returnee," "repatriate" and other displaced groups. The special documentation law was widely utilized by individuals while in force, and was renewed until a new national personal identification program was put in place.

For about five years following the 1996 peace accords, displaced and returning refugees were given priority under several programmes to help war-displaced recover lands, obtain new land, resolve land conflicts, engage in economic projects and receive material aid including support for housing construction and reparations through the National Reparations Programme. Most of these programs began to phase out around 2000, notwithstanding the ongoing petitions and charges of incomplete implementation made by organizations representing displaced and returned refugees. Guarantees for physical safety and full exercise of rights for those displaced and returning home were reiterated in the peace agreements and monitored by the UN Mission in Guatemala (MINUGUA) and UNHCR in the 1990s, while these entities maintained a field presence in Guatemala, but otherwise fell to the Guatemala Human Rights Ombudsman's office. In October, 2011, organizations that historically represented or included communities of war-time displaced argued in front of the Inter-American Commission on Human Rights (IACHR) that not only has material help been deficient or absent for many displaced but also that those who did eventually return home found "newly established military presence and state-sanctioned exploitation of natural resources."⁷⁵ The communities' attorney argued that such situations go against the state's commitment to non-repetition.⁷⁶ There is no formal legislation, however, linking the commitments made to the war-displaced of the past that would provide protection or guarantees for the current

⁷³ Asociación Centro de Análisis Forense y Ciencias Aplicadas (CAFCA) (2012). Informe Alternativo al Comité contra la Tortura. Guatemala. http://www2.ohchr.org/English/bodies/cat/docs/ngos/CAFCA_CIDH_ECAP_Guatemala_CAT50.pdf.

⁷⁴ Office of the High Commissioner on Human Rights (2012). Annual report of the United Nations High Commissioner for Human Rights. Addendum Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala January 30, 2012.

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.21.Add.1_sp.pdf.

⁷⁵ Wakefield (2011) "Situation of Victims of Forced Displacement in Guatemala." *The Human Rights Brief*, October 27, 2011 <http://hrbrief.org/2009/12/international-commission-against-impunity-in-guatemala/>.

⁷⁶ Ibid.

phenomena of individuals or communities becoming displaced because of drug trafficking, development projects affecting land holdings, or prevalence of violent crime.

The political framework for overseeing programs to aid displaced as well as to implement many aspects of the peace accords in general was given to SEPAZ, the Secretariat of Peace (Secretaría de la Paz) formed for this purpose. With the passage of time, however, the role and capability of SEPAZ has been steadily diminished. A few months into the Pérez Molina administration, human rights groups expressed dismay that the government closed the “peace archives” held by SEPAZ despite their actual and potential use in human rights and other legal cases related to Guatemala’s period of armed conflict.

Below are important international, inter-American, and national laws in force in Guatemala:

INTERNATIONAL CONVENTIONS	RATIFICATION/ACCESSION
Rome Statute of the International Criminal Court	2 April 2012
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime	1 April 2004
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Preamble, supplementing the United Nations Convention against Transnational Organized Crime	1 April 2004
United Nations Convention against Transnational Organized Crime	25 September 2003
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	14 March 2003
Optional Protocol to the Convention on the Elimination of Discrimination against Women	9 May 2002
Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour	11 October 2001
Convention relating to the Status of Stateless Persons	28 November 2000
Optional Protocol to the International Covenant on Civil and Political Rights	28 November 2000
International Covenant on Civil and Political Rights	5 May 1992
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	5 January 1990
Convention on the Rights of the Child	6 June 1990
Convention relating to the Status of Refugees	22 September 1983
Protocol Relating to the Status of Refugees	22 September 1983
International Convention on the Elimination of All Forms of Racial Discrimination	18 January 1983
Convention on the Elimination of All Forms of Discrimination against Women	12 August 1982
Freedom of Association and Protection of the Right to Organise Convention	13 October 1952
Right to Organise and Collective Bargaining Convention	13 October 1952
INTER-AMERICAN CONVENTIONS	
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights " Protocol of San Salvador" (Protocolo Adicional a la Convención Americana sobre Derechos Humanos en Materia de Derechos Económicos, Sociales y Culturales)	30 May 2000
InterAmerican Convention on Forced Disappearance of Persons (Convención Interamericana sobre desaparición forzada de personas)	27 July 1999
InterAmerican Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belem do Para" (Convención	4 January 1995

Interamericana para Prevenir, Sancionar y Erradicar la Violencia contra la Mujer)	
InterAmerican Convention to Prevent and Punish Torture (Convención Interamericana para Prevenir y Sancionar la Tortura)	12 October 1986
American Convention on Human Rights (Convención Americana de los Derechos Humanos)	27 April 1978
NATIONAL LEGISLATION	
Law on the National Mechanism for the Prevention of Torture and Other Cruel Inhuman or Degrading Treatment or Punishment Legislative Decree No. 40-2010 (Ley del Mecanismo Nacional de Prevención de la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes)	2010
Penal Competence Law Decree No. 17-2009 (Ley de Fortalecimiento de la Persecución Penal)	14 April 2009
The Law Against Sexual Violence, Exploitation and Trafficking, Decree No 09-2009 (Ley contra la Violencia Sexual, Explotación y Trata de Personas)	18 February 2009
Law Against Femicide and Other Forms of Violence Against Women, Decree 22-2008, (Ley contra el Femicidio y Otras Formas de Violencia contra la Mujer)	9 April 2008
Law Against Organized Crime, Decree No 21-2006 (Ley contra la Delincuencia Organizada,)	19 July 2006
Peace Accords Framework Law Decreto No. 52-2005 (Ley Marco de los Acuerdos de Paz)	3 August 2005
Law to Prevent, Sanction, and Eradicate Violence within the Family, Decree No. 97-96 (Ley para Prevenir, Sancionar y Erradicar la Violencia Intrafamiliar)	25 November 1996
Partial agreements that form part of the 1996 Peace Accords: Comprehensive Agreement on Human Rights; Agreement on Resettlement of the Population Groups Uprooted by the Armed Conflict; Agreement on Identity and Rights of Indigenous Peoples; Agreement on Socio-economic Aspects of the Agrarian Situation; Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society; Agreement on the Establishment of the Commission to clarify past human rights violations and acts of violence that have caused Guatemalan population to suffer	1996
Witness Protection Law, Decree No. 70-96 (Ley de Protección a Testigos-- Ley para la Protección de Sujetos Procesales y Personas Vinculadas a la Administración de Justicia Penal)	27 August 1996
Code of Criminal Procedure, Decree No. 51-92 (Código Procesal Penal Guatemalteco)	7 December 1992
Law establishing the Human Rights Commission of the Congress of the Republic and the Human Rights Ombudsman, Decree No. 54-86 (Ley de la Comisión de los Derechos Humanos del Congreso de la República y del Procurador de los Derechos Humanos)	1986
Code of Criminal Procedure, Decree No. 17-73 (Código Procesal Penal Guatemalteco)	5 July 1973

Of interest is the evolving capacity of Guatemala in offering protection to witnesses under the 1996 legislation (Decree 70-96). The challenge of protecting witnesses has been a long-standing obstacle limiting Guatemala's ability to successfully initiate and conclude criminal cases. For example, the United States Department of State, in its 2011 Human Rights report, mentions "credible reports" of witnesses being killed in that year and ample documentation of threats against both witnesses and those in the

judicial system.⁷⁷ The International Commission against Impunity in Guatemala (CICIG) and other entities have made ongoing efforts to aid the Guatemala government in improving these programs.⁷⁸

The CICIG's analysis was that one of the main weaknesses of the system was a lack of a police unit that was properly trained and exclusively dedicated to witness protection. Their technical assistance therefore focused on training police officers at the National Civilian Police (PNC) academy that could fulfill this function.⁷⁹ The current institutional framework includes the Division of Protection and Security (Protección a Personas y Seguridad) that is within the PNC "in charge of providing personal protection to human rights defenders, witnesses, judicial authorities, and prosecutors" and the Witness Protection Program (Oficina de Protección al Testigo) under the Attorney General's Office (that also deploys the trained officials of the PNC Division).⁸⁰

According to the government, the Attorney General's Office's Witness Protection Program offers support to an average of 120 persons per year that are testifying in cases considered "high impact".⁸¹ About 10 people per month are helped to relocate and/or change identify and social connections.⁸² This program works in conjunction with the Ministry of the Interior to protect persons who have witnessed criminal acts and come forward to participate in judicial proceedings. Considering that the law is also meant to cover the family members of witnesses, the actual number of those benefiting from the program could reach up to 600 per year.⁸³ Ninety agents from the PNC Division of Personal Protection and Security are assigned to this program. This same PNC division has officers assigned to the CICIG's Special Unit for Witness Protection (Unidad Especializada de Protección a Testigos).⁸⁴

A group of Guatemalan legal aid, legal analysis and human rights organizations recapped important improvements attributed to the work of CICIG, an Attorney General (Claudia Paz y Paz) dedicated to such change, and a competent head of the Witness Protection Program. The coalition's report goes on to say:

"Despite the achievements gained in recent years, the Witness Protection Service needs to be strengthened in regard to monitoring and the evaluation of its actions; the collaboration of the Service with other institutions; and having the necessary financial and human resources that go beyond the offer to safeguard the life of the protected persons but also to assure their wellbeing during the time they are under protection, among other reasons, in order to make sure that they don't drop out as witnesses, and also to facilitate their transition to civilian life [after]. It is also important to explain to potential users of the program their rights and obligations and also to implement actions that are attuned to specific cultural attributes. Further strengthening the program would permit the implementation of all the situations contemplated in the [1996] law

⁷⁷ United States Department of State (2012). 2011 Human Rights Reports: Guatemala. 2011 Country Reports on Human Rights Practices. <http://www.state.gov/documents/organization/186728.pdf>. Also see: Comisión Internacional contra la Impunidad en Guatemala (CICIG) (2011). *Programa de Protección a Testigos necesita fortalecerse*: <http://cicig.org/index.php?page=programa-de-proteccion-a-testigos-necesita-fortalecerse>. For the example of a 2002 case that couldn't be brought to court following the slow dwindling of material witnesses (three killed and the others intimidated) see: Agencia Guatemalteca de Noticias (AGN) (2013) "Forzados a cambiar de identidad domicilio." October 12, 2012 <http://www.agn.com.gt/index.php/component/k2/item/416-forzados-a-cambiar-de-identidad-y-domicilio>.

⁷⁸ Comisión Internacional contra la Impunidad en Guatemala (CICIG) (2012) "Comunicado de prensa 070, Alemania dona equipo al MP." September 14, 2012 <http://cicig.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=247&cntnt01returnid=61>.

⁷⁹ Comisión Internacional contra la Impunidad en Guatemala (CICIG). (2013). "CICIG, Funciones de la Comisión, Asistencia Técnica." Retrieved Jun 3, 2013, <http://cicig.org/index.php?page=asistencia-tecnica>.

⁸⁰ Procuraduría de los Derechos Humanos de Guatemala (2013). Informe Anual Circunstanciado Situación de los Derechos Humanos en Guatemala, 2012. January 2013. p. 221.

⁸¹ Ibid. p. 221.

⁸² Agencia Guatemalteca de Noticias (AGN) (2013)

⁸³ Ibid.

⁸⁴ Ibid.

*such as [a complete] identity change which is not [fully] carried out in Guatemala as this would go beyond simply changing names on documents.*⁸⁵

3. PREVAILING SECURITY CONDITIONS

The United States government advisory in 2013 still forewarned foreign travelers that they would encounter in Guatemala a “developing country characterized by wide income disparities [where violent] crime is a serious concern due to endemic poverty, an abundance of weapons, a legacy of societal violence, and weak law enforcement and judicial systems.”⁸⁶ As suggested by the background information above, the widespread occurrence of violence and seemingly arbitrary nature of who may fall victim to crime at any time affects Guatemala daily life because the simple acts of riding a bus, running a small business, withdrawing money at a bank, or walking at dusk imply risk. While risk is widespread, it falls disproportionately on those with less means to avoid it and those who are targeted in specific ways. Perpetrators of the vast majority and most serious violence are described below considering both non-State and State actors. The geography of where different types of violence take place is also considered.

3.1 Violence linked to organized crime, drug trafficking and gangs

The non-State actors perpetrating persecution and violence in Guatemala are primarily organized crime groups carrying out drug trafficking (groups controlling territory related to the trafficking and groups that are traffickers or transporters), both those with and without connections to arms trafficking, human trafficking, kidnapping rings, contract killings (sicariato) and vehicle theft. Specific street gangs also come under the heading of organized crime but are discussed separately. In Guatemala gangs with national reach and transnational connections are involved in contraband, extortion, prostitution, and property theft. Violence and intimidation carried out by security agents or guards employed by private agencies are also described.

a) Organized crime groups primarily associated with drug trafficking

Drug trafficking organizations in Guatemala are concentrated mostly in the north, northwest, and northeastern parts of the country, especially in areas bordering Mexico and Honduras (see maps in Annex). One of the main actors generating violence is the Zetas Cartel, known simply as the “Zetas.” This Mexican drug trafficking organization has not confined its activities solely to transporting the drugs that flow through Guatemala. According to the International Crisis Group, the Zetas “are a diversified mafia that runs various criminal enterprises from extortion to kidnapping to murder for hire to prostitution and human trafficking. They also use their superior firepower to steal drug shipments and force Guatemalan groups to pay protection money.”⁸⁷ The International Crisis Group analysis points to Guatemalan nationals, not Mexicans, as the majority participants within Guatemala and the tendency of the Zetas to recruit former members of the Guatemalan Army’s elite forces, known as Kaibiles.⁸⁸

⁸⁵ Asociación Centro de Análisis Forense y Ciencias Aplicadas (CAFCA) (2012). (translation by author)

⁸⁶ United States Department of State. (2013). "Guatemala Country Specific Information." Retrieved March 24, 2013, http://travel.state.gov/travel/cis_pa_tw/cis/cis_1129.htm.

⁸⁷ International Crisis Group (2011). Guatemala: Drug Trafficking and Violence.

⁸⁸ Ibid.p. 5.

Part of the Zetas Cartel's violence originates in its war against the so-called "Pacific Cartel," which in Guatemala operates with the Sinaloa and the Gulf Cartels, allies since the Zetas broke off as the armed wing of the Gulf Cartel and became an independent entity. In Guatemala, the Zetas compete with local traffickers associated with both the Sinaloa and Gulf cartels."⁸⁹ A massacre of 27 people in the plantation of Los Cocos in the municipality of La Libertad, Petén, in May 2011, occurred as part of the Zetas' expansionary war.⁹⁰

In Guatemala, the Zetas are allied with a local drug trafficking group led by Walter Overdick, who was extradited to the USA in December of 2012; Overdick's group has operations in the provinces of Alta Verapaz and northern Quiché (in the region known as the 'Franja' or Northern Transversal Strip).⁹¹ Another Zetas ally is the Lorenzana organization that operates in the provinces of Zacapa and Izabal on the Honduran border and in Petén, which borders Belize.⁹² The presumed leader of the Lorenzana organization, Waldemar Lorenzana Lima, was apprehended in 2011 and was still awaiting extradition to the USA in 2013.⁹³

According to a 2012 study by the UNODC, the Lorenzanas are believed to be responsible for 20 to 25 homicides per year. This may be an undercount, however, as many of their murders go unrecorded because they "often hide bodies in remote areas."⁹⁴

The Mendozas are among the local organizations allied with the Pacific Cartel. They operate out of the municipality of Morales, Izabal, on the border with Honduras, and their activities extend to Petén. According to UNODC, the Mendozas have been accused of kidnapping and sometimes killing local farmers in order to acquire land.⁹⁵

As described by UNODC, another organization linked to the Pacific Cartel is the Chamalé group that operates in San Marcos (municipalities of Malacatán, Tecún Umán), near to both the Mexican border and the Pacific Ocean coast. "The Chamalé group is believed to be responsible for approximately 50 homicides per year in Guatemala and to be engaged in kidnapping, extortion and land expropriation."⁹⁶

⁸⁹ Ibid.

⁹⁰ (2012) "Análisis epistolares en torno a una masacre." *Plaza Pública*, March 1, 2012

<http://www.plazapublica.com.gt/content/analisis-epistolares-en-torno-una-masacre-0>. Also see: InSight Crime (2011) "Grupos de poder en Petén: Territorio, político y negocios." <http://www.insightcrime.org/docs/the-peten-report.pdf> [the document was subsequently removed from this website but is available through third parties]

⁹¹ Ministerio Público República de Guatemala (2012). Presentación de Resultados 2012. Administración: Dra. Claudia Paz y Paz. Guatemala, Ministerio Público República de Guatemala. <http://www.slideshare.net/mpguate/presentacin-de-resultados-2012#btnNext>.

⁹² InSight Crime. (2013). "Lorenzanas." Retrieved March 5, 2013, <http://www.insightcrime.org/groups-guatemala/lorenzanas>.

⁹³ Ministerio Público República de Guatemala (2011) "Capturan a Waldemar Lorenzana Lima." April, 2011 <http://www.mp.gob.gt/2011/04/capturan-a-waldemar-lorenzana-lima/>.

⁹⁴ United Nations Office on Drugs and Crime (UNODC) (2012). p. 25.

⁹⁵ The Mendozas include a group of brothers with the last names Mendoza Matta, that conduct a mix of legal and illicit businesses. Those whose names are known are: Milton Oswaldo, Walter Obdulio, Mario Giovany, Geovany Estuardo and Haroldo based in Morales, Izabal. See: InSight Crime. (2013). "Mendozas." Retrieved March 5, 2013, <http://www.insightcrime.org/groups-guatemala/mendozas;>

Ramos (2012) "Testigo es protegido en caso de familia involucrada en narco." *Plaza Pública*, March 22, 2012

<http://www.elperiodico.com.gt/es/20120322/pais/209856/>; Ramos (2012). "Disminuyen las muertes y violentas de mujeres. La saña con que se cometen los crímenes manifiesta la violencia que se vive en el país, señala la ONU." *elPeriódico*. November 22, 2012 <http://www.elperiodico.com.gt/>. Also: United Nations Office on Drugs and Crime (UNODC) (2012). p. 25; InSight Crime (2011) "Grupos de poder en Petén: Territorio, político y negocios."; Espach, Meléndez Quiñonez, Haering and Castillo Girón (2011). Criminal organizations and illicit trafficking in Guatemala's border communities. Alexandria, Virginia, CNA Analysis & Solutions.

⁹⁶ United Nations Office on Drugs and Crime (UNODC) (2012). p. 25.

In the last decade, several drug trade kingpins have been captured and/or extradited, which has led to restructuring within the local drug trafficking organizations and shifting alliances with particular Mexican drug cartels.⁹⁷ In March 2013, the Minister of the Interior, Mauricio López Bonilla, stated in a radio interview that a net result of the captures and resulting fragmentation of drug trafficking trade means that now there are an estimated 50 groups instead of the 8-10 that were operating beforehand.⁹⁸

Both the local and foreign-based drug trafficking organizations have developed financial and personalized connections at the local level that take on importance when drug trafficking groups consolidate in strategic regions. A consultant report that researched the topic of border violence indicates that often overlooked are the: “Local dynamics which underpin [the high incidence of violence and organized crime], such as the relationships between criminal networks and local authorities and institutions.”⁹⁹

The aforementioned studies highlight the intertwined relationships between drug traffickers and local municipal authorities, security forces, as well as links to high-ranking military officers.¹⁰⁰

b) Street gangs

Street gangs are also considered among the main non-State actors that generate violence. “Mara 18” (18th Street Gang or MS-18) and “Mara Salvatrucha (MS13)” are deemed the two most prominent gangs.¹⁰¹ Nevertheless, how these two transnational groups are manifested locally is infinitely complex and changes frequently. For example, in 2012, a government estimate indicated that the local groups representing one or the other of these two umbrella gang organizations totaled 200 with each group having between 30 and up to 1,200 members.¹⁰²

The M-18 is the largest gang in terms of the number of its youth members; it covers a wide region in the Central American isthmus, with links to organized crime and the drug trade. It is present “in urban areas of El Salvador (San Salvador, Santa Ana, Sonsonate, La Libertad, San Miguel), Guatemala (Guatemala City, San Marcos, Xela [which is another name for Quetzaltenango], Antigua etc.), Honduras (Tegucigalpa, San

⁹⁷ <http://www.plazapublica.com.gt/content/nueve-anos-de-caceria-para-ocho-narcos-guatemaltecos-i>

⁹⁸ Tzoc (2013) “Estructuras de narcotráfico se incrementan en el país.” *Emisoras Unidas* 89.7, March 17, 2013

<http://noticias.emisorasunidas.com/noticias/nacionales/estructuras-narcotrafico-se-incrementan-pais>. Also see coverage of the Ministry of the Interior press conference in June 2011 asserting that there are 54 drug trafficking groups in Guatemala that the government has mapped in a document not released to the public: (2013). “En Guatemala operan 54 grupos narcotraficantes y 70 de pandillas.” *Prensa Libre*. June 11, 2013 http://www.prensalibre.com/noticias/justicia/Gobernacion-informa-estructuras-diversos-delitos_0_935906608.html; AFP. (2013). “Identifican 54 grupos de narcotraficantes en Guatemala.” *el Periódico*. June 11, 2013 <http://www.elperiodico.com.gt/es/20130611/pais/229599/>.

