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**OMCT** **fidh**  
SOS-Torture Network  
The Observatory  
for the Protection  
of Human Rights Defenders



# GUATEMALA

## "SMALLER THAN DAVID": THE STRUGGLE OF HUMAN RIGHTS DEFENDERS

International Fact-Finding Mission Report

February 2015

**fidh**

**OMCT**  
SOS-Torture Network



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## I. INTRODUCTION

Given their concerns about the situation of human rights defenders in Guatemala, in particular about the smear campaigns criminalizing and defamation of human rights defenders and organisations in the country, the Observatory for the Protection of Human Rights Defenders, together with the World Organisation against Torture (OMCT) and the International Federation for Human Rights (FIDH), decided to undertake an international fact-finding mission. The purpose of the mission, which took place from November 7 until November 15, 2013, was to verify and evaluate the situation of human rights defenders in Guatemala *in situ*. A documentary filmmaker accompanied the mission's rapporteurs and was responsible for filming their activities and producing a follow-up documentary of the mission upon its completion. The documentary entitled "*Más pequeños que David*" (English translation: 'Smaller than David') can be found on the official websites and social networks of the OMCT and the FIDH, the two organisations that form the Observatory.

Human rights defenders in Guatemala undertake their activities in extremely vulnerable conditions. In recent years the issues of most noticeable concern are the smear campaigns being launched against them and the criminalisation and persecution of their activities.

The mission focused its attention on the smear campaigns waged against land rights defenders and on the criminalisation of their activities. The Observatory defines land rights defenders as those individuals or organisations belonging to civil society that seek to protect and promote land-related human rights, in particular by peacefully protesting the adverse impacts of development projects.

The reason the mission chose to focus its attention on the situation faced by land rights defenders was due to the gravity of the reports the Observatory had received regarding violence against defenders who were speaking out against companies involved in natural resource extraction<sup>1</sup>. In this regards, land rights defenders are the second most vulnerable social group in Guatemala.

The most common types of attacks suffered by this group include: threats, attempts against their lives and physical attacks, and also criminal persecution and defamation. This social conflict that relates to mining and extraction projects, hydroelectric projects or monoculture plantation projects is widespread across the country, and the mishandling of events by government authorities has led to an unsettling climate of hostility and violence.

However, it is important to mention that although the primary objective behind the mission was to assess the situation of land rights defenders the mission's rapporteurs also investigated the situation of women's human rights defenders and the situation of defenders fighting against impunity.

Although the high incidences of common violence in the country also affect human rights defenders, the dramatic increase in documented aggressions in 2013 is primarily the result of changes in transitional justice that took place that same year; of the 657 documented aggressions, 326 were committed against defenders working in the field of truth and justice<sup>2</sup>. We are referring to the genocide trial and the media smear campaign that targeted defenders, both of which shall be dealt with in more detail further on.

The OMCT and the FIDH would like to offer their thanks to the representatives of all the institutions, members of the diplomatic corps, human rights defenders, representatives from civil society, and victims that lent their support to the mission for their assistance and for the information provided. We would also like to add that the mission's work would have been impossible had it not been for the support and efforts of the Unit for Protecting Human Rights Defenders in Guatemala (UDEFEQUA).

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<sup>1</sup> See Observatory for the Protection of Human Rights Defenders, Annual Report 2011, p. 226.

<sup>2</sup> See UDEFEQUA, *El silencio es historia, Estado de Situación 2013, 2014*, p. 1. Available at: <http://www.undefegua.org/index.php/documentacion/elacompanante>.

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## II. HISTORIC, ECONOMIC AND POLITICAL CONTEXT

### 2.1 Civil war and peace treaties

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The civil war in Guatemala ran for 30 years, from 1962 until 1996, the year in which the Firm and Lasting Peace Treaty was signed by the Government and the Guatemalan National Revolutionary Unity (URNG). In July 1997 the work of the Commission for Historical Clarification (CEH) began. This body is a truth and reconciliation commission sponsored by the United Nations and it is responsible for investigating violations that take place during internal armed conflicts.

In its report, the CEH estimated that there had been more than 160,000 executions and 40,000 forced disappearances and thus concluded that 93% of registered human rights violations were attributable to the State and to paramilitary groups that were acting with consent or financial backing from the State<sup>3</sup>. The massacres that took place followed patterns of discrimination in which the majority of victims were indigenous peoples and large numbers of women became the victims of sexual assaults<sup>4</sup>. The commission also concluded that in the years 1980 – 1983, genocide was perpetrated against the Maya Ixil<sup>5</sup>.

