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Activities of the Office of the United Nations High Commissioner for Human Rights in Guatemala

Report of the Office of the United Nations High Commissioner for Human Rights*, **

Summary

In the present report, the United Nations High Commissioner for Human Rights describes the situation of human rights and the activities of the Office of the High Commissioner in Guatemala from 1 January to 31 December 2018. She highlights progress and challenges, with a focus on issues relating to justice, security, the situation of human rights defenders, journalists, indigenous peoples, persons of African descent, women, lesbian, gay, bisexual and transgender persons, persons with disabilities and migrants, and economic, social and cultural rights. She outlines the relevant activities of the Office and makes a number of recommendations to various State institutions and other stakeholders.

* The summary of the report is being circulated in all official languages. The report itself, which is annexed to the summary, is being circulated in the language of submission and in Spanish only.

** Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



Annex

Report of the Office 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 Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Government of Guatemala, signed in January 2005 and renewed in September 2017 for an additional three years.

2. The report covers the year 2018, and is based on information collected and analysed by OHCHR in Guatemala. It highlights the activities carried out by the Office with relevant authorities and other stakeholders to strengthen the promotion and protection of human rights.

II. Context

3. Guatemala continues to face systemic poverty, inequality, discrimination, exclusion and a high level of impunity. In 2018, the country was ranked 127 in the Human Development Index, the second lowest in its region, falling two points due to the lack of gender equality, and social and economic inequality.

4. In 2018, social and political tensions deepened, and there was a backlash against the efforts to combat impunity and corruption. In this context, peaceful demonstrations were held, led by university students, indigenous peoples and campesino communities. Sweeping changes were made in the executive branch, including removals and resignations in key ministries. As a result, important policies and reforms relating to human rights were rolled back, notably within the Ministry of the Interior. Congress did not make progress in the adoption of laws in critical human rights areas, instead promoting a regressive agenda that could further entrench impunity, restrict civic space,¹ and undermine the rights of indigenous peoples, women, and lesbian, gay, bisexual and transgender persons. These trends risk reversing the progress made in the implementation of the 1996 peace agreements that brought the internal armed conflict to an end.

5. On 31 August 2018, the President of the Republic, Jimmy Morales, in the presence of members of the military and police forces, publicly announced that he would not renew the mandate of the International Commission against Impunity in Guatemala in 2019. On 3 September, the Government announced that it would not allow Iván Velásquez, the head of the Commission, to re-enter the country “for reasons of public order and security”.² On 5 September, the Secretary-General expressed serious concern over the decision and confirmed that Commissioner Velásquez would continue to lead the Commission from abroad.³ On 16 September, the Constitutional Court ordered that the Commissioner be allowed back into the country (file 4207-2018). On 19 December, the Government requested that 11 investigators with the Commission leave the country within 72 hours. In response, the Constitutional Court granted injunctions to suspend the decision regarding

¹ For all communications sent and information received, see <https://spcommreports.ohchr.org>. For the cases mentioned here, see GTM 8/2018, the response from the Government dated 20 July 2018, and GTM 3/2018.

² Letter to the General Directorate of Migration, No. 72-2018-RMV.

³ See www.un.org/sg/en/content/sg/statement/2018-09-05/statement-attributable-spokesperson-secretary-general-guatemala.

those investigators (file 5346-2018). On 26 December, the Office of the Counsel General filed a request to lift the immunity of three judges of the Constitutional Court, alleging that they had acted “illegally and arbitrarily”.

6. The Office of the Attorney General and the International Commission against Impunity in Guatemala continued to investigate and prosecute members of criminal networks that still permeate all branches of the State. The former Vice President, Roxana Baldetti, was sentenced to over 15 years in prison for corruption (file M001-2015-28365), and the former Minister of the Interior, Mauricio López Bonilla, to over eight years for fraud (file MP 001-2016-5771). In April 2018, Alvaro Arzú, long-standing Mayor of Guatemala City and former President, died while under investigation for corruption. In May, the President elected a new Attorney General following a selection process led by an appointment committee. In general, there are still concerns regarding the independence and objectivity of appointment committees for the selection of judicial officials (A/HRC/28/3/Add.1, para. 22).

7. Intolerance of dissent increased and the freedoms of expression, association and peaceful assembly continued to be under threat. There was an increase in the number of murders of human rights defenders, which reached a total of 26 at the end of December. There is concern that violence against human rights defenders could increase in the period leading up to the 2019 general elections. There was also an increase in threats to the independence of judges and magistrates. The Ombudsperson was subjected to smear campaigns and summoned for hearings in Congress, in acts that were perceived as harassment.

8. Opportunities for international cooperation with the Government were reduced, including by delays in the approval of projects. In May, the President requested the substitution of the ambassadors of Sweden and the Bolivarian Republic of Venezuela; the Constitutional Court granted a provisional injunction against the decision concerning the Ambassador of Sweden.

9. In May, the Special Rapporteur on the rights of indigenous peoples visited Guatemala, meeting with Maya, Xinka and Garifuna peoples. She identified widespread racism and discrimination as the main structural problems affecting indigenous peoples, stating that they amounted to “de facto racial segregation”. The Special Rapporteur referred to the painful patterns of violence and repression, including an increase in the number of murders of indigenous defenders, which kept alive the legacy of abuse and genocide dating from the time of the internal armed conflict (A/HRC/39/17/Add.3, paras. 6–7 and 60).

10. The year was also marked by serious humanitarian situations. More than 194 people died and at least 234 disappeared as a result of the eruption of the Fuego volcano on 3 June. Some 12,823 people were evacuated from their homes, but only 3,343 were relocated to temporary shelters.⁴ The shelters did not comply, however, with international standards, leading to tensions with the Government. Efforts to locate missing persons, including some involving the use of dermatoglyphics and DNA technology, are ongoing. Some of the communities that were evacuated had been previously displaced during the armed conflict and relocated to the slopes of the volcano.