⁹⁹ Espach, et al. (2011).

¹⁰⁰ (2012) “Hermano de ex director de Contraineligencia, señalado de narco.” *Plaza Pública*, November 19, 2005

<http://www.elperiodico.com.gt/es/20051119/actualidad/22064/>.

¹⁰¹ “The two major gangs in Central America, the Mara Salvatrucha (MS13) and 18th Street [M-18], have their roots in the U.S. Beginning in the early 1980s, nearly a million Central Americans fled to the U.S. to escape the violence and hardship of civil conflict in the region. Living in poverty and marginalized by other groups, a small percentage became involved with gangs. Some joined 18th Street [M-18], a primarily Mexican gang that had been established many years prior to the wave of Central American immigration, while others formed MS13. During the mid-1990s, many Central Americans, including some gang members, were deported to their countries of birth. Some gang members became involved in criminal activity in their home countries and replicated the 18th Street and MS13 gangs. Over time, high-profile acts of violence brought gangs into the public view. Governments of the region responded by implementing a variety of *mano dura* (heavy handed) policies that emphasized repression and law enforcement while minimizing prevention, rehabilitation and social reintegration of gang members. With the passage of “Illicit Association” legislation, known and suspected gang members were rounded up in police sweeps, incarcerated, and in some instances tortured and killed through extrajudicial executions.” Source: World Bank (2010). *Crime and Violence in Central America* Volume II. p. 60. Also see: Washington Office on Latin America (WOLA) (2008). *Central American gang-related asylum: A resource guide*. Washington D.C. May 2008.

¹⁰² (2012). “Forma de operar de maras sale a luz.” *Prensa Libre*. November 3, 2012.

Pedro Sula), Mexico, and the USA. Some members have been recently arrested in Panama and Costa Rica.”¹⁰³

According to InSight Crime, “With thousands of members across hundreds of kilometers, and interests in a number of different illicit activities, M-18 is one of the more significant emerging criminal threats in the region.”¹⁰⁴ UNODC summarizes the M-18's activities as: “Extortion (bus companies, local businesses, private individuals), street-level drug trafficking (cannabis and some cocaine), theft, murder-for-hire.”¹⁰⁵

InSight Crime offers the following analysis of the M-18's criminal activities and links to the drug trade: “The gang has its hand in a number of different criminal enterprises across the length and breadth of its territory, among them murder-for-hire, drug sales, prostitution, extortion, and kidnapping. The latter two are especially common in Central America, where the relatively open criminal landscape and weak police forces created space for extortion rackets and kidnapping gangs, filled in part by M-18 in [the last decade]...M-18 has also allegedly linked up with some of Mexico's most notorious drug trafficking networks. Despite M-18's Mexican roots, the gang is not one of the strongest organizations in Mexico, but may have links with groups like the Zetas and the Sinaloa Cartel based on its presence in the USA and Central America (where the Mexicans have been increasing their presence in recent years).”¹⁰⁶

The MS13 is the second major gang; it dominates a large part of the Central American region and has the closest ties to organized crime. It operates in El Salvador (San Salvador, Santa Ana, Sonsonate, La Libertad, San Miguel), Guatemala (Guatemala City, Chimaltenango, San José Pinula, Mixco, Villanueva), and Honduras.

Its activities are “mainly extortion (bus companies, local businesses, individuals), street-level drug trafficking (cannabis and some cocaine), theft and robberies and murder-for-hire.”¹⁰⁷ “They rob, extort and bully their way into neighborhoods and have gradually turned to transnational crimes such as human smuggling and drug trafficking. Their activities have helped make the Northern Triangle [countries] – Guatemala, El Salvador, and Honduras - the most violent place in the world that is not at war.”¹⁰⁸ Both gangs are increasingly collaborating with larger trafficking organizations to provide a range of criminal services, according to military leaders of the U.S. Southern Command.¹⁰⁹

3.2 Other non-State actors

a) Private security companies

Guatemala's high levels of violence for decades; the flourishing of gangs, criminal groups, and drug traffickers; the demoralized and corrupt police forces; and the population's marked distrust of public security forces have contributed to the proliferation of private security companies and so-called vigilante groups. “The poor, of course, cannot hire others to provide for their security. They must respond directly

¹⁰³ United Nations Office on Drugs and Crime (UNODC) (2012). p. 28.

¹⁰⁴ InSight Crime. (2013). “Barrio 18 (M-18).” Retrieved March 5, 2013, <http://www.insightcrime.org/groups-guatemala/barrio-18>.

¹⁰⁵ United Nations Office on Drugs and Crime (UNODC) (2012). p. 28.

¹⁰⁶ InSight Crime. (2013). “Barrio 18 (M-18).”

¹⁰⁷ United Nations Office on Drugs and Crime (UNODC) (2012). p. 27.

¹⁰⁸ InSight Crime. (2013). “MS-13.” Retrieved March 5, 2013, <http://www.insightcrime.org/groups-guatemala/mara-salvatrucha-ms-13>.

¹⁰⁹ (2012). *Posture Statement of General Douglas M. Fraser, United States Air Force Commander, United States Southern Command.*

and one of the clearest indicators of State failure is the emergence of vigilante action. It appears that both private security and vigilante action are on the rise in Guatemala as well as elsewhere in the region.”¹¹⁰

In its January 2013 report, the OHCHR emphasized that the trend continues for private security agents to greatly outnumber the police in Guatemala and also noted with concern that by the end of 2012, “...none of the existing companies had completed the compulsory registration process before the General Directorate, two years after the adoption of the law on private security services (Decree 52-2010).”¹¹¹ The UN Committee on Torture also manifested concern “regarding the extensive use of private guards for activities which are incumbent upon the State, with reported incidents of abuse, lack of accountability as well as of connections of private guards with organized crime.”¹¹²

The OHCHR's 2010 report had highlighted the growing threat that non-State actors present to human rights defenders and determined that one such actor is private security companies. “The context of insecurity and violence has a negative impact on human rights defenders. Non-State actors such as vigilante groups, private security companies and organized crime are a growing threat to their security, in particular when the work of human right defenders threatens these actors’ interests. OHCHR-Guatemala received information alleging the acquiescence or complicity of local authorities in some cases of threats to, the discrediting of, legal action against and even the murder of defenders. It is of concern that investigations into such serious allegations have not yet yielded results.”¹¹³

Although that statement was from a 2010 report, the participation of certain companies and of private security agents hired by businesses with infrastructure projects in socially conflictive areas in acts of violence against human rights defenders and local residents has continued. One case involved the violent evictions of inhabitants in the Polochic Valley region, in the municipality of Panzós, Alta Verapaz, between March and May 2011, in which police forces, members of the army, and private security guards from the Chabil Utzaj sugar refinery participated. The IACHR ordered protective measures for 14 indigenous communities in the Panzós Municipality as a consequence.¹¹⁴

Another case occurred in the Barillas municipality in May 2012. The OHCHR's 2013 report summarized the case as follows:

“Like its predecessors, the current Government resorted to exceptional measures and declared a state of siege in Santa Cruz Barillas, Huehuetenango. This followed the 1 May [2012] killing of peasant Andrés Pedro Miguel, allegedly by a private security guard. In response, some members of the community damaged a hotel and other buildings, allegedly detained a judicial official and forcibly entered the military barracks. The decree establishing the state of siege lacked a clear

¹¹⁰ United Nations Office on Drugs and Crime (UNODC) (2012). p. 71. See also: International Crisis Group (2011). Guatemala: Drug Trafficking and Violence. p. i.

¹¹¹ Office of the High Commissioner on Human Rights. (2013). "Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala." See also: United Nations Office on Drugs and Crime (UNODC) (2012). .

¹¹² United Nations Committee against Torture (2012). Combined fifth and sixth periodic reports of States parties due in 2011, submitted in response to the list of issues (CAT/C/GTM/Q/6) transmitted to the State party pursuant to the optional reporting procedure (A/62/44, paras. 23 and 24) Guatemala. January 9, 2012, distributed April 3 2012. www2.ohchr.org/english/bodies/cat/docs/CAT.C.GTM.5-6_en.doc.

¹¹³ Office of the High Commissioner on Human Rights. (2011). "Informe de la Alta Comisionada de las Naciones Unidas para los Derechos Humanos sobre las actividades de su oficina en Guatemala."

¹¹⁴ Inter-American Commission on Human Rights (IACHR) (2011) "Medidas Cautelares, MC 121/11 - 14 Comunidades Indígenas Q'echi del Municipio de Panzós, Guatemala. ." <http://www.oas.org/es/cidh/decisiones/cautelares.asp>. Also see: (2011) "Wendy en Guatemala, el País de Nunca Jamás." *Plaza Pública*, October 28, 2012 <http://www.plazapublica.com.gt/content/wendy-en-guatemala-el-pais-de-nunca-jamas>.

*justification and analysis of necessity, exceptionality and proportionality. The Government withdrew the measure after 18 days.”*¹¹⁵

Private guards who work for security agencies or who are organized by the companies or plantation owners frequently participate in evictions and/or displacement of farmworkers or settlers. For example, private security guards working for companies cultivating African palm in the Petén province's southern municipality of Sayaxché have been accused of carrying out company-sponsored intimidation in the area so that area residents sell their lands to the companies while also blocking access routes for small-holders that refused to sell their lands. Protests and the population's aggressive singling out of security guards as enforcers of company-sponsored violence resulted.¹¹⁶

Finally, another key case is that of the murder in 2009 of community leader and human rights defender Adolfo Ich Chamán near El Estor, in Izabal province. Private security agents with the mining company CGN (Guatemalan Nickel Company) were indicted.¹¹⁷ This case is currently being tried in Canada (with the parent company Hudbay Minerals Inc. charged as the responsible party) along with another court case alleging that security guards from another company that became a Hudbay Minerals Inc. subsidiary assaulted and raped a group of 11 q'eqchi' women in 2007 while carrying out an eviction on lands claimed by the company, also near El Estor in Izabal.¹¹⁸

b) Vigilante groups

Another non-State agent linked to violence against the population and against human rights defenders are vigilante groups known also as “security commissions” (juntas de seguridad) that evolved from a program created by the government in 1999. The OHCHR's 2013 report indicated that: “According to the Ministry of the Interior, over 1,000 legally established civilian security groups exist—either local security committees or local security commissions. They carry out tasks ranging from community based–prevention activities to maintenance of public order. Some members perform policing functions and have even committed abuses.”¹¹⁹ The High Commissioner encouraged the authorities “to continue taking legal action against abuses by these groups and reiterates her recommendation to derogate General Order 11-99 of the PNC establishing local security committees.”¹²⁰ A study conducted at the Guatemalan Rafael

¹¹⁵ Office of the High Commissioner on Human Rights. (2013). "Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala."

¹¹⁶ López (2008). "Campesinos son presionados para vender y abandonar sus tierras." *Diario de Centro América (Official)*. June 19, 2008; (2012). "Pobladores amenazan con quemar fincas en Sayaxché, Petén." *Siglo Veintiuno*. May 8, 2012; Arce (2012) "Sayaxché, ambigüedad y medias verdades." *Plaza Pública*, June 12, 2012 <http://www.plazapublica.com.gt/content/sayaxche-ambigüedad-y-medias-verdades>.. The Office of the High Commissioner for Human Rights has noted concerns about ongoing labor disputes by workers in these same plantations, see: Office of the High Commissioner on Human Rights. (2013). "Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala."

¹¹⁷ Office of the High Commissioner on Human Rights. (2013). "Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala."

¹¹⁸ Observatory for the Protection of Human Rights Defenders (2011). Guatemala: Annual Report 2011. <http://www.unhcr.org/refworld/pdfid/4ea7b3f50.pdf>. For details of the charges made, see: Ontario Superior Court of Justice (2010). *Second amended fresh as amended statement of claim*. [by] Angelica Choc, individually and representative of the estate of Adolfo Ich Chamán, deceased Ontario, Canada: <http://www.chocversushudbay.com/wp-content/uploads/2010/11/Second-Amended-Fresh-as-Amended-Choc-v.-HudBay-FILED.pdf>; Ontario Superior Court of Justice (2011). *Amended statement of claim*. [by] Margarita Caal Caal [et. al.]. Ontario, Canada: <http://www.chocversushudbay.com/wp-content/uploads/2010/11/Amended-Statement-of-Claim-Caal-v.-HudBay-FILED.pdf>.

¹¹⁹ Office of the High Commissioner on Human Rights. (2013). "Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala."

¹²⁰ Ibid.

Landívar University found 300 of such local security committees “acting outside of police control” and, although originally formed with government support, the study indicates that they have taken on a life of their own.¹²¹ Commenting on the study, an academic from the Guatemalan research institute ASIES (Asociación de Investigación y Estudios Sociales) noted that these groups are extremely susceptible to cooptation by organized crime and drug traffickers in return for being supplied with arms and that their original role has been “perverted and abused,” since “in some cases they have replaced the role of the Police and have committed kidnapping and illegal detentions, and carry out judgments and mete out punishment.”¹²²

The High Commissioner singled out for recognition two situations where action was taken, at the same time, highlighting the kinds of abuses that have been documented in such cases.¹²³ In August 2012, the former mayor and president of the local security commission in San Juan Cotzal, Quiché, was sentenced for the torture, kidnapping and extrajudicial execution of Pedro Rodríguez Toma in 2009. The other case involved three members of the “Panajachel Security Commission,” a group that operated with the acquiescence of local authorities. The MP brought the commission's members to trial, charging them for having committed minor and severe injuries, illegal detention, and coercion. In April 2012, they were found guilty of attacking residents and tourists and were sentenced to several years in prison.¹²⁴ In this case the IACHR had ordered protective measures for a witness and for journalists who had been threatened by the security commission members.¹²⁵

A similar case entailed the dismantling of the “Security Committee” in Ciudad Quetzal in the San Juan Sacatepéquez municipality of the province of Guatemala. According to the Attorney General’s Office (MP), this committee “provoked violence and terror in the population of Colonia Margaritas in Ciudad Quetzal. Its criminal activities included extortion, kidnapping, and homicide.”¹²⁶

Vigilante or security committees can evolve to become groups linked to organized crime and the drug trade. A relevant example is the Mendoza drug trafficking organization. According to the UNODC 2012 report, “In the late 1990s, the United States fruit export company Del Monte hired them as a private security agency to deal with local labour unrest and land acquisition.”¹²⁷

¹²¹ Vásquez (2013). “Más de 300 juntas actúan ilegalmente.” *Prensa Libre*. June 20, 2013

http://www.prensalibre.com/noticias/justicia/juntas-actuan-ilegalmente_0_941305912.html. (translation by the author).

¹²² Ibid. (translation by the author).

¹²³ Office of the High Commissioner on Human Rights. (2013). “Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala.”

¹²⁴ Ministerio Público República de Guatemala (2012) “A juicio encapuchados del Comité de Seguridad de Panajachel.” April 24, 2012 <http://www.mp.gob.gt/2012/04/a-juicio-encapuchados-del-comite-de-seguridad-de-panajachel/>; Ministerio Público República de Guatemala (2012) “Sentenciados dirigentes de un comité de seguridad de Panajachel.” April, 2012

<http://www.mp.gob.gt/2012/04/a-17-y-19-anos-de-carcel-fueron-sentenciados-dirigentes-del-comite-de-seguridad-de-panajachel/>.

¹²⁵ Inter-American Commission on Human Rights (IACHR) (2011) “Medidas Cautelares, MC 422/11 – Lucía Carolina Escobar Mejía, Cledy Lorena Caal Cumes, Gustavo Girón, Guatemala.” <http://www.oas.org/es/cidh/decisiones/cautelares.asp>.

¹²⁶ Ministerio Público República de Guatemala (2012) “Suman captura por Junta de Seguridad en Ciudad Quetzal.” July 26, 2012 <http://www.mp.gob.gt/2012/07/suman-captura-por-junta-de-seguridad-en-ciudad-quetzal/>. Also see: Ministerio Público República de Guatemala (2012). Presentación de Resultados 2012.

¹²⁷ United Nations Office on Drugs and Crime (UNODC) (2012). p. 25.

3.3 Police, army, and the penitentiary system

An important quota of human rights violations and the violation of other laws occur directly by the National Civilian Police (PNC). Furthermore, as mentioned, there is direct influence of organized crime on State structures to determine, for example, who is targeted or not targeted, by police action and the judicial system. Army soldiers have been implicated in select cases through their role in joint-force security activities. The agents in the penitentiary system have been accused both for their illegal acts they submit prisoners to as well as being complicit and participants in organized crime rings operated by prisoners.

a) National Civilian Police (PNC)

The PNC is the public security institution with the highest number of complaints registered against it in regard to acts that violate human rights and its links to organized crime.

The police remain plagued by structural problems despite different reform initiatives over the years. "The 25,000 members of the PNC are on the front lines of Guatemala's battle against crime. But all too often citizens distrust and fear the police – widely dismissed as inefficient, corrupt and abusive – as much as the criminals. Underfunded, poorly trained and often outgunned, they are frequently incapable or unwilling to confront criminals and gain the public trust needed to build a State based on rule of law."¹²⁸

The PNC, with support from army units, has participated in violent evictions of protesters and community members, evictions that have resulted in human rights violations. The joint operations between police and military forces are legally backed by the Law to Support Civilian Security Forces, Decree 40-2000, that permits army units to participate in joint combat against organized crime and common crime. In addition to this law, the Protocol for Army Inter-institutional Active Support to Civilian Security Forces (Government Accord No. 285-2012) justifies army assistance and support to civilian security forces.

Joint and coordinated work between the Attorney General's Office (MP) and the CICIG has advanced the process of purging the police, as the State institution that is perhaps most infiltrated by organized crime.¹²⁹ General Attorney Paz y Paz's presence beginning in 2011 has resulted in ongoing efforts to dismantle criminal structures comprised of PNC agents and officers, as well as other police units in the divisions that investigate organized crime and drug trafficking.

b) Armed forces/soldiers

The military's responsibility in the death of six indigenous people in Totonicapán during a protest in October 2012 led to demands to prevent army participation in civilian security tasks. In her most recent human rights report for Guatemala, the United Nations High Commissioner for Human Rights noted that:

"This [incident] provoked a serious questioning of the use of the military in law-enforcement functions, motivated the revision of regulations and policies regarding its role, including Decree

¹²⁸ International Crisis Group (2012). Police Reform in Guatemala: Obstacles and Opportunities. *Latin America Report No. 43*. July 20, 2012.

