



## 人权理事会

## 第四十三届会议

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## 议程项目2

联合国人权事务高级专员的年度报告

以及高级专员办事处的报告和秘书长的报告

## 危地马拉的人权状况

## 联合国人权事务高级专员的报告\*\*\*

## 概要

联合国人权事务高级专员在报告中叙述了2019年1月1日至12月31日危地马拉的人权状况和高级专员办事处在该国开展的活动。她强调了在促进和保护人权方面取得的进展和持续存在的挑战，重点指出与民主空间、正义和打击有罪不罚、平等和不歧视有关的问题。她在报告的最后向各国家机构和其他利益攸关方提出了建议。

\* 报告概要以所有正式语文分发。报告正文附于概要之后，仅以提交语文和西班牙文分发。

\*\* 因提交方无法控制的情况，经协议，本报告迟于标准发布日期发布。



## 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 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. The report covers the year 2019 and is based on information collected and analysed by OHCHR in Guatemala, as well as information provided by State institutions and other stakeholders. Specific activities of OHCHR are detailed throughout the report.

2. In 2019, OHCHR conducted 83 monitoring and fact-finding missions, provided 193 capacity-building courses to State institutions and civil society, and followed up on 104 emergency cases of alleged human rights violations. It regularly issued public statements and produced two reports and several informational fact sheets, which are available on its website ([oacnudh.org.gt](http://oacnudh.org.gt)). It organized seven forums, including on business and human rights, freedom of expression, the rights to water and sanitation, and transitional justice. It provided strategic litigation and technical support for the implementation of judgments or reparations ordered, especially in cases regarding the rights of indigenous peoples.

3. The Office provided continuous technical assistance to State institutions at the national and local levels, notably to the Office of the Ombudsperson; the Office of the Attorney General; the judiciary; the Ministry of Labour; the Ministry of Health; the Ministry of Education; the National Civil Police; the Presidential Commission on Human Rights; the Presidential Secretariat for Women; and the Supreme Electoral Tribunal, among others. Throughout its work, it collaborated with regional and international human rights-monitoring mechanisms.

4. The work of OHCHR in 2019 covered issues raised in the present report, notably human rights defenders; independence of the judiciary; transitional justice; the fight against impunity; security; inclusive and sustainable human development; and non-discrimination and equality. OHCHR prioritized the situation of the most marginalized sectors of the population: indigenous peoples; women and girls; people on the move; lesbian, gay, bisexual and transgender persons; and persons with disabilities.

## II. Context

5. The new Government assumed office on 14 January 2020 in a challenging human rights context, with persisting high levels of inequality, discrimination, insecurity and impunity. The year 2019 was marked by significant setbacks and actions aimed at obstructing the advancement of human rights, the rule of law, and the fight against corruption and impunity.<sup>1</sup> The situation has continued to drive large numbers of Guatemalan nationals, including unaccompanied children, to migrate.

6. The presidential, legislative and municipal elections were at the centre of political attention in 2019 (see paras. 13–16). Legal battles regarding the participation of several presidential candidates overshadowed substantive debates and the presentation of political platforms. Following the first round of voting, which was held on 16 June, discrepancies between the digital and written copies of ballot-box returns led to the results being called into question and to a weeks-long revision by the Supreme Electoral Tribunal. On 11 August, following the second round of voting, Alejandro Giammattei (Vamos party) won the runoff with 57.95 per cent of the votes against Sandra Torres<sup>2</sup> (UNE party).<sup>3</sup>

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<sup>1</sup> [ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24071&LangID=E](http://ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24071&LangID=E).

<sup>2</sup> On 2 September, Sandra Torres was arrested on charges of illegal campaign financing in 2015.

<sup>3</sup> <https://preliminares2019.tse.org.gt/201902/panel.html> (in Spanish).

7. Divisions within Congress increased in 2019. The outgoing legislature only passed 8 decrees in 2019 compared with 50 in 2016, its first year. Certain members continued to push bills aimed at undermining the protection of human rights, sparking numerous statements of concern at the national and international levels.<sup>4</sup> However, none of these bills gained sufficient cross-party support for adoption. Some members of Congress conducted hearings to question persons engaged in the promotion of human rights and the fight against corruption and impunity, including the Ombudsperson, judges, prosecutors and former staff of the International Commission against Impunity in Guatemala (CICIG). However, in 2020, the balance of power in Congress could shift. Only 50 out of 160 members of Congress were re-elected. The 2020–2024 legislature will consist of 19 caucuses. Despite increasing their seats from 24 to 31, women will only represent 19 per cent of Congress.

8. The previous general elections were held in 2015 in the context of a massive mobilization against corruption, which brought President Morales to power on an anti-corruption platform. Just over three years later, on 7 January 2019, President Morales announced that Guatemala was unilaterally withdrawing from the agreement with the United Nations establishing CICIG (A/HRC/40/3/Add.1, para. 5). On 9 January, the Constitutional Court suspended the Executive's decision to withdraw from the agreement, allowing CICIG to operate until the end of its mandate, on 3 September. The Executive did not renew the mandate, leaving uncertain both the future of the cases still under investigation with the support or participation of CICIG, and the commitment of the State to continue the fight against corruption and impunity.

9. During 2019, the justice system was seriously undermined on several occasions, including as a result of the failure of the Government to abide by decisions of the Constitutional Court and owing to constant attacks by “pro-impunity” sectors against judicial independence (see paras. 33–36). The process to appoint new judges to the Supreme Court of Justice and to Appeals Courts, initiated on 13 August, generated legal challenges by civil society alleging a lack of objectivity, transparency and merit-based evaluations. Owing to these concerns, on 16 September, the nomination process was temporarily suspended by the Constitutional Court. On 2 December, the Court decided on a road map for the nominations. On 9 and 11 December, the nominating commissions were established (see paras. 29–32).

10. On 26 July, the Governments of Guatemala and the United States of America signed a cooperation agreement on protection requests, known as the “Safe Third Country” agreement. It stipulates that non-Guatemalans of legal age who arrive in the United States (through any port of entry) for the purposes of requesting asylum or another form of protection will be sent to Guatemala for a determination of such requests. There are serious concerns that the implementation of the agreement could lead to violations of human rights, such as collective expulsions, lack of due process guarantees and arbitrary detention, as well as violations that could result from the lack of respect for the principle of non-refoulement (see paras. 78–81).

11. On 4 September, the Government declared a state of siege due to “a series of violent events that took human lives and endangered the constitutional order, governance and security of the State”.<sup>5</sup> The decree followed an incident in El Estor, Izabal, on 3 September, in which three soldiers were killed and five people injured. The state of siege was extended over 22 municipalities, mainly in indigenous-populated and rural areas where land conflicts are common and extractive and agro-industrial projects operate. It lasted 60 days and involved the suspension of constitutional rights, including freedoms of movement, association and protest, resulting in human rights organizations halting their activities for fear of detention of their staff.<sup>6</sup> OHCHR was concerned that these measures were not necessary and proportional to achieve a legitimate justification in accordance with international human rights norms and standards.

<sup>4</sup> [ohchr.org/sp/NewsEvents/Pages/DisplayNews.aspx?NewsID=24098&LangID=S](https://www.ohchr.org/sp/NewsEvents/Pages/DisplayNews.aspx?NewsID=24098&LangID=S) (in Spanish); [ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24273&LangID=E](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24273&LangID=E); and [ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24300&LangID=E](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24300&LangID=E).