Decades of armed conflict and prolonged periods of military governments gave rise to a State and society that was heavily militarized. In addition, the impunity of crimes committed during that era led to a lack of public trust in the government and the legal system<sup>6</sup>, a fact that still holds true today.

The Peace Treaty provided the foundation for radical reforms in each of the country's sectors, including the fundamental issue of agrarian reforms. However, these reforms were never implemented due to a lack of support from Congress<sup>7</sup>.

### 2.2 Security, organised crime and violence

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Extreme levels of violence have been documented in the country and the murder rate stands as one of the highest in the world<sup>8</sup>. In 2011 the figure for violent deaths stood at 5,681 individuals<sup>9</sup>, dropping to 5,155 in 2012<sup>10</sup>. In 2013, this decline was reversed and the figure for recorded violent deaths stood at 6,072 individuals.

Thus, statistics from the Guatemalan National Institute of Forensic Science (INACIF) and the National Civil Police (PNC) indicate that the number of homicides rose by 4.3% to 6.5%, and that the homicide rate for women rose between 17% and 26%<sup>11</sup>. The nature of violence just described together with the impunity witnessed in the country has led to a widespread sense of insecurity that has permeated society.

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<sup>3</sup> See Comisión para el Esclarecimiento Histórico (Commission for Historical Clarification), *Guatemala, Memoria del Silencio*, 1999.

<sup>4</sup> See *Guatemala: Asfixiada entre el Crimen y la Impunidad, Informe sobre América Latina No. 33*, 2010, p. 3.

<sup>5</sup> See Comisión para el Esclarecimiento Histórico (Commission for Historical Clarification), *Guatemala, Memoria del Silencio*, 1999, para. 3357.

<sup>6</sup> See International Crisis Group, *Guatemala: Asfixiada entre el Crimen y la Impunidad, Informe sobre América Latina No. 33*, 2010, p. 4.

<sup>7</sup> *Idem*, p. 5.

<sup>8</sup> See UNDP, *Regional Human Development Report 2013-14. Citizen security with a human face: evidence and proposals for Latin America*. Available at: [http://hdr.undp.org/sites/default/files/citizen\\_security\\_with\\_a\\_human\\_face\\_-\\_executivesummary.pdf](http://hdr.undp.org/sites/default/files/citizen_security_with_a_human_face_-_executivesummary.pdf).

<sup>9</sup> See Office of Human Rights of the Archbishop of Guatemala, ODHAG, *Violence in Guatemala. A reflection on the rise in delinquency and psychological trauma*, 2012, p. 8.

<sup>10</sup> See Mendoza, Carlos A. (CABI) and Méndez Arriaza, Claudia (El Periódico), *Seven myths about homicidal violence in Guatemala*. Research published in El Periódico and available at: <http://public.tableausoftware.com/profile/claudia.mendez.arriaza#!/vizhome/MitosHomicidiosGuatemala/Portada>.

<sup>11</sup> See OHCHR, *Report on activities of the Guatemalan Office for 2013*, UN Document A/HRC/25/19/Add.1, p. 10, para. 42.

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Furthermore, the government's inability and/or lack of interest in tackling the issue of impunity combined with corruption in state institutions has provided fertile ground for organised crime to flourish<sup>12</sup> and resulted in drug-trafficking rings seizing control in some areas of the country and wielding influence at higher levels of certain state institutions i.e. the police, the law courts, the Public Ministry and the Ministry of the Interior<sup>13</sup>.

### 2.3 The fight against impunity

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From 2009 to 2012, figures for impunity show a drop from 95% to 72% in crimes involving threats against life<sup>14</sup>. What these figures show is how structural reforms and changes in the strategic focus of the judicial administration produced tangible results. However, it is important to point out that levels of impunity continue to remain high in cases involving defenders, as shall be detailed further on.

With regards to transitional justice, in March 2013 a trial was held involving the retired military personnel and former dictator Efraín Ríos Montt, and José Mauricio Rodríguez Sánchez. They were tried for the crime of genocide against the Maya Ixil indigenous people that took place in the 1980s. The trial was closely followed by the national and international media because of an interest in the political and legal battles being played out and the numerous procedural delay tactics that arose during its course, the most important of which included: an attempted appeal for legal protection by means of an amnesty (*intento de amparo*) included in the National Reconciliation Act, which does not apply in the case of crimes of genocide; the attempted annulment of the trial in April 2013 following an alleged court order from the Constitutional and Supreme Courts of Guatemala; the annulment of practically the entire trial decreed by the Constitutional Court in May 2013 that also included the 80-year prison sentence of Mr Ríos Montt.