¹²⁹ Ministerio Público República de Guatemala (2013) "Doce elementos de la Policía Nacional Civil capturados." March 13, 2013 <http://www.mp.gob.gt/2013/03/doce-elementos-de-la-policia-nacional-civil-capturados/>. Comisión Internacional contra la Impunidad en Guatemala (CICIG) (2010) "Comunicado de prensa 018, Capturas agosto 09 de 2010." August 9, 2010 [http://cicig.org/index.php?mact=News.cntnt01.detail.0&cntnt01articleid=54](http://cicig.org/index.php?mact=News.cntnt01.detail.0&cntnt01articleid=54;).; (2010) "La Cici g desarticula una estructura criminal incrustada en la PNC." *Noticias de Guatemala noticias.com.gt*, March 2, 2010 <http://noticias.com.gt/nacionales/20100302-cicig-desarticula-estructura-criminal-pnc.html>; Comisión Internacional contra la Impunidad en Guatemala (CICIG) (2010) "Comunicado de prensa 018, Capturas agosto 09 de 2010."; Gutierrez Valdizan (2012) "Of Slaves and Serfs: Guatemala's 'Occupied' Bodies." October 28, 2012 <http://www.insightcrime.org/slavery-in-latin-america/slaves-victims-of-crime-in-guatemala>.

40-2000, and revealed the urgent need to consolidate the reform of the PNC. These events also showed the need for the State to continue to fulfill its duty to protect the right to life and the integrity of demonstrators while they exercise their right to protest.”¹³⁰

c) Penitentiary System

The detention centers, under the supervision of the Ministry of the Interior's Penitentiary System Directorate, are another entity permeated by organized crime and violence. The system's guards are prone to forge ties with drug traffickers, gangs, and members of organized crime present in the inmate population.

The situation of the Penitentiary System was presented in a report by Guatemala's Presidential Coordinating Committee for Executive Policy on Human Rights (COPREDEH) as follows:

*“Among the main problems that the Penitentiary System faces are: limited budget; inappropriate and insufficient prison installations; personnel that is understaffed (with a total of 2,200 guards in the entire Penitentiary System), poorly paid, and poorly trained in proper inmate treatment; permanent abuse and violence, among inmates themselves, from inmates towards staff and vice versa; high levels of corruption and impunity; irregularities in detainees' assigned jail placements (for instance, convicted prisoners fulfilling sentences in pre-trial detention centers); incidents of torture, punishment, and cruel, inhumane, and degrading treatment towards inmates; riots and acts of coercion by prisoners towards authorities (hostage-taking, for example); trafficking of drugs and of prohibited items such as cellular phones, weapons, munitions, computers, etc. inside jail walls; and the planning and implementation of criminal acts against citizens from within jails, particularly extortion.”*¹³¹

The United States Department of State's Office of Diplomatic Security 2011 crime and safety report cites a common extortion method toward the general population as an operation run out of Guatemala's prison system: “Typically, prisoners call random numbers and threaten the caller with serious bodily injury or death if the extortion demand is not met. A recent study found that 90 percent of extortion calls originated in prisons, while another 5 percent stemmed from neighbors and/or family members, with the last 5 percent coming from gang members outside of prison.”¹³²

3.4 Geography of violence

Maps annexed to this report show a visual representation of Guatemala's high crime regions alongside social conditions and other phenomena by region.

¹³⁰ Office of the High Commissioner on Human Rights. (2013). "Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala."

¹³¹ Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos (COPREDH). (2011). "Informe Básico Común del Estado de Guatemala a los Órganos de Tratados de Carácter Convencional en Materia de Derechos Humanos."

¹³² United States Department of State (2011). Guatemala 2011 Crime and Safety Report. April 7, 2011. <https://www.osac.gov/Pages/ContentReportPDF.aspx?cid=10789>.

The UNODC, in its 2011 Global Study on Homicide, singles out Guatemala as a small country where homicide rates vary dramatically between regions in the country.¹³³ As documented by the Human Rights Ombudsman's Office (PDH) and other sources, of Guatemala's 22 provinces the worst violence is found in the eastern area of the country (bordering El Salvador and Honduras) along with the most northern province, Petén (bordering Mexico and Belize) and the provinces of Guatemala and Escuintla hosting, respectively, the largest metropolitan area around Guatemala City, the capital, and the nearby densely populated city of Escuintla near the country's Pacific coastline. In order of magnitude and consistent with prior years, the four provinces with the highest number of violent deaths in 2012 were Guatemala, Escuintla, Chiquimula and Petén.¹³⁴ Reviewing the 2012 homicide rate per 100,000 inhabitants yields a different ranking. The six provinces with the highest homicide rates are, from high to low: Chiquimula, Escuintla, Zacapa, Santa Rosa, Izabal, and Guatemala.¹³⁵ The first five are all in the southeast part of the country.

The Office of the Human Rights Ombudsman (PDH), based on data from the National Civilian Police (PNC) and the National Statistics Institute (INE), produced a list in its January 2013 report to the Guatemala Congress highlighting municipalities where the homicide rates are particularly alarming with many exceeding an annual rate of 100 homicides per 100,000 inhabitants:

Municipalities with the highest rate of violent deaths, per 100,000 inhabitants, 2011 and 2012¹³⁶		
	2011	2012*
Amatitlán, Guatemala	104	95
Asunción Mita, Jutiapa	100	80
Escuintla, Escuintla	97	95
Esquipulas, Chiquimula	135	149
Melchor de Mencos Petén	120	186
Moyuta, Jutiapa	102	100
Puerto Barrios, Izabal	101	108
Río Hondo, Zacapa	106	67
San José, Escuintla	119	156
Teculután, Zacapa	129	78
Tiquisate, Escuintla	99	115
Zacapa, Zacapa	120	95

¹³³ United Nations Office on Drugs and Crime (UNODC) (2011). Global study on homicide: trends, contexts, data 2011. Vienna, Austria, UNODC. http://www.unodc.org/documents/data-and-analysis/statistics/Homicide/Globa_study_on_homicide_2011_web.pdf, p. 75

¹³⁴ Procuraduría de los Derechos Humanos de Guatemala (2013). pp. 50-51. The PDH report also analyzes why different official sources counting Guatemala homicide do not fully coincide;

¹³⁵ (2013). "7 mitos sobre la violencia homicida en Guatemala." *elPeriódico*. January 27, 2013 <http://public.tableausoftware.com/views/MitosHomicidiosGuatemala/Portada?:e>.

¹³⁶ Procuraduría de los Derechos Humanos de Guatemala (2013). In June of 2013, President Molina Pérez announced in a press conference that 80% of the homicides that took place from 2011 through March 2013 were concentrated in the following 25 municipalities: in Guatemala province: Guatemala, Villa Nueva, Mixco, Amatitlán, Villa Canales, San Miguel Petapa y Chinautla; in Escuintla province: Escuintla, Nueva Concepción, Puerto San José y Tiquisate; in Izabal province: Puerto Barrios y Morales; Chiquimula province: Chiquimula, Esquipulas y Camotán; Jalapa (municipality of same name); Zacapa (city center); in Alta Verapaz province: Cobán; Chimaltenango: (municipality of same name); Jutiapa (municipality of same name); in Petén province: La Libertad; in Quetzaltenango province: Quetzaltenango and Coatepeque; in Huehuetenango province: (municipality of same name). (2013). "En 25 municipios se focalizan crímenes." *Prensa Libre*. April 7, 2013 http://www.prensalibre.com/noticias/justicia/municipios-focalizan-crimenes_0_896910321.html.

In 2009 and 2010, respectively, rates of intentional homicide for the capital Guatemala City were 118 and 116 per 100,000 inhabitants.¹³⁷

These extraordinarily high levels of violence coincide, to a great degree, with areas of notable presence of organized crime, where drug trafficking, gang activity, contract killings, extortions, kidnapping, human trafficking, and the exploitation of migrants on the move are all present.¹³⁸

In the highly indigenous western highlands of Guatemala, especially the provinces of Huehuetenango, San Marcos, and Quetzaltenango, which together host a population of nearly 3 million (20% of the total population), the homicide rates range from 15 to 33 per 100,000.¹³⁹ These are very high, especially given the region's heavily rural character although not the highest in Guatemala. This western region also hosts high numbers of deported migrants¹⁴⁰ and a growing presence of organized crime.

According to the World Bank: "Controlling for other factors, areas with intense levels of drug trafficking in Central America have homicide rates 65 percent higher than other areas in the same countries. Murder rates are also higher in areas with greater shares of female-headed households and larger populations of young men. Overall crime victimization rates are at their most extreme in the region's capitals and other large cities."¹⁴¹

The geography of increasing activity by organized crime and drug traffickers throughout Guatemala was clearly laid out by the Minister of the Interior (Ministro de Gobernación), Héctor Mauricio López Bonilla, at the beginning of Perez Molina's administration. In February 2012, one month into the new administration, the minister held a press conference showing areas considered "ungovernable" and stated: "of Guatemala's 334 municipalities, 58 are ungovernable due to the operations of drug trafficking and contraband organizations."¹⁴² The municipalities in question are mostly in Guatemala's Western highland provinces of San Marcos and Huehuetenango, that border México, and in the provinces running west to east in the north (known as the Franja Transversal del Norte) that respectively border Mexico, Belize, and Honduras. These municipalities are not necessarily those that report the highest levels of violence in the country. They do coincide with many areas that are primarily populated by Guatemalan's indigenous population. They also coincide with areas that have high current levels of migration and displacement where individuals and families facing pressure to sell or vacate their land to agro-industrial companies (such as plantations producing African palm) or those suffering threats or extortion are often seeking to relocate.

¹³⁷ United Nations Office on Drugs and Crime (UNODC) (2011). Global study on homicide: trends, contexts, data 2011. p. 118.

¹³⁸ International Crisis Group (2011). Guatemala: Drug Trafficking and Violence.

¹³⁹ Procuraduría de los Derechos Humanos de Guatemala (2013). pp. 50-51.

¹⁴⁰ IOM International Organization for Migration (2013). Migración en Guatemala (CIFRAS): última actualización 30 Abril 2013. Guatemala. <http://www.iom.int/files/live/sites/iom/files/Country/docs/Migration-Figures-Guatemala-2013.pdf>.

¹⁴¹ World Bank (2010). Crime and Violence in Central America Volume II. p. i.

¹⁴² See Annex for maps. These maps were only temporarily available through the Ministry's website. For the press coverage see: (2012). "Gobernación admite que 58 municipios son ingobernables: Guatemala tiene ingobernables 58 de sus 334 municipios debido a las operaciones de organizaciones dedicadas al narcotráfico y el contrabando, dijo hoy el ministro de Gobernación, Mauricio López." *Prensa Libre*. February 16, 2012 http://www.prensalibre.com/noticias/justicia/Gobernacion-declara-municipios-ingobernables_0_647335482.html?print=1; United Nations Office on Drugs and Crime (UNODC) (2012). Transnational Organized Crime in Central America and the Caribbean: A threat assessment. p. 67. This UNODC document adapted and published by this same Ministry of the Interior, February 2012 maps.

The areas noted by the Minister of the Interior in February 2012 as ungovernable also coincide with regions (especially Huehuetenango, San Marcos, Quiché) where the highest number of social conflicts have been documented, principally conflicts related to proposed or existing mining projects.¹⁴³ A report undertaken by a Ministry of the Interior concluded that: “Social conflict has been mainly associated with those provinces that possess the most resources in terms of gold, silver, and iron and also in those where the most grassroots-organized region-wide referenda (consultas populares) rejecting this type of economic activity have taken place.”¹⁴⁴

4. SELECTED HUMAN RIGHTS DEVELOPMENTS

4.1 Right to Life, Personal Security and Physical Integrity

As noted above, Guatemala has a favorable legal framework in place in regard to human rights but a weak record on upholding such rights. The role of the State in committing human rights violations is manifested when there is insufficient oversight to enforce respect for human rights by police officers, for example, or prison officials. In terms of omission of the State’s protective role, there is a weak institutional framework to contend with the generalized presence of organized crime, its penetration of the State, and the spillover effects of violence and lack of a functional policing or justice system. The latter situation also leads to localized violence in which local authorities, drug group strongmen, community leaders, and private individuals may take matters into their own hands through hired contract killings, group attacks, or unlawful detentions.

As indicated above, in Guatemala, incidence of crime and a lack of security for average citizens are notable and this is manifested in risk to life, personal security, and physical integrity; homicides, death threats, contract killings (sicariato), extortions, armed robbery, violence against women, kidnapping, arrests without cause, illegal detentions, and extrajudicial killings. These illicit acts are committed by police, gangs, drug traffickers, and others linked to organized crime groups. The governmental Human Rights Ombudsman’s office (PDH) emphasizes that in Guatemala, the right to life is among the most violated and has been increasing notably in recent years as affecting women, a phenomenon in Guatemalan now labeled femicide.¹⁴⁵

Guatemala has one of the highest homicide rates in the world. The political stakes are high in terms for successive governments to show both efforts and results to diminish crime and therefore lessen the fear felt by the general population when it comes to carrying out daily economic and social activities. Homicide rates in the prior decade peaked in 2009 and 2010 reaching more than 46 homicides/100,000 of population. Year-end tallies for 2011 and 2012 showed successive decreases in the annual rate calculated at 39/100,000 in 2010 and 35/100,000 in 2011. For many observers, the two-year downward trend can be attributed to the concerted efforts by the Attorney General’s Office beginning in 2011 along with the efforts of the UN-supported CICIG to investigate crime, dismantle organized crime rings (connected to kidnappings, contract killings, and extortion), and bring perpetrators to justice including the capture and

¹⁴³ See: Ministerio de Gobernación (2012). Informe sobre la Minería y la Conflictividad Social. Sistema de Alerta Temprana (SAT) y Área de Análisis e Investigación Social, Unidad para la Prevención de la Violencia. Tercer Viceministerio de Gobernación. February, 2012.p. 31-32. And for the perspective of private individuals openly critical of such social protests: (2012). Organizaciones que promueven la conflictividad social en Guatemala: Redes de organizaciones locales e internacionales que promueven la conflictividad social, atentan contra el Estado de Derecho y desestiman la inversión privada en Guatemala. p. 21.

¹⁴⁴ Ministerio de Gobernación (2012). p. 40.

¹⁴⁵ Procuraduría de los Derechos Humanos de Guatemala (2012). Informe Anual Circunstanciado al honorable Congreso de la República de Guatemala, sobre la situación de los derechos humanos en el país durante el año 2011. January 26, 2012.

extradition of important drug trafficking kingpins.¹⁴⁶ President Pérez Molina attributed the reduction to actions by his government, chiefly the implementation of the Task Forces that the Ministry of the Interior created to combat various criminal phenomena, particularly in Guatemala City, including contract killings, drug trafficking, gang activity, and extortion.

The consulting firm Central American Business Intelligence (CABI) reported in a press release that the monthly rate of homicides remained at about 2.9 homicides per 100,000 inhabitants between May and October 2012 and then began to rise in November 2012 reaching 3.3 in January 2013.¹⁴⁷ Monthly statistics from the State's National Institute of Forensic Science (INACIF) indicate that there were more homicides in February 2013 compared to the same month in 2011 and 2012, the majority by firearms.¹⁴⁸ This increase compared to the prior two year trend continued during 2013.¹⁴⁹ Responding to information about rising levels of violence in early 2013, President Otto Pérez Molina instead emphasized the broader multi-year trend of decreasing violence and attributed 22% to organized crime and 21% to gangs. Another 32% of crimes, he said, had to do with personal vengeance and the culture of violence that persists in Guatemala.¹⁵⁰

In a February 2013 forum focusing on gun violence, organized by OHCHR and a Guatemalan research institute IEPADES (Instituto de Enseñanza para el Desarrollo Sostenible), Rebecca Peters, an expert on gun violence emphasized that Guatemala, El Salvador and Honduras (known as the North Triangle countries of Central America) have the highest rates of violence within Latin America, which as a region has the most gun-related deaths in the world. Peters emphasized that Guatemala, along with Mexico and the U.S.A., is among the few countries where the Constitution allows individuals gun ownership. According to IEPADES, 82% of violent deaths are from guns.¹⁵¹ This statistic coincides with those compiled by the Guatemalan National Forensic Sciences Institute, INACIF.¹⁵²

According to the Office of the Human Rights Ombudsman (PDH), "Since the primary means for homicides are non-registered weapons, it is urgent to increase arms sales controls in the market. An aggravating factor is the proliferation of offensive weapons, albeit classified as defensive, in the hands of private citizens who often carry such weapons in plain view, publicly and conspicuously."¹⁵³ Furthermore, for the PDH:

"the lack of gun control is of concern, in terms of firearm access among boys, girls, and adolescents. Of the 2,845 weapons seized between January and November 2012, 320 were in the control of adolescents between 13 and 17 years of age. This shows that children and adolescents

¹⁴⁶ Ministerio Público República de Guatemala (2012). Presentación de Resultados 2012; Ministerio Público República de Guatemala (2012) "Segundo año de importantes logros." December 13, 2012 <http://www.mp.gob.gt/2012/12/segundo-ano-de-importantes-logros/>; IPN-USAC Instituto de Problemas Nacionales / Universidad de San Carlos (2013). "Irreducible violencia criminal." *el Periódico*. March 10, 2013 <http://www.elperiodico.com.gt/es/20130310/domingo/225769/>.

¹⁴⁷ Central America Business Intelligence (CABI) (2013). Comunicado de prensa: Nivel de violencia homicida en Guatemala muestra estancamiento, en el largo plazo. <http://ca-bi.com/blackbox/?p=7752>.

¹⁴⁸ Instituto Nacional de Ciencias Forenses de Guatemala (INACIF) (2013) "Necropsias realizadas del 01 al 28 de febrero de 2013 a nivel nacional." <http://www.inacif.gob.gt/docs/estadisticas/mensual/FebreroM2013.pdf>.

¹⁴⁹ (2013) "Asesinatos aumentaron 5.84% en ocho meses de 2013." *Siglo Veintiuno*, September 7, 2013 <http://www.s21.com.gt/node/312065>. Pachico. (2013). "Explaining the Jump in Guatemala's Murder Rate." <http://www.insightcrime.org/news-analysis/explaining-the-jump-in-guatemala-murder-rate>.

¹⁵⁰ Reyes (2013). "Hechos delictivos tienden a la baja." *Diario de Centro América (Official)*. March 4, 2013 <http://www.dca.gob.gt/index.php/template-features/item/13460-hechos-delictivos-tienden-a-la-baja.html>.

¹⁵¹ Valdez (2013) "Violencia ocurre más en el Istmo, señala experta." *Prensa Libre*, February 8, 2013 http://www.prensalibre.com/noticias/comunitario/Violencia-ocurre-Istmo-0_862113810.html.

¹⁵² Instituto Nacional de Ciencias Forenses de Guatemala (INACIF) (2012) "Necropsias realizadas del 01 de Enero al 31 de Diciembre de 2012 a nivel nacional." <http://www.inacif.gob.gt/docs/estadisticas/anual/AnualM2012.pdf>.

¹⁵³ Procuraduría de los Derechos Humanos de Guatemala (2013). Informe Anual Circunstanciado Situación de los Derechos Humanos en Guatemala, 2012.p. 14 (translation by author).

*are recruited by organized crime as hired guns; the public perceives them as perpetrators rather than victims, and social opinion then demands a lowering of the age at which adolescents may be prosecuted for crimes as adults and therefore face harsh sentences.”*¹⁵⁴

A study by UN-Habitat compares the high homicide levels in Guatemala to war scenarios:

*“Throughout the world, the highest homicide levels are associated with low levels of human and economic development and with large income disparities in the population. As a whole, Latin America and the Caribbean is the region with the highest homicide level in the world (over 20 per 100,000 inhabitants), placing it well above the international average (7 per 100,000 inhabitants). In El Salvador, Guatemala, Honduras, and Jamaica, urban violence is reaching major proportions and is resulting in higher death tolls than those of typical armed conflicts”.*¹⁵⁵

UN-Habitat also found that Guatemala's rate of violence against women is one of the highest in the world: “One type of violence that is particularly disturbing for its intensity, prevalence, and lack of visibility is gender-based violence, which is manifested in different ways. Many violent acts against women take place in public, but they also occur on public transportation, at work and in homes...” Between 2004 and 2009, 13 of the 25 countries with the highest levels of femicide in the world were in Latin America, among those 13 Guatemala is third highest following only El Salvador and Jamaica.¹⁵⁶

4.2 Torture and Other Inhuman and Degrading Treatment and Punishment and Extrajudicial Killings

In 2010, Guatemala's National Congress approved Decree No. 40-2010: Law for the National Mechanism to Prevent Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment. This legal framework created the National Office for Torture Prevention, which was expected to begin operations in 2013. The law was created to bring Guatemalan law into line with the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

An increase has been reported in the number of cases in which victims' bodies demonstrate signs of brutality and cruelty and where State agents do not appear to have participated as perpetrators. According to INACIF's annual statistics, in 2012 there were 36 cases of body severing (decapitation or dismemberment), of which 25 were men. The phenomenon persists in 2013.¹⁵⁷

Cases of torture and extrajudicial executions committed by State agents were documented and legally prosecuted by the CICIG during the presidential terms of Óscar Berger and Álvaro Colom.¹⁵⁸ According to a CICIG report, a recent case was the arrest and prosecution of the former General Director of the PNC, Marlene Blanco Lapola. She was arrested in March 2012 and along with three active and two retired police officers, charged with illicit association and extrajudicial executions. The accusation by the Attorney General's Office (MP) and CICIG attests that while Marlene Blanco directed the PNC:

¹⁵⁴ Ibid.p. 228 (translation by author).

