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Ежегодный доклад Верховного комиссара
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по правам человека и доклады Управления
Верховного комиссара и Генерального секретаря

Ежегодный доклад Верховного комиссара Организации Объединенных Наций по правам человека о деятельности Управления Верховного комиссара в Гватемале

В настоящем докладе Верховный комиссар Организации Объединенных Наций по правам человека описывает положение в области прав человека в Гватемале с 1 января по 31 декабря 2017 года. В докладе основное внимание уделяется правосудию и борьбе с безнаказанностью; безопасности; правам человека в контексте миграции и внутреннего перемещения; положению коренных народов, женщин, детей, лесбиянок, геев, бисексуалов, транссексуалов и интерсексуалов, а также инвалидов; нападениям на правозащитников и журналистов; экономическим и социальным правам.



Annual report of the United Nations High Commissioner for Human Rights on the activities of the Office of the High Commissioner in Guatemala*

I. Introduction

1. The present report was prepared pursuant to the agreement between the Government of Guatemala and the Office of the United Nations High Commissioner for Human Rights (OHCHR), signed on 10 January 2005 and extended in September 2017 for an additional period of three years. It gives an overview of the situation of human rights in Guatemala from 1 January to 31 December 2017, based on monitoring conducted by OHCHR in Guatemala. It also highlights some of the activities carried out by OHCHR during that period. In November 2017, the United Nations High Commissioner for Human Rights visited Guatemala.

II. National context

2. Guatemala continues to face structural inequality and discrimination. It has a Gini coefficient of 0.63 (one of the worst in the world),¹ while some 60 per cent of the population still live in poverty (reaching 76.1 per cent in rural areas, 79.2 per cent among indigenous peoples and 69.2 per cent among children under 15).² Some 46.5 per cent of children under 5 years of age (61.2 per cent among indigenous children) suffer from chronic malnutrition.³ Women have a lower human development index than men.⁴ Efforts by the Government to address this situation have been partly hindered by corruption. The Central American Institute for Fiscal Studies estimates that 20 per cent of the 2015 national budget was affected by corruption, which in turn had an impact on the enjoyment of human rights.⁵

3. In 2017, investigations led by the Office of the Attorney General, with the support of the International Commission against Impunity in Guatemala (CICIG), continued to reveal complex criminal networks linking public and private sectors, and involving the highest levels of government (A/HRC/34/3/Add.1, para. 3).⁶ These networks carried out deliberate actions to control or influence State institutions for personal benefit and to ensure impunity. A total of 351 high-level public officials, at the local and national levels and in all three branches of the State, are being investigated for corruption.⁷ The failure of Congress to adopt outstanding reforms to the law on immunities could constitute an obstacle to the prosecution of officials. The appointment of a new Attorney General, in May 2018, could mark a turning point, determining whether the fight against corruption and impunity will continue or will be reversed.

4. Strong resistance was put up against advances made in the aforementioned anti-corruption investigations by people wishing to maintain the status quo and to hold on to their

* Circulated in the language of submission and Spanish only.

¹ United Nations Development Programme (UNDP), “Desigualdad y pobreza limitan desarrollo humano en las regiones del Norte y Occidente”, 2 November 2017.

² See Segeplán, *Agenda 2030 para el desarrollo sostenible: Examen nacional voluntario, 2017: Guatemala*, p. 66.

³ *Ibid.*, p. 92.

⁴ UNDP, *Más allá del conflicto, luchas por el bienestar*, Informe Nacional de Desarrollo Humano 2015/2016, Guatemala, 2016, p. 24.

⁵ Instituto Centroamericano de estudios fiscales (ICEFI), *La corrupción: Sus caminos e impacto en la sociedad y una agenda para enfrentarla en el Triángulo Norte Centroamericano, 2017*, pp. 35 and 234.

⁶ See also International Commission against Impunity in Guatemala (CICIG), *Décimo informe de labores de la CICIG, 2017*.

⁷ Information received from CICIG for the period from 2007 to 31 December 2017. See also A/HRC/31/3/Add.1, para. 12 and A/HRC/34/3/Add.1, para. 16.

privileged positions.⁸ On 25 August, the Office of the Attorney General and CICIG announced the results of investigations into illegal campaign financing of three political parties, including the ruling party.⁹ Two days later, the President of the Republic, Jimmy Morales, declared the Head of CICIG, Iván Velásquez, persona non grata. The Constitutional Court suspended this decision (file 4182-2017) shortly thereafter following injunctions filed by civil society representatives and the Ombudsman (files 4179-2017, 4151-2017 and 4180-2017).

5. Furthermore, on 11 September 2017, Congress rejected requests to lift the immunity of the President preventing the pursuit of investigations against him for illegal campaign financing. Two days later, Congress pushed through legal reforms (decrees 14-2017 and 15-2017) shielding its members from investigations for corruption and allowing for the potential commutation of detention sentences for more than 400 crimes with a maximum penalty of 10 years, including in relation to corruption. Following public outcry, these initiatives were withdrawn on 15 September. In this politically tense context, some public officials in key cabinet positions submitted their resignation, expressing disagreement with the Government's actions.

6. In the face of such developments, peaceful protests were held in August around the country denouncing a "corruption pact" and calling for the resignation of corrupt officials. Protests have since been held on a regular basis.¹⁰ In the context of these movements, diverse sectors have proposed important structural reforms, both institutional and legal, to guarantee democracy, including the revision of the law on elections and political parties and the law on civil service, and an independent judicial system (see A/HRC/34/3/Add.1, paras. 16 and 100). Public calls for greater accountability of local authorities were also made. Youth movements, including the Association of University Students of the national public university (presided by a woman elected in the first democratic process in 17 years) played a leading role in this process. Journalists and independent media outlets were instrumental in reporting on corruption despite the hostile political context.

7. In the meantime, investigations into corruption led by the Office of the Attorney General and CICIG continued, included into the "Pandora's Box" case, concerning allegations of a criminal network operating within the penitentiary system by ex-military officer Byron Lima (now deceased) (A/HRC/34/3/Add.1, para. 10). This case involves investigations concerning Alvaro Arzú, former president and current mayor of Guatemala City, and Moises Galindo, defence attorney for former military officers accused of crimes against humanity, including the genocide case against former head of State Efraín Ríos Montt.