11. Over a year after the death of 41 girls in a fire in the Hogar Seguro Virgen de la Asunción, a government-run shelter for children, in March 2017, the 15 survivors and 56 families of the victims have not yet received adequate psychological, legal and economic support. The adoption, in August 2018, of a law to provide financial support to the survivors, and the declaration of 8 March as the national day to commemorate the victims of the tragedy, represent important but insufficient steps to guarantee dignified and transformative reparation. There were delays in the criminal trial, and the State has yet to implement much-needed structural changes to the child protection system. In November, OHCHR issued a report on the tragedy, making recommendations to the authorities.⁵

⁴ Information from the National Disaster Reduction Coordinator (17 November 2018).

⁵ See OHCHR in Guatemala, *Las víctimas del Hogar Seguro Virgen de la Asunción: un camino hacia la dignidad* (2018).

12. Inequality and widespread violence, such as gang violence and organized crime, continued to drive migration, including migration of children. Thousands of people from Central America travelled north, through Guatemala, from October.⁶ In December, two Guatemalan migrant children, Jakeline Caal (7 years old) and Felipe Gómez (8 years old), died while detained in a Customs and Border Protection centre in the United States of America. More than 460 children and adolescents from Guatemala had been separated from their families by the migration authorities of the United States as at June 2018.⁷ As at September, 79,864 Guatemalan citizens had been deported from the United States and Mexico (51 per cent more than in 2017).⁸ Migrants make an essential contribution to the economy, shown by the fact that remittances make up 11.3 per cent of the GDP of Guatemala, close to the total GDP contribution from the agriculture, cattle, hunting, forestry and fishing industries.⁹

13. The first national population and housing census since 2001 was held in July and August. It gathered crucial information to better understand and address the economic and social needs of the population and to better implement the 2030 Agenda for Sustainable Development. Although questions on self-identification and identity, such as on languages spoken, were included in the census, OHCHR received complaints that those questions were not asked systematically or they were asked incorrectly, which may result in underregistration of the indigenous population.

14. The presidential, legislative and municipal general elections are scheduled to be held in 2019, and new high court judges will also be appointed. There is a crucial need for effective mechanisms in the period leading up to and during the elections to ensure the meaningful participation and adequate representation of the diverse Guatemalan population.

III. Progress and challenges in the protection of human rights

A. Justice

1. Judicial independence and the fight against impunity

15. Despite some progress, including rulings in transitional justice cases, OHCHR is concerned about the persistent impunity for past and present human rights violations and setbacks in ensuring judicial independence. Congress did not consider pending bills for the much-needed reform of the justice system (see A/HRC/37/3/Add.1, para. 8). Instead, it promoted bills that were incompatible with international standards, such as bill No. 5300 to reform the law on immunities, which would make it more difficult to file corruption complaints and other criminal charges against public officials, and bill No. 5377 to amend the National Reconciliation Act, which would grant a general amnesty for crimes committed during the armed conflict.¹⁰

16. In February, the Judicial Career Council was established, pursuant to the Judicial Career Act (Decree 32-2016 and its amendments). However, its ability to guarantee judicial independence has been affected by delays in the approval of its implementing regulations and the establishment of its subsidiary bodies.¹¹ In this regard, in July, civil society organizations filed an injunction to suspend the candidate selection process for the subsidiary bodies, alleging that there was a lack of transparency and objectivity. The injunction was granted by the Supreme Court of Justice in August 2018.

17. Judges, especially those with jurisdiction in “high-risk” cases (Decree 21-2009) relating to corruption and transitional justice, and public prosecutors continued to face

⁶ See GTM 14/2018.

⁷ Public statement by the Minister of Foreign Affairs to Prensa Libre, (19 June 2018).

⁸ Information from the International Organization for Migration (January to October 2018).

⁹ Bank of Guatemala, trimestral GDP, second trimester 2018 (October 2018). Available at www.banguat.gob.gt/inc/ver.asp?id=/estaeco/remesas/remfam2010_2018.htm&e=138076.

¹⁰ See GTM 5/2018.

¹¹ See GTM 11/2018.

attacks, reprisals and intimidation.¹² Spurious injunctions and requests to lift immunity were filed to remove some judges from their posts. One judge was the subject of eight such requests. The mainstream and social media were frequently used to discredit judges.

18. At times, the Supreme Court of Justice failed to assign the necessary support personnel or give basic supplies to certain judges, and it did not always allocate cases on the basis of objective criteria. Some judges were subjected to the misuse of administrative procedures by disciplinary bodies, including visits by court supervisors, sometimes daily or prior to hearings (A/HRC/37/3/Add.1, para. 15), and complaints before the Honour Tribunal of the Guatemalan Bar Association (A/HRC/28/3/Add.1, para. 24). Female judges and magistrates, especially in high-profile cases, suffered gender-based stigmatization, intimidation and attacks, including from colleagues.

2. Transitional justice

19. Historic progress was made in trials for crimes committed during the internal armed conflict. The unrelenting commitment of the State, including of the Office of the Attorney General, is essential to guarantee the rights to justice, truth, reparation and non-repetition.

20. In May, the high-risk court “C” issued its groundbreaking judgment in the Molina Theissen case on the enforced disappearance of 14-year-old Marco Antonio and the rape of his sister, Emma Guadalupe, in 1981 (file C-01077-1998-00002). The judgment recognized that practices of sexual violence, torture and enforced disappearance were part of the military strategy during the internal armed conflict. It reaffirmed that past cases of serious human rights violations could not be prescribed, nor could the defendants be granted amnesty. Five appeals have since been filed by the defence against the judgment. The Molina Theissen family has faced intimidation and harassment, including a criminal complaint against them. The judge and prosecutor have also had legal complaints made against them.

21. In September, the high-risk court “B” reaffirmed that the military had committed genocide and crimes against humanity against indigenous Ixil Maya peoples in 1982 and 1983 (file C-01076-2011-00015). However, the former military intelligence chief, José Mauricio Rodríguez Sánchez, was acquitted in the first instance. In November, the high-risk court “C” sentenced ex-military official Santos López Alonzo for crimes against humanity and sexual violence in the Dos Erres massacre of 171 people, including children, in 1982 (file C-01076-2010-00003). In 2018, various injunctions impeded progress in the CREOMPAZ case. The case relating to the sexual violence committed against Achi’ women between 1981 and 1985 is expected to start in early 2019.

