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Annual report of the United Nations

High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Situation of human rights in Guatemala^{*}, ^{**}

Report of the United Nations High Commissioner for Human Rights

Summary

In her report, the United Nations High Commissioner for Human Rights describes the human rights situation and the activities of her office in Guatemala from 1 January to 31 December 2021. She highlights advances and persisting challenges in the promotion and protection of human rights, with a focus on issues related to equality and non-discrimination, inclusive and sustainable human development, justice, democratic space and the human rights impact of the coronavirus disease (COVID-19) pandemic.

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

** The present report was submitted after the deadline in order to reflect latest developments.



Annex

Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Guatemala

I. Introduction

1. The present report is submitted 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 2021. The report covers the year 2021 and is based on information provided by State institutions and other stakeholders, as well as information collected and analysed by OHCHR in Guatemala. The report provides an overview of the key activities undertaken by OHCHR in Guatemala in 2021.

2. OHCHR provided technical assistance to State institutions, notably the Ministry of Social Development, the Ministry of Labour and Social Security, the Ministry of Energy and Mining, the Land Registry, the Social Welfare Secretariat, the Presidential Secretariat for Women, the National Youth Council, the National Forestry Institute, the Presidential Commission for Peace and Human Rights, the National Civil Police, the judiciary, Congress, the Constitutional Court, the Public Prosecution Service, the Office of the Human Rights Advocate and the Attorney General's Office. OHCHR also conducted 99 workshops for State institutions and organized 29 forums and webinars. The topics covered included participation in the management of public affairs, prior and informed consultation, water and sanitation, the environment, social protection, decent work, access to justice, violence against women and girls, and the rights of indigenous peoples, human rights defenders, persons with disabilities and young persons.

3. In 2021, OHCHR continued to monitor the human rights situation through active engagement with authorities, communities and civil society. OHCHR produced 54 bulletins, brochures and other publications¹ and launched 11 public information campaigns on indigenous peoples' rights, women's rights, judicial independence and freedom of expression and opinion. It provided assistance to the Social Welfare Secretariat in the development of a campaign to promote the human rights of children and adolescents with a gender perspective. It organized two regional workshops on youth rights and the collective intellectual property of indigenous peoples, with the participation of institutions and civil society organizations from Ecuador, Guatemala, Honduras, Panama and Peru.

4. OHCHR followed up on 137 cases and situations of alleged human rights violations, and worked with victims, civil society representatives and State institutions to prevent potential violations. It also worked in partnership with regional and international human rights protection mechanisms.

II. Context

5. In the context of the coronavirus disease (COVID-19) pandemic, during the reporting period Guatemala has continued to face systemic and structural challenges, for example in relation to inequality and discrimination, the judicial system and impunity. According to the most up-to-date disaggregated data on poverty and inequality in the country and pre-pandemic projections by academic institutions, 61.6 per cent of the population lived in multidimensional poverty,² increasing to 79.2 per cent among indigenous peoples and 69.2 per cent among children,³ with a Gini index of 48.3 per cent, which indicates that there are high levels of inequality.⁴ As a consequence of the pandemic, poverty levels are projected to

¹ See <https://issuu.com/oacnudhgt/docs>.

² See https://mppn.org/wp-content/uploads/2019/10/Guatemala-Report-IPM-gt_29jul19-v1.1.pdf, p. 26.

³ Government of the Republic of Guatemala, voluntary national review 2017, p. 66. Available at <https://www.pnd.gt/Home/Documentos>.

⁴ See https://repositorio.cepal.org/bitstream/handle/11362/44989/1/S1901132_en.pdf.

increase by at least 2 per cent.⁵ In the most recent gender inequality index, Guatemala received a score of 0.479, putting it in 119th place out of 162 countries. Women's participation in the formal labour market stands at 39.9 per cent, compared to 86.3 per cent for men.⁶

6. In 2021, with technical assistance and support from OHCHR, the Presidential Commission for Peace and Human Rights established 15 regional headquarters and strengthened the capacities of its officials.

7. The Government declared 10 states of exception. Of those, six were for preventive purposes,⁷ including one that was declared in January in respect of the arrival of a caravan of migrants mostly from Honduras and El Salvador, on the grounds that it might affect order, governance and the security of the population and with a view to guaranteeing the "security and life of the inhabitants and authorities" of the affected departments and the health of migrants. It also declared a state of siege⁸ and, subsequently, a state of exception for preventive purposes in the municipality of El Estor, in the Department of Izabal (paras. 30 and 85);⁹ a state of siege in the Department of Sololá¹⁰ and two states of public emergency due to the spread of COVID-19.¹¹

8. During the year, Congress approved 20 decrees. Some members of Congress continued to promote bills that are manifestly contrary to international human rights standards and which are still being examined and considered. For example, bills No. 5714 on reinstating the death penalty, No. 5875 on the chemical castration of persons convicted of rape, No. 5920 on extinction of criminal liability for all offences committed during the internal armed conflict and No. 5940 on guaranteeing comprehensive protection for children and adolescents against gender identity disorders.

9. Congress made no progress in the pending appointment of justices to the Supreme Court and the Appeals Court for the 2019–2024 term¹² (para. 54). In March, justices were elected to the Constitutional Court for the 2021–2026 term. However, according to civil society actors, the processes lacked transparency, publicity and objectivity. Congress swore in four regular justices and five alternates, but left pending the swearing-in of a justice elected by the Higher University Council (para. 55).

10. OHCHR documented cases of attacks and reprisals against human rights defenders, journalists and justice officials, including the misuse of criminal law against those who have played a role in cases related to corruption and human rights violations, intended to prevent or punish them for the legitimate exercise of their work (paras. 56, 59, 75 and 79). At least two former officials of the Public Prosecution Service and the Constitutional Court left the country for fear of reprisals against them. The Human Rights Advocate continued to face campaigns to discredit him and obstacles to the fulfilment of his mandate, including unjustified delays in the allocation of the institution's budget. In addition, Deputy Advocate No. II is facing criminal proceedings related to the exercise of her official duties.