8. The lack of consensus in Congress prevented progress in the legislative agenda in key human rights areas, including in reforms necessary to consolidate progress in the fight against impunity and corruption, notably pending constitutional reforms in the area of justice presented in October 2016 (A/HRC/34/3/Add.1, para. 5). In February, debates on reforms stalled during discussions on the recognition of indigenous jurisdiction; indigenous authorities eventually withdrew their proposal on indigenous jurisdiction in order to allow progress in other issues. In April, the debates broke down again during discussions on the model for the separation of administrative and jurisdictional functions of the Supreme Court of Justice. Furthermore, Congress rejected provisions of the bill affirming the principles of gender equality in access to justice and the legal profession. In December, Congress did not reach consensus regarding the national budget for 2018. It also failed to elect the new rapporteurs of the national mechanism for the prevention of torture (which has therefore been virtually inoperative since April).

9. Indigenous peoples played a key role in the development of proposals to promote their collective rights, including to strengthen their participation in democratic processes through adequate and proportional representation; to ensure their inclusion in decision-making through consultation mechanisms; to recognize indigenous community radios; and to protect

⁸ See CICIG, Décimo informe (see footnote 6).

⁹ See CICIG, Informe de Financiamiento de la Política en Guatemala, 2015.

¹⁰ Office of the United Nations High Commissioner for Human Rights (OHCHR), "Respeto de los derechos humanos fortalece las experiencias democráticas", 16 September 2017.

traditional knowledge and cultural expressions. Indigenous women weavers formulated a draft law for the protection of their collective intellectual property. These proposals have not, however, been prioritized by Congress.

10. The case of the Hogar Seguro Virgen de la Asunción shelter (see A/HRC/22/54/Add.1, para. 89) illustrated the persisting inadequacy of protections for vulnerable children and youth. In the fire that broke out on 8 March in the shelter, run by the Secretary of Social Welfare, 41 girls died and 15 were injured, including 11 seriously burned, after they had been locked in a tiny classroom overnight as a disciplinary measure.

11. Cases of forced evictions linked to land tenure insecurity, involving mainly indigenous communities, resulted in human rights violations and humanitarian challenges. Evicted communities include those of Laguna Larga (Petén), Chabilchoch (Izabal) and La Cumbre (Alta Verapaz). Women, including pregnant women, older persons and children, were particularly affected (see also A/HRC/34/3/Add.1, paras. 47 and 63).

12. Much remains to be done to ensure the democratic transformation of the country as envisaged by the peace agreements. Twenty years on, 50.4 per cent of the agreements have yet to be implemented, particularly those relating to inequality and non-discrimination.¹¹ The lowest rate of implementation concerns the agreements on identity and indigenous peoples (only 19.49 per cent implemented) and on socioeconomic aspects and the agrarian situation (34.39 per cent).¹² As the High Commissioner stated during his visit to Guatemala in November, the country is at a crossroads, “facing the choice between forging ahead with the necessary reforms to create a modern democratic State, based on the rule of law and guided by human rights principles, or remaining with the old unjust system where the few profit at the expense of the majority.”¹³

III. Advances and challenges in key human rights areas

A. Justice and the fight against impunity

13. Legal reforms are required to guarantee an independent, effective and inclusive justice system, and to sustain progress made in the fight against corruption and impunity. The approval by Congress, in September, of the reform to the law on the judicial career (decree 32-2016) (see A/HRC/34/3/Add.1, para. 16) ordered by the Constitutional Court (file 5911-2016), addressed a legal gap relating to the election of the members of the Judicial Career Council (*Consejo de la Carrera Judicial*), ensuring a clearer separation between the administrative and legislative functions of the Supreme Court of Justice. Reforms to depoliticize the selection of key judicial authorities did not, however, advance (see A/HRC/34/3/Add.1, para. 15). The need to reform the normative framework of the nominating committees was illustrated in a case, presented in January by the Attorney General and CICIG, in which a judge had allegedly been bribed to support the election of certain high court judges.¹⁴

14. In criminal cases, including high-profile cases and those relating to crimes committed during the internal armed conflict, the excessive filing of injunctions (among other practices) appears to have been a way used to delay resolutions. Between January and October, 2,957 injunctions were filed before the Constitutional Court, which dismissed 72 per cent of injunctions reviewed in 2017. Reforms to the law on injunctions (writ of *amparo*) are required to allow prompt trials while ensuring the necessary judicial guarantees (see A/HRC/31/3/Add.1, paras. 12 and 16, and A/HRC/34/3/Add.1, para. 16).

¹¹ Secretaría de la Paz, *Agenda Política de la Paz 2017-2026*, 2017, pp. 17-18.

¹² *Ibid.*

¹³ OHCHR, “Statement by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein at the end of his mission to Guatemala”, press release, 19 November 2017.

¹⁴ See CICIG, *Décimo informe* (see footnote 6), p. 20.

15. Judicial independence was undermined by patterns of pressure from within and outside the judicial system.¹⁵ Some judges who denounced interference by their colleagues were subjected to spurious complaints to internal disciplinary bodies,¹⁶ such as Judge Carlos Ruano, who was subjected to a disciplinary procedure in March for alleged ethical breaches after denouncing pressure by a magistrate of the Supreme Justice Court (later stripped of her immunity). The case was eventually dismissed.¹⁷ Constitutional Court judges who issued crucial resolutions to maintain the constitutional order also denounced pressures, including requests to lift their immunity and smear campaigns targeting them. Judges, public prosecutors and lawyers in several high-profile cases were also subjected to such treatment, as were victims and their families, and supporting organizations.

16. Lobbying campaigns were conducted to influence public opinion and pressure high courts. In the case of two projects (the Oxec hydroelectric dam and the San Rafael mine) that were allegedly approved despite a lack of consultation with the indigenous peoples affected, some actors within the private sector took out paid public advertising campaigns calling upon courts not to suspend project licences, arguing that a suspension would have a negative impact on economic development.