22. Amendments to the law on injunctions, which would help to prevent and punish dilatory tactics often used by defendants, are pending. These tactics risk depriving victims of their right to justice, especially given the advanced age of many victims and defendants, as illustrated in the case of José Efraín Ríos Montt, who was accused of genocide and crimes against humanity for his alleged involvement in the Ixil genocide and the Dos Erres massacre, but died in April, before judgments in those cases were issued.

23. In March, the Office of the Ombudsperson, with the technical assistance of OHCHR, evaluated the work of the regional offices of the National Reparations Programme (see A/HRC/37/3/Add.1, para. 30). The evaluation revealed insufficient budget implementation, inadequate facilities and personnel, and a lack of gender-based and multicultural approaches in the work of the Programme. This was demonstrated by the fact that reparations had been provided in fewer than 100 of the 22,186 cases submitted.¹³

24. Despite some progress, there continued to be delays and a lack of coordination in the implementation of reparation measures ordered by the high-risk court “A” in 2016 in the

¹² See GTM 7/2018.

¹³ See Office of the Ombudsperson (Procuraduría de los Derechos Humanos), “Informe sobre el monitoreo de las oficinas regionales del Programa Nacional de Resarcimiento”, May 2018.

Sepur Zarco case.¹⁴ In the case relating to the hydroelectric dam in Chixoy, the Government is close to completing the process of individual reparations, and has begun efforts to implement collective reparation measures (see A/HRC/37/3/Add.1, para. 19).

25. Civil society initiatives led to the exhumation and burial of the remains of 172 victims of the armed conflict in Comalapa, Chimaltenango, which were important steps in the search for truth.

26. No progress was made in the institutionalization of the Historical Archive of the National Police, nor in the allocation of a budget by the State to guarantee its functioning and the preservation of historical memory.

3. Access to justice and indigenous jurisdiction

27. Despite the persisting limitations on indigenous peoples' access to justice, particularly due to geographical, cultural and linguistic barriers, indigenous peoples have increasingly turned to the judicial system for the protection of their rights.¹⁵ The Constitutional Court continued to consolidate its jurisprudence by recognizing the legal capacity of indigenous peoples to exercise their collective property rights, as in the case of the community of Santa Elena Samanzana II, Alta Verapaz (file 5533-2016).

28. In addition, judicial institutions improved their understanding of the central role played by indigenous authorities in administering justice and maintaining peace in their communities. For example, the secretariats responsible for indigenous peoples within the judiciary and the Office of the Attorney General continued to promote coordination mechanisms between indigenous and ordinary jurisdictions, including to address violence against women.

29. Some State institutions, however, disregarded decisions made by indigenous authorities, undermining their legitimacy. The four departments with the lowest recorded numbers of violent deaths in 2018 were those where indigenous peoples were the majority of the population, showing the preventive role of the indigenous justice system.

B. Security

30. In 2018, violent deaths decreased by 9 per cent compared to 2017, but remained considerably high, with an average of 13 violent deaths per day; 3,419 men, 642 women, 60 adults of unknown gender, 298 boys and 115 girls were killed between 1 January and 31 October. Violent deaths of women decreased by 3 per cent compared to 2017.¹⁶ Some 71 per cent of violent deaths were caused by firearms, with young people from 13 to 29 years old still the main victims (48 per cent). Six men died by lynching.¹⁷

31. Violence against women remains prevalent. Between 1 January and 30 September 2018, the Office of the Attorney General received 39,156 complaints of violence against women, 4,943 complaints of sexual violations and 341 complaints of femicide. During that period, its specialist unit on femicide secured 41 convictions. However, the unit only has one office covering the entire country. In August, the Government created the inter-institutional "Isabel-Claudina" alert system for the prompt search of missing women. According to the National Civil Police, between January and November 2018, 1,347 women were reported missing.

32. In 2018, there was a return to a more repressive approach to security, including increased military involvement in public security duties. There were major changes in key posts within the police, including the removal of the entire police directorate, which notably

¹⁴ In November, the Sepur Zarco decision was upheld on final appeal (file 2132-2018); see A/HRC/37/3/Add.1, para. 17.

¹⁵ File 4755-2017, 1 March 2018; file 5786-2017, 3 May 2018; file 5533-2016, 9 May 2018; file 5785-2017, 3 September 2018.

¹⁶ Information from the National Institute of Forensic Sciences (19 October 2018).

¹⁷ Information from the Office of the Ombudsperson (January–November 2018).

affected the units on criminal investigation and anti-kidnapping. Furthermore, 136 police officers were promoted without having completed the courses required by the training regulations for the National Civil Police.¹⁸

33. There were also changes within the Ministry of Defence. In March, 187 brigade and commander soldiers were removed without any adequate explanation. Despite the announcement made on 31 March that the military forces had been withdrawn from public security duties, armed forces continued to carry them out. On 31 August, during the President's announcement that the mandate of the International Commission against Impunity in Guatemala would not be renewed, members of military task forces in border areas led operations in Guatemala City, using vehicles with high-calibre artillery for military use.

34. The arrest, in February, of the military chief Colonel Otto Fernando Godoy Cordón, on charges of drug trafficking, raised concerns regarding the potential influence of organized crime within the military.

35. In July, the National Intelligence Centre was created,¹⁹ combining the functions of civil and military intelligence into one institution. Its establishment violated the provisions of the Peace Agreement on the strengthening of civil power and the role of the military in a democratic society and of the National Security System Framework Act, which required the two functions to be kept separate.

36. The State continued to assign public security duties to private companies, with limited accountability. According to the General Directorate of Private Security Services, 52 out of the 189 companies registered under the Private Security Services Act (Decree No. 52-2010) continued to operate without a licence as required by the Act.