<sup>5</sup> [minfin.gob.gt/images/downloads/leyes\\_acuerdos/decreto1\\_050919.pdf](https://minfin.gob.gt/images/downloads/leyes_acuerdos/decreto1_050919.pdf) (in Spanish), art. 2.

<sup>6</sup> [oas.org/es/cidh/prensa/comunicados/2019/288.asp](https://oas.org/es/cidh/prensa/comunicados/2019/288.asp) (in Spanish).

12. A significant advance in 2019 was the publication of the results of the 2018 census, the first since 2002. The data collected are essential for the development of public policies to address the numerous challenges in the enjoyment of human rights. According to the results of the census, the population is 14.9 million (51.5 per cent women, 48.5 per cent men). Previous official projections estimated the population at 17.3 million in 2018. Of the population in the census, 51.1 per cent self-identified as “ladino” (referring to the non-indigenous population of Guatemala) and 43.8 per cent as indigenous, a number that was questioned by some indigenous authorities who alleged deficiencies in the formulation of the question on self-identification. The census shows that many Guatemalans, especially indigenous peoples, continue to live in situations of extreme poverty, with serious limitations to their rights to food, water, education and land (see paras. 59–69).

### III. Democratic space

#### A. The general elections

13. The general elections took place in a highly polarized environment. These were the first elections to implement the 2016 reforms of the law on elections and political parties. Among other issues, the reforms related to campaign financing, the allocation of media time for campaigns, the effect of null votes and the issue of voting from abroad.

14. Following the presentation of numerous legal challenges, decisions issued by the Constitutional Court determined the 19 parties that could run on presidential tickets. These decisions generated dissatisfaction among various sectors of the population, particularly in the cases of Zury Ríos (Valor party) and former Attorney General Thelma Aldana (Semilla party) who were among the top three candidates in polls in the weeks before the elections. Another presidential candidate, Mario Estrada (UCN party), was arrested in the United States on charges of conspiring with a drug cartel to meddle in the elections in exchange for unrestricted passage of drugs through the country, to which he later pled guilty.<sup>7</sup>

15. For the first time in the history of Guatemala, an indigenous woman, Thelma Cabrera (MLP party), won 10 per cent of the votes, placing fourth. However, women and indigenous peoples remained underrepresented in elected positions at all levels. Women made up only 20 per cent of the total number of candidates.<sup>8</sup> Although there was an increase of women candidates at municipal levels (from 137 in 2015 to 227 in 2019), only 10 were elected.<sup>9</sup> No disaggregated information is available with respect to voter participation among indigenous peoples. OHCHR documented misogynist and racist discourses on social media, particularly against indigenous candidates.<sup>10</sup>

16. During both electoral rounds, OHCHR deployed teams in coordination with the Office of the Ombudsperson to observe the human rights situation. During the first round of voting, on 16 June, OHCHR sent 14 teams to 17 departments. The teams documented cases of coercion and pressure to vote, including vote buying, threats against members of the temporary electoral bodies,<sup>11</sup> riots preventing vote counting and violent entry into polling stations. Owing to incidents of violence, the elections of four municipal councils had to be repeated.<sup>12</sup>

<sup>7</sup> United States Department of Justice, United States Attorney’s Office, Southern District of New York, “Guatemalan presidential candidate charged with conspiring to import cocaine into the United States and related firearms offense”, 17 April 2019. Available at [justice.gov](https://www.justice.gov).

<sup>8</sup> Information provided to OHCHR by the Supreme Electoral Tribunal, DOP-0-3114-2019, 17 October 2019.

<sup>9</sup> Ibid.

<sup>10</sup> [oacnudh.org.gt/images/CONTENIDOS/ARTICULOS/PUBLICACIONES/Elecciones2019/Boletin2\\_NoDejarANadieAtras.pdf](https://oacnudh.org.gt/images/CONTENIDOS/ARTICULOS/PUBLICACIONES/Elecciones2019/Boletin2_NoDejarANadieAtras.pdf) (in Spanish).

<sup>11</sup> These resulted in the suspension of elections in San Jorge (Zacapa).

<sup>12</sup> Iztapa (Escuintla); Tajumulco and Esquipulas Palo Gordo (San Marcos); and San Antonio Ilotenango (Quiché).

## B. Human rights defenders

17. In May 2019, OHCHR and the Office of the Ombudsperson published a joint report on the situation of human rights defenders.<sup>13</sup> OHCHR values the commitment of human rights defenders and organizations working in an adverse context and with diminished resources. This includes representatives of indigenous and peasant organizations who, in April and May, walked more than 100 kilometres in a “march for dignity”, and students of the San Carlos University of Guatemala who, in August, protested for weeks in favour of affordable higher public education.

18. After more than a year without progress (A/HRC/40/3/Add.1, paras. 39–40), in October 2019, the Presidential Commission of Human Rights (COPREDEH) reinitiated efforts to develop a public policy for the protection of human rights defenders and collected information on the risks they faced. The Office of the Ombudsperson established a specialized unit on human rights defenders and journalists in November, which was a positive step.

### 1. Protection of human rights defenders

19. Human rights defenders continued to work in a multi-risk context, with high levels of impunity for attacks against them. Between 1 January and 17 October, the Office of the Attorney General recorded the following figures concerning crimes against human rights defenders and arrests of those responsible (see table 1).<sup>14</sup>

Table 1

#### Crimes against human rights defenders and arrests made

<i>Type of defender</i>	<i>Complaints received</i>	<i>Arrest warrants requested</i>
Activists	108	13
Journalists	96	13
Members of the judiciary and prosecutors	92	32

20. Between 1 January and 4 October, the police carried out 168 risk-analysis procedures for human rights defenders and recommended 131 measures involving periodic visits by the police, 14 personal protection measures and 6 protection measures to buildings.<sup>15</sup>

21. The non-governmental organization Udefegua documented 395 cases of aggressions against human rights defenders (153 women, 242 men) in 2019. Land rights defenders, mostly indigenous peoples, continued to be the most targeted, accounting for 47 per cent of reported aggressions. As of the end of November, 16 human rights defenders had been killed, including 10 members of the Peasant Development Committee (CODECA), which defends rights to land and to affordable electricity.

22. Organizations were the target of attacks, including criminalization, surveillance of their offices, robberies and raids by unknown persons, including the theft of computers and hard drives containing sensitive information. In 2019, Udefegua documented 67 such incidents. On 8 March, International Women’s Day, the office of the non-governmental organization “Alianza Política Sector de Mujeres” (Women’s Sector Political Alliance) in Guatemala City was broken into and documents were taken by unknown persons, for reasons still under investigation by the Office of the Attorney General.

<sup>13</sup> [oacnudh.org.gt/images/CONTENIDOS/ARTICULOS/PUBLICACIONES/Informe\\_personas\\_defensoras.pdf](https://oacnudh.org.gt/images/CONTENIDOS/ARTICULOS/PUBLICACIONES/Informe_personas_defensoras.pdf) (in Spanish).

<sup>14</sup> Information provided to OHCHR by the Office of the Attorney General, UIP/G 2019-002341/hacmda, 30 October 2019.

<sup>15</sup> Information provided to OHCHR by the National Civil Police, Doc. No. 2115-2019/DG/CRTE/at, 14 October 2019.

## 2. Stigmatization and criminalization

23. In 2019, messages discrediting human rights defenders proliferated on social media, including from the President and anonymous “trolls”. It was concerning that social media, which can be a tool to promote human rights, was used to attack human rights defenders and delegitimize them.