¹⁵⁵ United Nations HABITAT (2012). Estado de las ciudades de América Latina y El Caribe: Rumbo a una nueva transición urbana. Brazil. August 2012. [available from www.unhabitat.org](http://www.unhabitat.org). p. 75. (translation by author).

¹⁵⁶ Ibid. pp. 75-76. (translation by author).

¹⁵⁷ (2013) "Capturan a tres por desmembramiento de pareja en Ciudad Quetzal." *Emisoras Unidas* 89.7, March 10, 2013

<http://noticias.emisorasunidas.com/noticias/nacionales/capturan-tres-desmembramiento-pareja-ciudad-quetzal>.

http://www.prensalibre.com/noticias/justicia/Localizan-jovenes-degolladas-Palencia_0_880712182.html

¹⁵⁸ Comisión Internacional contra la Impunidad en Guatemala (CICIG) (2012). Informe de la Comisión Internacional contra la Impunidad en Guatemala con ocasión de su quinto año de laborers. September 11, 2012.

<http://cicig.org/uploads/documents/2012/COM-067-20120911-DOC02-ES.pdf>.

*“various groups comprised of National Civilian Police agents engaged in contract killings and a system called the Operative Intelligence System, through which a structure was formed that carried out parallel intelligence and investigations for crimes, in order to individually identify and execute alleged criminals.... Worthy of mention, in relation to this structure, is the conviction achieved in June 2011 of two former members of the PNC's Specialized Office of Criminal Investigation for the forced disappearance of a supposed extortionist.”*¹⁵⁹

In 2012, the first year of Pérez Molina's Presidency, no acts were documented related to torture and/or extrajudicial executions by State agents or others with State support. However, a media publication documented dozens of cases that occurred in 2012 that were characteristic of “social cleansing”—victimizing those considered undesirable in society with no due process and carried out by anonymous actors.¹⁶⁰ In these extrajudicial executions, victims showed signs of torture, with their hands and feet tied and with a shot to the head; the supposition is that they were drug traffickers, parallel groups, and defunct local security group members. This press article highlighted that the “cadavers have similar typologies to those utilized in the past by security forces to carry out social cleansing.” According to Norma Cruz, the director of the Survivors' Foundation who is cited in the article, “These cases are of concern because the authorities do not investigate.” According to Cruz, “it's been determined that former members of the security forces, of the Army, and of the local security groups participate in these acts. She affirmed that in Villa Nueva and Villa Canales [municipalities in the metropolitan area of Guatemala City] it is known that security committees conduct social cleansing.”¹⁶¹

4.2.1 Inhuman and cruel treatment of women and children

Violent deaths of women constitute one of the major violations of the right to life; brutality and signs of torture characterize these homicides. According to data systematized by the Human Rights Ombudsman's Office (PDH), drawing on sources such as the National Civilian Police, the judiciary system, and the National Institute of Forensic Science (INACIF), during the period from 2009 to 2012 the number of violent deaths of women steadily increased. The PDH affirms that “These levels continue because of a permanent gender-based violence that does not depend on time-sensitive situations or on social transformations or other factors that feed into social violence; the extent of brutality and signs of torture that female victims show on their bodies allows us to conclude that this phenomenon is related to misogyny.”¹⁶²

In summary, the PDH emphasizes:

*“Even though sanctions have increased over the last four years, this violence continues to be highly prevalent, in terms of both sexual violence, whose main victims are girls and female adolescents, and femicide, a phenomenon that demonstrates unprecedented levels of brutality, in that the victims' bodies display signs of torture, including even dismemberment, in a show of total contempt for their humanity; there is to date no discernible efficient crime policy under which the State would prevent, investigate, and sanction this violation of the right to life and personal integrity.”*¹⁶³

¹⁵⁹ Ibid. pp. 11-12. (translation by author).

¹⁶⁰ (2012). “Narcotráfico es ligado a crímenes violentos.” *Prensa Libre*. December 10, 2012 http://www.prensalibre.com/noticias/justicia/Narcotrafico-ligado-crimenes-violentos_0_826117397.html.

¹⁶¹ Ibid.

¹⁶² Procuraduría de los Derechos Humanos de Guatemala (2013). Informe Anual Circunstanciado Situación de los Derechos Humanos en Guatemala, 2012. (translation by author).

¹⁶³ Ibid. (translation by author).

In 2009 the Penal Code was reformed to establish a new definition of sexual violence in Articles 173 and 174. Prior to this reform, the crime was defined as being committed only against a woman. Since the reform, it is considered a crime when committed against any adult, or any boy or girl.

The Guatemalan National Institute of Forensic Science (INACIF) statistics, which include only cases that have been officially reported, clearly show a high number of acts of sexual aggression against women and children.¹⁶⁴ In 2012, 4,373 cases were reported; 800 of them were against males, most of whom, according to the non-governmental Mutual Support Group (GAM), were boys.¹⁶⁵

The Committee on the Elimination of Discrimination against Women has urged Guatemala to adopt measures to modify social and cultural attitudes which are the fundamental causes of most of the forms of violence against women, including homicides.¹⁶⁶

In the context of the 2012 Human Rights Council Universal Periodic Review on Guatemala, the Guatemalan government “highlighted the establishment of the Justice Centre for Femicide and Other Forms of Violence against Women, which had initiated its activities on 5 October.”¹⁶⁷ Other States have recommended the State of Guatemala to “devote adequate resources, in particular financial resources and personnel, to combating femicide and all forms of violence against women”¹⁶⁸ and allocate necessary financial and human resources to mechanisms and organizations including the Ministry of Social Development; Presidential Commission for Combating Femicide; Secretariat on Sexual Violence, Exploitation and Trafficking in Persons; and the National Commission on Police Reforms) to ensure that their objectives are achieved.¹⁶⁹

Guatemala was encouraged in this Review, among other recommendations, to: (a) enhance legal protections for women, including by improving the investigation, prosecution and prevention of violence against women and fully implementing the National Action Plan for the Prevention and Eradication of Domestic Violence and Violence against Women, (b) implement policies and programmes preventing violence against women and children and (c) thoroughly investigate and promptly prosecute cases of femicide and other acts of violence against women.¹⁷⁰

4.2.2 Detained/prisoners

In its detailed report covering 2012, the Guatemalan Human Rights Ombudsman (PDH) noted:

“It is of concern that the Penitentiary System (SP) becomes more seriously precarious and dysfunctional each year. One of the most critical situations in the [Penitentiary System] is its residential capacity, which in November 2012 was operating at 127.33% of its capacity of 6,492 people. It is also worrisome that the [Penitentiary System] does not have the required penitentiary policies, even though the Penitentiary System Law established a National Commission of the

¹⁶⁴ Instituto Nacional de Ciencias Forenses de Guatemala (INACIF) (2012) “Necropsias realizadas del 01 de Enero al 31 de Diciembre de 2012 a nivel nacional.”

¹⁶⁵ *ibid.*; Grupo de Apoyo Mutuo (GAM). (2013). “Informe de monitoreo de violencia febrero 2013.” <http://areadetransparencia.blogspot.com/2013/03/informe-de-monitoreo-de-violencia.html>.

¹⁶⁶ Comité para la Eliminación de la Discriminación Contra la Mujer sesión 43 (2009). *Observaciones finales del Comité para la Eliminación de la Discriminación contra la Mujer: Guatemala*. . Geneva, Comité para la Eliminación de la Discriminación Contra la Mujer, Naciones Unidas. párr. 22.

¹⁶⁷ United Nations General Assembly Human Rights Council (2012). Report of the Working Group on the Universal Periodic Review, Guatemala. A/HRC/22/8. December 31, 2012. lib.ohchr.org/HRBodies/UPR/.../GT/A_HRC_22_8_Guatemala_E.doc. p. 7.

¹⁶⁸ *Ibid.* p. 16.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.* p. 15.

*Penitentiary System as an advisory and consultative entity charged with proposing relevant policies.”*¹⁷¹

The high levels of violence lead to prison overcrowding. According to the PDH, “The rights of people deprived of liberty are affected by the overuse of pretrial detention (52% of the inmate population are non-convicted prisoners), which feeds into overpopulation in the jails.”¹⁷² This leads to negative consequences for persons deprived of liberty, such as health problems, violence among inmates, extortion, physical aggression, and even threats and actions against life. “The majority of complaints received by the PDH regarding violations of due process – 42.43% – reference discontinuous and slow judicial processes.”¹⁷³ Similar concerns and additional ones, such as some detention centres functioning “illegally” were also raised by the United Nations High Commissioner for Human Rights in her report presented in January of 2013.¹⁷⁴ Also in the 2012 Human Rights Council Universal Periodic Review, a concern about the conditions of the detained persons and the living conditions in penitentiaries was raised.¹⁷⁵

4.3 Land and Property Rights

Unequal land tenure and difficulties that individuals and (especially indigenous) communities have faced historically in retaining or recovering agricultural land is considered to have been one of the major touch points behind Guatemala’s 1960-1996 internal conflict. Addressing land conflicts uncovered via the peace process and carrying out cadastre and land titling programs have been a focus of each government over the past 20 years. Ongoing key issues include: rural agricultural families that need land and cannot afford to buy lands with inflated prices vis-à-vis the local economy, historical land claims made by those who have farmed land for generations but do not hold firm land title, international companies seeking to purchase or control land with government support for major infrastructure projects, the high cost for poor people of pursuing legal solutions when transferring land or resolving disputes, and, ironically, the high debts imposed on rural communities that were beneficiaries of lands purchased through the land acquisition funds set up by the 1996 Peace Accords.¹⁷⁶

The emphasis of Guatemala law is to enshrine the property rights of the owner without expedited mechanisms to resolve the disputes that arise when the legitimacy of how land was acquired or transferred to an “owner” is questioned. Historically the powerful and economically well-off have benefited from the lack of agile ways for low-income and/or indigenous individuals or communities to assert land rights or question land transfers. Furthermore, despite State commitments under the 1996 Peace Accords that included agreements specific to agrarian issues and indigenous rights, including those over land, there is no legislation that fully recognizes traditional and collective forms of tenure, possession and property of land by indigenous communities. “This creates serious obstacles for communities to legally defend the rights over their lands, particularly in the face of irregular or illicit registration of property and the overlap

¹⁷¹ Procuraduría de los Derechos Humanos de Guatemala (2013). Informe Anual Circunstanciado Situación de los Derechos Humanos en Guatemala, 2012. p. 13. (translation by the author).

¹⁷² Ibid. p. 13.

¹⁷³ Ibid. p. 13.

¹⁷⁴ Office of the High Commissioner on Human Rights. (2013). "Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala."

¹⁷⁵ United Nations General Assembly Human Rights Council (2012). p. 17.

¹⁷⁶ Colectivo Social por el Derecho de la Alimentación (2011). *Informe alternativo del derecho a la alimentación en Guatemala, monitoreo de las directrices voluntarias para el derecho a la alimentación 2011*. Guatemala, Magna Terra editores S.A; Colectivo Social por el Derecho de la Alimentación (2012). *Informe alternativo del derecho a la alimentación en Guatemala, monitoreo de las directrices voluntarias para el derecho a la alimentación 2012*. Guatemala, Magna Terra editores S.A.

of registries, the uncertainty of land delimitations and the lack of a reliable cadastre.”¹⁷⁷ Guatemalan law also gives ownership of subsurface resources to the State.

The government’s Secretariat of Agrarian Affairs’ report of March 2013 showed 1,330 active and cataloged land conflicts in Guatemala involving 1.1 million people of which 965 were disputing ownership, 42 were for land boundary issues, 230 land occupation cases and 93 were related to the process of regulating titles or documenting ownership. Of these, areas most affected, by number of conflicts were: Nebaj and neighboring communities in Quiché (212), three areas in Alta Verapaz province (and bordering regions)—Polochic (89), Chisec (81), and Cobán (84), Soloma in Huehuetenango (97), and the province of Izabal (84).¹⁷⁸

The UN Human Rights Committee has raised concerns in relation to this situation, indicating that indigenous and those of African descent face continued exclusion on many levels, including lack of access to basic services, appropriate working conditions, access to the formal economy and also limitations to exercise land ownership or to obtain access to the justice system to claim their land rights.¹⁷⁹

In the 2012 Universal Periodic Review, members of the Human Rights Council recommended that Guatemala: (a) undertake a dialogue process with indigenous peoples to seek an appropriate consultation mechanism regarding the adoption of measures affecting indigenous peoples, (b) continue its efforts to facilitate and promote indigenous peoples’ access to education, sanitation, property, and public positions, (c) adopt national legislation to fully implement the ILO Convention No. 169 on indigenous and tribal peoples, putting particular focus on the indigenous peoples’ right to be consulted at all levels of decision-making, in policy, legislative, administrative and development processes affecting them, and (d) adopt a legal instrument to protect the rights of the indigenous population especially in cases of land disputes and mining development and (e) safeguard legitimate rights of individuals belonging to indigenous communities in relation to land disputes, in particular in rural areas, reforming eviction procedures to comply with international standards.¹⁸⁰

The government replied by saying that as regards decision-making processes that could have an impact on the future development of rural communities it is its understanding that “the consultation procedure provided for in the Constitution and the law that will govern consultations under ILO Convention No. 169 will be the appropriate mechanisms for these purposes.”¹⁸¹

¹⁷⁷ United Nations General Assembly Human Rights Council (2013). Report of the Working Group on the Universal Periodic Review, Guatemala. Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review. A/HRC/22/8/Add. 1. January 23, 2013.

lib.ohchr.org/HRBodies/UPR/.../A_HRC_22_8_Add1_Guatemala_E.doc.

¹⁷⁸ Secretaría de Asuntos Agrarios de la Presidencia de la República (2013) "Reporte Estadístico de los Conflictos Agrarios, 4 de marzo 2013." March 4, 2013

<http://portal.saa.gob.gt/images/stories/InfoPubli/2013/pertinenciasocio/Informe%20de%20Conflictos%20Febrero%202013.pdf>.

¹⁷⁹ United Nations Human Rights Committee (2012). Examen de los informes presentados por los Estados partes en virtud del artículo 40 del Pacto, Observaciones finales del Comité de Derechos Humanos, Guatemala. New York. March, 2012. ccprcentre.org/doc/.../Guatemala/CCPR:C:GTM:3_S.p... párr. 10.

¹⁸⁰ United Nations General Assembly Human Rights Council (2012). Report of the Working Group on the Universal Periodic Review, Guatemala. pp. 20, 21 and 22.

¹⁸¹ United Nations General Assembly Human Rights Council (2013). Report of the Working Group on the Universal Periodic Review, Guatemala. Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review. par.15

4.4 Rights of migrants

Generalized causes of displacement across the Central America region include social inequality, poverty, natural disasters and economic developments that restrict or remove land-based livelihoods, as well as the widespread new forms of violence generated by organized crime.¹⁸² There are an estimated 250,000 migrants living in Guatemala or in transit through Guatemala.¹⁸³ They are from El Salvador, Honduras, Nicaragua, Colombia, South Korea, China, Ecuador and other countries and include migrants moving northward (or prevented from doing the same) and those who have settled in Guatemala but have no formal migratory status thus severely limiting their ability to obtain work and exercise basic rights.¹⁸⁴

Legislation related to migrants' rights in Guatemala includes the 1998 Migration Law (Decree No. 95-98) which is considered outdated. This legal framework, however, would be reformed under proposed legislation (bill 4126) in order to conform to the 1990 United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families that Guatemala has ratified. Another goal of reform efforts would be to align the new legislation with the UN 1951 Convention relating to the Status of Refugees and the 1967 protocol, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness among others. Migrant advocates in Guatemala believe that the Degree 95-98 law in its current form violates fundamental rights and has important gaps. Moreover their contention is that the emphasis is overly concentrated on the control of migrants and national security given that the Office of Migration (Dirección General de Migración) operates under the Minister of the Interior (Ministerio de Gobernación).¹⁸⁵

The proposed bill to reform existing legislation points out that the current Migration Law (Decree 95-98) was created before Guatemala's 2004 ratification of the Protocol against the Smuggling of Migrants by Land, Sea or Air. The proposal indicates that, because of this, the emphasis of the Migration Law is to criminalize migrants without adequate attention on locating and prosecuting the traffickers:

"...the phenomenon of illicit human trafficking and trafficking of migrants is a social ill that must be fought with all the tools available to the State. For this reason, [this proposed legislation] is proposing that a new chapter be introduced into the Penal Code that would regulate the crime of illicit trafficking of migrants...and impose stricter sentences in order to combat this problem." Other goals of reform would be to incorporate "respect for migrants' human rights, correct the law for refugees, asylum, and statelessness, articulating personal identification needed for boys and girls who are unaccompanied children and the rights of those who fall victim to human trafficking."¹⁸⁶

There are also efforts underway to reform the Law of the National Council for Migrant Services of Guatemala (CONAMIGUA), Decree No. 46-2007, by establishing an entity meant to give help to Guatemalan migrants outside of Guatemala and migrants within Guatemala.

¹⁸² Examples of these issues that are linked to the high incidence of land conflicts are provided here: Mesa Nacional para las Migraciones en Guatemala (MENAMIG) (2012). Informe Ejecutivo Preliminar, Balance Migratorio 2012. December 28, 2012. Also see: Centro Internacional para los Derechos Humanos de los Migrantes/International Centre for the Human Rights of Migrants (CIDEHUM) (2012). Forced Displacement and Protection Needs produced by new forms of Violence and Criminality in Central America (Desplazamiento Forzado y Necesidades de Protección, generados por nuevas formas de Violencia y Criminalidad en Centroamérica).

¹⁸³ Grupo Articulador Sobre Migraciones (2011). Migraciones: Un compromiso de estado, Guatemala, 2012-2016.

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.; Carbajal Tejeda (2012). "Reforma migratoria (opinión)." *Prensa Libre*. September 2, 2012 http://www.prensalibre.com/opinion/Reforma-migratoria_0_766723324.html.

¹⁸⁶ Mesa Nacional para las Migraciones en Guatemala (MENAMIG) (2012). (translation by author).