11. The Plaza de la Constitución in Guatemala City was used as a meeting place where a range of civil society movements, both urban and rural, some of them led by indigenous authorities, were able to exercise their rights to freedom of opinion, expression and assembly and protest against, inter alia, the situation caused by the pandemic, corruption and violence. Indigenous peoples have staged peaceful protests demanding the fulfilment of their rights to consultation, land, territories and natural resources and denouncing the high cost of electricity.

⁵ See https://mail.icefi.org/sites/default/files/icefi_-_guatemala_-_la_crisis_del_covid-19_y_su_impacto.pdf, p. 32.

⁶ See <https://hdr.undp.org/sites/default/files/Country-Profiles/GTM.pdf>, p. 6.

⁷ Government Decrees No. 1-2021, No. 2-2021, No. 3-2021, No. 4-2021, No. 5-2021 and No. 10-2021.

⁸ Government Decree No. 9-2021.

⁹ Government Decree No. 10-2021.

¹⁰ Government Decree No. 11-2021, state of siege in the municipalities of Santa Catarina Ixtahuacán and Naulá.

¹¹ Government Decrees No. 6-2021 and No. 8-2021, which were not approved by Congress.

¹² A/HRC/46/74, paras. 10 and 67.

12. The Ministry of Energy and Mining held meetings to comply with rulings of the Constitutional Court on “restorative” consultations in cases concerning the Xinka people of Santa Rosa, Jutiapa and Jalapa¹³ and the Q’eqchi’ people of El Estor, Izabal.¹⁴ In the latter case, the consultation process coordinated by the Ministry of Energy and Mining concluded on 10 December. However, some Q’eqchi’ Maya communities and authorities were unhappy with how the process was conducted.¹⁵

13. OHCHR notes the reform of the Public Prosecution Service in relation to the General Instruction on the investigation of the offences of trespass, aggravated trespass and trespass in protected areas.¹⁶ The Service signed a cooperation agreement with the Property Rights Observatory with support from the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations, and in October it opened the Office of the Prosecutor for the Offence of Trespass.

14. On 21 June, Decree No. 02-2003, containing the provisions amending the Act on Development Non-Governmental Organizations and the Civil Code,¹⁷ entered into force. Special rapporteurs from the United Nations and the Inter-American Commission on Human Rights publicly expressed their concern¹⁸ that the decree was not compatible with international human rights standards and risked criminalizing human rights defenders. Subsequently, within the framework of the proceedings concerning constitutional reviews filed by civil society organizations and the Human Rights Advocate, on 14 July, the Constitutional Court “provisionally” suspended, pending the issuance of a final judgment, the application of those provisions of the decree that relate to the monitoring and dissolution of non-governmental organizations.

III. Equality and non-discrimination

A. Indigenous peoples and persons of African descent

15. Indigenous peoples and persons of African descent continued to face multidimensional forms of discrimination and economic and social inequalities, which were exacerbated by the pandemic. This situation had a more serious impact on the exercise of indigenous women’s rights.

16. Indigenous peoples continued to promote initiatives to strengthen the exercise of their rights to self-determination, cultural practices for the conservation of their lands, ancestral territories and natural resources, and the generation of livelihoods and economies to sustain their families and communities. Indigenous authorities continued to work in their communities to provide access to justice and ensure community cohesion.

17. With assistance from OHCHR, the Constitutional Court published a thematic compilation of rulings on indigenous peoples’ rights¹⁹ and prepared materials on symbolic examples of such rulings to facilitate their dissemination and implementation. For example, the ancestral authorities of San José Poaquil presented the materials to 42 local indigenous communities with the aims of disseminating the content of the ruling that re-established their right to the ancestral administration of communal lands and strengthening their role in the community.

¹³ Constitutional Court, file No. 4785-2017.

¹⁴ *Ibid.*, file No. 697-2019.

¹⁵ See <https://oas.org/en/iachr/sessions/hearings.asp>.

¹⁶ General Instruction No. 4-2021 of the Attorney General and Chief of the Public Prosecution Service. The purpose of the protocol is to establish the procedures for investigating and prosecuting cases of trespass offences as set out in the Criminal Code and the Protected Areas Act.

¹⁷ A/HRC/46/74, para. 11.

¹⁸ See <https://www.ohchr.org/en/press-releases/2021/07/guatemala-un-and-oas-experts-sound-alarm-about-choking-ngo-law?LangID=S&NewsID=27248>.

¹⁹ See https://issuu.com/oacnudhgt/docs/compilaci_n_tem_tica_con_isbn.

18. On 24 June, the Criminal Court of San Benito, Petén, sentenced three people to 20 years' imprisonment for the offence of homicide in the case of Domingo Choc Ché, a Q'eqchi' spiritual guide who was burned alive following accusations of witchcraft.²⁰

19. OHCHR continued to support capacity-building for indigenous midwives to promote the recognition of their rights. In January, the 2021–2025 action plan of the national policy on midwives of the four peoples of Guatemala was presented,²¹ marking an important step towards its implementation. OHCHR continued to provide technical assistance and support to the National Weavers' Movement and the Women's Association for the Development of Sacatepéquez to promote recognition of the collective intellectual property rights of indigenous women's weavings.