17. Some progress was made in judicial proceedings for crimes committed during the internal conflict. In July 2017, an appeals court (file 01076-2012-00021) confirmed the historic decision made in the Sepur Zarco case, sentencing two ex-military officers for crimes against humanity (rape and sexual slavery) against Q'eq'chi women (A/HRC/34/3/Add.1, para. 7).¹⁸ In March, a judge concluded there was sufficient evidence to prosecute five ex-military officials for crimes against humanity related to the enforced disappearance, in 1981, of a child, Marco Antonio Molina Theissen, and for sexual violence against his sister, Emma (A/HRC/34/3/Add.1, para. 19). In October, the Ixil genocide case resumed after years of delays (see A/HRC/34/3/Add.1, para. 20), following the decision of the Constitutional Court, in 2013, to revoke the judgment against Ríos Montt. In May, the Centre for Legal Action for Human Rights filed a malfeasance complaint against three former judges of the Constitutional Court for reversing the 2013 judgment.

18. Most transitional justice cases suffered delays, including the Dos Erres (see A/HRC/22/17/Add.1, para. 37) and Ixil genocide cases, partly due to the filing of 42 and 37 injunctions, respectively. Delays increase the risk of depriving the victims of justice, especially considering the advanced age of defendants and survivors. In the CREOMPAZ case (see A/HRC/34/3/Add.1, para. 6), an injunction was filed in September before the Constitutional Court to reverse the motion to open trial issued in 2016, which had excluded reference to 94 of the alleged victims, potentially depriving them of access to justice. In March, the immunity of one of the defendants in this case – a member of Congress and founder of the ruling party – was lifted, but he avoided arrest and has been a fugitive since.

19. Effective measures to ensure reparation to victims of the armed conflict and non-recurrence, including by strengthening the funding and effectiveness of the National Reparations Programme, remain crucial. The Government is finalizing the process of individual reparations in the Chixoy case, while collective reparations measures have been subjected to delays (A/HRC/34/3/Add.1, para. 21).

20. Efforts were continued to eliminate cultural barriers in access to justice (see A/HRC/34/3/Add.1, para. 24). In particular, the Constitutional Court continued to strengthen its jurisprudence concerning the recognition of indigenous jurisdiction; for example, in June, it upheld the decision of an indigenous authority recognizing the collective property rights of an indigenous woman in Nebaj (file 943-2017). Moreover, in May, the Office of the Attorney General adopted a policy on access to justice for indigenous peoples and established a secretariat in charge of its implementation, monitoring and evaluation. The unit on

¹⁵ Organization of American States (OAS), “IACHR wraps up on-site visit to Guatemala”, press release, 4 August 2017.

¹⁶ OHCHR, “OACNUDH-Guatemala resalta la importancia de garantizar la independencia judicial y llama al Estado a garantizar la protección de las juezas y los jueces”, press release, 11 January 2017.

¹⁷ See CICIG, Décimo informe (see footnote 6), p. 20.

¹⁸ Ibid.

indigenous peoples established within the judiciary was strengthened and upgraded to the level of secretariat.

21. In July, a new director of the National Institute of Forensic Science (INACIF) was elected. The important work of that body in the collection of scientific evidence in judicial processes has been hampered by inadequate financial and human resources, in the face of a growing demand for specialized services.

B. Security

22. High levels of violence persist, fuelled by discrimination, inequality, easy access to weapons, organized crime, impunity and the legacy of violence of the armed conflict. In 2017, 4,553 violent deaths were recorded, down 2.4 per cent against 2016, except in some departments, such as Guatemala.¹⁹ On the other hand, violent deaths of women increased by 8 per cent (662 cases). The vast majority of violent deaths (3,301) continued to be caused by firearms, in the absence of an effective arms control policy. The Office of the Ombudsman (*Procurador de los Derechos Humanos*) reported that, between January and October, 28 people were killed by lynching (40 per cent more than in 2016).

23. According to information provided by INACIF, in 2017, 80 per cent of violent deaths in Guatemala were concentrated in 10 (of the State's 22) departments, while the regions inhabited by a majority of indigenous peoples, such as Totonicapán, Sololá, San Marcos and Quiché, where traditional indigenous justice is applied, have the lowest rates of homicide. At the same time, certain cases of sanctions applied in the framework of indigenous justice underscored the need to ensure compatibility with human rights norms and standards.

24. In January, the Ministry of the Interior, in line with the peace agreements, announced an "operationalization plan" for the withdrawal of 4,400 soldiers from "citizen security squadrons" in 53 municipalities. While this process was scheduled to be finalized by 31 December 2017, the Ministry of Defence requested that soldiers remain in squadrons in 11 locations around the country for three additional months.

25. In 2017, the number of National Civil Police officers reached nearly 40,000, including 4,000 new recruits. Challenges nonetheless remain to provide for citizen security, including addressing widespread violence against women. In 2017, the parliamentary committee on security and justice drafted a bill to reform the law on the National Civil Police, with the participation of the police and civil society (see A/HRC/34/3/Add.1, para. 28). Joint operations by the police and the Office of the Attorney General to combat extortion and illegal private security services were noteworthy.

26. The police played an important role in guaranteeing respect for human rights in the context of peaceful protests in August and September,²⁰ while the Ministry of the Interior has been revising police protocols on the progressive use of force. Some cases of the disproportionate use of force were nonetheless reported, including in March, when special police forces were ordered to capture children who had escaped the Hogar Seguro Virgen de la Asunción shelter, and in June, in Casillas, San Rafael Las Flores, in the case of people demonstrating against the El Escobal mine.

27. Challenges remain in the State's ability to supervise private security companies. According to the General Directorate of Private Security Services (DIGSSP), of 182 companies registered under the law on private security services (decree 52-2010), 59 do not comply with its provisions. The number of private security agents (45,258) is superior to that of the national police. The Directorate furthermore reports that, in 2017, 76,557 weapons of private security companies were registered. It conducted 185 supervisions during the reporting period, more than in any other previous year. The fact that some private security companies refuse the supervision of the Directorate, for example by barring access to its agents wishing to conduct inspections, filing injunctions or not complying with sanctions, is a cause for concern.

¹⁹ Information received by OHCHR from INACIF for January-October 2017.

²⁰ See OHCHR, "Respeto de los derechos humanos" (see footnote 10).

28. Incarceration continued to be the prioritized response to insecurity, as was pretrial detention (accounting for 51.3 per cent of the penitentiary population) (see also A/HRC/34/3/Add.1, para. 32). The deplorable conditions of detention (345 per cent of overcrowding in women's prisons and 227 per cent in men's prisons),²¹ which are aggravated by corruption, contribute to human rights violations, including of the rights to life (20 violent deaths and 15 deaths by illness were reported by INACIF in 2017) and to physical integrity, and sexual violence.