24. Cases of misuse of criminal law against human rights defenders continued, such as the criminalization of public officials, including prosecutors and judges who carry out functions in defence of human rights (see paras. 33–36) (A/HRC/42/30, paras. 54 and 55). The high level of criminalization of members of certain organizations is particularly troubling, such as the 706 cases against members of the Altiplano Peasants’ Committee (CCDA) and the 256 cases against members of the Peasant Unity Committee (CUC). The most common charge is the crime of “aggravated trespassing” in the context of land claims.

25. In April, indigenous defender Abelino Chub was acquitted of all criminal charges against him (unlawful association, arson and aggravated trespassing). OHCHR welcomed the acquittal, noting, however, that he spent over two years in pretrial detention. In its judgment, High-Risk Court A held that criminal law had been used to criminalize the work of the accused without any crime having been committed.<sup>16</sup> Even in cases where human rights defenders were acquitted, they have not received reparations and those who filed groundless claims have not been sanctioned.<sup>17</sup>

## 3. Freedom of expression

26. OHCHR noted an increase in defamation campaigns and the spreading of false narratives or use of fake social media accounts, discrediting the work of journalists and intimidating them, including in the lead up to the elections.<sup>18</sup>

27. Community radio stations play a vital role in ensuring access to information in indigenous communities with a culturally and linguistically appropriate approach. However, these stations have little opportunity to compete for frequencies, given that those frequencies are made available through auctions. As a result, the wealthiest media outlets bid the highest and therefore monopolize the frequencies. The irregular use of frequencies by communities leads to searches by authorities, the confiscation of equipment and the criminalization of communicators on charges of “theft”. In September, during the state of siege in El Estor, Izabal, the Maya Q’eqchi’ community radio Xyaab’ Tzuultaq’a was searched by the Office of the Attorney General and shut down indefinitely.<sup>19</sup>

28. Investigations by the Office of the Attorney General have revealed the involvement of local political actors as the intellectual authors of several killings of journalists, such as in the January 2017 murder of Salvador Villagrán, a journalist from San Jorge, Zacapa.

# IV. Justice and the fight against impunity

## A. The election of high court judges

29. The challenges in the selection of new high court judges (see para. 9) exemplified the continued problems in the judicial appointment model (e.g., A/HRC/40/3/Add.1, para. 6, and A/HRC/28/3/Add.1, para. 22). The nominating commissions, established in August, were meant to select the new judges of the Supreme Court of Justice and the Appeals Courts for the period 2019–2024. However, between August and September, OHCHR documented numerous concerns in the process conducted by the nominating commissions,

<sup>16</sup> High-Risk Court A, case file 18002-2016-000328, 6 May 2019.

<sup>17</sup> [oacnudh.org.gt/images/CONTENIDOS/ARTICULOS/PUBLICACIONES/Informe\\_personas\\_defensoras.pdf](https://oacnudh.org.gt/images/CONTENIDOS/ARTICULOS/PUBLICACIONES/Informe_personas_defensoras.pdf) (in Spanish), para. 39.

<sup>18</sup> [oacnudh.org.gt/index.php/sala-de-prensa/noticias-y-comunicados/208-guatemala-la-libertad-de-expresion-y-el-rol-de-la-prensa-son-indispensables-para-asegurar-elecciones-libres-y-transparentes-este-16-de-junio](https://oacnudh.org.gt/index.php/sala-de-prensa/noticias-y-comunicados/208-guatemala-la-libertad-de-expresion-y-el-rol-de-la-prensa-son-indispensables-para-asegurar-elecciones-libres-y-transparentes-este-16-de-junio) (in Spanish).

<sup>19</sup> [oas.org/es/cidh/prensa/comunicados/2019/288.asp](https://oas.org/es/cidh/prensa/comunicados/2019/288.asp) (in Spanish).



including a lack of appropriate methodologies, time frames and selection criteria to ensure an impartial, merit-based, depoliticized and transparent vetting of candidates.

30. On 16 September, the Constitutional Court issued a provisional injunction to suspend the appointment process and ordered the nominating commissions to start over (file Nos. 4251-2019 and 4862-2019).<sup>20</sup> In the case of the nominating commission for the Supreme Court of Justice, it ordered that the selection of commission members be repeated owing to concerns regarding transparency. The Constitutional Court also ordered the Judicial Career Council to carry out a pre-screening of judicial performance of the more than 500 candidates before submitting the list to the nominating commissions for evaluations, in accordance with the Judicial Career Law.

31. On 2 December, the Constitutional Court issued a final and unanimous judgment spelling out a road map for the election of high court judges, ordering that evaluations of candidates occur within 30 days and that the list of nominations be presented to Congress thereafter (file No. 6528-2019). On 7 December, the Court issued a press statement further clarifying the judgment.<sup>21</sup> Thus, on 9 December the nominating commission for the Supreme Court was established and on 11 December, the nominating commission for the Appeals Court was established.

32. A number of measures are still necessary to consolidate the progress made since the signature of the 1996 Peace Accords in order to strengthen the independence of the justice system and the rule of law. This includes the approval of the by-law to the Judicial Career Law and the selection of new members of the Judicial Career Council's auxiliary bodies.<sup>22</sup>

## B. Judicial independence

33. The patterns of attacks, reprisals and intimidation against judges and public prosecutors documented by OHCHR in previous years persisted in 2019. Judges of the Constitutional Court and those in the High-Risk Courts who preside over cases related to transitional justice and corruption have been particularly targeted. Attacks have come from sectors of society that could benefit from continued impunity.

34. On 9 January, following an injunction blocking the Executive's decision to unilaterally withdraw from the agreement establishing CICIG, banners were hung around Guatemala City with photos of three judges of the Constitutional Court, labelling them as traitors. In August, workers of the Fenix mine of the Guatemalan Nickel Company in El Estor, Izabal, blocked the exit of the judges of the Constitutional Court for an entire day. These workers had been mobilized to protest against the temporary injunction issued by the Court suspending the company's mining licence owing to a lack of consultation with affected indigenous communities and possible environmental impacts.

35. In October, the Inter-American Commission of Human Rights issued precautionary measures for four judges of the Constitutional Court (two acting judges and two alternates), bringing the total number of Constitutional Court judges benefiting from such measures to five.<sup>23</sup>

36. Judges in the High-Risk Courts C and D, which have jurisdiction over complex corruption cases, have faced various attacks linked to their work, including requests to lift their immunity so they can be criminally prosecuted, smear campaigns in social media, and the appointment of support personnel who leaked information and documents from the courtrooms. Owing to these actions, Erika Aifán, the judge of High-Risk Court D, received

<sup>20</sup> Civil society and judge of the Appeals Court filed the injunction request.

<sup>21</sup> Constitutional Court, COM 25-2019. Available at [cc.gob.gt/2019/12/07/comunicado-de-prensa-comisiones-de-postulacion-magistrados-organismo-judicial/](http://cc.gob.gt/2019/12/07/comunicado-de-prensa-comisiones-de-postulacion-magistrados-organismo-judicial/) (in Spanish).

<sup>22</sup> Decree No. 32-2016 (Judicial Career Law), arts. 6 (d), 32 and 76.