20. On 6 October, the Inter-American Court of Human Rights issued a judgment on the violation of the rights to freedom of expression, equality before the law and participation in cultural life of the Kaqchikel Maya of Sumpango and the Achí Maya of San Miguel Chicaj, who operated community radio stations.²² The judgment underscores the importance of community radio stations as a tool for the exercise of freedom of expression by indigenous peoples and as a guarantee of plurality and diversity in the media. The Court ordered various measures of reparation, including the adaptation of domestic legislation to recognize community radio stations, particularly indigenous-run ones, as differentiated means of communication; the reservation of part of the radio spectrum for indigenous community radio stations; the immediate end to criminal prosecutions of individuals who operate indigenous community radio stations, raids of such stations and the seizing of their transmission equipment; and the revoking of convictions and any consequences thereof in respect of individuals from indigenous communities convicted of using the radio spectrum.²³

21. A number of programmes and public policies were developed and implemented to address situations affecting the Garifuna people and Afro-Guatemalans, particularly women. In Livingston, Izabal, the cultural rights of the Garifuna people have been seriously affected by the loss of practices and knowledge relating to fishing and the production of handicrafts. Likewise, Garifuna and Afro-Guatemalan individuals have limited access to university education, insufficient job opportunities and a high rate of internal and external migration.

22. With support from OHCHR, the University of San Carlos, based in Izabal and Quetzaltenango, led two technical training programmes for indigenous, Garifuna and Afro-Guatemalan persons on strategic litigation, with a focus on rights, gender and interculturality, and on creating networks and alliances.

23. The Ministry of Energy and Mining held meetings to comply with the rulings of the Constitutional Court on "restorative" consultations. For example, in the case of the Xinka people of Cuilapa, Santa Rosa,²⁴ the pre-consultation phase took place with the participation of the indigenous authorities represented in their traditional forms of organization.²⁵ However, OHCHR noted differences in the way the meeting was conducted in the case of the Q'eqchi' Maya people of El Estor, Izabal, with respect to the Fénix mining concession.²⁶ OHCHR has noted that the consultation processes do not necessarily meet current international standards and is in communication with the Ministry of Energy and Mining to strengthen these processes.

²⁰ A/HRC/46/74, para. 35.

²¹ See <https://mspas.gob.gt/images/files/pueblosindigenas/documentos/2021/Plan-2021-2025-Politica-Comadronas-gt.pdf>.

²² Inter-American Court of Human Rights, case concerning *the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*, Judgment of 6 October 2021, para. 156.

²³ *Ibid.*, paras. 196 and 202.

²⁴ Constitutional Court, file No. 4785-2017, ruling of 3 September 2018.

²⁵ See <https://mem.gob.gt/blog/avanza-pre-consulta-al-pueblo-indigena-xinka/>.

²⁶ Constitutional Court, file No. 697-2019, ruling of 18 June 2020.

B. Women and girls

24. Violence against women and girls remained among the most prevalent human rights violations. Between 1 January and 17 December, the Women's Observatory of the Public Prosecution Service recorded 60,089 victims of violence against women and 478 femicides and violent deaths, an increase from the previous year.²⁷ Between January and September, 20,655 of the calls to the 110 hotline concerned violence against women.²⁸ Between January and July, 65,373 pregnancies were reported in girls between 10 and 19 years of age, including 3,203 in girls under 14 years of age.²⁹ Articles 173 and 174 of the Guatemalan Criminal Code define sexual relations with a minor under the age of 14 years as rape.

25. The Public Prosecution Service implemented a new comprehensive care model for women who are victims of violence. The allocation of public resources for the prevention of all forms of violence against women and the protection of victims continued to be insufficient given the magnitude of the issue. As a result of delays in the transfer of funds in 2021, there are concerns about the financial situation and sustainability of the work of the network of comprehensive support centres for women who are survivors of violence.

26. Delays persist in the legal proceedings in the case concerning the Hogar Seguro Virgen de la Asunción children's home.³⁰ The start of the public oral debate phase was set for March 2022. OHCHR continued to coordinate actions with the Social Welfare Secretariat to strengthen the promotion of the rights of children and adolescents with a gender perspective, including monitoring the situation of the survivors from the Hogar Seguro Virgen de la Asunción children's home and a social media campaign called "Rights Connect Us".

27. On 23 June, the new head of the Presidential Secretariat for Women took office. The position had been vacant for more than a year. The Working Group on discrimination against women and girls³¹ and the Committee on the Elimination of Discrimination against Women have urged Guatemala to strengthen the Presidential Secretariat for Women.³²

C. Migrants and asylum seekers

28. In partnership with the Guatemalan Institute for Migration, the Ministry of Health and Social Welfare provided COVID-19 antigen testing and vaccinations at the Migrant Support Centre to migrants who were returned by air.³³

29. In implementation of the Migration Code, and under the leadership of the inter-agency technical committee, the Council for Assistance and Protection is developing its internal regulations, a workplan, training for its members and a protocol for migrant support.³⁴

²⁷ See <https://observatorio.mp.gob.gt/portal-estadistico/>.

²⁸ Information provided by the National Civil Police.

²⁹ See <https://osarguatemala.org/embarazos-y-registro-de-nacimientos-2021/>.

³⁰ A/HRC/46/74, para. 40. See also

www.oacnudh.org.gt/images/CONTENIDOS/ARTICULOS/PUBLICACIONES/InformeHSVA.pdf.

³¹ See <https://www.ohchr.org/en/news/2020/06/un-experts-concerned-guatemalas-proposed-backward-step-womens-rights?LangID=S&NewsID=25979>.

³² CEDAW/C/GTM/CO/8-9, para. 14.

³³ See <http://igm.gob.gt/continua-proceso-de-vacunacion-en-contra-de-covid19-en-el-centro-de-recepcion-de-retornados/> and <https://dca.gob.gt/noticias-guatemala-diario-centro-america/migrantes-son-recibidos-de-manera-digna/>.