29. According to the Inter-American Commission on Human Rights, conditions in juvenile detention centres in Guatemala amount to inhuman and degrading treatment.²² In 2017, three riots broke out in these centres following inmates' complaints of mistreatment and demands for improvement in basic living conditions.

C. Rights of indigenous peoples and Afro-descendants

30. Indigenous peoples have continued to defend their rights, including through judicial procedures. The Constitutional Court consolidated its jurisprudential trends regarding rights to bilingual and intercultural education (file 3100-2014), consultation (file 1798-2015 and consolidated files 90-2017, 91-2017 and 92-2017; files 3120-2016 and 4488-2015), lands and territories (file 121-2014) and traditional legal systems (file 943-2017). Another positive development was the consultations conducted in their territories by the Government to develop a national plan of action for the International Decade people of African Descent and Garífuna (see A/HRC/28/3/Add.1, para. 56). Nevertheless, indigenous peoples and Afro-descendants generally face high levels of discrimination, inequality and exclusion, particularly women and girls (A/HRC/34/3/Add.1, para. 43). The Central American Institute for Fiscal Studies estimates that public spending for indigenous peoples is less than half of that of the rest of the population.²³

31. There continued to be a lack of protection for the collective property of indigenous peoples, particularly affecting women in the case of land titling and access to credits.²⁴ This lack of protection and the continued fragmentation of ownership of indigenous communal lands have facilitated the negotiation of individual buy-sell agreements in the context of extractive and development projects, which has a negative impact on the integrity of communally held lands and collective decision-making. Importantly, one of the reparation measures ordered in the Sepur Zarco case (see A/HRC/34/3/Add.1, para. 7) was the guarantee of access to land for Q'eqchi' women.

32. Some progress was made in jurisprudence in 2017, for example in the protection of the collective property rights of indigenous peoples,²⁵ such as the restitution of ancestral lands to the Chortí community of Jocotan,²⁶ the Xinca community of San Francisco Jumaytepeque²⁷ and the Q'eqchi' community of San Pablo Chinaja.²⁸ In these cases, anomalous registration of collective lands led to land titles being placed in the hands of municipalities or private actors. In the case of the Chortí community, this registration facilitated the issuing by the

²¹ Information received by OHCHR from the Office of the Ombudsman in November 2017. See also OHCHR, Procurador de los Derechos Humanos, *La aplicación de la prisión preventiva en Guatemala: un problema de derechos humanos*, 2016.

²² OAS, "Preliminary Observations to the IACHR's On-Site Visit to Guatemala", 4 August 2017.

²³ Mark Peñate, Enrique Maldonado, *Inversión en pueblos indígenas*, ICEFI, 2017.

²⁴ See Segeplán, *Agenda 2030 para el desarrollo sostenible* (see footnote 2), p. 74.

²⁵ Cases supported by the Maya Programme (see www.gt.undp.org/content/guatemala/es/home/operations/projects/democratic_governance/programa-maya.html).

²⁶ Third Chamber of the Court of Appeals, Civil and Commercial Branch, injunction 01010-2016-00059.

²⁷ Second Chamber of the Court of Appeals, Civil and Commercial Branch, file SGT 01009-2016-00199, injunction 139-2016.

²⁸ Second Chamber of the Court of Appeals, Civil and Commercial Branch, Injunction 01008-2016-00198.

municipality of a 50-year lease to a private actor over lands where a hydroelectric project is operating.²⁹

33. Authorities at different levels continued to fail to meet their obligations of consultation with indigenous peoples with the aim of obtaining free, prior and informed consent. A “guide on minimum standards for consultations with indigenous peoples”, issued by the Ministry of Labour in July, was not developed in accordance with a consultation process aligned with international standards, despite meetings held in distinct regions. Debates surrounding the right to consultation often mischaracterize it as merely a procedural formality or a mechanism of conflict resolution or impact mitigation, without ensuring the protection of human rights and the genuine participation of the indigenous peoples concerned. It is important to ensure the holding of consultations at the earliest stages of projects, during the environmental and social impact assessments. This would be in line with their obligations and also prevent the accumulation of judicial complaints and court judgments.

34. During the visit of the High Commissioner, representatives of indigenous peoples stressed that they were not opposed to development, but were against those who exploited their land under the pretext of development.³⁰ In cases of projects affecting indigenous peoples, the State seemed to prioritize its responses to security situations over attention to their impact on human rights, as in Ixquisis, Huehuetenango, where the presence of the State is limited to military and police bases. In some cases, companies provided certain benefits to groups within communities to garner support for projects, without respecting community decision-making processes, which led to internal divisions. Actions such as these have a negative impact on the feasibility of genuine consultation processes.

35. In May, the Constitutional Court issued a judgment regarding the lack of consultations held in the case of two hydroelectric projects in Santa María Cahabón, Alta Verapaz (files n.90-2017, 91-2017 and 92-2017). It ruled that the projects could continue while consultations were being held, despite the criticism of the indigenous peoples concerned.

D. Migration and internal displacement

36. The Migration Code, which came into force in April, reflects progress in the acknowledgement of the rights of migrants in transit, including equal access to services related to health, education and protection. Of concern, however, is the lack of full recognition of the principle of non-refoulement, the introduction of expedited return procedures without due process, and the introduction of fines for unauthorized presence (arts. 50, 51 and 65). The creation of the migration authority under the Code has been delayed. OHCHR received allegations of sexual violence, trafficking, arbitrary and prolonged detention, lack of access to legal advice and representation, and extortion by individuals and State authorities. Institutional support for migrants is insufficient, including for access to justice and for the protection of persons who have returned to Guatemala.

37. Structural problems, including discrimination, poverty, violence and other human rights violations, are displacing people within Guatemala and in some cases forcing them to migrate. The lack of land tenure security, especially for indigenous peoples, has led to patterns of forced evictions and their consequent internal displacement. Various types of discrimination and violence have also led to the internal displacement of people in search of protection, including youth, women, children, LGBTI persons, indigenous peoples, and small entrepreneurs victims of extortion. There is, however, no comprehensive policy in place to address the situation of displaced persons, including victims of forced evictions, as the State does not recognize the issue of internal displacement.

²⁹ National Property Registry, Inscripción No. 2, Finca 1732, folio 29, libro 23, Chiquimula (2000).