<sup>23</sup> Resolution 34-2017, precautionary measure 431-17, August 2017. Available at [oas.org/es/cidh/decisiones/pdf/2017/34-17MC431-17-GU.pdf](http://oas.org/es/cidh/decisiones/pdf/2017/34-17MC431-17-GU.pdf) (in Spanish). See also resolution 56/2019, precautionary measure 28-19, October 2019. Available at [oas.org/es/cidh/decisiones/pdf/2019/56-19MC28-19-GU.pdf](http://oas.org/es/cidh/decisiones/pdf/2019/56-19MC28-19-GU.pdf) (in Spanish).

precautionary measures from the Inter-American Commission of Human Rights on 23 October.<sup>24</sup>

### C. The fight against impunity

37. The technical support provided by CICIG to the Office of the Attorney General for 12 years made it possible to achieve significant progress in the fight against impunity and the dismantling of criminal structures.<sup>25</sup> In the period of August 2007 to July 2019, CICIG assisted in the prosecution of over 120 cases, involving approximately 660 people, including high-profile defendants. CICIG also investigated over 70 highly complex criminal structures resulting in more than 400 convictions.<sup>26</sup> Furthermore, it supported legal reforms to strengthen the justice system.<sup>27</sup>

38. Throughout the year, OHCHR registered an increase in reprisals against judges, lawyers and prosecutors, especially those in the specialized unit against impunity (FECI) of the Office of the Attorney General owing to their cooperation with CICIG (A/HRC/42/30, paras. 54–55).<sup>28</sup> Former CICIG staff were also targeted.

39. On 27 September, the Congress created a commission of inquiry to investigate alleged “illegal and arbitrary” acts by CICIG.<sup>29</sup> On 7 October, the Constitutional Court issued a provisional injunction suspending this commission upon a request filed by the Attorney General and civil society actors. However, Congress renamed this entity a “truth commission” and continued to hold hearings about cases that had already been resolved in courts of law. These actions appeared to be an attempt by Congress to undermine the judiciary and delegitimize progress achieved in combating impunity.

### D. Transitional justice

40. In 2019, some progress was made towards guaranteeing the rights to truth, justice, reparation and non-repetition for victims of the internal armed conflict (1960–1996). The Office of the Attorney General advanced with the digitalization and file management of cases involving serious human rights violations, which was a positive step.

41. An important development in the fight against impunity was the arrest, on 16 June, of General Luis Mendoza, accused of genocide and crimes against humanity against the Maya Ixil people, when he was director of operations during the administration of de facto Head of State Efraín Ríos Montt in 1982 and 1983. The Office of the Attorney General filed a request to change the judge of High-Risk Court A assigned to the case, owing to concerns regarding her lack of impartiality. The appeals court granted this request on 17 October.

42. In October, hearings commenced in the case of genocide and crimes against humanity allegedly committed by the military command of the Government of Romeo Lucas García (1978–1982). Those on trial are former chief of staff Benedicto Lucas García, the chief of intelligence, Manuel Antonio Callejas y Callejas, and the chief of operations, César Octavio Noguera Argueta. OHCHR monitored the trials and provided technical

<sup>24</sup> Resolution 55/2019, precautionary measure 682-18, October 2019. Available at [oas.org/es/cidh/decisiones/pdf/2019/55-19MC682-18-GU.pdf](https://oas.org/es/cidh/decisiones/pdf/2019/55-19MC682-18-GU.pdf) (in Spanish).

<sup>25</sup> A/HRC/16/20/Add.1, para. 27; A/HRC/19/21/Add.1, para. 26; A/HRC/25/19/Add.1, para. 18; A/HRC/28/3/Add.1, para. 23; A/HRC/34/3/Add.1, paras. 3 and 14; A/HRC/37/3/Add.1, para. 13; and A/HRC/40/3/Add.1, para. 6.

<sup>26</sup> [cicig.org/cicig/informes\\_cicig/informe-de-labores/informe-final-de-labores](https://cicig.org/cicig/informes_cicig/informe-de-labores/informe-final-de-labores) (in Spanish).

<sup>27</sup> CICIG, “Informe de cierre: el legado de justicia en Guatemala”, pp. 99–104. Available at [cicig.org/wp-content/uploads/2019/08/InformeLegadoJusticia\\_SI.pdf](https://cicig.org/wp-content/uploads/2019/08/InformeLegadoJusticia_SI.pdf) (in Spanish).

<sup>28</sup> This included the judges Francisco de Mata Vela, Bonerge Mejía, Gloria Porras, Erika Aifán, Yassmin Barrios, Miguel Angel Gálvez Aguilar and Juan Pablo Xitumul.

<sup>29</sup> Legislative agreement 12-2019, September 2019. Available at [congreso.gob.gt/assets/uploads/info\\_legislativo/acuerdos/bb04a-12-2019.pdf](https://congreso.gob.gt/assets/uploads/info_legislativo/acuerdos/bb04a-12-2019.pdf) (in Spanish).



assistance various stakeholders on international norms and standards related to transitional justice.

43. However, there were some setbacks. On 21 June, High-Risk Court A issued its decision in the case of sexual violence committed against Achí women between 1981 and 1985, dismissing the case with respect to three defendants, and provisionally closing the case with respect to the other three defendants. On 9 September, the judge assigned to the case was recused owing to concerns about her lack of impartiality, and the case was reassigned to High-Risk Court B. On 5 December, the indigenous women plaintiffs filed a complaint against the judge in High-Risk Court A for discrimination based on gender, socioeconomic status, language and indigenous origin.<sup>30</sup> OHCHR is concerned that victims could suffer additional stigmatization and reprisals from the defendants and their families, given the lack of adequate protection mechanisms.

44. On 27 May, the Minister of the Interior announced his intention to take control of the historical archive of the national police, sparking concerns over potential interference with or destruction of the over 70 million documents that are crucial for transitional justice cases and the historical memory of Guatemala. On 7 June, the Supreme Court of Justice granted an injunction filed by the Office of the Ombudsperson to prevent the transfer. On 1 July, the Ministry of Culture and Sports adopted an internal agreement<sup>31</sup> to store, digitalize and conserve the documents. However, there are concerns about the capacity of the Ministry of Culture and Sports to properly care for the archive.

45. Between 1 January and 30 September, 288 reparations were made out of the 22,186 total cases identified by the National Reparations Programme,<sup>32</sup> which continues to operate with an inadequate budget and insufficient human resources (A/HRC/40/3/Add.1, para. 23).

46. Moreover, delays were documented in the implementation of measures ordered in transitional justice cases, such as in the Molina Theissen case of 2018,<sup>33</sup> including measures ordered by the court to search for Marco Antonio Molina Theissen, who was disappeared in 1981.

47. Despite the provisional injunction granted by the Constitutional Court on 18 July for the purposes of suspending the debate on Bill No. 5377 on the reform of the National Reconciliation Law, Congress continued discussions on the initiative, raising concerns regarding respect for judicial independence and the rule of law. The proposed reforms foresaw granting general amnesty for grave human rights violations committed during the internal armed conflict and the release within 24 hours of persons accused and convicted of such crimes.

## E. Security

48. Institutional weaknesses, corruption and lack of accountability contribute to an environment conducive to the proliferation of national and transnational criminal networks. The presence of organized crime throughout the country, reportedly in collusion with local and national authorities in some cases, results in perceptions of widespread insecurity, fear and despair. This is amplified by the frequent practice of extortion, especially in urban areas. Reportedly, in 2019 complaints of extortion reached almost 14,000 cases registered, reflecting an increase of 66 per cent compared with 2018. In 2019, a total of 29 criminal structures extorting people were disbanded.<sup>34</sup>

49. In 2019, the officially reported number of violent deaths decreased by 3.8 per cent compared with 2018, but remained alarming, with 3,558 victims (2,729 men, 430 women,

<sup>30</sup> Complaint C-15002-2014-00315, Of.6, file MP001-2012-69161.