³⁴ See <http://igm.gob.gt/la-mesa-tecnica-del-consejo-de-proteccion-y-atencion-empresen-proceso-de-planificacion-interinstitucional/>; <http://igm.gob.gt/reunion-de-trabajo-de-la-mesa-tecnica-del-consejo-de-atencion-y-proteccion-cap/>; <http://igm.gob.gt/la-mesa-tecnica-interinstitucional-del-cap-revisa-y-valida-protocolo-de-recepcion-de-guatemaltecos-retornados-via-aerea/>; and <http://igm.gob.gt/desde-el-cap-se-avanza-en-el-proceso-de-la-construccion-del-protocolo-de-atencion-integral-al-migrante/>.

30. Between 14 and 17 January, a caravan of approximately 9,000 migrants, mostly young persons, families and unaccompanied minors³⁵ from El Salvador and Honduras, entered Guatemala en route to Mexico. OHCHR monitored the human rights situation remotely and participated in the intersectoral committee on supporting migratory flows, which was convened by the Guatemalan Institute for Migration. It also provided technical advice on the protection of migrants' rights. The Government's response, namely the declaration of a state of exception for preventive purposes (para. 7), included a massive police and military deployment along the route to stop the advance of the group of migrants. During their three-day stay,³⁶ they had no proper access to water, food or shelter.³⁷ OHCHR received reports of unnecessary or disproportionate use of force by security forces against migrants, including beatings and the use of tear gas.

31. OHCHR documented cases of expulsion or return of migrants from Guatemala to third countries without guarantees of due process or individualized assessments. There were also documented instances of returns of migrants to or from Guatemala in conditions that put them at risk, including returns to places between borders or at night without migration-related support. As of 17 November, 99,408 people were returned to Guatemala from Mexico and the United States of America (62,763 men, 17,576 women, 11,761 male children and adolescents, and 7,308 female children and adolescents). Of those, 55,822 were Guatemalan nationals, including 6,621 unaccompanied children and adolescents.³⁸

D. Persons with disabilities

32. OHCHR welcomes the ruling of 28 January³⁹ in which the Constitutional Court found chapter VI of title I of the Act on the Provision of Services for Persons with Disabilities (Congressional Decree No. 135-96) unconstitutional and urged Congress to bring the Act into line with the Convention on the Rights of Persons with Disabilities. The ruling sets out a human rights-based approach with a view to ensuring that persons with disabilities have access to public and private insurance, thereby guaranteeing their right to health.

33. The Ministry of Education issued Government Decree No. 121-2021, which sets out regulations pertaining to the Act on the Recognition and Approval of Sign Language in the National Education System, with the aim of ensuring that public and private establishments with students who have hearing impairments or are deafblind progressively train their staff in the use of Guatemalan Sign Language.

34. A number of organizations launched legal proceedings before the courts over ongoing concerns about the living conditions and lack of access to adequate health care for persons with disabilities in the Federico Mora National Mental Health Hospital. Several media outlets reported on the limited access to medicines for people undergoing outpatient treatment.⁴⁰

³⁵ See https://reliefweb.int/sites/reliefweb.int/files/resources/SitRep_%231_Caravana_Migrantes_GT_19012021.pdf.

³⁶ See <https://n9.cl/v9xov>.

³⁷ Ibid., and Network of National Institutions for the Promotion and Protection of Human Rights in the Americas, "El procurador de los Derechos Humanos, Jordán Rodas Andrade, manifiesta su preocupación ante el uso de la fuerza por parte del Ejército y la Policía Nacional Civil" (Human Rights Advocate Jordán Rodas Andrade voices concern at use of force by armed forces and National Civil Police), 17 January 2021, Guatemala. Available at: <https://www.rindhca.org/en/actualidad/indh/guatemala/el-procurador-de-los-derechos-humanos-jordan-rodas-andrade-manifiesta-su-preocupacion-ante-el-uso-de-la-fuerza-por-parte-del-ejercito-y-la-policia-nacional-civil>.

³⁸ See <https://igm.gob.gt/guatemaltecos-retornados-2/#>.

³⁹ File No. 3350-2019.

⁴⁰ Constitutional Court, *amparo* proceedings, case No. 1295-2021; see also <https://prensalibre.com/guatemala/comunitario/yo-no-es-que-este-loca-paciente-sufre-ataque-epileptico-frente-al-hospital-federico-mora-por-falta-de-medicamentos-breaking/>.

35. In conjunction with other United Nations agencies, OHCHR conducted training for public officials on the implementation of the Convention on the Rights of Persons with Disabilities.⁴¹

E. Sexual diversity and gender identity

36. Stigmatization, harassment, discrimination and rates of violence against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons are issues of concern and require urgent preventive and protective measures. As of 26 October, 17 gay men, 3 lesbian women, 7 transgender women and 2 bisexual men had been murdered.⁴²

37. In July, Congress submitted bill No. 5940 on guaranteeing comprehensive protection for children and adolescents against gender identity disorders. On 25 November, a group of special rapporteurs of the Human Rights Council sent a letter to the Government pointing out that the bill contains several provisions that are not in line with international human rights standards on the rights of LGBTI persons, including the rights to equality and non-discrimination, education, freedom of expression and opinion, and health.⁴³

F. Young persons

38. Young persons continue to face challenges in exercising their rights on equal terms. Their comprehensive development is hindered by a lack of access to education, decent work, health and safety. Despite the discrimination faced by young indigenous persons, young women, young LGBTI persons and young persons with disabilities, they continue to seek ways to engage in promoting their rights and strengthening democracy by joining youth networks.

39. OHCHR continued to provide support to the National Youth Council, which has 108 municipal offices,⁴⁴ in updating the National Youth Policy 2021–2032 in line with international human rights standards.

40. OHCHR provided technical assistance to the Network of Young Women Human Rights Defenders for capacity-building in rights promotion and digital security. It also documented the risks expressed by youth organizations regarding safety in online civic spaces and shared messages on social networks on the protection, participation and promotion of youth in digital spaces. It also presented the first edition of the Global Report on Protecting Young People in Civic Space.