The increasing levels of violence prompted by expanding organized crime, not only has prompted increasing internal displacement in Central American countries but also is a major cause of refugees and asylum-seekers throughout the region. A study on the subject indicates that:

*“While the number of Central American refugees and asylum seekers (mainly from Guatemala, El Salvador and Honduras) has risen in recent years, it represents only a portion of the population that has been displaced and may be in need of international protection. This tendency could intensify because of problems of security and violence produced by the activities of [organized crime], which lead to people being displaced internally or crossing borders in search of international protection in more and more countries.”*¹⁸⁷

Also in regard to migrants, the United Nations Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) has expressed its concern about the expulsion and deportation procedures not adhering to international standards, and the long periods of detention of extracontinental migrants in an irregular condition. The Committee urged Guatemala to consider deportation and expulsion as exceptional procedures, and to ensure that migrants have the right to appeal these measures with the deportation stayed until the appeal is heard.¹⁸⁸

5. SITUATION OF SPECIFIC PROFILES

5.1 Indigenous people

Guatemala’s indigenous population is considered to be the majority or close to the majority of the population (50-60%). Mayan is a term grouping communities that vary by language and place-based affiliation. An individual’s indigenous identity may be related to mix of factors included but not limited to language, traditional customs, cultural beliefs and family/place of birth. The four Mayan languages most spoken in Guatemala are K’iche’, Kaqchikel, Mam, and Q’eqchi’. Many Mayan languages are further divided into regional dialects. Younger people or those raised outside regions historically associated with a particular group frequently are bicultural in many ways and may prefer Spanish as a first or only language. Notwithstanding the constitutionally recognized principles of equality and rights, indigenous people are not adequately represented or included in the social, political, and cultural spheres of Guatemala society. According to the OHCHR, extreme inequalities between the indigenous and non-indigenous population in Guatemala reveal patterns of obvious discrimination that “compromise the State’s international obligation to ensure adequate development and protection, as well as the full and equal enjoyment of their rights. The provinces with an indigenous majority [collectively] register higher rates of both poverty (74.8 per cent) and extreme poverty (27.2 per cent).”¹⁸⁹ These provinces are Huehuetenango, Quiché, San Marcos, Alta Verapaz, Izabal, Totonicapán, Quetzaltenango, Sololá, Baja Verapaz, Sacatepéquez and Chimaltenango.

¹⁸⁷ Centro Internacional para los Derechos Humanos de los Migrantes/International Centre for the Human Rights of Migrants (CIDEHUM) (2012).

¹⁸⁸ United Nations Committee on Migrant Workers (2011). Observaciones finales del Comité de Protección de los Derechos de Todos los Trabajadores Migratorios y de sus familiares: Guatemala. Geneva. párrs. 22, 23.

¹⁸⁹ Office of the High Commissioner on Human Rights (2012). Annual report of the United Nations High Commissioner for Human Rights. Addendum Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala

As historically discriminated against socially, politically, and economically and often with language or educational barriers, Guatemalan's indigenous peoples are more vulnerable to having basic rights violated in areas such as labor rights or freedom of expression and are more likely to be the victims of violence, including sexual violence in the case of women. Reflecting the growing issue of social conflicts given threats to the rights to land and livelihood by indigenous communities, these are described below, as they potentially provoke displacement in different ways. First, displacement occurs through formal evictions or other pressures to vacate lands. Second, because to the extent that the social conflict is marked by violence or the actors with vested interest in the land utilize violence, then fear and displacement may result. And thirdly, because at stake in some cases is the possibility of negative or unhealthy changes to the geographical landscapes and natural resources thus rendering some habitats not livable or less viable (through initiatives like hydroelectric plants, large-scale monoculture, mining, and oil drilling).

The report of the United Nations High Commissioner for Human Rights covering 2012 recommended:

*To avoid the risk of potentially ungovernable situations and violence, social conflicts relating to the exploitation of natural resources in or around ancestral indigenous territories require a decisive response. Such situations should be addressed from a human rights perspective, focusing on the rights of indigenous peoples to property (including collective property), to health, and to establish their own forms of development as part of their right to free determination.*¹⁹⁰

A Ministry of the Interior report on government supported mining projects and the resulting social conflicts, recognizes that no minimum agreements are being negotiated prior to projects initiating work and that this has prompted communities to hold their own consultation process, albeit non-binding, to reject mining operations. Then, given the lack of agreement, those in opposition proceed on to actions that are "successively more violent and reach the point of creating road blocks to impede access by the mining companies."¹⁹¹ These social conflicts are mainly in the regions that are both majority indigenous and are areas with the most gold, silver, and iron. It is precisely in these areas where the majority of the "community consultation" referenda (all rejecting mining projects) have taken place¹⁹²

As with mining projects, opposition to hydroelectric projects and oil exploration is also generalized in the indigenous regions of Guatemala. Organizations and leaders have denounced that death threats, illegal detention and/or legal action against community activists have all been increasing in an ongoing manner since 2005. Two recent examples cited by the OHCHR indicate these concerns. First, the May 2012 government state of siege in Barillas, Huehuetenango, and sending of soldiers following protests against a hydroelectric project was deemed to be an excessive measure not merited by the circumstances and the nine townspeople accused of fomenting the protest actions were detained by police through means that

¹⁹⁰ Office of the High Commissioner on Human Rights. (2013). "Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala."

¹⁹¹ Ministerio de Gobernacion (2012). (translation by the author).

¹⁹² Castillo Zamora (2012). "Señales de alerta." *Prensa Libre*. December 30, 2012

http://www.prensalibre.com/noticias/Senales_de_alerta_PREFIL20121230_0001.pdf; Juárez (2012). "Un año marcado por la conflictividad social." *La Hora*. December 28, 2012 <http://www.lahora.com.gt/index.php/nacional/guatemala/reportajes-y-entrevistas/170974-un-ano-marcado-por-la-conflictividad-social>; Ministerio de Gobernacion (2012). ; Office of the High Commissioner on Human Rights (2013) "Comunicado de prensa, Ref. 022013. ONU derechos humanos rechaza ataques a sindicalista y periodista." March 8, 2013 [http://www.oacnudh.org.gt/documentos/comunicados/022013Ataque_sindicalista_periodista\(8mar13\).pdf](http://www.oacnudh.org.gt/documentos/comunicados/022013Ataque_sindicalista_periodista(8mar13).pdf). Office of the High Commissioner on Human Rights (2013) "Presentación pública del Informe Anual 2012." March 18, 2013 [http://www.oacnudh.org.gt/documentos/ponencias/Presentacion_Informe_Anual_2012\(18mar13\).pdf](http://www.oacnudh.org.gt/documentos/ponencias/Presentacion_Informe_Anual_2012(18mar13).pdf). Valdez (2013) "Rechazan explotación de recursos en 74 consultas comunitarias." *Prensa Libre*, March 28, 2013 http://www.prensalibre.com/noticias/consultas-comunitarias-explotacion-recursos-naturales_0_889711204.html.

were illegal and/or violated several protocols.¹⁹³ Second, a 2013 case took place in the Xinca community of Santa María Xalapán in the municipality de Jutiapa, Jutiapa where a group of leaders of a community opposed to a local silver mining initiative were kidnapped and then one appeared dead, with signs of torture.¹⁹⁴ The OHCHR also observed that the “appearance of racist and violent content in the media and social networks branding defenders [of human rights] as terrorists and criminals increases their vulnerability. This is exacerbated by the absence of public recognition by the government of the importance of the human rights defenders’ work.”¹⁹⁵

Special concerns about this topic were raised in the 2012 Human Rights Council Universal Periodic Review on Guatemala, where it was recommended that authorities “educate the national security forces to effectively uphold law and order particularly when policing demonstrations and large crowds by reviewing and enhancing security training programmes on crowd control techniques and implementing non-aggressive strategies.”¹⁹⁶

5.2 Human rights defenders

Regarding the categories of human rights defenders that experience the most violence, the Office of the Human Rights Ombudsman (PDH) attests:

*“The bulk of attacks are primarily directed against three sectors. The hardest-hit sector involves those who promote and defend labor rights and who belong to trade union organizations; they face threats and more serious acts: in 2012 alone, seven people linked to these types of organizing were killed, and a total of 22 different types of acts against trade unionists were registered. The second most attacked sector comprises farmworkers’ rights defenders; the third is those who work for indigenous peoples’ rights; and the fourth involves people who are concerned with environmental rights or who question or are opposed to the harmful effects on life and health that result from extractive companies’ activities.”*¹⁹⁷

Threats and intimidation have also affected as a group those who are activists, witnesses, and professionals involved with transitional justice where individuals and non-government organizations are bringing human rights abuse cases to court. The Inter-American Commission on Human Rights (IACHR) estimated that close to 15% of the cases of attacks they gathered information on for its 2011 report were “reportedly directed against those who promote the clarification of human rights violations committed during the armed conflict.”¹⁹⁸ In 2012, the IACHR ordered protective measures for members of a human rights lawyer’s office, the Bufete Jurídico en Derechos Humanos, calling on the Guatemala State to guarantee

¹⁹³ Office of the High Commissioner on Human Rights. (2013). "Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala."

¹⁹⁴ Boche (2013). "“Llevémoslos a donde Amildo, esa es la orden dijeron los plagarios.”" *elPeriódico*. March 22, 2012 <http://www.elperiodico.com.gt/es/20130322/pais/226231>; Office of the High Commissioner on Human Rights (2013)

"Presentación pública del Informe Anual 2012."

¹⁹⁵ Office of the High Commissioner on Human Rights. (2013). "Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala."

¹⁹⁶ United Nations General Assembly Human Rights Council (2012). Report of the Working Group on the Universal Periodic Review, Guatemala. p. 19.

¹⁹⁷ Procuraduría de los Derechos Humanos de Guatemala (2013). Informe Anual Circunstanciado Situación de los Derechos Humanos en Guatemala, 2012. P. 222. (translation by the author).

¹⁹⁸ Inter-American Commission on Human Rights (IACHR) (2011). Segundo informe sobre la situación de las defensoras y los defensores de derechos humanos en las Américas/Second report on the situation of human rights defenders in the Americas. December 31, 2011. <http://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf> and for English translation of Spanish original: <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>.

their life and physical integrity.¹⁹⁹ Lawyers with this group are involved in bringing charges of genocide against those who were high-ranking army officials during Guatemala's internal conflict.

In 2012, the Office of the Human Rights Ombudsman (PDH) directly registered "57 cases of attacks against human rights defenders via 76 different actions, such as: assassination, death threats delivered by various means, attempts at intimidation through surveillance and telephone calls, acts of aggression, break-ins and robberies in homes and organizational headquarters, and extortion." The PDH also documented in 2012 the deaths of 19 people linked to human rights defense.²⁰⁰

According to the Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala, "The Human Rights Unit of the Attorney General's Office had registered 282 attacks against human rights defenders through October 2012...a total of 50 attacks against activists, 119 against judicial officials, 48 against journalists and 65 against trade unionists."²⁰¹ In addition to this special unit in the Attorney General's Office, the Presidential Coordinating Commission for Executive Policy on Human Rights (COPREDEH) also has a Human Rights Defenders Protection Department, and the Institute to Analyze Patterns of Attacks against Human Rights Defenders (Instancia de Análisis de Ataques a Defensores de Derechos Humanos) works within the Ministry of the Interior. The PDH concludes that these entities form an institutional framework and therefore improve the prospects for protecting and investigating acts against this sector."²⁰² The latter of these entities, the Institute to Analyze Patterns of Attacks against Human Rights Defenders, is comprised of national and international social organizations and government officials. Its role is explained by the PDH as follows:

*"to contextually analyze the patterns of attacks against human rights defenders, through a scientific methodology defined and approved by its own members; to formulate recommendations for investigations and for applying technical criteria in assessing risks, degree of threats, or vulnerability; and to collect information regarding the fulfillment of preventative and protective measures."*²⁰³

However, these efforts to increase the institutional framework has not halted or even diminished attacks against human rights defenders to date.

*"A positive aspect was the renewal of the [Institute to Analyze Patterns of Attacks against Human Rights Defenders] operating term in 2012 for four additional years, although social organizations have insisted that it does not work adequately. Moreover, the continuing attacks during the year is an indicator that the Institute's work needs to be strengthened; although it has analyzed 463 cases between 2007 and 2012, this has not been reflected in criminal proceedings that determine perpetrators' responsibility; one good measure implemented is that at the end of 2012 the Ministry of the Interior bolstered the Human Rights Unit, which could give the Institute a boost."*²⁰⁴

¹⁹⁹ Inter-American Commission on Human Rights (IACHR) (2012) "Medidas Cautelares, MC 13/12 – Miembros del Bufete Jurídico en Derechos Humanos, Guatemala." May 2, 2012 <http://www.oas.org/es/cidh/decisiones/cautelares.asp>.

²⁰⁰ Procuraduría de los Derechos Humanos de Guatemala (2013). Informe Anual Circunstanciado Situación de los Derechos Humanos en Guatemala, 2012.

²⁰¹ Office of the High Commissioner on Human Rights. (2013). "Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala." par. 47.

²⁰² Procuraduría de los Derechos Humanos de Guatemala (2013). Informe Anual Circunstanciado Situación de los Derechos Humanos en Guatemala, 2012. p. 221. (translation by the author).

²⁰³ Ibid. p. 221. (translation by the author).

²⁰⁴ Ibid. p. 221. (translation by the author).

Guatemalan journalist and columnist Marielos Monzón summarized the overall situation for human rights defenders and others documenting such issues as follows:

*“It continues to be highly risky to be a trade unionist, community leader, farmworker leader, or journalist in a country like ours. Even though almost two decades have passed since the end of the war, clandestine and illegal groups still exist; they operate as they please and ‘remove’ those considered to be bothersome enemies. Some operate from within State structures, others are private security forces, and still others are at the service of drug traffickers or criminals who are in prison.”*²⁰⁵

In early 2013, academic and journalist Irmalicia Velasquez Nimatuj described the most recent attacks, threats, and detentions against community and indigenous leaders, as a kind of selective repression analogous to the selective repression experienced by leaders in the 1970s, prior to the wholesale violence that followed.²⁰⁶

In terms of the perpetrators, the PDH determined that “Material or intellectual authors have not been identified in most of the attacks; however, given the information available in the complaints received by the PDH in 2012, in at least three cases the possibility is raised that State agents are involved, and most cases point to private individuals who aim to intimidate defenders in order to paralyze their actions.”²⁰⁷

In some cases the attacks or threats extend to the human rights defender's nuclear family. One case that stands out is that of an anti-mining activist from the Metropolitan Area Northern Front (FRENAM), Telma Yolanda Ouelí Véliz, who was wounded by firearm in June 2012; her husband fled the country after receiving death threats, and one of Ouelí Véliz's siblings received similar threats.²⁰⁸ In this case, the Inter-American Commission on Human Rights ordered protective measures for the activist and her immediate family,²⁰⁹ and the representative of the OHCHR in Guatemala, Alberto Brunori, also requested State protection for them.²¹⁰

The UN Human Rights Committee, the OHCHR, Guatemala's Office of the Human Rights Ombudsman (PDH) and others have lamented, in the PDH's words: “ongoing practice consisting of singling out, discrediting, or groundlessly accusing human rights defenders, claiming that they operate outside of the law, and even initiating legal cases against them.”²¹¹ “Attempts have been made in the media to discredit victims, civil society organizations, public prosecutors and judicial officers working on human rights abuses committed during the internal armed conflict. Legal actions were brought against journalists, human rights defenders and others, some deceased or immune from prosecution, alleging they were guerrilla members or accusing them of having committed crimes during the internal armed conflict.”²¹²

²⁰⁵ Monzón (2013). “Con sello de terrorista (opinión).” *Prensa Libre*. March 12, 2013 http://www.prensalibre.com/opinion/sello-terrorista_0_881311882.html. (translation by the author).

²⁰⁶ Velásquez Nimatuj (2013). March 25, 2013

²⁰⁷ Procuraduría de los Derechos Humanos de Guatemala (2013). Informe Anual Circunstanciado Situación de los Derechos Humanos en Guatemala, 2012. P. 222. (translation by the author).

²⁰⁸ Ibid. P. 222. (translation by the author).

²⁰⁹ Inter-American Commission on Human Rights (IACHR) (2012) “Medidas Cautelares, MC 207/12 – Telma Yolanda Oueli Veliz y su núcleo familiar, Guatemala.” August 24, 2012 <http://www.oas.org/es/cidh/defensores/proteccion/cautelares.asp>.

²¹⁰ Archer, Ed. (2012). *Front Line Defenders. Handbook for Human Rights Defenders. What protection can United Nations field presences provide?*. Dublin, Ireland, Front Line The International Foundation for the Protection of Human Rights Defenders. See p. 19.

²¹¹ Office of the High Commissioner on Human Rights (2012). Examen de los informes presentados por los Estados partes en virtud del artículo 40 del Pacto, Observaciones finales del Comité de Derechos Humanos, Guatemala (Advance Unedited Version). Comité de Derechos Humanos, 104º período de sesiones, Nueva York, 12 a 30 de marzo de 2012. New York. <http://www.ohchr.org/EN/countries/LACRegion/Pages/GTIndex.aspx>.

²¹² Office of the High Commissioner on Human Rights. (2013). “Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in

In July 2012, Aura Lolita Chávez, member of the K'iche' Peoples' Council in Defense of Life, Mother Earth, and Nature, which comprises 87 communities, remarked: "We are accused of being terrorists, usurpers, opponents of development; and we aren't talking about just Quiché, but rather all of the western [highlands] region."²¹³

According to the Inter-American Commission on Human Rights, 59 human rights defenders, males and females, were assassinated between 2006 and 2011 and there was one case of forced disappearance in the same period. "The IACHR has been aware of the particular exposure to risk reportedly faced by labor union leaders, as well as defenders of environmental rights in [Guatemala]."²¹⁴

As a part of the 2012 Universal Periodic Review of Guatemala undertaken by the United Nations Human Rights Council, the Guatemalan government's presentation referred to the Human Rights Office of the Ministry of the Interior and highlighted that, in 2008, a body for analyzing attacks against human rights defenders had been created. "This body was composed of representatives of the judiciary and the Presidential Human Rights Commission and was aimed at analyzing the criminal context and attack patterns." The Guatemalan government also made reference to the fact that in 2012, seven convictions were achieved related to the protection of human rights defenders and three concerning attacks against journalists.²¹⁵ However, as part of the recommendations forthcoming from this review, Guatemala was encouraged to "Adopt further measures to ensure that any act of threat or reprisal against human rights defenders is effectively investigated, prosecuted and punished."²¹⁶

The Guatemalan government responded by stating that "the investigations into reports of violations conducted by the prosecution service and the courts will improve once the constitutional amendments designed to increase their functional and economic independence have been approved."²¹⁷

5.3 Victims of human trafficking and sexual violence

The United States Department of State in its 2012 report detailing human trafficking country by country indicates that:

"Guatemala is a source, transit, and destination country for men, women, and children subjected to sex trafficking and forced labor. Guatemalan women and children are exploited in sex trafficking within the country, as well as in Mexico and the United States. Guatemalan men, women, and children are subjected to forced labor within the country, often in agriculture or domestic service. Guatemalan men, women, and children also are found in conditions of forced

Guatemala." Several of the actions described have been by the private Foundation Against Terrorism (*Fundación contra el Terrorismo*), others are by members of an organization grouping former army officials and their relatives, known as AVEMILGUA.

²¹³ España (2013). "Lolita Chávez: Nos acusan de terroristas y usurpadores." *Siglo Veintiuno*. July 7, 2012

<http://www.s21.com.gt/nacionales/2012/07/17/lolita-chavez-nos-acusan-terroristas-usurpadores>. (translation by the author).

²¹⁴ Inter-American Commission on Human Rights (IACHR) (2011). Segundo informe sobre la situación de las defensoras y los defensores de derechos humanos en las Américas. December 31, 2011.

<http://www.oas.org/es/cidh/defensores/docs/pdf/defensores2011.pdf>. (translation by the author).

²¹⁵ United Nations General Assembly Human Rights Council (2012). Report of the Working Group on the Universal Periodic Review, Guatemala. p. 5.

²¹⁶ Ibid. p. 17.