When faced such a disheartening scene, it is important to remember that in recent years Guatemala has taken unprecedented steps in the fight against the impunity of crimes committed during the armed conflicts. The aforementioned case of the former dictator Ríos Montt was the last of many from that era of internal armed conflict to be put on trial and given sentences since 2009.

### 2.4 Economic development and poverty

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Guatemala occupies position 133 in the United Nations Human Development Index (UN). However, after Haiti, it occupies second place on the list of countries with the lowest index of the Latin American continent<sup>15</sup>. The agricultural sector is at the forefront of the national economy and it is a sector that employs nearly half of the entire labour force<sup>16</sup>.

Although figures many vary depending on the source being consulted, it is possible to confirm that indigenous peoples make up at least seventy percent of the Guatemalan population and that they belong to the following three tribes: the Maya, the Garifuna and the Xinca.

Looking at the rural population, 70.5% live in poverty or extreme poverty<sup>17</sup>. Taking into account the fact that the majority of the indigenous population lives in rural areas, it is evident that there is a pattern of discrimination surrounding the issue of poverty in Guatemala. One of the effects of rural poverty is the persistence of chronic malnutrition, which has been recognised by the government as a causal factor in the internal armed conflicts<sup>18</sup>.

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<sup>12</sup> Guatemala occupies position 123 in the Transparency International Perception Index for 2013.

<sup>13</sup> See International Crisis Group, *Guatemala: Asfixiada entre el Crimen y la Impunidad, Informe sobre América Latina No. 33*, 2010, p. 19.

<sup>14</sup> Information obtained from a comparison of data from the National Civil Police performed by the UDEFEGUA.

<sup>15</sup> See UNPD, *Human Development Report 2013*. Available at: [http://hdr.undp.org/sites/default/files/reports/14/hdr2013\\_en\\_complete.pdf](http://hdr.undp.org/sites/default/files/reports/14/hdr2013_en_complete.pdf).

<sup>16</sup> See International Crisis Group, *Guatemala: Asfixiada entre el Crimen y la Impunidad, Informe sobre América Latina No. 33*, 2010, p. 2.

<sup>17</sup> See United Nations, *Core document forming part of reports of State parties Guatemala*, Document HRI/CORE/GTM/2012, para. 25.

<sup>18</sup> See CIFCA, OMCT, APRODEV, La Via Campesina (International Peasant Movement), FIAN, CIDSE, FIDH, *The right to food in Guatemala. Final report of the international fact-finding mission*, 2010, p. 9. Available at: <http://www.omct.org/human-rights-defenders/reports-and-publications/guatemala/2010/03/d20585/>.

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Since the 1990s a series of legal reforms have been implemented in relation to the natural resource extraction industry. Using these reforms, changes were also made to mining legislation in an attempt to create attractive opportunities for foreign investors<sup>19</sup>.

Therefore the Small-Scale Mining Act and the reforms made to the Mining Act cut back on red tape, thus making it much easier for mining permits to be granted. They also eliminated the need for express written permission from the landowner for a mining project<sup>20</sup>.

This fact, together with a combination of other factors, has contributed to the increasing amount to social conflict surrounding land tenure, particularly in relation to: legislation, policies and public practices that favour foreign companies in order to promote industry and generate more tax dollars, which in fact generate little or no benefits for the country itself; the existence of poor supervisory mechanisms to monitor the activities of transnational enterprises; vague and inconsistent environmental policies<sup>21</sup>; the insufficient investment of resources in the bodies responsible for ensuring said legislation is complied with; and finally, the systematic violation of the right of the population that is being affected by the mining and hydroelectric projects to prior, free and informed consultation.

The landmark case involving the company Montana Exploradora de Guatemala S.A., a subsidiary of the Canadian enterprise Goldcorp, highlights the general problem surrounding such projects. The company was granted exemption from paying taxes on its mining activities at the Marlin mine, thus illustrating how the riches generated from such projects tend to be transferred abroad, whilst the burden of environmental, cultural, social, and health costs must be borne internally<sup>22</sup>.