41. In conjunction with the United Nations Population Fund (UNFPA) and the National Youth Council, OHCHR drafted a document on the application of international human rights standards relating to young persons as a technical tool to assist officials, youth organizations and student associations in the formulation of inclusive and participatory policies and programmes.

⁴¹ The participating institutions included the Planning and Programming Secretariat of the Office of the President, the Ministry of Social Development, the Ministry of Education, the Ministry of Labour and Social Security, the Ministry of Health and Social Welfare, the Ministry of Economic Affairs, the National Council for Persons with Disabilities and the Office of the Human Rights Advocate.

⁴² Data on violent deaths motivated by the victim's sexual orientation or gender identity, as provided by the national human rights monitoring body responsible for cases of violence related to sexual orientation or gender identity.

⁴³ See

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26826>.

⁴⁴ Information provided by the National Youth Council.

IV. Inclusive and sustainable human development

A. Social protection

42. At 7.9 per cent of the gross domestic product, the proportion of resources that the State allocates to social programmes continues to be lower than the Central American average of 9.3 per cent.⁴⁵

43. In conjunction with the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF) and UNFPA, OHCHR provided technical assistance in the design and implementation of a gender-sensitive social registry of households.⁴⁶ This tool will help strengthen the Government's capacity to identify the most vulnerable populations and prioritize them for social protection.

44. In 2020 and 2021, approximately 125,734 families have benefited from the social programmes run by the Ministry of Social Development. The programmes include cash transfers and social subsidies for families in extreme poverty, education scholarships, social canteens to improve food security, and schemes for young persons and pregnant women and girls.⁴⁷

B. Access to lands, territories and natural resources

45. Boundary disputes and lack of security of tenure over lands and territories persist, affecting legal certainty and the enjoyment of rights. OHCHR documented six forced evictions of members of the communities of Chinebal, Izabal, and Se'inup, Petén, which were not conducted in line with international human rights standards insofar as no prior notification was given, force was used disproportionately and no relocation measures were put in place. Another issue of concern is the violent attacks, including attempted homicides, by unidentified persons against leaders of the Washington community in Baja Verapaz, who are engaged in a land title review process and who have been granted precautionary measures by the Inter-American Commission on Human Rights.⁴⁸

46. OHCHR welcomes the willingness of the Land Registry to comply with the relevant Constitutional Court ruling and adhere to international human rights standards to guarantee the legal security of the right to collective ownership of land, territories and natural resources for the Maya Q'eqchi' communities of Sierra Santa Cruz, Izabal.⁴⁹

47. OHCHR continued to work with public institutions to strengthen the capacities of public officials⁵⁰ with regard to international human rights standards on access to lands and territories, healthy environment, indigenous peoples and campesinos.

48. OHCHR welcomes the creation of the Office of the Deputy Minister for Water and Basic Sanitation. In that regard, OHCHR organized discussion forums on the right to water with the municipal water and sanitation authorities and established a close dialogue with the mayors of the municipalities in the Northern Transversal Strip, where communities have been affected by lack of access to water and by water contamination caused by monocultures.

⁴⁵ Economic Commission for Latin America and the Caribbean, *Social Panorama of Latin America 2020* (Santiago), 2021.

⁴⁶ See <https://guatemala.un.org/es/99803-registro-social-de-hogares-sensible-al-genero>.

⁴⁷ Data as of August 2021. See <https://mides.gob.gt/programas-sociales/vida/>.

⁴⁸ A/HRC/46/74, para. 55.

⁴⁹ Constitutional Court, file No. 5955-2013, ruling of 25 November 2015.

⁵⁰ The National Council for Protected Areas, the Office of the Human Rights Advocate, the Public Criminal Defence Institute, the National Forestry Institute, the Ministry of Energy and Mining, the Ministry of the Interior, the Office for the Regulation of State Territorial Reserves, the Attorney General's Office and the Land Registry.

C. Business and human rights

49. OHCHR welcomes the efforts of the Presidential Commission for Peace and Human Rights to begin the process of developing the baseline for the National Action Plan on Business and Human Rights, in application of the recommendations of the High Commissioner,⁵¹ and reiterates its commitment to continuing to provide relevant technical assistance.

50. In conjunction with the Global Compact and Centrarse, OHCHR provided training for companies and other civil society actors on the Guiding Principles on Business and Human Rights with a view to designing a national business and human rights action plan.

V. Justice and the fight against impunity

A. Access to justice and the fight against impunity

51. The structural challenges of the justice system, such as the backlog of cases and the delay in electing and swearing in judges (paras. 9 and 55), continued to worsen as a result of the COVID-19 pandemic. Between January and June, more than 33,000 criminal hearings were reported to have been postponed; 7,203 of them were arraignment hearings,⁵² thereby affecting the right to be brought promptly before a judge and to be tried without undue delay. There is concern about the practice of detaining people awaiting arraignment for unreasonable periods of time without formal custody orders.

52. Persisting structural barriers were documented in the area of access to justice for women victims of gender-based violence, indigenous peoples and Afro-Guatemalans, persons with disabilities and adolescents in conflict with the law. In judicial proceedings, OHCHR observed intersectional discrimination on the basis of gender, racial, economic and social stereotypes, which are more acute in rural areas and indigenous territories. To strengthen the capacities of judicial officials in handling cases of gender-based violence, the judiciary, with technical assistance from OHCHR, released a tool for applying a human rights, gender-sensitive and intersectional approach in judgments relating to gender-based violence.⁵³

53. OHCHR supported capacity-building for the Constitutional Court on the rights of indigenous peoples and persons with disabilities, gender perspectives and intersectionality, access to justice, the right to a fair trial and compliance with treaties.