²¹⁷ United Nations General Assembly Human Rights Council (2013). Report of the Working Group on the Universal Periodic Review, Guatemala. Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review. par.14.

labor in Mexico and the United States in agriculture, the garment industry, and in domestic service."²¹⁸

Major cities, tourist towns, and border areas evidence women and children participating in the sex trade industry and forced labor. The United States Department of State report also points out that in Guatemala: "Indigenous Guatemalan are particularly vulnerable to forced labor." Men fall victim to human trafficking and forced labor but it is not disputed that women and children are most at risk—for example "in the border area with Mexico, Guatemalan children are exploited for forced begging and vending on the streets and [in] forced labor in the majority of municipal dumps throughout the country."²¹⁹

*"Being a woman, a female child, indigenous and poor is what most exposes one to be a victim of sexual exploitation and subject to human trafficking in Guatemala. Moreover the lack of employment opportunities and the lack of knowledge about how traffickers trick participants and how to combat this kind of deception are the factors that weigh most in increasing the vulnerability of the population."*²²⁰

This problem has been also mentioned by the UN Committee on the Rights of the Child by expressing, in particular, its concern about the propensity of garifuna (African descended) people and indigenous adolescents to be victims of sexual and economic exploitation, due to the lack of appropriate information on their rights and the absence of mechanisms to guarantee them.²²¹ A similar concern has been raised by the UN Human Rights Committee, in relation to the particular vulnerable situation and the high levels of racial, social and gender discrimination that indigenous and African-descended women face in the country.²²²

The press and non-governmental organizations in Guatemala use the figure of 15,000 victims per year to indicate an estimated size of the problem²²³ but the actual documentation of the phenomenon is considered impossible by definition. According the Office of the Human Rights Ombudsman (PDH):

*"those who are entrapped in this system often have total or partial restrictions on their freedom of movement and are subject to coercion and threats in a way that completely blocks their capacity to denounce their situation. Moreover there is some societal tolerance for certain kinds of trafficking abuses, such as: marriages made in exchange for payment from one family to another leading to the situation where the victims are not conceived of as such."*²²⁴

²¹⁸ United States Department of State (2012). *Guatemala. Trafficking in Persons Report 2012*: <http://www.state.gov/documents/organization/192595.pdf>.

²¹⁹ Ibid.

²²⁰ Procuraduría de los Derechos Humanos de Guatemala (2012). *Violencia sexual en contra de niñas, adolescentes y mujeres en Guatemala. 146o Período de Sesiones, Comisión Interamericana de Derechos Humanos*. October 29, 2012.

<http://www.pdh.org.gt/index.php/documentos/informes-especiales.html?download=232%3AInforme-violencia-sexual-en-contra-de-ninas-adolescentes-y-mujeres-en-guatemala>. (translation by the author).

²²¹ United Nations Committee on the Rights of the Child (2010). *Examen de los informes presentados por los Estados partes en virtud del artículo 44 de la Convención. Observaciones finales: Guatemala*. Geneva. par. 40

²²² Ibid. par 8.

²²³ (2012). "Estado debe fortalecer atención a las víctimas." *Siglo Veintiuno*. October 19, 2012

<http://www.s21.com.gt/nacionales/2012/10/16/estado-debe-fortalecer-atencion-victimas>.

²²⁴ Procuraduría de los Derechos Humanos de Guatemala (2012). *Violencia sexual en contra de niñas, adolescentes y mujeres en Guatemala*. (translation by the author)

The PDH reports that between January 2000 and May 2012, the Attorney General's Office had registered slightly more than 1000 complaints related to trafficking. Within this time period, more started to be registered as of 2008 with the last full year of this tally, 2011, showing the highest annual count to date.²²⁵ The UN Office on Drugs and Crime (UNDOC) indicates that in Central America, most human trafficking is for the sex trade although trafficking for the purpose of exploiting labor constitutes about 10% of cases in the region.²²⁶

Human trafficking is a problem throughout the country according to statistics from the Attorney General's Office (MP). In 2012 (January through October) only two provinces (Baja Verapaz and Jutiapa) reported no cases. In 6 out of the remaining 20 provinces much of the problem is concentrated (77%) and among those, the province of Guatemala (where Guatemala City is located) has 44% of all cases, equal to 67 complaints registered. There is a high concentration of cases that border Mexico or are not too far away (24% in the combined area of Alta Verapaz, Huehuetenango, Quetzaltenango, Quiché, San Marcos and Petén) leading the PDH to conclude there is a "close relationship between human trafficking, migration, and the trafficking of migrants."²²⁷

According to the United States Department of State, in addition to Guatemalan nationals, migrants from other countries in transit through Guatemala run the risk of becoming victims of human trafficking while in the country:

*"Women and children from other countries in the region, including El Salvador, Honduras, Colombia, and Nicaragua, are exploited in sex trafficking in Guatemala. Child sex tourism is prevalent in certain tourist areas such as Antigua, Puerto Barrios, Rio Dulce, around Lake Atitlan, and in Tecun Uman on the Mexican border. Child sex tourists predominately come from Canada, Germany, Spain, and the United States."*²²⁸

In addition to a lack of programs addressing the endemic causes of human trafficking, Guatemala has challenges in regard to educating potential victims, documenting cases, pursuing traffickers criminally, reaching convictions, and habilitating victims who have been rescued from trafficking situations. There is awareness at some levels in the government and certainly among those designated to coordinate such efforts about the great need and the need for resources.²²⁹ The United States Department of State annual trafficking report gives this succinct overview:

"The Government of Guatemala does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. ...Guatemalan authorities maintained anti-trafficking progress, particularly through continued law enforcement efforts...a dedicated shelter for adult trafficking victims [and the launch of] specialized services to victims of trafficking and sexual violence. Investigative units, however, remained under-funded,

²²⁵ Ibid. p. 19. 2011 coincides with a new Attorney General, Claudia Paz y Paz, changing protocols to better detect such cases, a possible or partial explanation for 2011 having the highest numbers to date reported.

²²⁶ United Nations Office on Drugs and Crime (UNODC) (2012). Transnational Organized Crime in Central America and the Caribbean: A threat assessment. Vienna, Austria. p. 53.

²²⁷ Procuraduría de los Derechos Humanos de Guatemala (2012). Violencia sexual en contra de niñas, adolescentes y mujeres en Guatemala. p 184. (translation by the author).

²²⁸ United States Department of State (2012). *Guatemala*. p. 171,

²²⁹ (2012). "Estado debe fortalecer atención a las víctimas." October 19, 2012; (2012). "Se registran más de 15 mil víctimas de trata al año." *Siglo Veintiuno*. July 20, 2012 <http://www.s21.com.gt/nacionales/2012/07/20/se-registran-mas-15-mil-victimas-trata-ano>; Alvarez Morales *ibid.* "Ampliarán acciones contra trata de personas." December 29, 2012

<http://www.s21.com.gt/nacionales/2012/12/28/ampliaran-acciones-contra-trata-personas#main-content>; Zavala (2013). "Trata de personas es un peligro latente en el país." *Ibid.* February 26, 2013 <http://www.s21.com.gt/nacionales/2013/02/26/trata-personas-peligro-latente-pais>.

*many judges and law enforcement officials were poorly informed about human-trafficking, and official complicity continued to impede anti-trafficking efforts.”*²³⁰

The report continues about the on-the-ground obstacles including government corruption:

*“Credible reports from international organizations, NGOs, and several government officials continued to indicate that corrupt public officials impeded anti-trafficking law enforcement efforts and facilitated trafficking activity by accepting or extorting bribes, falsifying identity documents, leaking information about impending police raids to suspected traffickers, and ignoring trafficking activity in commercial sex sites. The government did not report investigating, prosecuting, convicting, or punishing any officials complicit in human trafficking”*²³¹

As a part of its presentation for the 2012 Human Rights Council Universal Periodic Review, the Guatemalan government made reference to the expanded geographical coverage of the Special Prosecutor’s Office for Women and Children Victims and the implementation of an integral attention model.²³² Also, it indicated, that “in order to be in conformity with the Law against Sexual Violence, the Prosecutor’s offices for trafficking in persons and human rights were also created.” The following tools had also been created: the inter-institutional Protocol against Sexual Exploitation and Trafficking and the inter-institutional Protocol for the Repatriation of Victims of Trafficking. In addition, in 2011, the first shelter for victims of trafficking had been established. Seven centres of integral attention were in place and the approval of three additional centres was under way.”²³³

5.4 Women and children with certain profiles or in specific circumstances

As mentioned earlier in this report, the term femicide is now being used in Guatemala to describe increasing vulnerability of women to violent deaths. In the Human Rights Ombudsman’s Office (PDH)’s October 2012 mapping exercise to show social conflicts, femicide and violence against women appear as one of the greatest social problems that occurred in 2011 and as projected at that time for 2012. The phenomenon appeared in 201 municipalities, which is 60% of the total number of municipalities and was manifested in 19 of Guatemala’s 22 provinces (departamentos).²³⁴

Along with other national and international entities, the PDH recognizes progress in the application of justice to confront the scourge of femicide; yet it also warns that much must still be done:

*“The results herein revealed advances in formulating protocols for victims’ treatment and crime scene management; as well as the creation of Prosecuting Units and Tribunals Specialized in Femicide; and there are verified efforts to improve inter-institutional coordination between the National Civilian Police, the Attorney General’s Office (MP), and the National Institute of Forensic Science. Nevertheless, a crime prevention policy is still needed, as is a reinforcement of the MP’s investigative labors, because despite the very high incidence of femicide, due to lack of evidence many such crimes are classified instead as murders and homicides; above all, it should be noted that even though there are more convictions, the number of women’s violent deaths has not decreased.”*²³⁵

²³⁰ United States Department of State (2012). *Guatemala*. p. 171.

²³¹ *Ibid.* p. 172.

²³² United Nations General Assembly Human Rights Council (2012). Report of the Working Group on the Universal Periodic Review, Guatemala.

²³³ *Ibid.*

²³⁴ Procuraduría de los Derechos Humanos de Guatemala (2012). Mapa de Conflictividad. October 29, 2012.

²³⁵ Procuraduría de los Derechos Humanos de Guatemala (2013). Informe Anual Circunstanciado Situación de los Derechos Humanos en Guatemala, 2012. p.177. (translation by the author).

Children make up a majority of the country's population. According to the National Statistics Institute (INE), Guatemala has a population of 15,438,384 inhabitants, of whom at least 56% are under 18 years old (source UNICEF). Of the total population, 56% live in poverty and 15.2% in extreme poverty, a figure that increases to 72% among the indigenous population in rural areas.²³⁶ The National Survey on Living Conditions and Youth (ENCOVI-2011) revealed that the primary causes of the violence that affects youth include: lack of education, at 19%; scarcity of job opportunities, at 17.10%; domestic violence, at 16.10%; poor economic situation, at 13.90%; and the existence of gangs, at 10.20%.²³⁷

According to the PDH, children represent 10.41% of the total number of victims of domestic violence. The most recurring complaint regarding domestic violence is child abuse. Likewise, the PDH notes that children and adolescents comprise 42.21% of the victims of sexual abuse, while adult women represent 46.55%.²³⁸

Statistics of violent deaths of children reported by public institutions and human rights organizations vary by source, but all indicate that the problem is severe and early 2013 showed initial worsening trends.²³⁹ Data published by print media indicate, for example, that according to the Attorney General's Office (MP), between January 1 and February 12, 2013, 39 minors died violent deaths; 14 of these victims were female. Monitoring by Childhood Watch of the Archbishop's Human Rights Office (ODHAG), based on figures from the Guatemalan National Institute of Forensic Science (INACIF), determined from January 1-February 28, 2013, 69 children had died from gunshots and in January alone more than 50 had been injured by either guns or knife wounds.²⁴⁰

5.4.1 Recruitment by gangs

Non-governmental organizations in Guatemala consider much of the gang phenomena as related to the issue of human trafficking because of the forced recruitment of children and adolescents carried out by gangs. In the red-light districts where gangs have a greater presence, the levels of school dropout, family disintegration, overcrowding, and unemployment are higher, forming a fertile brew that facilitates gang recruitment.²⁴¹

The United States Department of State in its report covering human rights in Guatemala in 2012 commented:

*“Criminals often recruited street children, many of whom were former victims of domestic abuse, for purposes of stealing, transporting contraband, prostitution, and illegal drug activities. According to the [Attorney General’s Office] and PNC [National Civilian Police], approximately 3,000 youth were involved in street gangs. The NGO Mutual Support Group reported that 55 children suffered violent deaths nationwide between January and October [of 2012]. NGOs dealing with gangs and other youth reported concerns that street youth detained by police were subject to abusive treatment, including physical assaults.”*²⁴²

²³⁶ Mesa Nacional para las Migraciones en Guatemala (MENAMIG) (2012).

²³⁷ Procuraduría de los Derechos Humanos de Guatemala (2013). Informe Anual Circunstanciado Situación de los Derechos Humanos en Guatemala, 2012. p. 51-52.

²³⁸ Ibid. p. 153.

²³⁹ Grupo de Apoyo Mutuo (GAM). (2013).

²⁴⁰ Oficina de Derechos Humanos del Arzobispado de Guatemala (ODHAG). (2013). "Muertes de niños y adolescencia." http://www.odhag.org.gt/observatorio/index.php?option=com_content&view=article&id=1&Itemid=2.

²⁴¹ Castañón (2011). "Informe policial: Las diez zonas más peligrosas de Guatemala." *La Hora*. November 28, 2011 <http://lahora.com.gt/index.php/nacional/guatemala/reportajes-y-entrevistas/148368-las-diez-zonas-mas-peligrosas-de-guatemala>; Castañón (2012). "Maras utilizan la trata para reclutar niños." *La Hora*. December 17, 2012

<http://lahora.com.gt/index.php/nacional/guatemala/reportajes-y-entrevistas/170474-maras-utilizan-la-trata-para-reclutar-ninos->; Castañón (2013). "Benítez: Manipulan a mujeres y niños para cuidar cultivos de droga." *La Hora*. February 9, 2013.

²⁴² United States Department of State (2011). 2010 Human Rights Reports: Guatemala.

The United States Department of State, in its annual report on human trafficking noted: “According to [non-governmental organizations] and government officials, organized crime networks continue to be involved in some cases of human trafficking, and gangs recruit children to commit illicit acts, sometimes using force or coercion.”²⁴³

The Unit to Prevent Human Trafficking (Unidad de Prevención de la Trata de Personas) that is part of the Human Rights Ombudsman’s Office (PDH) has not directly documented many cases of forced recruitment but asserts that this is because of underreporting, not because the issue is not a serious one: “Two cases were registered of children being forcibly recruited into gangs or criminal groups and forced to carry out extortions which is a new modality; although few cases are registered, it is believed that there is a high percentage of young people forced into gangs or crime groups under threat that they or their families will be harmed.”

As of December 5, 2012 the Task Force against Extortion had detained 71 adolescents engaged in extortion during 2012. During 2011 there were 34 minors apprehended for the same crime.²⁴⁴

5.4.2 Unaccompanied children that are returned to Guatemala and/or in transit

Migrant children and adolescents that are unaccompanied minors are in a grave situation. According to the non-governmental National Roundtable on Migrations in Guatemala (MENAMIG), the factors that drive immigration in this age group are varied and include:

*“family disintegration; domestic violence; gangs; the lack of opportunities for education, work, and housing; the poverty and extreme poverty in which they live. They leave the country in search of better opportunities. According to data gathered by MENAMIG from the SOSEP (Presidential Social Works Secretariat), 82% of children and adolescents that have been deported by air or by land stated that they emigrated out of the country to seek work and help their families. While 4% did so alongside their mothers and 1% with their fathers, others leave Guatemala in an attempt to reunite with their parents or other relatives who had to abandon them when faced with the need to provide for their families' food and basic necessities despite the risks involved in border crossing.”*²⁴⁵

Different studies have uncovered different facets of the face of these unaccompanied children: roughly half leave Guatemala headed for the USA and half to work in Mexico, the months of the latter shaped by the seasonal agricultural cycle.²⁴⁶ Poverty, hoping to reunite with their parents, and fleeing abuse in their households are among the reasons that are the immediate impetus for unaccompanied children to leave the country. Once outside Guatemala, they are the most vulnerable among the vulnerable and if detained and deported (from either Mexico or the USA), they can be re-victimized by the experience of detention, deportation, and the uncertain future upon their return²⁴⁷

As compiled by MENAMIG’s 2012 year end summary, accurate statistics on the deportation of minors do not exist, though existing information does provide an indication of the magnitude of the problem. According to ECPAT (International Network against Sexual Exploitation), approximately 2,400 to 3,000 children and adolescents from all of Guatemala’s provinces, especially San Marcos, Guatemala, Sololá, Huehuetenango, Quetzaltenango and Quiché, are deported each year by Mexican authorities. The children

²⁴³ United States Department of State (2012). *Guatemala*.

²⁴⁴ Castañon (2012). "Maras utilizan la trata para reclutar niños." December 17, 2012

²⁴⁵ Mesa Nacional para las Migraciones en Guatemala (MENAMIG) (2012). (translation by the author).

²⁴⁶ Caballeros (2011). "Migración con rostro de niños, niñas y adolescentes." *Encuentro* 90: 84-93.

²⁴⁷ Ibid.

range in age from 6 to 16 years. An estimate mid-year 2011 mentioned a weekly average of 26 Guatemalan children returned by Mexico.²⁴⁸

According to SOSEP (Presidential Social Works Secretariat), between January 2009 and September 2012, 2,206 cases of deported minors arriving by plane from the USA were processed:²⁴⁹

Year	Female minors	Male minors
2009	80	495
2010	50	490
2011	40	485
2012	30	390
Total over 4 years	200	1860

5.5 Lesbian, Gay, Bisexual, Transgender and Intersex persons

According to the Inter-American Court on Human Rights, in Guatemala “gay, lesbian, trans, bisexuals and intersex persons have historically been discriminated against on the basis of their sexual orientation, gender identity and gender expression, and continue to be victims of discrimination, violence, persecution and other abuses; which infringes on their human rights protected by international and inter-American instruments.”²⁵⁰

In its detailed report covering 2012, the Human Rights Ombudsman's Office (PDH) highlights that “In Guatemalan society, expressions of violence and aggression against the community of sexual diversity are still observed and little or nothing is said about hate crimes against this sector of the population.”²⁵¹

The PDH indicates that “There are organizations that have documented acts of discrimination, homophobia, transphobia, and hate crimes against transsexual women; in most cases it was found that it was impossible to identify the aggressors. In 2012, the PDH documented four acts of physical aggression, nine deaths of transsexual women, and the disappearance of a member of the organization OTRANS.”²⁵²

According to PDH statistics, the institution received 20 related complaints in 2012, the majority regarding acts of homophobia by public officials, uniformed personnel (PNC, municipal police, private police), educational institutions, and private companies, among others.²⁵³

In 2012, the IACHR's Unit for the rights of people with different sexual orientation issued two convictions for the murders of three transsexual people in Guatemala.²⁵⁴ In the context of these deaths, the National Sexual Diversity Network reported being aware of at least eight deaths of members of this collective, that

²⁴⁸ Mesa Nacional para las Migraciones en Guatemala (MENAMIG) (2012).

²⁴⁹ Ibid.

²⁵⁰ Inter-American Commission on Human Rights (IACHR) (2011) "Derechos de las lesbianas, los gays, y las personas trans, bisexuales e intersex." <http://www.oas.org/es/cidh/lgtbi/>. (translation by the author).

²⁵¹ Procuraduría de los Derechos Humanos de Guatemala (2013). Informe Anual Circunstanciado Situación de los Derechos Humanos en Guatemala, 2012.p. 202. (translation by the author).

²⁵² Ibid. p. 202. (translation by the author).

²⁵³ Ibid. p. 202.

²⁵⁴ Inter-American Commission on Human Rights (IACHR) (2012) "CIDH condena asesinato de mujer trans hondureña en Guatemala." July 11, 2012 <http://www.oas.org/es/cidh/prensa/Comunicados/2012/085.asp>.

is, men who are characterized and identify as women —via surgery or feminine attire— though they note that such figures are underreported.²⁵⁵

The need to strengthen measures for the protection and integration of LGBT persons in the country was also highlighted as a part of the recommendations made to Guatemala in the 2012 Human Rights Council Universal Periodic Review.²⁵⁶

5.6 Government and public officials

There are well documented cases of government prosecutors and judges subject to death threats and assassination attempts historically in Guatemala and contemporarily given the crucial role they play in both historical cases now being brought to justice and in criminal proceedings that by nature are threatening to existing crime networks. In the case of town mayors, the main source of threats or harm against them have stemmed from disputes among political parties, cases of government corruption, or due to drug traffickers' role in local politics. Here details about the situation of judges and government prosecutors emphasizing information from the last four years are highlighted.