³⁰ OHCHR, “Statement by UN High Commissioner” (see footnote 13).

E. Rights of human rights defenders and journalists

38. In 2017, the Unit for the Protection of Human Rights Defenders in Guatemala (UDEFEQUA), a non-governmental organization, registered 438 attacks against human rights defenders, including 12 deaths. The organization adds to the number of deaths the 41 girls who died in the Hogar Seguro Virgen de la Asunción (see para. 10 above).³¹ Defenders most affected by attacks were those engaged in issues related to land, territories and natural resources. Women and LGBTI human rights defenders were subject to particular forms of attacks on the basis of their gender, sexual orientation or gender identity, which is not always taken into account in registration or protection responses. Impunity for attacks against human rights defenders and journalists continued.

39. OHCHR documented the largest number of attacks against human rights defenders in the departments of Guatemala, Alta Verapaz, Izabal, San Marcos, Huehuetenango, Chiquimula and Zacapa. It continued to receive complaints regarding attacks against defenders in the context of implementation of extractive and development projects. Such cases included the killing, in January, of Sebastián Alonso during a peaceful protest against the Pojom II hydroelectric project in Ixquis, Huehuetenango; and, in May, of Carlos Maaz Coc during peaceful protests by local fishermen against the alleged pollution of Lake Izabal by the CGN mine in El Estor, Izabal. In both cases, failure to collect key evidence by State authorities in a timely manner may undermine investigations and thus hinder efforts to bring those responsible to justice.

40. The misuse of criminal procedures against human rights defenders – often those whose work could affect the economic interests of private entities – to prevent or sanction their work remains a matter of concern. OHCHR documented irregularities in criminal cases against defenders, including the issuance of arrest warrants based on insufficient evidence, lack of verification of witness testimony, excessive use of pretrial detention, and lack of compliance with due process norms and standards. This pattern was illustrated in several cases, including in the context of forced evictions in Alta Verapaz; the recuperation of traditional lands in Chiquimula; the denouncing of environmental contamination in Izabal; and the development of hydroelectric projects in Huehuetenango and San Marcos.

41. Progress was made in the development of a public policy on the protection of human rights defenders, spearheaded by the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH), with the participation of civil society. The need to strengthen the protection mechanisms of the Personal Protection and Security Division of the National Civil Police remains, through better registration and tracking of cases; increased variety and flexibility of protection measures; monitoring, evaluation and consultation with human rights defenders before protection measures are lifted; and adequate funding, to ensure vehicles and fuel for police patrols. Recognition by the State of the legitimate work of human rights defenders is also essential to enhance their protection, as is the strengthening of the Unit for the Analysis of Attacks against Human Rights Defenders of the Ministry of the Interior.

42. Given the ongoing concentration of media ownership by a few companies, independent media outlets and journalists continued to be subjected to attacks and threats, including from false social media accounts. In 2017, the Office of the Attorney General registered 93 attacks against journalists, including four killings;³² this number includes attacks against journalists reporting on corruption and impunity. At the local level, organized crime and local authorities allegedly involved in corruption have attempted to silence journalists.³³ In October 2017, a court for high-risk crimes issued a judgment concerning the murder of two journalists in Mazatenango, Suchitepéquez in 2015. The immunity of the alleged mastermind, a member of Congress, was finally lifted in November 2017 (A/HRC/31/3/Add.1, para. 39).

³¹ See www.udefegua.org.

³² Information received by OHCHR from the Office of the Attorney General for January-October 2017.

³³ See James L. Cavallaro et al, *Silenced Zones: Highly Dangerous Areas for the Exercise of Freedom of Expression* (Washington, D.C., OAS, 2017).

F. Violence against women

43. Violence against women remains a grave problem in Guatemala, as shown by the large number of violent deaths of women reported by INACIF (see para. 22 above). In its concluding observations on the combined eighth and ninth periodic reports of Guatemala (CEDAW/C/GTM/CO/8/9), the Committee on the Elimination of Discrimination against Women emphasized the persistence of discriminatory stereotypes of women, “which contributes to the perpetuation of high levels of violence” and exclusion, including in access to justice.

44. In 2017, the Office of the Attorney General registered 14,750 complaints of violence against women. The specialized courts for femicide registered 6,364 cases (an increase of 13 per cent over 2016). These resulted in 2,181 judgments (24 per cent more than in 2016), including 1,647 convictions and 534 acquittals. In 2017, a secretariat for women’s affairs was established in the Office of the Attorney General to monitor and implement gender policies. New specialized courts for femicide and violence against women were created in Chimaltenango. One serious concern, however, is the ongoing allocation of insufficient resources for the prevention of all forms of violence against women and the protection of victims, leading to a lack of funding for specialized shelters, such as the support centres for women victims of violence (CAIMUS).

45. An important development was the approval, in August, of reforms to the Civil Code prohibiting the marriage of children under 18 years (decree 13-2017) (see A/HRC/31/3/Add.1, para. 52). Pregnancy rates among girls remain very high (out of 52,288 births registered, 24,258 were from mothers under 18 years);³⁴ comprehensive measures that could address this issue, such as the elimination of barriers to information and the availability of adequate sexual and reproductive health services, including legal abortion services, have yet to be taken (see CEDAW/C/GTM/CO/8/9, para. 37).

G. Rights of the child

46. The child protection system is marked by serious deficiencies in preventing human rights abuses against children. The State favours the institutionalization of children over support by families and communities, which has a particularly negative impact on indigenous children, who are removed from their cultures, and children with disabilities, who are in effect segregated from society.

47. In the case of the Hogar Seguro Virgen de la Asunción shelter, authorities had failed to address allegations of psychological, physical and sexual violence reported by some children and their families. On 7 March, a large group of children fled the institution in protest at the abuses and poor living conditions. Following their capture by police, the 56 girls were more severely punished (locked in a smaller classroom) than the 43 boys. It allegedly took more than nine minutes for authorities to open the door after a fire broke out in the classroom, and 41 girls consequently died. In the ongoing legal case regarding the incident, one of the plaintiff organizations alleged torture, while the Office of the Attorney General filed charges, such as involuntary manslaughter and mistreatment of children.

48. One concern was the situation of more than 500 children, particularly children with disabilities, transferred from the institution following the incident, without adequate control by the State. Legal reforms are required to develop a comprehensive system to guarantee the rights of children.