B. Judicial independence, including the election of judges

54. Congress placed the elections to the high courts for the 2019–2024 term on its agenda on at least 68 occasions without achieving concrete results. The current justices have continued to serve beyond the end of their constitutional term, giving rise to uncertainty that impacts the functioning of the judiciary and the judicial profession. In addition, in a ruling on 8 November,⁵⁴ the Constitutional Court provisionally suspended articles of the Judicial Service Act and its regulations, restricting the functions of the Judicial Service Council and limiting progress towards the separation of the administrative and jurisdictional functions of the Supreme Court.⁵⁵

55. In April, Constitutional Court justices were sworn in by Congress for the 2021–2026 term, with the exception of re-elected judge Gloria Porras, against whom legal actions had

⁵¹ A/HRC/46/74, para. 93 (f).

⁵² Information provided by the judiciary on 30 September 2021.

⁵³ See https://issuu.com/oacnudhgt/docs/herramienta_para_incorporar_el_enfoque_de_derechos.

⁵⁴ Case No. 5729-2021.

⁵⁵ A/HRC/34/3/Add.1, para. 16.

been filed by a number of actors in an attempt to hamper the re-election process.⁵⁶ Judge Francisco de Mata Vela, who is temporarily occupying the vacant post in the Constitutional Court, continues to be subject to retaliation in the form of attempts by the Supreme Court and Congress to waive his immunity with respect to criminal complaints received in connection with judicial rulings issued by the Constitutional Court in 2018 and 2020.⁵⁷ The cases of both judges have been included in the annual reports of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights.⁵⁸

56. OHCHR continued to document attacks and reprisals, committed mainly by private actors, against five judges, one justice and one former justice of the Constitutional Court and 14 prosecutors and former prosecutors. The attacks include the misuse of criminal law to prevent or punish the legitimate exercise of their work; pretrial applications for immunity waivers for, inter alia, alleged abuse of authority, unconstitutional rulings, prevarication and illicit association; and actions against personal integrity. For example, there have been documented instances of surveillance, intimidation and death threats via social networks.

57. The judicial profession was seriously weakened by transfers, dismissals or removals of prosecutors in symbolic cases, without apparent justification or any respect for due process. In addition, OHCHR received allegations that at least four prosecutors, including the former head of the Office of the Special Prosecutor against Impunity, Juan Francisco Sandoval, were dismissed without applying the principle of legality or due guarantees of objectivity, impartiality and the right to a defence.⁵⁹ All of the above-mentioned events weaken the judicial system and jeopardize progress in criminal prosecution, the fight against impunity and access to justice.

C. Transitional justice

58. Significant progress was made in 4 of 11 cases of serious violations committed during the armed conflict. In May, the Office of the Prosecutor for Human Rights indicted 12 former intelligence officers of the now defunct Presidential General Staff and the Army in the *Diario Militar*⁶⁰ case for crimes against humanity and offences of forced disappearance and murder that occurred between 1983 and 1985. The intermediate phase was concluded in the *Las Dos Erres* case⁶¹ and the *Genocide against the Maya-Ixil people 1978–1982* case with regard to, inter alia, crimes against humanity, genocide and forced disappearance. In the *Sexual Violence against Achí Women* case, although 6 of the 12 people charged were sent to trial, the Supreme Court twice cancelled the cassation hearing on the judicial situation of 3 others who were acquitted.

59. The persistent attacks on judicial officials responsible for investigating and prosecuting these cases remain a concern. In the *Diario Militar* case, OHCHR documented acts of intimidation against Judge Miguel Ángel Gálvez from High-Risk Crime Court B, four prosecutors from the Office of the Prosecutor for Human Rights and officials from the Office of the Human Rights Advocate.

60. On 10 February, the Constitutional Court permanently suspended the reforms to the National Reconciliation Act contained in bill No. 5377.⁶² However, in June, Congress was

⁵⁶ See <https://www.ohchr.org/en/press-releases/2021/04/guatemala-un-expert-deeply-concerned-congress-refusal-reappoint-top-judge?LangID=S&NewsID=27006>.

⁵⁷ Constitutional Court, order of 29 May 2018, files No. 2198-2018 and No. 2201-2018, relating to the Swedish ambassador's withdrawal from the country on 10 May 2018; and ruling of 25 September 2020, cases No. 3300-2018 and No. 3387-2018, on the suspension of the election of a Constitutional Court justice for the 2018–2021 term.

⁵⁸ A/HRC/45/36, annex II, paras. 54–64; A/HRC/42/30, paras. 54–55, and annex I, paras. 40–45.

⁵⁹ Inter-American Commission on Human Rights, *IACHR Expresses Concern over Actions That Weaken Judicial Independence in Guatemala*, press release, 6 August 2021. Available at: https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2021/203.asp.

⁶⁰ Inter-American Court of Human Rights, case of *Gudiel Álvarez et al. (“Diario Militar”)* v. *Guatemala*, judgment of 20 November 2012.

⁶¹ *Ibid.*, *Case of the “Las Dos Erres” Massacre v. Guatemala*, judgment of 24 November 2009.

⁶² A/HRC/40/3/Add.1, para. 15.

presented with bill No. 5920 on peacebuilding and reconciliation. The bill, which remains under consideration, is incompatible with international human rights standards insofar as it seeks to extinguish the criminal liability of persons accused of committing international crimes committed during the internal armed conflict, including by quashing convictions.

61. Although the transfer of archives from the National Reparations Programme to the Ministry of Social Development was completed, no reparations were made to victims in 2021. There is concern about the lack of budget and capacity to process the 26,125 files in the system. The *amparo* proceedings filed before the Constitutional Court in 2020 in respect of the Government's decision to convert the National Restitution Programme into a social welfare programme within the Ministry of Development remain unresolved.⁶³ OHCHR provided technical assistance to the National Reparations Programme/Ministry of Social Development team on international standards and the human rights-based approach to reparations.