Officials that are involved in the implementation of Guatemala's justice system are at risk when their investigations or cases they are prosecuting/presiding over are related to corruption, drug trafficking, organized crime, organized gangs, human rights cases that air the testimony of witnesses of wartime massacres and other crimes, and cases considered politically delicate because politicians are implicated or State corruption implied. The potential risk and actual cases of harassment and violence have been consistently documented by the United Nations and others during the past few years as an ongoing concern²⁵⁷ The defamation campaign described under the section on "human rights defenders", underway in 2012 and 2013 that involved accusing a variety of civil society leaders of past participation in guerrilla operations in wartime or of being 'leftist' has also targeted public prosecutors, judges and others in the court system.²⁵⁸ The current Attorney General and her distant family members have appeared repeatedly in these lists. Judges and prosecutors connected with the trial processing former President Rios Montt were also named in the publications distributed by the organization called the Foundation against Terrorism during the months in the spring of 2013 when the trial was initially carried out.

The Justice System's Security Unit (Unidad de Seguridad del Organismo Judicial), affirms that 640 judges and magistrates were subject to threats and intimidations between 2002 and mid-2012. During this time 24 experienced attacks, 5 were kidnapped, and 11 were killed.²⁵⁹ Threats and intimidation are common toward those involved in the justice system. The Inter-American Commission on Human Rights (IACHR)

²⁵⁵ (2012). "CIDH pide investigación (caso derechos LGTBI)." *Prensa Libre*. October 14, 2012

http://www.prensalibre.com/noticias/politica/Relatora-prostitucion-concluye-visita-Guatemala_0_763723790.html.

²⁵⁶ United Nations General Assembly Human Rights Council (2012). Report of the Working Group on the Universal Periodic Review, Guatemala.

²⁵⁷ human rights first (2008) "Violencia contra jueces y fiscales en Guatemala 2008." <http://www.humanrightsfirst.org/wp-content/uploads/pdf/080728-HRD-guatemala-petition-judges.pdf>; United Nations High Commissioner on Refugees

(UNHCR/ACNUR) (2008) "Guatemala: Juristas Condenan Ataques y Amenazas contra Operadores de Justicia."

<http://www.acnur.org/t3/recursos/informacion-sobre-pais-de-origen/detalle-documento-coi/guatemala-juristas-condenan-ataques-y-amenazas-contra-operadores-de-justicia/>; Lawyers Without Borders Canada (2012) "ASFC se preocupa por las amenazas en contra de la independencia de la judicatura de Guatemala." November 6, 2012 <http://www.asfcanada.ca/es/noticias/asfc-se-preocupa-por-las-amenazas-en-contra-de-la-independencia-de-la-judicatura-de-guatemala-163>.

²⁵⁸ Boche (2013). "El MP investiga ocho denuncias contra exguerrilleros." *elPeriódico*. April 3, 2013.

²⁵⁹ García (2012). "Ante intimidaciones y amenazas, seguridad para los operadores de justicia es fundamental." *La Hora*. July 25, 2012 <http://www.lahora.com.gt/index.php/nacional/guatemala/reportajes-y-entrevistas/162499-ante-intimidaciones-y-amenazas-seguridad-para-los-operadores-de-justicia-es-fundamental>.

documented at least 20 such cases between 2009 and 2011.²⁶⁰ The brutal May 24, 2011 assassination of Allan Stowlinsky Vidaurre, an assistant prosecutor of the Attorney General's Office involved in different efforts to investigate drug cartel crimes, whose butchered body was left in multiple plastic bags in the town of Cobán, Alta Verapaz, was a chilling message for others investigating or prosecuting cases related to drug traffickers.²⁶¹ This particular case was addressed by the subsequent arrest and sentencing of 7 drug traffickers connected to the Zetas cartel for their involvement in this crime.²⁶²

5.7 Journalists

There are increased reports of attacks on journalists including assassinations, death threats, and intimidation. In March 2012, the news agency CERIGUA and its Journalists' Observatory presented its Report on Freedom of Expression in Guatemala covering the period from 2008 to 2011. The report determined that in 2011, "a greater number of violations to freedom of expression were registered: at least 33 acts of aggression confirmed by the Journalists' Observatory, compared to 19 cases reported in 2010. Some of these aggressive acts were related to impediments placed by authorities and civil groups on journalists' coverage. But there are more serious cases, such as a murder that authorities have not solved, death threats, physical and verbal acts of aggression, an arrest, and threats to the press in general made by the Los Zetas crime group."²⁶³

The report indicates that the Attorney General's Office's Unit on Crimes against Journalists received 26 complaints of aggressive acts in 2011. It adds that the same year, while the Human Rights Ombudsman Office (PDH) registered fewer complaints, it singled out as alleged perpetrators "the National Civilian Police (PNC), certain judicial authorities, political party sympathizers, unionized groups (teachers and market tenants), and unidentified persons, presumably belonging to organized crime, who limited [the right to free expression]."²⁶⁴ The same organization continued to document cases affecting journalists in 2012.²⁶⁵

In its 2012 detailed report, the PDH stated that it received 47 complaints of violations of the right to free expression, 21% of which were committed by government officials, followed by 19% committed by unknown persons (supposedly from organized crime). The report indicated that "aggressive acts against the press have intensified in a context of protest actions, public disorder, or confrontations between inhabitants and security forces, in which journalists were reported to sustain grave injuries that warranted urgent medical attention..."²⁶⁶

²⁶⁰ Inter-American Commission on Human Rights (IACHR) (2011). Segundo informe sobre la situación de las defensoras y los defensores de derechos humanos en las Américas/Second report on the situation of human rights defenders in the Americas.

²⁶¹ Ministerio Público República de Guatemala (2011) "Fiscal General condena asesinato de Auxiliar Fiscal." May 25, 2011 <http://www.mp.gob.gt/2011/05/fiscal-general-condena-asesinato-de-auxiliar-fiscal/>.

²⁶² Inter-American Commission on Human Rights (IACHR) (2012) "Press release: IACHR hails progress against impunity and expresses concern about the human rights situation of indigenous peoples and women." March 27, 2012 http://www.oas.org/en/iachr/media_center/PReleases/2012/033.asp.

²⁶³ Centro de Reportes Informativos sobre Guatemala (CERIGUA) (2012). Estado de Situación: de la libertad de expresión en Guatemala 2008-2011. March 2012. (translation by the author).

²⁶⁴ Ibid. (translation by the author).

²⁶⁵ Centro de Reportes Informativos sobre Guatemala (CERIGUA) (2013). Estado de Situación: de la libertad de expresión en Guatemala 2012: Luces, sombras e incertidumbres. February 2013. <http://www.youblisher.com/p/581072-LIBERTAD-DE-EXPRESION-EN-GUATEMALA-2012-Luces-sombras-e-incertidumbres/>.

²⁶⁶ Procuraduría de los Derechos Humanos de Guatemala (2013). Informe Anual Circunstanciado Situación de los Derechos Humanos en Guatemala, 2012.p. 227-228. (translation by the author).

Finally, the PDH indicated that of the complaints included in the report, 29.79% were presented to the Human Rights Ombudsman, with the written press representing the highest number of complaints at 41.67%, followed by television and cable channels at 22.92%, and radio media at 10.42%. The province with the highest number of complaints was Guatemala with 61.70%, followed by Alta Verapaz with 10.64%.²⁶⁷

In early 2013, the news daily, *el Periódico*, reported intimidation against one of its reporters following a series of articles about the apparently excessive privileges given to an imprisoned military official, Byron Lima Oliva, who is currently serving a sentence for his role in the assassination of Catholic Bishop Juan José Gerardi Conedera in 1998. The OHCHR issued a press release via its Guatemala office condemning “the intimidation of journalist Sofía Menchú that was denounced to this office, apparently as a consequence of *El Periódico*’s (sic) investigative journalism and published articles. These actions are in addition to other recent events targeting those in the justice system, including lawyers, and that threaten the justice system’s independence.”²⁶⁸

The OHCHR official in Guatemala, Alberto Brunori, is quoted in the press release as follows: “It is inadmissible that these criminal practices are used to pressure and block the free exercise and reclaiming of human rights, including labor rights and the freedom of expression.” The institution “called on the authorities to investigate, process, and hold accountable whoever turns out to be responsible for these acts and to take urgent measures to guarantee the protection of all those who are dedicated to the defence of human rights in Guatemala.”²⁶⁹

In the context of investigating the situation of vigilante groups operating as state-sanctioned “security groups”, journalists from at least two different media outlets reportedly received threats in 2013.²⁷⁰

Guatemala was encouraged in the 2012 Human Rights Council Universal Periodic Review to ensure a safe working environment for journalists and free access to information for all Guatemalans through the effective protection of the media as they are occasionally threatened by drug traffickers and organized crime.²⁷¹ The government expressed its specific commitment to develop a protection program for journalists.²⁷²

5.8 Bus drivers/other drivers

According to the Human Rights Ombudsman's Office (PDH) as well as the non-governmental Mutual Support Group (GAM), drivers of metropolitan and rural buses, taxis, and motorcycle taxis hold the most dangerous job in the country due to the increasing number of murders primarily related to extortion schemes targeting drivers by members of the Mara Salvatrucha 13 (MS13) and M-18 gangs. According to the PDH, “The majority of victims of violent death on public transportation are drivers, followed by

²⁶⁷ Ibid.p. 229

²⁶⁸ (2013). "Intimidan a reportera que escribió sobre Lima." *elPeriódico*. March 8, 2013

<http://www.elperiodico.com.gt/es/20130308/pais/225720/>; Office of the High Commissioner on Human Rights (2013) "Comunicado de prensa, Ref. 022013. ONU derechos humanos rechaza ataques a sindicalista y periodista." (translation by the author).

²⁶⁹ Office of the High Commissioner on Human Rights (2013) "Comunicado de prensa, Ref. 022013. ONU derechos humanos rechaza ataques a sindicalista y periodista."

²⁷⁰ Vásquez (2013). June 20, 2013

²⁷¹ United Nations General Assembly Human Rights Council (2012). Report of the Working Group on the Universal Periodic Review, Guatemala. p. 18.

²⁷² Ibid. p. 23.

passengers and drivers' assistants; thus, this service, vital for families and the national economy, continues to be one of the most risky.²⁷³

Deaths resulting from criminal attacks on public transportation in 2011 and 2012 according to the Association of Urban and Rural Public Transport Users (AUTUE)²⁷⁴		
YEAR	2011	2012
Passengers	54	63
Bus drivers	76	58
Driver assistants on board	25	35
Public transport van (microbus) drivers	15	18
“tuc-tuc” motorcycle taxis	28	49
Taxi drivers	12	42

In the first three months of 2013 alone, 19 “tuc-tuc” drivers (motorcycle pulled taxis) were murdered when they failed to pay extortion demanded by criminal groups, according to declarations given to the press by the National Civilian Police. A driver stated to the newspaper that in his case, he must pay 25 quetzales every day and “[employment] driving a tuc-tuc is very risky. If you don’t pay, then our lives are in danger.” The Human Rights Ombudsman Office’s (PDH) official affirmed that the PDH believes that extortion is behind the deaths “and in some cases a tuc-tuc company might be facing extortion from three different criminal groups” at the same time.²⁷⁵

5.9 Union members

The situation of trade unionists in Guatemala has been difficult historically and this continues into the present. Also fitting under the broader category of human rights defenders, unionists remain hard hit. According to the International Trade Union Confederation (ITUC), Guatemala is second in the world, following only Colombia in terms of have the highest number of union leaders assassinated.²⁷⁶

The International Trade Union Confederation (ITUC)’s 2012 report, covering 2011, indicated:

“Guatemala again stood out in 2011, regrettably, as the Central American country characterised predominantly by human rights violations. The right to life of trade union, rural and indigenous community leaders and human rights defenders continued to be violated. Ten trade unionists were assassinated and there were violations of every kind in municipalities, businesses and assembly

²⁷³ Procuraduría de los Derechos Humanos de Guatemala (2012). Informe Anual Circunstanciado al honorable Congreso de la República de Guatemala, sobre la situación de los derechos humanos en el país durante el año 2011.

²⁷⁴ Batres (2013). "El 2012 fue violento para taxistas y pilotos de tuc-tuc." *elPeriódico*. January 2, 2012 <http://www.elperiodico.com.gt/>.

²⁷⁵ Archila *ibid.* "Se incrementan ataques contra pilotos de mototaxis." January 10, 2012. (translation by the author). A journalistic account of the human trauma of bus drivers and bus owners trapped between extortion demands by gangs and the need to make a living was published in June, 2013: Elbein (2013). *The most dangerous job in the world: How did 900 bus drivers end up dead in Guatemala City*. *New Republic*.

²⁷⁶ telesur (2012) "Colombia registra el mayor número de sindicalistas asesinados en 2011." June 6, 2012

<http://www.telesurtv.net/articulos/2012/06/06/colombia-registra-el-mayor-numero-de-sindicalistas-asesinados-en-2011-9524.html>.

*factories [maquilas]. The Izabal Banana Workers' Unions (SITRABI) was the hardest hit. Guatemala's employers are very conservative and do not respect the right of workers to freedom of association, collective bargaining and decent work."*²⁷⁷

Alongside attacks against other human rights defenders, the Human Rights Ombudsman Office (PDH) singles out union members as having the most cases: "The first and most affected are those that promote and defend labor rights and those that belong to labor unions, these women and men confront threats and more serious situations: in 2012 alone 7 people associated with these organizations were assassinated and 22 different types of acts against union members were registered."²⁷⁸

The OHCHR cited the Human Rights Unit of the Attorney General's Office as the source indicating that from January through October 2012, 65 trade unionists had experienced attacks.²⁷⁹

Union leaders assert that between 2007 through March 2013 there have been 65 union leaders killed in Guatemala; this tally was given following the March 22, 2013 assassination of Kira Zulueta Enríquez Mena, who was secretary general for the local branch of the municipal workers union in Nueva Concepción, Escuintla. She was killed at work in the town library.²⁸⁰ Another recent case was denounced by the Guatemalan Office of the United Nations High Commissioner for Human Rights on March 8, 2013, that of Carlos Antonio Hernández Mendoza, in Chiquimula. His high profile in his union (of health workers) as well as his activism with other organizations and human rights efforts in Guatemala's eastern region was highlighted in the OHCHR press release, noting that he was gunned down while driving."²⁸¹

The situation of trade union members was discussed during the 2012 UN Human Rights Council Universal Periodic Review, in which the Guatemalan government indicated that "in 2011, a unit had been created within the Attorney General's Office to deal with crimes against trade union members. The Attorney General's Office was part of a board composed of the Ministry of Labour, the judiciary and the Ministry of Foreign Affairs. The board was created to follow up with the implementation of ILO Convention No. 87. The board carried out a study of 58 cases, which had been systematized and categorized to determine whether or not the crimes had been interlinked and targeted trade union members."²⁸² The need to protect trade union members was included in the recommendations given to Guatemala in the Review and the Guatemalan government expressed its willingness to observe this recommendation among others.²⁸³

²⁷⁷ITUC (2012). *Guatemala 2012. Annual survey of violations of trade union rights*: <http://survey.ituc-csi.org/Guatemala.html>.

²⁷⁸ Procuraduría de los Derechos Humanos de Guatemala (2013). Informe Anual Circunstanciado Situación de los Derechos Humanos en Guatemala, 2012. p. 223. (translation by the author).

²⁷⁹ Office of the High Commissioner on Human Rights. (2013). "Annual report of the United Nations High Commissioner for Human Rights . Addendum. Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala."

²⁸⁰ Central Nacional de Trabajadores de Panama (CNTP). (2013). "Otro dirigente sindical asesinado en Guatemala." <http://cntpaldia.org/otro-dirigente-sindical-asesinado-en-guatemala>.

²⁸¹ Office of the High Commissioner on Human Rights (2013) "Comunicado de prensa, Ref. 022013. ONU derechos humanos rechaza ataques a sindicalista y periodista."

²⁸² United Nations General Assembly Human Rights Council (2012). Report of the Working Group on the Universal Periodic Review, Guatemala. p. 6.

²⁸³ Ibid.

5.10 Returned Guatemalan migrants

In 2010, an estimated 1.637 million Guatemalans resided in other countries, 97% of them in the USA, and an estimated 44,000 more leave the country each year.²⁸⁴

Returned migrants confront specific challenges and their high and growing numbers make them more vulnerable in a context where very scant resources (whether official or non-governmental) to support their reintegration are stretched even thinner as the numbers increase. In 2012, 40,647 individuals were deported from the USA. Of these, 2,756 were adult women and 586 were minors (male and female). Also in 2012, 38,514 Guatemalans were deported from Mexico.²⁸⁵ Below are the statistics from 2007 through 2012 compiled by the International Organization for Migration (IOM) showing the increasing numbers of forced returnees in recent years and the cumulative effect of this phenomenon, nearly 400,000 in six years; a daunting statistic even when considering that there are some individuals who migrated and were returned more than once.

Guatemalans forcibly returned from Mexico and the USA²⁸⁶			
Year	Returned from Mexico	Returned from USA	Total
2007	49,475	23,062	72,537
2008	36,546	28,051	64,597
2009	28,786	27,222	56,008
2010	28,090	29,095	57,185
2011	31,427	30,855	62,282
2012	38,514	40,647	79,161
Total	212,838	178,932	391,770

As mentioned earlier in this report (in the section discussing unaccompanied minors as a vulnerable group), the distinction between minors returned with other family members as opposed to unaccompanied minors is not reported consistently. However, one overview document examined the 2010 statistics for Guatemalans returned from Mexico, finding that 68% of the 1,257 minors aged 12-17 were unaccompanied minors and of the 236 children 11 and under (including infants), 29 of them (12%) were unaccompanied.²⁸⁷

²⁸⁴ United Nations Children's Fund (UNICEF) (2011). *Going North: Violence, Insecurity and Impunity in the Phenomenon of Migration in Guatemala*. Guatemala, UNICEF. http://www.unicef.org.gt/1_recursos_unicefgua/publicaciones/Going_North.pdf.

²⁸⁵ IOM International Organization for Migration (2013). *Migración en Guatemala (CIFRAS): última actualización 31 marzo 2013*. Guatemala. <http://www.iom.int/files/live/sites/iom/files/Country/docs/Migration-Figures-Guatemala-November-2012.pdf>.

²⁸⁶ Numbers vary by source and the IOM statistics could be conservative. According to the non-governmental Guatemala National Roundtable on Migration (MENAMIG), statistics taken from the governmental national immigration office (Migración General), show that in 2011 there were more than 90,000 Guatemalans deported: "60,246 adults were deported by land and 30,855 by air." Cited in: Mesa Nacional para las Migraciones en Guatemala (MENAMIG) (2012). The United States Department of Homeland Security has totals that are similar but not exactly the same as the 2007-2010 totals reported by the IOM as returned from the United States Department of Homeland Security (2011). *Table 38. Aliens removed by criminal status and region and country of nationality: Fiscal years 2001 to 2010. 2010 Yearbook of Immigration Statistics*. Washington DC.

²⁸⁷ Caballeros (2011)

Overall, the western highlands where the indigenous population is most concentrated received most of the forcibly returned migrants from the USA in 2011 and 2012 according to the IOM, most notably the provinces of San Marcos, Huehuetenango, and Quetzaltenango (El Quiché province, also in the western highlands, is fifth in order as a place of origin)²⁸⁸ These areas of the country, as described earlier in this document, have notably high levels of violence though they are not among the provinces with the most extreme levels of violence. Some provinces that do belong to that latter category (and have municipalities with homicide rates that near or exceed 100 per 100,000), also receive high numbers of forced returnees. This would include the provinces of Guatemala, Jutiapa, and Petén that top the list of high rates of violence while being the fourth, sixth, and seventh in order of forced returnees having them as provinces of origin.²⁸⁹

For a vast majority of returnees, therefore, their regions of origin as well as the metropolitan areas including and surrounding Guatemala City, that are theoretically alternative destinations, are among the most violent and dangerous in the country.