H. Rights of LGBTI persons

49. LGBTI persons continued to face systemic discrimination and violence. In 2017, 15 cases of killing of transgender women, several in the context of extortion and violence by

³⁴ Information received by OHCHR from the Observatory of Sexual and Reproductive Rights and National Registry of Persons for January-September 2017.

organized crime, were documented by the non-governmental organization OTRANS.³⁵ The State continued to record such cases as deaths of men, resulting in a lack of visibility of gender identity and sexual diversity, and hindering investigations and the development of preventive measures.

50. Discrimination based on sexual orientation was evident in bill 5272, “on the protection of life and family”, submitted to Congress in March, which states that “no one is obligated to accept conduct and practices that are not heterosexual as normal”. In November, bill 5395, on “the gender identity of transgender persons”, was presented for the full recognition of gender identity. Both bills were still under consideration as at December 2017.

51. The Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (see para. 41 above), together with civil society organizations, has been developing a public policy on LGBTI persons. In November, on the occasion of his visit to Guatemala, the High Commissioner and the Ombudsman launched the national Free and Equal campaign for LGBTI equality.

I. Rights of persons with disabilities

52. Persons with disabilities account for 10 per cent of the population, and women tend to be more affected by disability than men.³⁶ Bill 5125 on the rights of persons with disabilities was discussed in Congress, but not approved. Effective measures have not been developed to guarantee the inclusion of persons with disabilities in the community, including access to reproductive health services for women, education and employment. The Government has not established national mechanisms to follow up on the Convention on the Rights of Persons with Disabilities (see CRPD/C/GTM/CO/1, para. 77).

53. Although some of the measures requested by the Inter-American Commission on Human Rights regarding the psychiatric institution Federico Mora (MC 370/12) have been implemented (see A/HRC/31/3/Add.1, para. 28 and A/HRC/34/3/Add.1, para. 34), it is essential also that the institutional reforms recommended by the Committee on the Rights of Persons with Disabilities proceed, including the establishment of an independent mechanism to monitor institutions for persons with disabilities (CRPD/C/GTM/CO/1, para. 44).

J. Economic and social rights

54. During his visit to Guatemala, the High Commissioner highlighted the need for transformation to overcome structural exclusion, inequality and discrimination. The national census to be conducted in 2018 is potentially an important step in the identification of inequalities on the basis of disaggregated information, particularly with regard to women, indigenous peoples, Afro-descendants, persons with disabilities and children. One of the challenges when conducting the census will be determining the percentage of the indigenous population, which (depending on sources) varies between 40 and 60 per cent. Information collected through the census could facilitate the incorporation of a human rights-based approach into all policies in order to leave no one behind.

55. A more substantial commitment by the private sector to human rights could also strengthen the State’s capacity and resources to address existing challenges. Following his visit, the High Commissioner highlighted the need for companies to ensure respect for human rights and due diligence in all their actions, and was encouraged that an emerging group was open to working to that end.³⁷

³⁵ Information received by OHCHR from OTRANS for January-November 2017.

³⁶ Consejo Nacional para la Atención de las Personas con Discapacidad (CONADI), Informe de la II Encuesta Nacional de Discapacidad en Guatemala: ENDIS 2016, p. 5.

³⁷ OHCHR, Statement by the UN High Commissioner” (see footnote 13).

1. Land and water

56. Guatemala is one of the most unequal countries in Central America in terms of land distribution.³⁸ According to the Secretariat of Agrarian Affairs, 766 land conflicts had been registered as at October 2017.

57. Land conflicts include incidents of forced evictions without resettlement plans. In some cases, communities were displaced without the opportunity to demonstrate potential property rights over lands from which they were evicted. As at December 2017, in Peten, nine communities living in the Laguna del Tigre protected area were at imminent risk of being evicted, purportedly in order to protect the environment. Activities conducted by private companies within that area were, however, permitted to continue.

58. The Government is developing a policy on human settlements in protected areas. One good practice is the agreement signed in 2016 between the National Commission on Protected Areas (CONAP) and the indigenous Q'eqchi' community of Paso Caballos (Laguna del Tigre), allowing the latter to remain on the land under certain conditions, including controls over agricultural burning during the dry season and immigration.

59. No progress WAS made in the development of a national water law (see A/HRC/34/3/Add.1, para. 66), and the State continued to fail to guarantee domestic water use, including in the context of competing commercial exploitation. Some 40 per cent of homes do not have access to an improved drinking water source.³⁹ The environmental impact of projects affecting water resources is assessed for sustainability on a project by project basis, but does not take into account the aggregate impact of multiple projects on the same river, such as in the Cahabón, Xacbal, Chixoy or Jute rivers.

60. In 2017, the Office of the Attorney General registered 1,146 complaints related to environmental protection and natural resources; 56 per cent of the cases were dismissed, while 16 per cent were resolved through a legal measure similar to a plea deal. In most cases, the participation and agreement of affected communities, the proportionality of reparation measures or guarantees of non-recurrence were not considered in the resolutions. The case of the alleged contamination of La Pasión river in Sayaxché, Petén by the palm oil company REPSA was still pending a decision (see A/HRC/31/3/Add.1, para. 62).

2. Labour and social security

61. The amendments made to the Labour Code in March (decree 007-2017) were a positive development, as they restored the power of the Inspectorate General of Labour to sanction employers in the event of violation of labour rights, and aim at strengthening transparency and compliance with labour standards.

62. Many challenges nonetheless remain in ensuring access to decent work. Of the total working age population, 61.73 per cent are economically active; 64.8 per cent are men, 35.2 per cent are women, while 68.8 per cent work in the informal sector.⁴⁰ The agriculture and manufacturing sectors are the largest employers, providing 42.6 per cent of all jobs.⁴¹ Despite a minimum wage of \$383.46,⁴² the national average salary is \$290.32 per month, which does not cover the “basic basket”.⁴³

63. According to the Guatemalan Social Security Institute (IGSS), only 22.9 per cent of workers in the formal sector are affiliated, while 17,000 employers do not meet their financial

³⁸ Instituto Nacional de Estadística, República de Guatemala: Encuesta Nacional de Condiciones de Vida 2014: Principales resultados, December 2015, p. 19.