62. OHCHR promoted processes to engage young persons and foster intergenerational dialogue and knowledge about the right to memory. OHCHR recognizes the important work of victims' organizations in giving voice to new generations in transitional justice processes.

VI. Democratic space

63. During the reporting period, demonstrations were held. However, civic space was reduced further, and the criminalization of human rights defenders and defamation and hate speech against them ramped up. Similarly, the spaces for dialogue between State authorities, indigenous peoples and civil society organizations as a whole were reduced.

64. OHCHR observed an increase in attacks on and threats against human rights defenders on social networks. The attacks on the defenders included aggressive language directed at people's sexual identity, physical appearance, reputation and family, and rape and death threats intended to halt their work.

65. OHCHR documented attacks targeting social movements, journalists and campesino organizations denouncing corruption on social networks, with the targets constantly labelled "criminals" or "terrorists" and being criminalized.

66. There continued to be a growing trend of smear campaigns, particularly against journalists, using fake netcenter accounts (trolls and bots) on social networks. For example, Ana Chen, a media worker from El Estor, received threats following her coverage of the Eta and Iota storms in 2020.

67. OHCHR continued to strengthen the participation of civil society and enhance its capacities to promote human rights as part of the Participate, Promote and Protect platform.⁶⁴ OHCHR identifies patterns of attacks in order to define protection mechanisms that can be implemented at both the international and national levels and provides assistance to public institutions and civil society.

A. Human rights defenders

Protection of human rights defenders

68. The frequency and severity of attacks against human rights defenders continued to be of concern. They included physical attacks, gender-based and sexual violence, threats, intimidation, surveillance and stigmatization. Indigenous peoples, human rights defenders, LGBTI rights defenders, journalists, community communicators, justice officials and defenders of victims of the internal armed conflict faced serious risks.

69. OHCHR also documented reports of defamation, stigmatization and criminalization in respect of human rights organizations with the aim of hampering the work of international human rights observers and their exercise of the right to association, as well as the

⁶³ A/HRC/46/74, para. 71.

⁶⁴ See <https://participapromueveprotege.org/>.

mobilization of student and campesino organizations. It is concerning that such accusations have been made by public officials and private sector actors.

70. OHCHR received reports of more than 800 attacks⁶⁵ against human rights defenders between 1 January and 15 December and documented 103 of them relating to 65 men, 31 women and 7 organizations. The largest increase has been in cases of criminalization, which rose more than 36 per cent compared to the number recorded during the same period in 2020.⁶⁶ OHCHR documented the murder of six human rights defenders: two members of the Campesino Development Committee, one member of the Verapaz Union of Campesino Organizations, one member of the Altiplano Campesino Development Committee, one spiritual guide and one journalist, whose murder was allegedly related to his human rights work.

71. The Public Prosecution Service recorded the following figures relating to offences against human rights defenders between 1 January and 30 September.⁶⁷

<i>Type of defender</i>	<i>Complaints received</i>	<i>Arrest warrants issued</i>	<i>Convictions obtained</i>
Activists	73	1	1
Journalists	64	11	1

72. The Office of the Human Rights Advocate reported 61 cases of attacks on human rights defenders as of 15 October, including 15 cases of criminalization and 19 cases of intimidation and/or threats. The Human Rights Defenders Protection Unit of Guatemala registered 839 attacks on human rights defenders between January and November.

73. The lack of national protection mechanisms elevates the risk of attacks on human rights defenders. OHCHR has observed that this absence of mechanisms and the low number of investigations and convictions gives rise to a lack of confidence in public institutions, discourages people from filing complaints and fosters a climate of impunity.

74. OHCHR worked with the Presidential Commission for Peace and Human Rights and civil society organizations to relaunch the process of formulating a public policy on the protection of human rights defenders.⁶⁸

Criminalization

75. There has been an increase in the misuse of criminal law against human rights defenders and journalists to prevent the legitimate exercise of their profession or to punish them for their work, using criminal proceedings that do not appear to be based on concrete facts and elements that would justify them. OHCHR documented irregularities in criminal proceedings against human rights defenders, such as the case of Jorge Choc and Marcelino Xol. It also documented cases of complaints and the application of criminal charges in relation to actions or conduct not amounting to a criminal offence or with disproportionate penalties. For example, in the context of peaceful protests, human rights defenders Nanci Sinto and Dulce Archila were accused of acts that carry sentences of 6 to 9 years' imprisonment.

76. OHCHR has received information on arrest warrants issued in respect of indigenous persons defending the right to land and territory on suspicion of trespass and aggravated trespass, for actions carried out in the context of demands for the ownership of ancestral lands and protection of the environment.

77. On 12 July, the Criminal Chamber of the Supreme Court upheld the sentence of 7 years and 4 months handed to the Q'eqchi' defender Bernardo Caal Xol. On 29 September,

⁶⁵ OHCHR receives complaints directly from victims, civil society organizations and institutions.

⁶⁶ *Ibid.*

⁶⁷ Information provided by the Public Prosecution Service through an official communication on 15 November 2021.

⁶⁸ Inter-American Court of Human Rights, case of *Human Rights Defender et al. v. Guatemala*, Judgment of 28 August 2014, para. 263.

his lawyer filed *amparo* proceedings before the Constitutional Court. By December 2021, he had served almost four years, more than half of his sentence. United Nations independent experts expressed concern about the criminalization of Bernardo Caal and the violations of his rights to due process and to health.⁶⁹

B. Freedom of expression

78. OHCHR continued to document attacks on persons who exercise and defend freedom of expression. Between 1 January and 31 October, the Observatory of the Guatemalan Journalists' Association registered 116 complaints about restrictions on freedom of expression, such as pressure to reveal sources, defamation, intimidation and threats.⁷⁰ In the same period, the Office of the Prosecutor for Offences against Journalists registered 73 complaints. As of 30 November, OHCHR documented 33 attacks on media workers and journalists, including a murder.