<sup>31</sup> Ministerial Agreement 523-2019.

<sup>32</sup> 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.

<sup>33</sup> Case file C-01077-1998-00002, May 2018. Available at [gazeta.gt/wp-content/uploads/2018/06/sentencia-caso-molina-theissen.pdf](http://gazeta.gt/wp-content/uploads/2018/06/sentencia-caso-molina-theissen.pdf) (in Spanish).

<sup>34</sup> Information provided by the State, 23 december 2019.

271 boys, 115 girls and 13 unspecified).<sup>35</sup> Young men and women aged 13 to 29 years represented over half of the victims (51.5 per cent).<sup>36</sup> Violent deaths of women and girls decreased by 5.8 per cent compared with 2018.<sup>37</sup> Firearms continued to be the leading cause of violent deaths, claiming 69 per cent of fatalities.

50. The adoption of new guidelines on the use of force by the National Civil Police (General Order No. 11-2019) before the general elections was a positive step. OHCHR provided technical assistance for the development of these guidelines. On 28 August, the Ministry of the Interior adopted Government Agreement 171-2019, increasing the bonus payments of the National Civil Police.

51. In the context of the state of siege in September and October, OHCHR noted the deployment of hundreds of military officers to different communities, including in areas where massive human rights violations were perpetrated during the internal armed conflict, such as in Sepur Zarco, provoking fear among the population, in particular among women.

52. On 10 October, the Inter-American Court of Human Rights issued a judgment concluding that the State was responsible for violations of the rights to life and physical integrity in the 14 November 2005 killing of a former prisoner in the El Infiernito prison during the “Gavilán Operation” to capture escaped convicts.<sup>38</sup>

## V. Inclusive and sustainable human development

### A. Lands, territories and natural resources

53. Guatemala remains characterized by an extremely unequal distribution of agricultural resources, with a high concentration of arable land in the hands of a few. Those agricultural producers classified as “commercial” producers represent only 1.9 per cent of all agricultural producers; however, they occupy 65.44 per cent of the country’s arable land area. In contrast, those classified as “subsistence” or “under-subsistence” producers comprise 92 per cent of all agricultural producers, yet they occupy only 21.86 per cent of the arable land area.<sup>39</sup>

54. As at 31 October, a total of 1,532 land conflicts had been registered by the Secretary of Agricultural Affairs, involving disputes over property rights, territorial limits and regularization of land.<sup>40</sup> Of these conflicts, 71 per cent were in the departments of Alta Verapaz, Huehuetenango, Izabal, Petén and Quiché – departments in which indigenous peoples live and where natural resource exploration and exploitation projects coincide.

55. A specialized agrarian justice system is still lacking. The State coordinated dialogue round tables to address land conflicts, but in general, these have not resulted in solutions. Instead, land conflicts often ended in the issuance of eviction orders by the courts.<sup>41</sup> During 2019, a total of 10 out of 52 pending eviction orders were executed, leaving over 210 families without land, housing or livelihoods.

56. Despite recommendations from international human rights mechanisms, a resolution of the Office of the Ombudsperson<sup>42</sup> and technical assistance by OHCHR, State institutions have not adopted regulatory frameworks to guarantee the human rights of all parties

<sup>35</sup> Information provided to OHCHR by the National Institute of Forensic Science, Doc. No. DG-0465-2019, necropsies conducted between 1 January and 30 September 2019.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> [corteidh.or.cr/docs/casos/articulos/seriec\\_384\\_esp.pdf](http://corteidh.or.cr/docs/casos/articulos/seriec_384_esp.pdf) (in Spanish).

<sup>39</sup> [segeplan.gob.gt/downloads/clearinghouse/politicas\\_publicas/Desarrollo%20Agropecuario/Politica\\_Agraria\\_2014.pdf](http://segeplan.gob.gt/downloads/clearinghouse/politicas_publicas/Desarrollo%20Agropecuario/Politica_Agraria_2014.pdf) (in Spanish), p. 12.

<sup>40</sup> Information provided to OHCHR by the Secretary of Agricultural Affairs, SAA-DS-654-2019/jr.

<sup>41</sup> JAL GTM 4/2019 of 22 July 2019. Available at [spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24655](http://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24655) (in Spanish).

<sup>42</sup> Office of the Ombudsperson, Resolution REF.EXP.EIO.PET.10180-2017P/PET (Laguna Larga case). Available at [pdh.org.gt/biblioteca-digital-documentos-resoluciones](http://pdh.org.gt/biblioteca-digital-documentos-resoluciones) (in Spanish).

involved in land conflicts. These would include measures for the recognition of indigenous peoples' rights to lands, territories and natural resources, and measures to ensure the relocation of and more durable solutions for persons who have been forcibly evicted or displaced.<sup>43</sup>

57. In 2019, two judgments recognizing land-related claims were issued that illustrate patterns of displacement of communities and the misuse of criminal law against them:

(a) *The Genesis case*. On 29 May, High-Risk Court B found 10 members of a criminal structure liable for money-laundering and aggravated trespassing for forcing 28 peasant communities in Petén from their lands and then legalizing those lands for others through notaries and private property registries. The court ordered that the land be returned to the peasant communities;<sup>44</sup>

(b) *The case of Abelino Chub* (para. 25). High-Risk Court A acquitted a criminalized human rights defender and questioned the use of criminal law (charges of the crime of aggregated trespassing) to “address” social conflicts related to the ownership of lands.<sup>45</sup>

58. The exploitation of natural resources continued in indigenous lands, without adequate consultation with the communities concerned, thereby affecting the rights of indigenous peoples to lands and territories, as well as their traditional forms of collective life and social organization. Delays continued in the compliance by the Government with judgments of the Constitutional Court regarding consultation in the Ixil region (2016 case involving electricity generation and power lines) (A/HRC/31/3/Add.1, para. 25) and the Xinca region (2018 case involving the San Rafael mine) (A/HRC/40/3/Add.1, para. 60).

## B. Poverty and right to housing

59. Despite an estimated 3.3 per cent GDP growth in 2019,<sup>46</sup> 6 out of 10 people in Guatemala experience multidimensional poverty,<sup>47</sup> mostly affecting indigenous peoples and rural communities. Indicators from the 2018 census confirm pervasive poverty and inequality, notably with regard to living conditions, housing, and school attendance (see table 2). These indicators underscore the pressing need for an inclusive development model, respectful of human rights, especially for indigenous peoples and peasants, in line with Sustainable Development Goals 1, 2, 3, 6 and 10.

Table 2

### Results of 2018 census with regard to living conditions, housing and school attendance

<i>Rights and conditions of enjoyment</i>	<i>Average percentage of the population with access<sup>a</sup></i>	<i>Average percentage in departments with high indigenous populations<sup>b</sup></i>
School attendance above the age of 7	29	22.5
Houses with concrete roofs	23	15
Ceramic or cement floor in housing	34	9.6
Water connection in the house	59	41.7
Houses connected to a drainage network	45	30.4
Houses connected to electricity	88	77.2

<sup>43</sup> ohchr.org/Documents/Issues/Housing/Guidelines\_sp.pdf (in Spanish).

<sup>44</sup> cicig.org/casos/caso-genesis-a-prision-preventiva-siete-integrantes-de-organizacion-criminal (in Spanish).