37. As at 31 August, 10,059 men and 1,479 women (46 per cent of the total population deprived of liberty) were in pretrial detention, and they were detained together with people serving sentences.²⁰ Overcrowding and insecurity are widespread in prisons. As at 30 September, 41 people in custody had been violently killed.²¹

38. Several reform proposals in relation to pretrial detention have been submitted to Congress but they may fail to adequately address the systematic application of pretrial detention (see CAT/C/GTM/CO/7, para. 18) owing to the lack of judicial review; the discriminatory application of pretrial detention, especially affecting defendants with a low income; and prolonged detention owing to judicial delays. There is also concern that, if adopted, these reforms could lead to the release of high-profile defendants currently awaiting trial on charges of corruption and crimes committed during the armed conflict.

C. Human rights defenders and journalists

39. In 2018, OHCHR observed the shrinking of civic space, particularly for human rights defenders. In April, the unit for analysing attacks against human rights defenders, the only inter-institutional mechanism for coordinating protection measures, ceased to function as a result of abrupt changes made to its procedures by new authorities within the Ministry of the Interior, which prompted civil society organizations to withdraw from the mechanism. In addition, despite the efforts of the Presidential Commission for the Coordination of Human Rights Policy to strengthen the commitment of the State institutions involved, the development of a public policy for the protection of human rights defenders has been delayed.

40. Institutional changes within the Ministry of the Interior generated a growing lack of trust in the State to implement protection measures. On 31 August and over the following

¹⁸ Articles 37, 39, 49 and 50.

¹⁹ Under Governmental Agreement No. 135-2018.

²⁰ Information from the General Directorate of the Prison System (22 November 2018).

²¹ *Ibid.*

days, prominent human rights defenders received a visit from the National Civil Police.²² The Ministry stated that the purpose of the visits was to analyse the effectiveness of protection measures. However, given the lack of prior notification, the fact that some defenders did not have protection measures, and the increased military and police presence in the streets, the visits were perceived as acts of intimidation. There were also reports of surveillance of defenders by unidentified individuals and hacking of institutional networks, including those of independent journalists.

41. There was a sharp escalation of violence against human rights defenders, especially those working on land rights and natural resources. In May and June, seven defenders from two organizations, the Campesino Development Committee and the Altiplano Campesino Committee, were killed, some in a particularly brutal way.²³ In total, according to the Unit for the Protection of Human Rights Defenders, a civil society organization, 260 human rights defenders had been attacked (189 men and 71 women) as at June 2018, and 26 had been killed (23 men and 3 women, including 1 trans woman defender) by the end of December.²⁴ The murders of the well-known defenders Juana Ramírez, midwife and founder of the Network of Ixil Women, in Nebaj, Quiché, and of Luis Arturo Marroquín, leader of the Campesino Development Committee, in San Luis Jilotepeque, Jalapa, were particularly troubling.

42. Some 69 complaints of attacks against journalists had been filed before the Office of the Attorney General as at 30 September 2018, and three journalists were killed in 2018.²⁵ OHCHR recorded death threats made against eight journalists reporting on cases of impunity and corruption during the political crisis. It also observed stigmatizing and demeaning comments against journalists, including sexist remarks against female journalists.

43. As a positive step, in April, the Office of the Attorney General adopted an internal protocol for the investigation of crimes against human rights defenders. The protocol stipulates that public prosecutors must investigate cases promptly and consider an attack as a potential act of reprisal for a defender's work. The procedure, if properly applied, could help to address the high levels of impunity in these cases. Indeed, although the unit on activists of the Office of the Attorney General received 238 cases of attacks against human rights defenders from January 2017 to September 2018, only three people charged were convicted.

44. The misuse of criminal law within the justice system to hinder the work of human rights defenders has become more frequent. Between January 2017 and December 2018, OHCHR monitored 75 cases of human rights defenders criminalized for a wide array of spurious charges ranging from "threats" to homicide. The Office observed irregularities in the arrest and detention of several human rights defenders in Izabal, including failure to present arrest warrants and arrests made by plain-clothed police, allegedly involving undercover intelligence services.

45. Across the country, community leaders were criminalized for protesting against the lack of access to affordable electricity, including on charges of instigation, illegal detention and sedition. In July, residents in Coatepeque, Quetzaltenango, and Chisec, Alta Verapaz, protested against the electricity cuts imposed by the energy company Energuate due to the lack of payments following its increased rates. In August, the Constitutional Court issued a temporary injunction ordering distributors to refrain from cutting electricity supplies in those municipalities (file 3265-2018).

²² Including Jorge Santos and Claudia Samayoa, La Unidad de Protección a Defensoras y Defensores de Derechos Humanos Guatemala; Nery Rodenas, Oficina de Derechos Humanos del Arzobispado de Guatemala; Helen Mack, Fundación Myrna Mack; Daniel Pascual, Comité de Unidad Campesina; Idivina Hernández, Asociación para el Estudio y Promoción de la Seguridad en Democracia; Edgar Pérez, Bufete Jurídico de Derechos Humanos; and Aldo Dávila, Gente Positiva.

²³ See www.oas.org/es/cidh/prensa/comunicados/2018/137.asp; and GTM 10/2018.

²⁴ See www.undefegua.org.

²⁵ See Observatorio de los Periodistas, "Estado de situación de la libertad de expresión 2018: intolerancia oficial".

46. Criminalization also took place in the context of forced evictions, on charges of aggravated trespassing²⁶ and trespassing in environmentally protected areas. Under the definition of the crime of aggravated trespassing, a person merely present in a property under dispute is considered in flagrante delicto, which affects his or her rights to the presumption of innocence, legal defence and land tenure (including on the basis of traditional possession by indigenous peoples). Communities repeatedly complained that State-sponsored round-table discussions on land and other related issues had served to identify indigenous and community leaders in order to later criminalize them.

47. Attacks against and the criminalization of human rights defenders have ripple effects on their families and communities. In Nueva Libertad, Alta Verapaz, all members of the community reported that arrest warrants had been issued against them in 2014 for aggravated trespassing in relation to their defence of their land rights. Since then, they had restricted their movement for fear of being arrested, affecting the ability of the 48 children in the community to attend school.