79. OHCHR has documented cases of criminalization of media workers, communicators and journalists by means of criminal proceedings relating to the legitimate exercise of the journalistic profession. For example, Sonny Figueroa and Marvin del Cid were accused of criminal offences for the publication of investigative journalistic reports on the former director of the Government Centre and the communications director of Congress. Executives of the media outlet La Hora were also reported to police in connection with investigations and articles it published.

80. At least 12 criminal investigations have been opened in respect of the directors of El Periódico in connection with their work as journalists.

81. OHCHR welcomes the willingness expressed by the Presidential Commission for Peace and Human Rights to begin to create networks with a view to establishing a system to protect journalists. In this context, OHCHR held a training workshop for various officials on international standards on freedom of expression and the protection of journalists.

C. Freedom of assembly and association

82. OHCHR observed, either in person or remotely, 113 demonstrations, most of which were peaceful and passed off without intervention by the security forces. Demonstrations held outside the capital region brought together thousands of people at gatherings that lasted several days and took place in dozens of different locations around the country at the same time. One such example was the "plurinational strikes", which were called by social organizations, indigenous authorities and campesino movements such as the Campesino Development Committee and the 48 Cantons of Totonicapán.

83. OHCHR has observed an uneven State response to the various demonstrations.⁷¹ For example, on 19 October, during a demonstration demanding the approval of bill No. 5664,⁷² retired military veterans forced their way into Congress, causing damage to facilities and vehicles and injuring journalists and police officers. At this demonstration, there was no greater deployment of security forces than at other demonstrations that were peaceful in nature. Similarly, on 27 September in the municipality of Cuyotenango, and on 22 and 23 October in the municipality of El Estor, excessive use of force by security forces during demonstrations was documented, with some injuries and cases of tear gas poisoning.

⁶⁹ See <https://www.ohchr.org/en/press-releases/2021/07/guatemala-stop-treating-indigenous-human-rights-defenders-criminals-un?LangID=S&NewsID=27343>.

⁷⁰ See

https://drive.google.com/file/d/1Aece93aaH_xn_QxLqXpeAtojKDasye2u/view?fbclid=IwAR1Vo386D7Lu9oZ3K5MSjrdSFQwIwvowNLnQk182LVnXvIoJpDZ_jgGfl3qQ.

⁷¹ See <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf>, para. 86.

⁷² Bill on financial compensation for military service rendered during the internal armed conflict.

D. Security and states of exception

84. OHCHR continued to document the use of states of exception as a way of responding to structural and social problems that require the adoption of administrative, legislative and jurisdictional measures. In 2021, they were used on 10 occasions (para. 7).

85. The state of siege declared in October in El Estor, Izabal, was justified using allegations of violence that supposedly occurred in the context of peaceful demonstrations by Q'eqchi' communities against mining activity in the region and calling for their participation in the consultation as set out in case No. 697-2019 of the Constitutional Court.

86. In this context, OHCHR conducted an observation mission⁷³ that allowed it to document disproportionate or arbitrary restrictions on the exercise of civil rights, as well as arrests and searches conducted without judicial guarantees. It also documented the fact that most of the arrest and search warrants were issued in respect of journalists, social communicators and human rights defenders.

VII. Conclusions and recommendations

87. **Guatemala continues to face systemic and structural challenges. In 2021, these challenges relate, in particular, to inequality and discrimination, the justice system and the fight against impunity, democratic spaces and citizen participation. This context prevents significant progress in the exercise and enjoyment of human rights.**

88. **The United Nations High Commissioner for Human Rights reiterates her commitment to supporting Guatemala in enhancing the protection of all human rights for all people. On the basis of the activities of OHCHR in Guatemala, and in addition to previous recommendations, the High Commissioner recommends that the Government:**

(a) **Step up its efforts to address inequality, especially for the benefit of the poorest and most vulnerable people, for example by expanding social investment and increasing the coverage of non-contributory social programmes;**

(b) **Increase efforts to promote social dialogue and consultation to strengthen the inclusion of all groups in decision-making processes, including indigenous peoples, women, young persons, persons with disabilities and lesbian, gay, bisexual, transgender and intersex persons;**

(c) **Guarantee the independence of judicial institutions and strengthen the professional careers of justice officials, including by increasing protection for such officials and creating national programmes or institutional protection mechanisms designed to detect and adequately address challenges relating to judicial independence;**

(d) **Continue taking measures to guarantee access to the rights to truth, justice, reparation, memory and guarantees of non-repetition; expedite redress processes, the investigation and prosecution of cases and the search for missing persons; and facilitate the appropriate use of archives relating to serious human rights violations that occurred in the past;**

(e) **Strengthen legislation, policies and institutional structures for the protection of human rights defenders and journalists, including against criminalization;**

(f) **Strengthen trust between public institutions and indigenous peoples by implementing measures to protect and uphold indigenous peoples' rights to lands, territories and natural resources, to be consulted and to free, prior and informed consent, to collective intellectual property, and to intercultural sexual health;**

⁷³ OHCHR mission conducted between 15 and 18 November.

(g) Promote and institutionalize national policies and programmes to guarantee the rights of Garifuna and Afro-Guatemalan peoples;

(h) Ensure the participation of all stakeholders, especially the most vulnerable people, in efforts to implement the National Action Plan on Business and Human Rights;

(i) Update contingency plans and protocols for managing demonstrations, including with regard to the use of force by security forces, in accordance with international human rights standards;

(j) Guarantee the human rights of people on the move, including returnees, irrespective of their migratory status, and strengthen the capacities of the Council for Assistance and Protection.