³⁹ Ministerio de Salud Pública y Asistencia Social, Instituto Nacional de Estadística, Secretaría de Planificación y Programación de la Presidencia, Informe Final : VI Encuesta Nacional de Salud Materno Infantil 2014-2015, Guatemala, January 2017.

⁴⁰ Instituto Nacional de Estadística, Encuesta Nacional de Empleo e Ingresos, ENEI 1-2016, p. 21.

⁴¹ Ibid., p. 24.

⁴² Ministerio de Trabajo y Previsión Social, Salario Mínimo 2018, available at www.mintrabajo.gob.gt/index.php/salariominimo.html.

⁴³ Instituto Nacional de Estadística, Encuesta Nacional (see footnote 40), p. 39.

obligations with the Institute.⁴⁴ An emblematic case is the San Gregorio Piedra Parada plantation, where former workers have no social security owing to their former employer's failure to pay the required contributions. In July, the Ministry of Labour stated before Congress that "IGSS was not fulfilling its obligations and should file a criminal case against the San Gregorio farm for non-compliance with social security payments" (file 014-2016). In June, 72-year-old Eugenio Lopez Lopez, an ex-worker of the farm, was killed during demonstrations demanding due retirement benefits (see A/HRC/34/3/Add.1, para. 42).

64. The situation of people employed in the domestic sector (estimated at 200,000), most of whom are indigenous women, is a serious concern.⁴⁵ Most domestic employees are hired informally and are not legally entitled to a working schedule, limited working hours, weekly rest, public holidays or the payment of benefits.

3. Health and food

65. Only 3.15 per cent of gross domestic product is allocated to the health sector.⁴⁶ Despite the initiation of intercultural dialogues,⁴⁷ the health-care system has struggled to integrate the work of indigenous midwives, who provide indispensable comprehensive maternal health-care for indigenous women and communities, as recognized by the Constitutional Court.⁴⁸ Indigenous midwives take care of at least 34 per cent of all births in Guatemala.⁴⁹

66. The chronic malnutrition of children remains a major issue. According to information provided by the Food and Nutritional Security Secretariat, in 2017 (up until week 51), 111 deaths of children under 5 years of age due to chronic malnutrition were registered, although the actual number is probably much higher. In August, Mavelita Interiano Amador, a Maya Chortí child, died from malnutrition. She had been one of five complainants in a 2016 case before the Constitutional Court relating to chronic malnutrition among children in Camotán, Chiquimula, and the Court had ordered protection measures for her. The case demonstrates the serious shortcomings in the State's response to structural problems contributing to chronic malnutrition (see A/HRC/34/3/Add.1, para. 75).

IV. Activities of the Office of the High Commissioner in Guatemala

67. OHCHR conducted more than 70 missions in Guatemala to monitor the situation of human rights. In November and December, it undertook visits to seven departments, during which it held 172 meetings involving 1,614 people. Throughout the year, OHCHR, in coordination with the National Civil Police and the Ombudsman, deployed teams to observe demonstrations.

68. The Office provided technical advice to Congress and civil society on international human rights standards relating to bills on the protection of life and family; sexual education; the national system for the protection of children and adolescents; and reforms to laws on injunctions, the judicial career and the Criminal Procedure Code (relating to pretrial detention, juvenile justice and the acceptance of charge). It provided technical assistance on, and observed, the election of the director of INACIF, the Ombudsman and rapporteurs of the National Office for the Prevention of Torture.

69. OHCHR held training sessions on human rights standards for staff members of the Office of the Attorney General, judges, magistrates and legal clerks, including of the Supreme Court of Justice and the Constitutional Court. It also conducted, with the regional office of

⁴⁴ Instituto Guatemalteco de Seguridad Social, Oficio DAE-580-2017.

⁴⁵ Instituto Nacional de Estadística, Encuesta Nacional (see footnote 40), p. 57.

⁴⁶ See Segeplán, *Agenda 2030 para el desarrollo sostenible* (see footnote 2), p. 92.

⁴⁷ Case supported by the Maya Programme.

⁴⁸ Constitutional Court, file 1380-2017, p. 11, 30 August 2017.

⁴⁹ Instituto Nacional de Estadística, Encuesta Nacional de Condiciones de Vida, 2014, Tomo I, January 2016, p. 172.

OHCHR in Central America, a virtual course on the Latin American protocol for the investigation of cases of femicide.

70. The Office held training workshops on a human rights-based approach to the implementation of the Sustainable Development Goals and human rights indicators for the Secretariat for Planning and Programming of the Office of the President, the National Statistics Institute, the Ombudsman, indigenous peoples, members of civil society and the United Nations country team. With the United Nations Population Fund, OHCHR supported the National Statistics Institute in incorporating a rights-based approach to the 2018 national population and housing census, and facilitated coordination with indigenous and Afro-descendant people in that context.

71. OHCHR finalized the implementation of the second phase of the Maya Programme, financed by the Government of Norway. It provided technical assistance to the Government and indigenous peoples on 11 strategic litigation cases and follow-up to seven court rulings involving rights relating to transitional justice, land and resources, and bilingual intercultural education. OHCHR supported the drafting and publication of the policy of the Office of the Attorney General on access to justice for indigenous peoples, translated a child-friendly version of the Constitution into the Kaqchikel, Q'eqchi' and Mam languages, implemented a certificate programme on indigenous peoples' rights for judges, prosecutors and public defenders, and held a workshop with indigenous women human rights defenders on protection.

72. The Office facilitated space for dialogue with indigenous authorities on the rights of indigenous peoples, particularly with regard to access to justice, consultation, land and resources. It conducted a course on international standards on land, a healthy environment and indigenous peoples, with the participation of key government institutions, and provided assistance to the Presidential Commission against Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA) in the formulation of the national plan of action for the International Decade for People of African Descent and Garifuna people.

73. OHCHR continued its implementation of a project on the protection of human rights defenders, financed by the European Union. It promoted protection measures with relevant authorities in cases of attack against human rights defenders, in coordination with victims; attended meetings of the Unit for the Analysis of Patterns of Attacks against Human Rights Defenders; provided technical assistance to develop a public policy on attacks against human rights defenders; held a workshop on criminalization with human rights defenders; and worked with the Office of the Attorney General on an internal protocol to avoid the misuse of criminal procedures against defenders.