48. In 2018, several well-known human rights defenders, most of whom are indigenous, were acquitted, or charges against them were dropped for lack of evidence, after spending months to years in pretrial detention or under an arrest warrant. These defenders include Jerson Morales and Juan Estuardo Caal in El Estor, Izabal; María Toledo, Emigdio Florentino Castañeda, Alfredo Baltazar Pedro, Diego Diego Marcos, Susana Elisabet Toledo and Juana Ercita Toledo, in Santa Eulalia and Santa Cruz Barrillas, Huehuetenango; Juan Bautista and Jose Manual Coc Saquil in Choctún Basilá, Alta Verapaz; and Ireneo Plucarto Clemente Pérez in San Pablo, San Marcos.

49. Other indigenous human rights defenders remain imprisoned. In October, Bernardo Caal was sentenced to over seven years for “illegal detention and aggravated robbery”. Concerns were raised about the strength and impartiality of the evidence presented against him, as observed by a group of United Nations independent experts.²⁷ The judgment has been appealed. Abelino Chub, indicted under charges of aggravated trespassing, arson and illegal association, has spent almost two years in pretrial detention, owing to serious delays in the judicial process against him.

D. Indigenous peoples and persons of African descent

1. Racism and discrimination

50. Indigenous peoples continue to face obstacles to equal participation in political, social, economic and cultural life.

51. No Xinka or Garifuna indigenous person has ever held a high-level government position. In the absence of affirmative measures to promote the election of representatives of indigenous peoples, overcoming their severe underrepresentation, particularly in the case of women, will be a challenge in the 2019 general elections and high court appointments.

52. Xinka people have been making their cultural identity increasingly visible, which they had previously hidden owing to historical patterns of persecution and discrimination. However, their traditional management of lands and territories has always remained intact.

53. Although there are anti-discrimination laws in place, OHCHR continues to document cases of racial hate speech against indigenous peoples. For instance, indigenous weavers defending their rights to their intellectual property and traditional knowledge have been subjected to such attacks on social media.

54. Peaceful demonstrations held by indigenous peoples are often perceived by the public at large and government authorities as “violent”, “blocking development” and “violating others’ rights to work”, unlike demonstrations held by urban sectors, which are

²⁶ Decree 33-96, which amended article 256 of the Criminal Code.

²⁷ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24031&LangID=E; and GTM 15/2018.

widely perceived as legitimate, even when those involved are protesting against the same issues, such as corruption.

55. The 2016 national plan for the International Decade for People of African Descent has not yet been adopted. Garifuna women face multiple difficulties in obtaining access to justice and employment owing to geographical, cultural and linguistic barriers.

2. Lands, territories and natural resources

56. Legal uncertainty over lands and territories of indigenous peoples is one of the main obstacles to the enjoyment of their rights and a source of agrarian conflicts.

57. Even when judicial rulings have recognized indigenous peoples' rights over their lands, such as in the community of San José Poaquil, certain municipalities continue to limit the use and management of ancestral land by indigenous authorities. For example, in Chuarrancho, the municipal mayor filed an injunction against ancestral authorities, questioning their capacity to manage their territory. In its judgment on the case, the Constitutional Court affirmed that both authorities were called upon to look for ways to articulate and coordinate their functions, and to foster a relationship based on respect for the principle of equal rights (file 4755-2017).

58. Indigenous authorities have faced attacks while defending their land rights. This was the case with Isabel Jerónimo in Morola, Chiquimula, who received death threats, and José Can Xol in Choctún Basilá, Alta Verapaz, who was murdered. Indigenous authorities have also faced tensions with community development councils, which claim control over the same territories and undermine the legitimacy of indigenous authorities, especially in the Ch'orti' region.

3. Priorities for development, and rights to consultation and consent

59. Indigenous peoples continue to demand rights to determine their development priorities and strategies in order to exercise their human rights. Mining, energy, single-crop farming and infrastructure projects in indigenous territories have not generated the economic and social benefits that were promised to communities.

60. There were acute patterns of intracommunity violence between the supporters and opponents of certain projects, with devastating effects on social cohesion and governance, in some cases fuelled by economic interests. This was the case, for instance, in the Xinka communities affected by the San Rafael mine in Santa Rosa; the Kaqchikel communities affected by the Cementos Progreso mine in San Juan Sacatepéquez; and the Q'eqchi' communities affected by the Oxec and Renace hydroelectric projects in Cahabón, Alta Verapaz.

61. In Ixquisis, Huehuetenango, communities held continuous protests throughout 2018 against the hydroelectric project owned by the company Energía y Renovación, and against the presence of the National Civil Police and military in their territories. Both the company and communities complained about the insecurity in the region. The State has not addressed underlying concerns about the project, including the lack of consultation with communities and its insufficient oversight of the project's impact on human rights and the environment.

62. In San Miguel Ixtahuacán, San Marcos, following the suspension of operations in the Marlin mine, there is still no effective plan for its closure, nor have the problems associated with the alleged pollution been resolved. Communities reported an increase in corruption and organized crime in the area due to the mismanagement of royalty payments to the municipality.

63. In September, the Constitutional Court issued a judgment in favour of the Xinka people in relation to the San Rafael mine (file 4785-2017), ordering its suspension until the Ministry of Energy and Mining consults with the affected Xinka people, in accordance with international standards. The Court also ordered measures to protect the health, cultural heritage and the environment of affected communities.

64. In 2018, in follow-up to the judgment of the Constitutional Court on the Oxec hydroelectric project in 2017, Congress presented two bills on consultation, but without

consulting indigenous peoples. Indigenous peoples filed injunctions against the bills, alleging that they did not comply with international standards. Measures are required to build consensus between indigenous peoples and the State on the content and procedures of the right to consultation and consent, as recommended by the Special Rapporteur on the rights of indigenous peoples (see A/HRC/39/17/Add.3, paras. 62–72).

E. Economic, social and cultural rights

65. In 2018, multidimensional poverty was estimated at 70.3 per cent.²⁸ Guatemala is one of the four countries with the highest level of inequality in Latin America, itself one of the most unequal regions in the world.²⁹ Women and indigenous peoples (especially indigenous women) suffer disproportionately, given that discrimination is intertwined with socioeconomic inequalities.³⁰ The departments with the highest level of inequality are Alta Verapaz, Chiquimula and Huehuetenango.³¹

1. Land and forced evictions

66. Land disputes, forced evictions and displacement remain among the most serious concerns, increasing poverty and malnutrition, especially in rural areas and among indigenous peoples.