<sup>45</sup> Judgment C-18002-2016-00328 OF, 3° Tribunal Primero de Sentencia Penal, Narcoactividad y delitos contra el Ambiente, pp. 96–97, 26 April 2019.

<sup>46</sup> banguat.gob.gt/cuentasnac/2T\_2019\_JM.pdf (in Spanish).

<sup>47</sup> mides.gob.gt/webtwo/wp-content/uploads/2019/07/Guatemala-Report-IPM-gt\_29jul19-v1.1.pdf (in Spanish), pp. 4 and 26.

<sup>a</sup> National statistical institute, 2018 census. Available at [censopoblacion.gt](http://censopoblacion.gt) (in Spanish).

<sup>b</sup> Ibid. These indicators concern the departments with the highest indigenous populations, namely Huehuetenango, Alta Verapaz, Totonicapán, Quiché and Chimaltenango.

## C. Rights to food and water

60. After a reduction in acute malnutrition in children under 5 years old over the past several years, OHCHR is very concerned that the rate increased by 22 per cent in 2019 as compared with 2018.<sup>48</sup> In 2019, malnutrition affected 15,322 children aged up to 5 years and caused 77 reported deaths,<sup>49</sup> mainly of children aged 6 months to 2 years. This was despite an increase to the budget for food security (from 0.94 per cent in 2016 to 1.49 per cent in 2019)<sup>50</sup> and the implementation, since 2017, of the school meals programme.<sup>51</sup> However, that programme only covers children enrolled in pre-primary and primary education, excluding those under 2 years of age, who are in the “1,000-day window” (the period between conception and 2 years old, which is crucial for preventing chronic malnutrition).

61. OHCHR documented cases of communities reporting lack of access to lands and water, which affected their right to an adequate standard of living. These cases included lack of access to water, sanitation, a healthy environment and adequate food, which were the result of the impact of at least 28 projects by extractive industries. In rural areas, only 24 per cent of communities have a water supply system complying with national minimum standards of water quality for personal use.<sup>52</sup>

62. Since 2012, prolonged periods of drought and the effects of the El Niño phenomenon have severely affected livelihoods, particularly with regard to crops, thereby exacerbating food insecurity.<sup>53</sup> In 2019, drought reportedly affected 96,512 families<sup>54</sup> (approximately 550,000 people) in 12 departments.

63. This situation led to increasing numbers of people migrating to urban centres in Guatemala or attempting to emigrate, primarily to the United States. This case involved members of two families from Camotán, who emigrated despite having won a legal case in which the State party was ordered to take measures to address their lack of food security (case Nos. 5662-2014, 4474-2014, 3380-2014 and 277-2015). In 2019, OHCHR continued to provide technical assistance to the Office of the Ombudsperson and non-governmental organizations to support the implementation of the court decision, and issued a report on advances and remaining challenges in that regard.<sup>55</sup>

## D. Labour rights

64. In 2019, the average monthly income was 2,260 Guatemala quetzales (approximately \$291),<sup>56</sup> which covered approximately 60 per cent of the basic food basket

<sup>48</sup> [apps.siinsan.gob.gt/salasituacional/archivos\\_subidos/201941EPI\\_25\\_10\\_2019\\_9\\_14\\_8.pdf](https://apps.siinsan.gob.gt/salasituacional/archivos_subidos/201941EPI_25_10_2019_9_14_8.pdf) (in Spanish).

<sup>49</sup> [siinsan.gob.gt/siinsan/situacion-san](https://siinsan.gob.gt/siinsan/situacion-san) (in Spanish).

<sup>50</sup> [icefi.org/sites/default/files/desnutricion\\_icefi\\_1.pdf](https://icefi.org/sites/default/files/desnutricion_icefi_1.pdf) (in Spanish).

<sup>51</sup> For information on Decree No. 16-2017 (the law on school meals), see [ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2017/pdfs/decretos/D16-2017.pdf](https://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2017/pdfs/decretos/D16-2017.pdf) (in Spanish).

<sup>52</sup> Information provided to OHCHR by the Ministry of Health and Public Assistance, Oficio 272-2019-AAP/DDHH/AH, 24 October 2019.

<sup>53</sup> [fao.org/americas/noticias/ver/es/c/1191839](https://fao.org/americas/noticias/ver/es/c/1191839) (in Spanish).

<sup>54</sup> SESAN 1236-2019, Guatemala, 28 October 2018.

<sup>55</sup> [pdh.org.gt/presentan-informe-acerca-del-cumplimiento-de-sentencias-de-camotan-sin-horizontes-de-desarrollo-humano](https://pdh.org.gt/presentan-informe-acerca-del-cumplimiento-de-sentencias-de-camotan-sin-horizontes-de-desarrollo-humano) (in Spanish).

<sup>56</sup> National Statistical Institute, National Survey on Employment and Income II-2018, p. 14. Available at [ine.gob.gt/sistema/uploads/2019/07/05/publicacion\\_ENEI\\_2\\_2018.pdf](https://ine.gob.gt/sistema/uploads/2019/07/05/publicacion_ENEI_2_2018.pdf) (in Spanish).

and 27 per cent of the extended basket.<sup>57</sup> Although women represent the majority of the population, their monthly income was on average 12 per cent lower than for men,<sup>58</sup> with indigenous women in rural areas earning even less or not receiving any remuneration for their work with their spouses on farms.<sup>59</sup>

65. Agriculture is considered to be one of the main economic sectors in Guatemala, contributing 13.4 per cent of the national GDP in 2019.<sup>60</sup> In total, there are about one million day-labourers or farmhands in the country,<sup>61</sup> mostly indigenous, 13 per cent of whom had social security.<sup>62</sup> In 2019, the average monthly income of these labourers was 1,155 Guatemala quetzales (about \$150), which is only 38.6 per cent of the minimum wage.<sup>63</sup>

66. In November, 49 workers of the “Las Delicias” coffee farm in El Tumbador, San Marcos, reached an out-of-court settlement with owners of the farm, and will move off the property within three months. Workers and their families had lived on the premises for generations in a situation of servitude as worker tenants, without enjoying their minimum labour rights. The settlement does not fully and adequately provide compensation for various human rights violated.

67. OHCHR documented cases of labour exploitation, as well as cases possibly involving trafficking in persons, child labour and forced labour in the agricultural sector, particularly in oil palm plantations in the northern departments, coffee plantations in San Marcos and sugar cane plantations in Retalhuleu.

68. OHCHR identified patterns in which several agricultural companies resort to recruiters to avoid the employer-employee relationship and paying minimum wage, work benefits and compensation. For example, 889 workers recruited for the Chiquibul palm oil company were in a situation of labour exploitation, given that the company had not recognized its obligation to pay workers the minimum wage and provide other legal entitlements.<sup>64</sup>

69. OHCHR continued to assist the General Labour Inspectorate to strengthen its capacities for inspecting compliance with labour rights, particularly in rural areas. In 2019, the Inspectorate collected 5 million Guatemala quetzales (\$650,000) as the result of 362 fines issued to employers for not complying with labour standards.<sup>65</sup> An additional 4,258 fines for labour law violations were still pending notification to employers for payment.

## VI. Equality and non-discrimination

### A. Indigenous peoples

70. In May, the Committee on the Elimination of Racial Discrimination issued its concluding observations to Guatemala (CERD/C/GTM/CO/16-17). It emphasized that the high levels of inequality, poverty and social exclusion were pernicious effects of racism and historical and structural racial discrimination faced by indigenous peoples and afro-descendants in the country. OHCHR provided technical assistance to 43 indigenous organizations for the preparation of their joint alternative report to the Committee.