The IOM, operating programs to help returned migrants in Guatemala, acknowledges that there is an overall serious lack of support for the vast majority of these especially for those that have not lived in Guatemala for years and that they face severe social, emotional, and economic obstacles to a successful reintegration upon their return. The IOM Chief of Mission opined in 2012:

*“The unexpected return of a family member after years working abroad is a tumultuous event, threatening both the economic and social stability of a household. This continued return flow is a challenge to Guatemala as a society, to each returnee’s community of origin and to the precious core of Guatemalan life, the migrant’s immediate family. Household income falls, while basic expenses rise. Families used to living better than their neighbors suddenly live worse, with debts they cannot repay in both Guatemala and the USA. Newfound economic balance tips back toward poverty and hunger, away from access to education and health care. Fragile domestic harmony, accustomed to distance and regular cash transfers may, with abrupt reunification, transform into alienation and family violence”*²⁹⁰

The IOM Chief of Mission in Guatemala further referred to the difficult aftermath faced by individuals returning without economic means, without social support, and ill equipped for psychological adaptation arriving to a context where organized criminal gangs, among other ills, are predominant: “Men, some 93 per cent of Guatemalan returnees, go suddenly from breadwinner to dependant. Their change in social standing puts them at higher risk of alcohol abuse, drug addiction, petty crime, and recruitment by organized criminal gangs.”²⁹¹

Because so many Guatemalans go into extreme debt in order to migrate and the “coyote” network by definition is part of broader structures of illicit crime, family members of migrants and the migrants themselves are subject to extortions, kidnappings and other types of violent crime.²⁹²

²⁸⁸ Also: Procuraduría de los Derechos Humanos de Guatemala (2013). Informe Anual Circunstanciado Situación de los Derechos Humanos en Guatemala, 2012. For a similar conclusion that a handful of western highland provinces and the province of Guatemala together are the source of nearly 50% of Guatemalan migrants see: United Nations Children's Fund (UNICEF) (2011).

²⁸⁹ IOM International Organization for Migration (2013). Migración en Guatemala (CIFRAS): última actualización 31 marzo 2013.

²⁹⁰ Delbert H. Field (2012) "Migration Management Challenges in Guatemala." *www.iom.int*, January - March 2012 <http://www.iom.int/cms/en/sites/iom/home/news-and-views/opinions/opinion-listing-area/migration-management-challenges.html>.

²⁹¹ Ibid.

²⁹² Procuraduría de los Derechos Humanos de Guatemala (2013). Informe Anual Circunstanciado Situación de los Derechos Humanos en Guatemala, 2012.p.218. Also see: Dudley (2012). Transnational crime in Mexico and Central America: Its evolution and role in international migration. Washington DC, Migration Policy Institute. November 2012. <http://www.migrationpolicy.org/pubs/RMSG-TransnationalCrime.pdf>.

Another source of extortions is the attribution given to those who migrated, whether or not they returned by their own means or were forcibly returned. A vice-minister of Guatemala's foreign affairs ministry under the Colom government, Erick Maldonado, stated to the press in 2008: "Extortionists track those persons who come back from the United States and take note when they have economic means (...) and that is when they take advantage of them, demanding their money in exchange for not doing them harm."²⁹³ The same official was quoted indicating that there had been cases of extortions of USA-based Guatemalan families when one member is returned to the country. Despite their increased vulnerability to gangs, Maldonado recognized that most migrant families do not report the perpetrators precisely out of the fear that they will be subject to reprisals by the gangs that already have them under threat.²⁹⁴

In its 2011 report, Guatemala's Office of the Human Rights Ombudsman pointed out that the returned migrant is vulnerable for multiple reasons even when these migrants' circumstances vary. The person who migrated very recently and was deported, is worse off because he or she is returning to the same situation that prompted the departure but also will now face the high debt incurred to migrate whereas those at the other extreme, those who lived many years abroad, are often facing separation from family in the USA with no intact network to help integrate them in Guatemala.²⁹⁵

For those that left a situation where their independent business was subject to extortion and constant threat by gangs, then the return home to Guatemala following a failed migration is especially precarious because those same gang leaders are likely still dominating local life. If they return with resources they will be targeted for those resources and if they have no resources, they still face possible retribution for having left and/or because of a perception that they have resources.

As analyzed in a 2012 report on Central American migration and organized crime commissioned by the Washington D.C. Migration Policy Group, beginning in 2007 (and at least through 2010), the number of criminal deportees from the USA to Guatemala increased each year as did their proportion relative to other returnees.²⁹⁶ Information on potentially dangerous felons or active gang members may not be transferred from the USA to the receiving government.²⁹⁷ The impact of this on non-criminal returnees or on Guatemalan society has not been studied explicitly but the Migration Policy Report uses the example of Jamaica as a small country where a high number of criminal deportees brought about unanticipated large-scale effects and cites a World Bank study to indicate "it does not take a large number of offenders to have a large impact, particularly if they assume a leadership role in criminal gangs on their return or provide perverse role models for youth."²⁹⁸

²⁹³ Estrada Tobar (2008). "Pandilleros creen que regresan con bienes y dinero: Deportados sufren extorsiones al retornar a Guatemala." *La Hora*. July 18, 2008 <http://www.lahora.com.gt/index.php/nacional/guatemala/actualidad/95303-deportados-sufren-extorsiones-al-retornar-a-guatemala>.

²⁹⁴ Ibid.

²⁹⁵ Procuraduría de los Derechos Humanos de Guatemala (2012). Informe Anual Circunstanciado al honorable Congreso de la República de Guatemala, sobre la situación de los derechos humanos en el país durante el año 2011. p. 129.

²⁹⁶ United States Department of Homeland Security (2011). ; Dudley (2012).

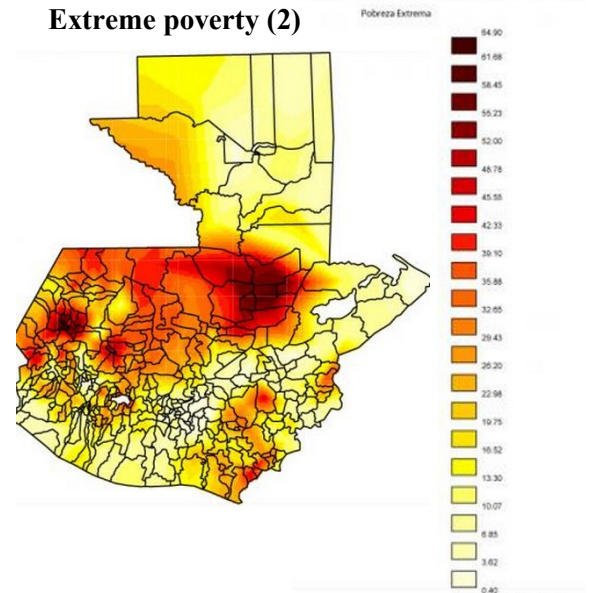
²⁹⁷ Dudley (2012). p. 9

²⁹⁸ Ibid. p. 9

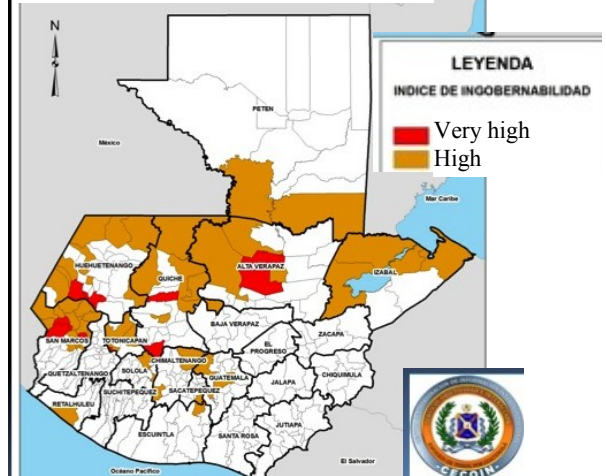
Guatemala's administrative divisions



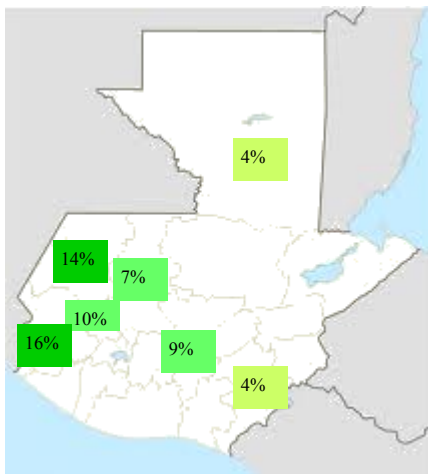
Extreme poverty (2)



Areas deemed 'ungovernable' (3)

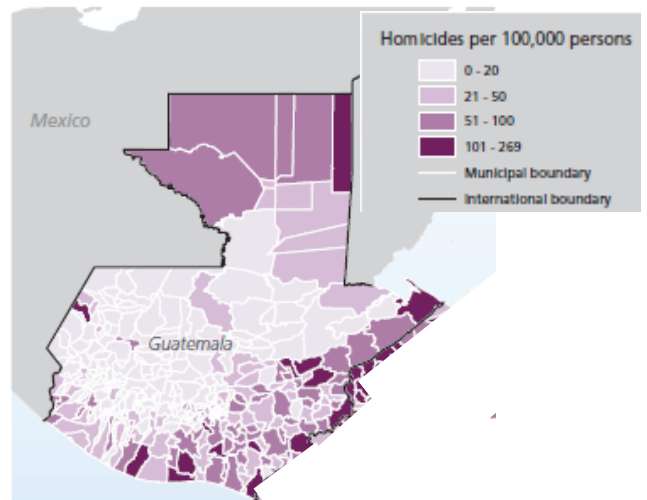


Areas of origin of Guatemalans deported from U.S. (1)



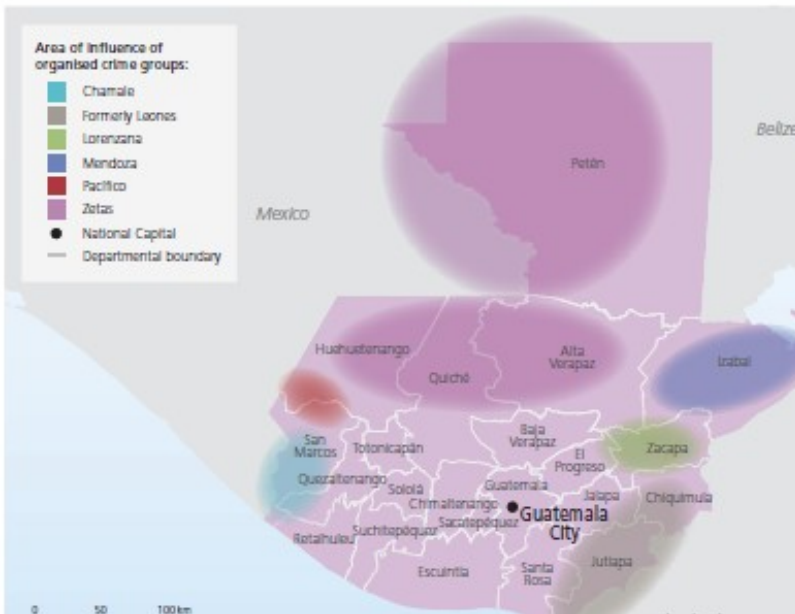
- (1) Six provinces most commonly the areas of origin of forced returnees arriving from the United States: percentages of the 14,783 persons sharing this information. Map by authors, derived from: IOM International Organization for Migration (2013). *Migración en Guatemala (CIFRAS): última actualización 30 Abril 2013*. Guatemala .
- (2) Garcia Aldana, M. B. (2012) "La pobreza está (sobre todo) en otra parte." *Plaza Pública* June 19, 2012 .

Map 1: Homicide rates by municipal area in 2011 (4)



- (4) United Nations Office on Drugs and Crime (UNODC) (2012). *Transnational Organized Crime in Central America and the Caribbean: A threat assessment*. Vienna, Austria, UNODC. Page 14.

Map 2: Territorial groups in Guatemala, 2012 (1)

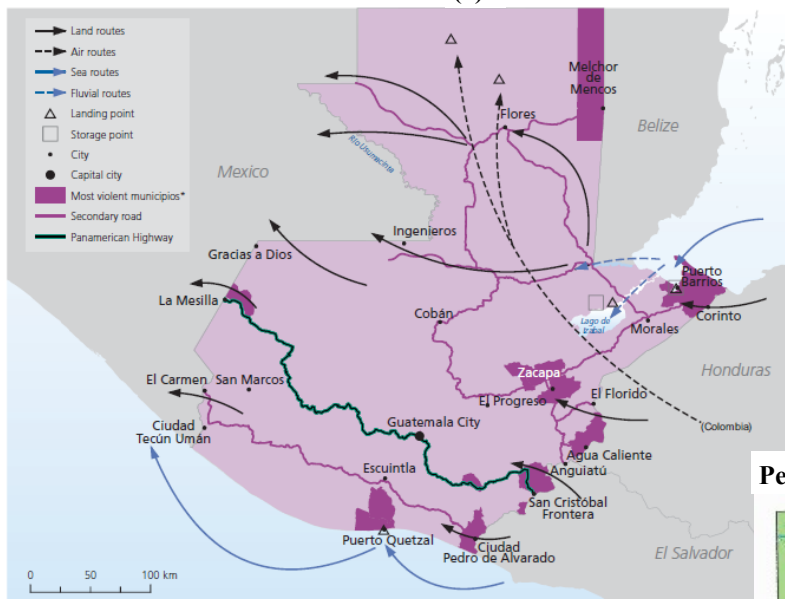


(1) United Nations Office on Drugs and Crime (UNODC) (2012). Transnational Organized Crime in Central America and the Caribbean: A threat assessment. Vienna, Austria, UNODC. Page 26.

(2) Ibid. Page 40.

(3) Mejía, D. (2012) "Petén, un movimiento perpetuo." *Plaza Pública* <http://www.plazapublica.com.gt/content/peten-un-movimiento-perpetuo>.

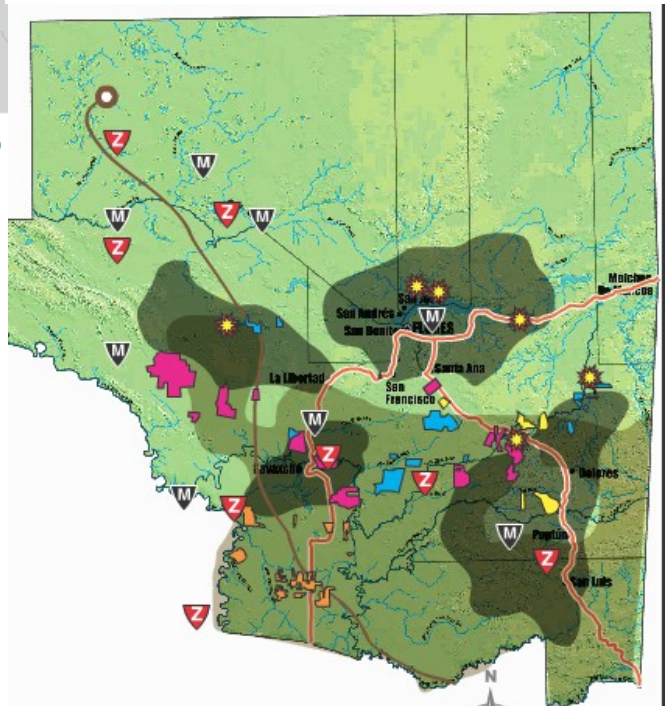
Map 8: Cocaine trafficking routes in Guatemala (2)



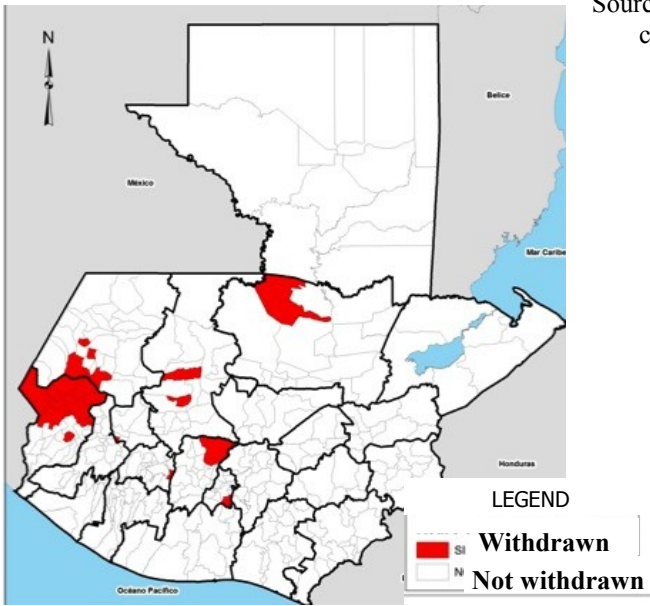
Source: UNODC, elaborated from interviews in the region and national police data
 *Selected among the municipalities with highest homicide rates (<100 homicides per 100,000 population)

Petén province, 2012 organized crime activity (3)

LEGEND TO MAP OF PETÉN	
	Paved roads
	Oil pipeline
	Los Lorenzana
	Los Mendoza
	Los León
	African Palm plantations
	Possible presence of Los Zetas
	Violent event
	Army outpost

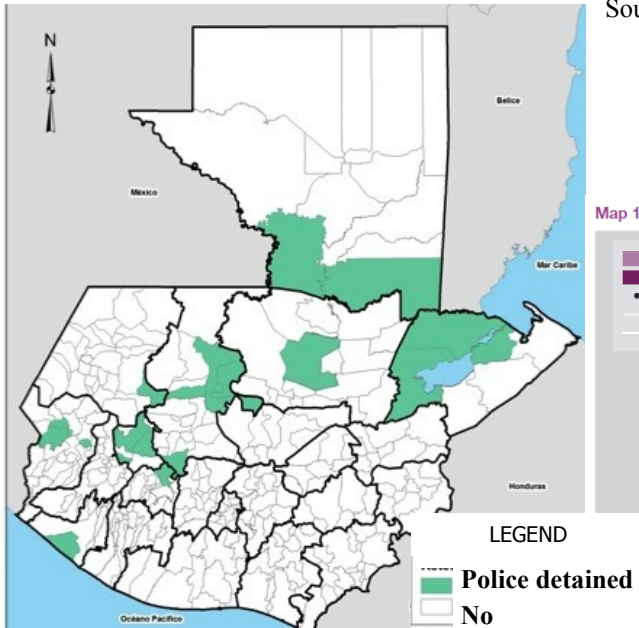


Municipalities where police have been withdrawn



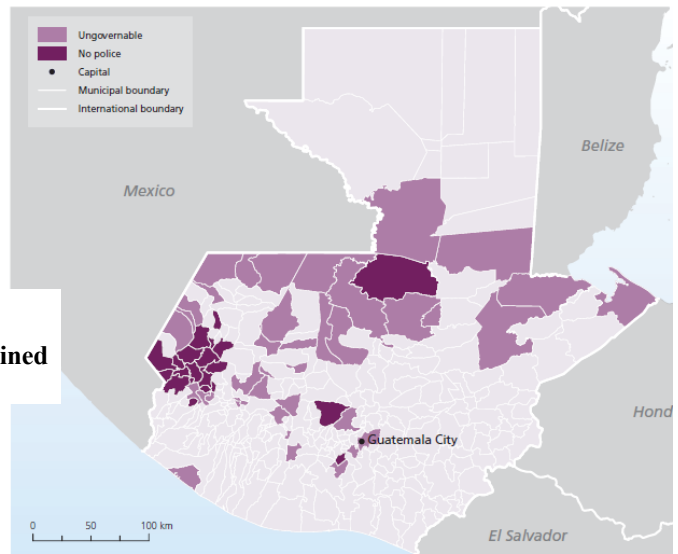
Source: Ministerio de Gobernación, Guatemala. Press conference held on February 15, 2012.

Municipalities where police have been detained



Source: Ministerio de Gobernación, Guatemala. Press conference held on February 15, 2012.

Map 12: Guatemala: municipal governability, 2011



Source: UNODC, elaborated from information from the Ministerio de Gobernación (Guatemala)

Source: United Nations Office on Drugs and Crime (UNODC) (2012). Transnational Organized Crime in Central America and the Caribbean: A threat assessment. Vienna, Austria, UNODC. Page 70. This map consolidates information from two of the maps provided by the Minister of the Interior at its February 15, 2012 Press Confer-

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