67. Most cases of agrarian conflict recorded in 2017 were not resolved in 2018. Of the 359 conflicts recorded in 2018, 20 were referred to round-table discussions.³² The credibility of these round tables has deteriorated, as only eight cases were solved through the mechanism in 2017 and 2018.³³ Just 4 of the 39 priority land dispute cases included in the August 2017 agreement between the Government and the Altiplano Campesino Committee have been resolved.

68. There were fewer forced evictions in 2018 (only 5 compared to 27 in 2017), partially owing to inter-institutional efforts and those made by OHCHR. At least 28 eviction orders, however, are still pending.³⁴ The Office of the Attorney General, the Presidential Commission for the Coordination of Human Rights Policy, the National Civil Police and the Office of the Ombudsperson have made efforts to update internal protocols on forced evictions.

69. Communities that were evicted in 2017 continue to live in extremely precarious conditions, especially in Alta Verapaz, Izabal and Petén. For over a year, around 11,000 people were left without water, sanitation, education, housing or a durable solution to land security.³⁵ OHCHR documented worrying health situations, especially among children and pregnant women. It monitored the lack of access to food and increasing levels of malnutrition resulting from the destruction of livelihoods due to evictions. The four precautionary measures issued by the Inter-American Commission on Human Rights, requiring immediate humanitarian aid, have not been implemented adequately.³⁶

²⁸ See Economic Commission for Latin America and the Caribbean, *Social Panorama of Latin America* (2018).

²⁹ See Oxfam, *The Commitment to Reducing Inequality Index* (October 2018).

³⁰ See *ibid.*

³¹ United Nations Development Programme, *Más allá del conflicto, luchas por el bienestar: Informe Nacional de Desarrollo Humano 2015/2016* (2016), p. 317.

³² Information from the agrarian affairs secretariat (10 October 2018).

³³ Information from the presidential commission on dialogue (15 October 2018).

³⁴ Information from the Presidential Commission for the Coordination of Human Rights Policy (March 2018).

³⁵ *Ibid.* (August 2018).

³⁶ Laguna Larga (Petén), MC-412/17; La Cumbre, MC-44/18 and Nueva Semuy, MC-872/17 (Alta Verapaz); Chabilchoch (Izabal), MC-860/17.

2. Rights to water and to a healthy environment

70. Guatemala is a country rich in biodiversity, which is preserved in many areas by indigenous communities. However, nearly 400 permits have been issued in these areas to allow the exploitation of natural resources and mining projects.

71. Vast areas of single-crop plantations (coffee, sugar cane, palm oil and banana) have had a negative impact on communities and the environment. OHCHR recorded cases of river diversions and pollution that were affecting residents' rights to water and to health. Despite the efforts made by some companies to mitigate the effects, communities continue to suffer. State institutions have limited capacity to regulate and oversee the activities of the business sector; for instance, the National Institute of Forensic Sciences lacks the equipment necessary to identify environmental pollution to carry out its important work.

72. The Office of the Attorney General received 1,670 complaints of violations of the right to a healthy environment between January 2017 and 30 September 2018, such as the pollution of the San Roman and El Jute rivers (Alta Verapaz), allegedly caused by chemical run-off from the surrounding palm oil plantations. In the same period, 320 environmental complaints were settled through plea deals, without the participation of the victims.

73. There has been no judicial decision in the case of the pollution of the La Pasión River nor in the case of death of fish in the Machaquilá River. While those cases were pending, 17 community members around the country were convicted of trespassing in protected areas between January 2017 and 30 September 2018.

3. Labour rights

74. Of the working age population, 41 per cent are economically active (86.3 per cent of men, 39.7 per cent of women and 62 per cent of indigenous peoples), and 69.7 per cent of the economically active population work in the informal sector (80 per cent of whom are indigenous peoples); 86.8 per cent of rural women work in the informal sector. The agriculture and manufacturing sectors employ the largest number of workers (46.9 per cent). While the minimum monthly wage in the agricultural and non-agricultural sectors is approximately \$375, the national average monthly wage is only \$280. Rural women, who are mostly indigenous, earn an average monthly wage of \$134.³⁷

75. The General Labour Inspectorate imposed 1,150 sanctions from January to 30 November 2018, mainly on *maquilas* (sweatshops) and private security companies, notably for failure to comply with laws on wages, working hours and social security. Ensuring dignified work conditions and the professionalism of labour inspectors is essential.

76. Workers on plantations in the Northern Transversal Strip reported the use of irregular contractors who charge workers to be hired; excessive working hours; high production goals; payment of less than the minimum wage; and a lack of workplace safety mechanisms, including to prevent sexual harassment. OHCHR documented cases of child labour in different parts of the country, mainly on coffee plantations.

77. A very low number of workers are registered with the Social Security Institute (19.3 per cent of rural workers, 12.39 per cent of workers in *maquilas* and less than 1 per cent of domestic workers, who are mostly women).³⁸ In addition, many businesses fail to pay their social security contributions as required by law. The Institute, however, has taken no action to recover debts.

78. In June, Domingo Nach, head of the Villa Canales trade union, was murdered. The Office of the Attorney General did not consider his work as a trade unionist as a possible motive for his murder, and the ongoing case has therefore not been prosecuted by the specialist unit on trade unionists.

³⁷ See Ministry of Economic Affairs, *Encuesta Nacional de Empleo e Ingresos 3-2017*, pp. 22–26 and 50.

³⁸ See Guatemalan Social Security Institute, *Boletín Estadístico Afiliación, 2017*. Available at www.igssgt.org/images/informes/subgerencias/Boletin_Afiliacion2017.pdf.

4. Right to food

79. Levels of malnutrition remained alarming, with 8,888 cases of acute malnutrition recorded in 2018, 47 of which led to death. No comprehensive national plan has been adopted to provide timely attention to communities affected by the ongoing drought, which resulted in the loss of food sovereignty and security for at least 291,705 families³⁹ (approximately 1.5 million people) in 16 of the 23 departments. Given the insufficient response to the drought by government institutions, food aid was largely provided by the international community.