<sup>57</sup> [ine.gob.gt/sistema/uploads/2019/04/08/20190408122914Nyto5KpgXeUsKGoT4SpRknBumA8etDe4.pdf](http://ine.gob.gt/sistema/uploads/2019/04/08/20190408122914Nyto5KpgXeUsKGoT4SpRknBumA8etDe4.pdf) (in Spanish).

<sup>58</sup> National Statistical Institute, National Survey on Employment and Income II-2018, p. 14.

<sup>59</sup> Ibid., p. 6. In Guatemala, 9.6 per cent of “non-remunerated workers” are counted as employed.

<sup>60</sup> [banguat.gob.gt/cuentasnac/2T\\_2019\\_JM.pdf](http://banguat.gob.gt/cuentasnac/2T_2019_JM.pdf) (in Spanish).

<sup>61</sup> National Statistical Institute, National Survey on Employment and Income II-2018, p. 15.

<sup>62</sup> Guatemalan Social Security Institute, Annual Report, 2018, p. 30. Available at [igssgt.org](http://igssgt.org).

<sup>63</sup> [mintrabajo.gob.gt/index.php/dgt/salario-minimo](http://mintrabajo.gob.gt/index.php/dgt/salario-minimo) (in Spanish).

<sup>64</sup> Information provided to OHCHR by the Ministry of Labour and Social Welfare, R-1601-0197-2019, 20 March 2019.

<sup>65</sup> Information provided to OHCHR by the Labour Inspectorate of the Ministry of Labour and Social Welfare, IGT4442-2019/JALA/egss.

71. In March, the Constitutional Court issued a historic decision in favour of the estimated 90,000 midwives in the country, following an injunction filed by indigenous midwives (case No. 3362-2017). The Court ordered the Ministry of Health to adopt nine measures to guarantee access to sexual and reproductive health rights for indigenous women, with cultural appropriateness. This includes access of midwives to public hospitals to attend to their patients and measures to ensure respect for their traditional medicines for care throughout a woman's life.

72. With the support of OHCHR, some progress was made in the implementation of two court judgments from 2016 and 2017 pertaining to the rights of indigenous peoples:

- The National Council of Weavers, together with some indigenous members of Congress, advocated for the development of a law to protect the collective intellectual property rights of weavers. This followed a judgment of the Constitutional Court, in 2017 (case No. 2112-2016), which recognized the cultural rights of indigenous women weavers over their textile designs and protected them from appropriation by third parties.
- Following a community-led process in Santa Catarina Ixtahuacán, Sololá, the Ministry of Education adopted an agreement outlining measures to include multicultural and intercultural bilingual education in the local curriculum, together with a related budget. This followed a judgment of the Constitutional Court, in 2016 (case Nos. 4783-2013, 4812-2013 and 2813-2015), which recognized the right to bilingual and intercultural education of indigenous peoples in that area.

73. Furthermore, there was some progress in the restitution of land rights to indigenous peoples through litigation. In May, the Constitutional Court ordered the restitution of over 130 acres to the Aldea Vecinos de Chuarrancho indigenous community (file No. 1052-2017) and the administration of communal lands by the indigenous authorities of the Ajawab' people in San Pedro Jocopilas, Quiché (file No. 2994-2016).

74. On 25 November, the Constitutional Court issued a judgment requiring Congress to adopt a law to regulate water resources. The law should ensure recognition of the right of indigenous peoples to water and of their unique relationship to water as a natural resource (file No. 452-2019).

## B. Women and girls

75. During the electoral campaigns, some candidates expressed their opposition to the rights of women and girls, particularly regarding sexual and reproductive health and education.<sup>66</sup> Congress continued to debate Bill No. 5272 on the "protection of life and the family", which foresaw an increase in criminal penalties for abortion and the criminalization of miscarriage (A/HRC/40/3/Add.1, para. 80). Of concern is the high birth rate among girls under 18 years of age (32,167 in 2018, the most recent official information). Of those, 2004 were births of mothers under 15 years old, which constitute rape under national legislation.<sup>67</sup>

76. Violence against women remained widespread. From 1 January to 17 October, the Office of the Attorney General received 43,271 complaints of violence against women, the second most frequently reported crime.<sup>68</sup> This included 285 complaints of alleged femicide.<sup>69</sup> During that period, the judiciary obtained 86 convictions for femicide.<sup>70</sup> However, the capacity to address this matter remains limited with only one prosecutor's

<sup>66</sup> [soy502.com/articulo/candidatos-comprometen-valores-familiares-foro-100931](http://soy502.com/articulo/candidatos-comprometen-valores-familiares-foro-100931) (in Spanish).

<sup>67</sup> National Statistical Institute, birth rates 2018. Available at [ine.gob.gt/ine/estadisticas/bases-de-datos/vitales](http://ine.gob.gt/ine/estadisticas/bases-de-datos/vitales).

<sup>68</sup> Information provided to OHCHR from the Office of the Attorney General, UIP/G 2019-002341/hacmda, 30 October 2019.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.



office specializing in femicide for the whole country. The Centre for Comprehensive Support for Women Survivors of Violence (CAIMUS), which assists victims of violence against women, remained underfunded and reported that delays in the transfer of funds seriously compromised their essential work.

77. Very little progress was made in the criminal case of the “Hogar Seguro Virgen de la Asunción” (safe house of the Virgin of the Assumption), a shelter in which 41 girls living under the protection of the State died in a fire in March 2017.<sup>71</sup> OHCHR is seriously concerned about the spurious case filed by a former State employee in October against the 15 surviving girls, blaming them for the fire and accusing them of murder, among 18 other serious charges.

### C. Migrants and asylum seekers

78. Three years after the adoption of the Migration Code, which led to progress in the recognition of the human rights of migrants, the Guatemalan Institute for Migration<sup>72</sup> is not yet fully operational. Moreover, the by-laws of the Code, including with regard to the return of migrants and the conditions of their detention, have not been adopted.

79. In 2019, OHCHR documented situations of collective expulsions; denial of access to the asylum request procedure; arbitrary detention, including of children, in inadequate conditions;<sup>73</sup> and separation of family members. OHCHR conducted capacity-building activities with the Office of the Ombudsperson on the rights of migrants, especially in border areas.

80. In May 2019, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families issued its concluding observations on the second periodic report of Guatemala (CMW/C/GTM/CO/2), in which it raised concerns regarding the situation of migrants in transit in Guatemala, notably with regard to sexual violence, threats, robbery and forced labour recruitment. The Committee also raised concern about extortion of migrants by agents of the National Civil Police and the General Directorate of Migration during migratory controls and bus interceptions, especially at borders.

81. OHCHR is concerned about the signing of the cooperation agreement on protection requests between the State party and the United States, given the lack of institutional, technical and financial capacity to guarantee the rights of asylum seekers to be transferred to Guatemala under the agreement. In the period January 2014 to August 2019, Guatemala only recognized 416 refugees.<sup>74</sup> There were only eight staff members working for the division of the Guatemalan Migration Institute responsible for processing asylum applications. These constraints could expose migrants and asylum seekers to human rights abuses and violations.