74. In the case of the Hogar Seguro de la Virgen de Asunción shelter, OHCHR issued a joint report with the United Nations Children's Fund (UNICEF);⁵⁰ facilitated the visit of international experts to Guatemala; advised State actors and civil society on structural reforms to the child welfare system; and monitored criminal trials related to the case, as well as the situation of children transferred from the institute.

75. With the Office of the United Nations High Commissioner for Refugees (UNHCR), the Ombudsman and the Rafael Landívar University, OHCHR carried out a study on forced internal displacement due to violence. It also co-led a United Nations country team protection group.

76. OHCHR assisted the Ministry of Health in the establishment of a human rights unit; provided technical assistance to the Ministry of Labour in the development of a protocol of procedures for the labour inspectorate and in updating regulations on occupational health and safety; together with the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the International Labour Organization (ILO), it launched a campaign to support ratification of the ILO Domestic Workers Convention (No. 189); made recommendations for the National Commission on Protected Areas on the development of a

⁵⁰ OHCHR and UNICEF, Informe sobre la crisis del Hogar Seguro Virgen de la Asunción y al protección de la niñez y la adolescencia en el corto y largo plazo, 14 March 2017.

policy on human settlements in protected areas in Petén; and continued to assist the Ombudsman and civil society in guaranteeing the right to food.

77. OHCHR presented the annual report of the High Commissioner submitted to the Human Rights Council (A/HRC/34/3/Add.1) in various regions, and promoted human rights through press releases, interviews, editorials and social media. It also launched the Free and Equal campaign.

78. OHCHR implemented a project on countering discrimination and combating impunity, funded by the Government of Sweden. With other United Nations entities, it contributed to peacebuilding fund projects on human rights defenders, justice for women and transitional justice.

V. Cooperation with regional and international human rights mechanisms

79. OHCHR assisted the Ministry of External Relations and COPREDEH in developing a system to monitor the implementation of recommendations by international human rights mechanisms. It also assisted the Government, civil society and the United Nations country team during the review of Guatemala before the Committee on the Elimination of Discrimination against Women and during the universal periodic review.

80. OHCHR assisted the Inter-American Commission on Human Rights during its visit to Guatemala in August, and joined its mission to the Laguna Larga community. OHCHR supported the rapporteurs on human rights defenders and on freedom of expression of the Commission in the organization of a forum on the protection of human rights defenders and journalists, and standards for free and inclusive radio. It also supported the presentation of the report of the Commission on high-risk areas to carry out journalism.⁵¹

81. In November, Guatemala participated in the third cycle of the universal periodic review and received 205 recommendations. While accepting 150, it noted 55, including those relating to the abolition of the death penalty, enforced disappearances, constitutional reform of the justice system, the misuse of criminal procedures against human rights defenders, sexual and reproductive health and education, and sexual diversity. The State presented its latest periodic report to the Committee on the Elimination of Racial Discrimination (CERD/C/GTM/16-17).

VI. Recommendations

82. The United Nations High Commissioner for Human Rights urges the authorities of Guatemala to implement his previous recommendations as well as those of United Nations human rights mechanisms, in consultation with civil society. In particular, the High Commissioner:

(a) Urges Congress and the executive to advance with structural reforms and policies to address exclusion, discrimination and inequality, in particular for indigenous peoples, Afro-descendants, persons with disabilities, women, children, migrants, and displaced and LGBTI persons, in consultation with the groups affected, including through the implementation of the Sustainable Development Goals and relevant recommendations of regional and international human rights mechanisms;

(b) Calls upon the National Statistics Institute to ensure the collection of disaggregated data and a human rights, gender and multicultural approach in the conduct of the national census;

(c) Calls upon the State and other sectors, including the private sector and the media, to promote and support efforts to protect human rights, and to combat discrimination and inequality, to consolidate a culture of democracy and human rights;

⁵¹ James L. Cavallaro et al, *Silenced Zones: Highly Dangerous Areas* (see footnote 33).

- (d) Urges the authorities to strengthen the fight against impunity and corruption, including by ensuring that the election of the new Attorney General respects the principles of objectivity, transparency, publicity and suitability;
- (e) Urges all State institutions and the private sector to respect judicial independence and to ensure that the justice system authorities can fulfil their obligations without being subject to pressure, threats or attacks;
- (f) Urges Congress to adopt critical pending constitutional and legal reforms, including to the law on elections and political parties;
- (g) Urges the judiciary to implement the law on the judicial career to create the conditions for an independent justice system;
- (h) Calls upon the Ministry of the Interior to develop measures to strengthen the professional police career and internal protocols of conduct, including through amendments to the law on the National Civil Police;
- (i) Encourages the Ministry of the Interior and the Ministry of Defence to finalize the withdrawal of the military from citizen security tasks, under appropriate supervision;
- (j) Urges the State to guarantee the rights of indigenous peoples, including the protection of their lands and natural resources, collective intellectual property, and traditional knowledge and cultural expressions;
- (k) Urges Congress to consult with indigenous peoples regarding any law or regulation on the right to consultation and prior, free and informed consent, in accordance with international standards;
- (l) Encourages the executive to develop measures to address protection needs and access to justice for migrants, to assist victims of violence at risk of displacement, and to adopt a comprehensive policy to address internal displacement;
- (m) Calls for the implementation of a rights-based approach to prevent forced evictions that are incompatible with international standards, including basic principles and guidelines on development-based evictions and displacement;
- (n) Urges the State to guarantee the human rights of children, preventing their institutionalization, prioritizing the best interests of the child, and incorporating a culturally sensitive approach into the child protection system;
- (o) Calls upon the Government to urgently take measures to support survivors and families affected in the Hogar Seguro Virgen de la Asunción case, in particular by providing psychological, legal and economic assistance;
- (p) Recommends that the Office of the Attorney General develop an internal protocol to prevent the misuse of criminal procedures against human rights defenders;
- (q) Urges the Office of the Attorney General to allocate sufficient human and financial resources to its human rights office to effectively investigate and sanction cases of attacks against human rights defenders and journalists;
- (r) Urges the Ministry of the Interior to ensure the effective implementation of protection measures for human rights defenders, incorporating gender and culturally sensitive approaches in risk assessments;
- (s) Urges the Government to adopt the public policy on the protection of human rights defenders;
- (t) Urges the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights to adopt a public policy on the rights of LGBTI persons and the authorities to develop measures to prevent killings and other attacks against transgender persons, including through prompt and thorough investigation, and the recognition of gender identity.