F. Women's rights

80. Discrimination and violence continue to seriously affect women. In 2018, Congress promoted a regressive legislative agenda on women's rights, in particular bill No. 5272. The bill proposes to amend the definition of abortion (considered a crime in Guatemala) to include the "natural or provoked death of the embryo or fetus in any phase of its development", which may lead to the criminalization of miscarriages. The bill also provides for longer prison sentences for both those who facilitate abortions and women who have abortions.⁴⁰

81. The public health system is not willing to cooperate with indigenous midwives and there is a lack of effective mechanisms for it to do so, which negatively affects the health of indigenous women.

82. In 2018, in a country with 60.1 per cent of the population under 25,⁴¹ sexual education became an increasingly taboo subject and the authorities made repeated references to a "gender ideology", distorting the content of the State's obligations on women's rights. From January to June 2018, 51,110 pregnant girls and adolescents (including 1,475 girls between 10 and 14 years of age) were recorded.⁴² There is still a lack of culturally appropriate sexual and reproductive education for indigenous women and girls.

G. Rights of lesbian, gay, bisexual and transgender persons

83. Discrimination and violence against lesbian, gay, bisexual and transgender persons persisted in 2018. State representatives made discriminatory statements, for example, that marriage should be "between a man and a woman, born that way". Bill No. 5272, which contains provisions that could provoke hate crimes against this population group,⁴³ moved forward in Congress. OHCHR documented the killing of 24 persons in that community (including six trans women) in 2018. It also recorded cases of violence and homophobic messages against defenders of lesbian, gay, bisexual and transgender rights, including a journalist and members of the organizations Gente Positiva and Somos. Unfortunately, Congress did not approve bill No. 5395 on gender identity, which would have guaranteed civil rights for trans persons and promoted their inclusion in society.

H. Rights of persons with disabilities

84. Persons with disabilities continued to face obstacles to their inclusion in society and to the enjoyment of their rights, such as the rights to work, education and independent living. The State has yet to comply with international standards on deinstitutionalization to

³⁹ Coordinadora Interinstitucional del Sistema de Monitoreo de Cultivos, "Boletín de monitoreo de cultivos" (August 2018), p. 5.

⁴⁰ See GTM 12/2018.

⁴¹ See www.ine.gob.gt/index.php/estadisticas/tema-indicadores.

⁴² See <https://osarguatemala.org/embarazos-y-partos-de-madres-entre-10-y-19-anos-enero-a-junio-2018>.

⁴³ See GTM 12/2018 and A/HRC/37/3/Add.1, para. 50.

ensure that persons with disabilities can live as part of a community, free from abuse, neglect and segregation.⁴⁴

85. Government institutions are working on a controversial bill on mental health, yet to be brought before Congress, which proposes involuntary treatment based on the “danger or damage” that persons with disabilities represent to themselves or others.

86. In the Federico Mora Hospital, a mental health facility, there are 318 men and women with disabilities, including 55 men transferred by the criminal justice system. Although 223 residents have received a medical report authorizing them to be deinstitutionalized,⁴⁵ there are no plans to that effect. There were some reforms introduced in the hospital, such as the removal of isolation rooms. There are, however, concerns about the lack of periodic case reviews, the deprivation of liberty, and medical treatment without free and informed consent.

87. The fire at the Hogar Seguro Virgen de la Asunción highlighted the lack of protection for children and adults with disabilities (A/HRC/37/3/Add.1, para. 10). OHCHR observed inadequate care in centres for persons with disabilities managed by the Social Welfare Secretariat in the departments of Guatemala, Quetzaltenango and Zacapa, with the exception of the Ónice II centre in Quetzaltenango.

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

88. OHCHR carried out 106 monitoring missions throughout the country in 2018. It observed over 30 trials, made 15 visits to detention centres and monitored public demonstrations.

89. OHCHR continued to support strategic litigation cases, including cases on women’s rights.

90. OHCHR coordinated efforts with national and international stakeholders for the protection of human rights defenders, including efforts to develop a public policy on the issue.

91. OHCHR provided technical assistance to Congress and civil society on more than 15 bills or legislative reforms. It monitored the appointment of the Attorney General and of members of the subsidiary bodies of the Judicial Career Council. It also provided technical assistance in the implementation of the Judicial Career Act.

92. OHCHR continued to conduct training programmes on international standards for judges, prosecutors and lawyers and provided technical assistance to the national mechanism for the prevention of torture.

93. OHCHR cooperated with the school for judicial studies to update the curricula on gender and to develop its first module on transitional justice. Together with the indigenous peoples secretariat of the judiciary, it organized four regional meetings to foster coordination between the indigenous and ordinary justice systems.

94. OHCHR trained members of civil society on strategic litigation related to land, territory and the environment, focusing on indigenous women. It continued to support indigenous midwives and weavers’ organizations in defending their rights.

95. OHCHR held numerous meetings with victims of the Hogar Seguro Virgen de la Asunción fire and with State institutions, and published a report on the case.

96. OHCHR monitored the humanitarian situation of displaced communities, in coordination with the United Nations system. It supported the Presidential Commission for

⁴⁴ See Committee on the Rights of the Child, general comment No. 9 (2006) on the rights of children with disabilities, para. 47.

⁴⁵ Information from the Ministry of Health (26 October 2018). See also Inter-American Commission on Human Rights, precautionary measures order MC-370/12.

the Coordination of Human Rights Policy, the Office of the Attorney General, the National Civil Police and the Office of the Ombudsperson in developing protocols on evictions.

97. OHCHR also promoted the integration of a human rights-based approach into the humanitarian response following the eruption of the Fuego volcano.

98. OHCHR engaged with the private sector on human rights issues.

99. OHCHR implemented a project to support the inclusion of persons with disabilities in the labour market, identifying barriers to guarantee their labour rights.

100. OHCHR supported the integration of a human rights-based approach into the national population and housing census, with the United Nations Population Fund; into the United Nations Development Group common country analysis; and into the implementation of the 2030 Agenda for Sustainable Development.

101. OHCHR monitored the caravan of Central American migrants, and strengthened the capacities of the State and civil society to address violations of migrants' rights.