### D. Sexual diversity and gender identity

82. Lesbian, gay, bisexual and transgender persons, including young people, continued to suffer harassment, abuse and isolation, including within their families. As at 10 December, nine gay men, two lesbian women, one bisexual man and six transgender women had been murdered in 2019.<sup>75</sup> On 25 March, Jose Diaz, an 18-year-old defender of the rights of lesbian, gay, bisexual and transgender persons, was murdered in Huehuetenango, his body bearing multiple signs of violence.

<sup>71</sup> [oacnudh.org/images/CONTENIDOS/ARTICULOS/PUBLICACIONES/InformeHSVA.pdf](https://oacnudh.org/images/CONTENIDOS/ARTICULOS/PUBLICACIONES/InformeHSVA.pdf) (in Spanish).

<sup>72</sup> This entity is mandated to guarantee the rights of migrants, advise the national migration authority on migration policy, manage migration and exercise migration control.

<sup>73</sup> In the first semester of 2019, the authorities arrested and detained 2,521 migrants, an increase of 68.7 per cent over the same period in 2018.

<sup>74</sup> [refworld.org.es/pdfid/5dc5e6fa4.pdf](https://refworld.org.es/pdfid/5dc5e6fa4.pdf) (in Spanish).

<sup>75</sup> According to an observatory of RENADS/Lambda on violent deaths related to sexual orientation and gender identity.

83. For the first time, an openly gay man was elected to Congress, despite the documentation of homophobic or stigmatizing statements made against the lesbian, gay, bisexual and transgender population during the campaigns. OHCHR notes with concern that Congress continued to push the final debate on Bill No. 5272 on the “protection of life and the family”, which contained provisions that would decriminalize hate crimes against lesbian, gay, bisexual and transgender persons.<sup>76</sup>

84. On 20 July, a parade for sexual diversity and gender identity was held in Guatemala City, with thousands of people participating. However, it is of concern that during a post-parade celebration in the offices of the lesbian, gay, bisexual and transgender organization “Gente Positiva” (Positive People), patrols of the National Civil Police entered the premises without a warrant and launched tear gas into the enclosed space.<sup>77</sup>

## **E. People with disabilities**

85. Guatemala has ratified the Convention on the Rights of Persons with Disabilities, but has yet to develop a human rights-based model in which the decision-making of persons with disabilities is supported.<sup>78</sup> People with disabilities continue to be institutionalized and segregated, such as in the Federico Mora Hospital, where they live under the tutelage of the Director of the Mental Health Hospital (A/HRC/37/3/Add.1, para. 53).

86. As of the end of 2019, Congress has yet to approve Framework Bill No. 5125 on disability, which has been pending since 2016 (CRPD/C/GTM/CO/1, para. 12). However, other bills on the rights of persons with disabilities have advanced, including Bill No. 5463 on the creation of disability certification to access social protection programmes; Bill No. 5529 on the promotion of employment of persons with disabilities; Bill No. 5286 on the use of guide dogs; and Bill No. 5603 on the official recognition of sign language. It is important to ensure that these bills comply with applicable international human rights norms and standards (See CRPD/C/GTM/CO/1, paras. 11, 16 and 76).

## **VII. Conclusions and recommendations**

87. **In 2019, Guatemala held general elections in a context of significant threats to democratic space, the independence of justice, and the combat against impunity and corruption. Moreover, persistent inequality, racism and discrimination continued to affect the majority of the population, notably indigenous peoples and women.**

88. **The new Government and Congress, which assumed office on 14 January 2020, has the opportunity to address outstanding challenges to enhance the protection of all human rights for all people in Guatemala, and to build upon and consolidate advances made in previous years.**

89. **Based on the monitoring of her Office in Guatemala, and in addition to previous recommendations, the United Nations High Commissioner for Human Rights:**

(a) **Recommends that the 2020–2024 Congress prioritize a legislative agenda aimed at strengthening the protection of and accountability for human rights violations and to avoid the adoption of regressive legislation;**

(b) **Urges all relevant authorities to carry out legal reforms to guarantee the independence of the justice system, to protect judges, magistrates, prosecutors, lawyers and witnesses, especially those involved in cases of transitional justice, corruption and impunity, and to guarantee the rights to truth, justice, reparation and non-repetition;**

(c) **Calls on authorities to adopt all measures needed to guarantee the merit-based selection of judges and magistrates of the Supreme Court of Justice, the**

<sup>76</sup> OL GTM 12/2018, A/HRC/37/3/Add.1, para. 50, and A/HRC/40/3/Add.1, para. 83.

<sup>77</sup> [oas.org/es/cidh/prensa/comunicados/2019/196.asp](https://oas.org/es/cidh/prensa/comunicados/2019/196.asp) (in Spanish).

<sup>78</sup> Committee on the Rights of Persons with Disabilities, general comment No. 1 (2014) on equal recognition before the law, para. 7.

Appeals Courts and the Supreme Electoral Tribunal, in strict compliance with the principles of transparency, impartiality and objectivity;

(d) Urges the Government and Congress to undertake a fiscal reform and institutional strengthening and to prioritize budget allocations for human rights compliance, notably for the rights to food, health, housing, water, education, social security and access to justice;

(e) Urges all relevant authorities to combat pervasive inequality and exclusion and to address persisting gaps in the enjoyment of economic, social and cultural rights between indigenous peoples and the rest of the population;

(f) Urges the Government to review and reform laws, policies and programmes on land, including by recognizing diverse land tenure systems and by regularizing land registration and titling, especially for indigenous peoples and peasants;

(g) Calls on all relevant authorities to regulate and monitor the activities of national and international business enterprises to ensure that their activities comply with international human rights standards;

(h) Calls on all relevant authorities, media and other stakeholders to take proactive measures to combat discrimination and prejudice, including hate speech, stigmatization and stereotyping, especially against women, indigenous peoples, lesbian, gay, bisexual and transgender persons, people on the move and persons with disabilities;

(i) Calls on all State institutions to implement the recommendations contained in the joint report on the situation of human rights defenders in Guatemala,<sup>79</sup> including by adopting comprehensive measures for preventing attacks against human rights defenders, ensuring their protection and ensuring their access to justice, with a differentiated approach for indigenous defenders, women, youth, lesbian, gay, bisexual and transgender persons, journalists, persons with disabilities, judges and prosecutors;

(j) Urges the Government to guarantee freedom of expression and refrain from criminalizing the legitimate exercise of human rights in the context of public demonstrations and other forms of peaceful defence of human rights;

(k) Urges all relevant authorities, in particular Congress, to guarantee that the Ombudsperson and his Office can carry out their constitutional mandate without undue interference, intimidation, harassment or other actions aimed at undermining their independence;

(l) Urges the Government to prevent violence and insecurity, including by strengthening the capacities of the National Civil Police, guaranteeing a human rights-based approach to security and ensuring the adequate allocation of resources and effective accountability mechanisms;

(m) Urges the Government to prioritize the implementation of the Migration Code by adopting pending by-laws and strengthening the Guatemalan Institute for Migration, and to guarantee respect for international human rights norms and standards in the implementation of the cooperation agreement on protection requests, especially with respect to asylum seekers and persons in need of protection;

(n) Encourages the ratification of pending international human rights instruments, notably the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Domestic Workers Convention, 2011 (No. 189) and article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

<sup>79</sup> [oacnudh.org.gt/images/CONTENIDOS/ARTICULOS/PUBLICACIONES/Informe\\_personas\\_defensoras.pdf](https://oacnudh.org.gt/images/CONTENIDOS/ARTICULOS/PUBLICACIONES/Informe_personas_defensoras.pdf) (in Spanish).