102. OHCHR provided technical assistance to the Ministry of Labour and Social Welfare in its dissemination of the inspection protocol and updating of occupational health and safety regulations, and on training courses on trafficking in persons and forced labour.

103. OHCHR supported the technical committee on education for peace, historical memory and human rights in providing civic education, including guides and training courses for 119 centres.

104. OHCHR implemented the "free and equal" campaign on lesbian, gay, bisexual and transgender rights, including by installing an interactive booth, the *Igualómetro*, to encourage reflection on discrimination.

105. OHCHR organized a series of events to commemorate the seventieth anniversary of the Universal Declaration of Human Rights, including a youth theatre festival, a contest to promote the rights of indigenous weavers to intellectual property, and a music camp with participants from other countries in the region.

106. OHCHR provided technical assistance to the State in reporting to treaty bodies, the universal periodic review process, and developing a system to follow up on recommendations made by international human rights mechanisms.

107. OHCHR organized the visit of the Special Rapporteur on the rights of indigenous peoples.

108. OHCHR and the Inter-American Commission on Human Rights continued to coordinate on their joint mechanism for the protection of human rights defenders.

109. The activities and projects of the Office were implemented with the financial support of the Governments of Canada, Norway and Sweden; the European Union; the Peacebuilding Fund and the United Nations Partnership to Promote the Rights of Persons with Disabilities.

V. Recommendations

110. **Based on her monitoring of human rights developments, and in addition to previous recommendations, the United Nations High Commissioner for Human Rights:**

(a) **Urges the State to ensure transparency, access to information and representative participation, especially of women, in the upcoming general elections;**

(b) **Recommends the implementation of affirmative measures to guarantee the rights to vote and to be elected for representatives of indigenous peoples, young people and persons with disabilities;**

(c) **Calls upon all relevant State authorities to implement effective measures to protect judges, prosecutors and complainants, and their families, in order to guarantee judicial independence;**

- (d) **Recommends that the judiciary implement the Judicial Career Act, approve its regulations and integrate the subsidiary bodies of the Judicial Career Council, in accordance with international standards;**
- (e) **Urges the judiciary, Congress and all other stakeholders to ensure transparency, accountability and participation of all sectors in the selection of the judicial authorities;**
- (f) **Calls upon the judiciary to strengthen cooperation between indigenous and ordinary jurisdictions in order to ensure access to justice for indigenous peoples, particularly women and girls, and urges the Office of the Attorney General to implement its policy on access to justice for indigenous peoples;**
- (g) **Urges the institutions of the justice system to continue and strengthen investigations and prosecutions of serious human rights violations committed during the armed conflict;**
- (h) **Calls upon the State to ensure the rights of victims, including to reparation, by implementing judgments and strengthening the National Reparations Programme;**
- (i) **Urges the State to implement the recommendations made by OHCHR in its report on the Hogar Seguro Virgen de la Asunción;**
- (j) **Recommends that the national mechanism for the prevention of torture ensure that its functions are consistent with international standards;**
- (k) **Calls upon the Ministry of the Interior to take measures to ensure the proportional use of force by the National Civil Police; guarantee the professional career development of the police; strengthen public security institutions; and ensure that the functions of the police and the military are kept separate;**
- (l) **Urges the State to respect the independence of the Office of the Ombudsperson to ensure that its mandate can be fully implemented; and to protect the Ombudsperson;**
- (m) **Calls upon the Office of the Attorney General to implement instruction No. 5-2018 on crimes against human rights defenders, and to prevent the misuse of criminal law by reviewing pending criminal cases against them and dismissing those that do not meet due process requirements under the Criminal Code;**
- (n) **Urges Congress to amend the definition of the crime of aggravated trespassing in order to guarantee the rights to presumption of innocence, legal defence and tenure over lands, including on the basis of traditional possession by indigenous peoples;**
- (o) **Calls upon the State to respect and protect human rights defenders, including before and during the general elections;**
- (p) **Urges the State to put in place effective mechanisms and prevent forced evictions to respect and protect the lands, territories and natural resources collectively held by indigenous peoples;**
- (q) **Calls upon the State to ensure consultation with and the free, prior and informed consent of indigenous peoples, in accordance with international standards, on decisions that affect them, including with respect to legislative proposals;**
- (r) **Calls upon the State to support indigenous peoples' traditional health systems, particularly the work performed by midwives, and to protect weavers' intellectual property rights over their textiles;**
- (s) **Urges the State to tackle structural inequality, based on the updated and disaggregated data gathered in the census, and to ensure rights to food, water, sanitation, health, education and affordable housing and electricity;**
- (t) **Calls upon the private sector to comply with all relevant international standards, especially the Guiding Principles on Business and Human Rights;**

Implementing the United Nations “Protect, Respect and Remedy” Framework, particularly in relation to the rights of communities to lands and natural resources;

(u) **Encourages the General Labour Inspectorate to continue its inspections, particularly in the agricultural and domestic sectors and in *maquilas*, and to ensure adequate wages, prevent and sanction child labour, and to protect women from exploitation;**

(v) **Recommends that the State ensure the incorporation of a human rights-based approach in the implementation of the 2030 Agenda for Sustainable Development and guarantee that no one is left behind, especially indigenous peoples;**

(w) **Recommends that the State adopt measures to protect lesbian, gay, bisexual and transgender persons from violence and discrimination and avoid the adoption of discriminatory legislation;**

(x) **Calls upon the State to prioritize the protection of women’s rights, gender equality and sexual and reproductive rights, and to prevent and punish gender-based violence, femicide, discrimination and stereotyping;**

(y) **Recommends that the State ensure the adoption of a legal framework to guarantee the rights of persons with disabilities to non-discrimination, inclusion, accessibility and equality before the law;**

(z) **Urges the General Directorate of Migration to develop internal regulations for the implementation of the Migration Code, incorporating a human rights-based approach and ensuring that migrants in transit and displaced persons are protected;**

(aa) **Recommends that the Ministry of Foreign Affairs provide effective assistance to Guatemalan migrants, especially children and women, and take measures to investigate deaths and disappearances abroad.**