Furthermore, in Guatemala is it possible to observe a structural divide in terms of access to economic, social or cultural rights. We shall discuss this in more detail in the section dealing with the impact of human rights on the legal and institutional framework<sup>23</sup>.

## 2.5 Current political climate

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On January 14, 2012 President Otto Pérez Molina of the political party Partido Patriota was sworn into office, anchored ideologically in the liberal right. In his inaugural address he declared that his government would work on three important national pacts that reflected the nation's priorities: 1) the Security, Justice and Peace Pact, 2) the Fiscal and Competitiveness Pact, and 3) the Zero Hunger Pact.

That same year, Guatemala began work in its capacity as a non-permanent member of the Security Council and was examined for the second time under the framework of the universal periodic review in October that year (the previous exam took place in May 2008 and the next shall take place in 2017). It also presented a proposal to the United Nations General Assembly and the Organization of American States General Assembly with the aim of discussing new approaches to tackling drug trafficking. The legislation that was passed during this initial phase included: the 2012 budget; fiscal reforms; the creation of the new Ministry of Social Development (MINDES); the ratification of the Rome Statute; and the creation of the Economic and Social Council of Guatemala.

During his first year in office, Pérez's government launched a number of large-scale proposals including the proposals to decriminalize drugs, reform the Constitution of the Republic, reform the educational system, pursue a comprehensive fiscal reform, approve the Rural Development Act, create a body through which it were possible to centralise the drive for transparency, and action the 'Security and Combating Organised Crime' plan.

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<sup>19</sup> See Simona -v- Yagenova, Claudia Donis, Patricia Castillo, *The extraction industry in Guatemala: Public policies, human rights, and popular resistance movements from 2003-2011*, Social Sciences Editorial, Guatemala, 2012, p. 23.

<sup>20</sup> See Small-scale Mining Act, Decree 55-1990; Mining Act, Decree 41-1993 and Decree 48-1997.

<sup>21</sup> See Simona -v- Yagenova, Claudia Donis, Patricia Castillo, *The extraction industry in Guatemala: Public policies, human rights, and popular resistance movements from 2003-2011*, Social Sciences Editorial, Guatemala, 2012, p. 29-30.

<sup>22</sup> Idem, p. 32.

<sup>23</sup> See Section 3.4 of this report: *Overview of human rights in the country*.

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However, this ambitious agenda has come to little in a practical sense, except for the fiscal reform - a single component of the Fiscal Pact for change, the left remaining undelivered - and a minor improvement in the figures for crime and violence in 2012 before reversals in these figures were seen in 2013, as mentioned previously<sup>24</sup>.

The constitutional reforms laid out by the government were aimed at promoting structural change in the judicial system as well as in the use of public resources, the structure and functions of Congress, and the recognition of the rights of the indigenous peoples. In the end it was the government that requested to Congress that the talks be suspended. It also announced that existing human rights institutions would be restructured into a single entity: Secretariat for Human Rights and Peace.

Certain political setbacks, such as the withdrawal of proposals for constitutional reform and the failure to pass the Rural Development Act that sought to tackle the problematic issue of land use, together with other serious events i.e. the massacre of community members of the committee group 48 cantones de Totonicapán at the hands of the military at the site called Cumbre de Alaska in 2012, the massacre at San José Macahuil in San Pedro Aymapuc in September 2013 in which 11 died and 15 were injured, supposedly at the hands of organised crime<sup>25</sup>, and the pursuit of mining and hydroelectric projects in direct violation of the right to prior consultation on the part of the affected communities has all led to a significant increase in the amount of social unrest and conflict.

Lastly, it is important to mention how measures taken by the current government had led to the remilitarisation of the country. In 2012, military presence in the country increased with the introduction of two new brigades and the announcement that two further measures would also be introduced, 1) military checkpoints in the city, and 2) police and army patrols<sup>26</sup>. Despite all the promises that the National Civil Police would be reinforced the police force was only increased by 4.7% whilst the army increased by 11.8%<sup>27</sup>. In 2013, the same trend continued. As a consequence there was an increase in the combined use of police and military forces that saw 1500 military personnel being deployed in Escuintla, Huehuetenango and Zacapa<sup>28</sup>.

The risks involved in using the military to prove public safety became all too clear when six indigenous people were killed and a further 20 injured by military personnel during the "Cumbre de Alaska" protests that were organised by the traditional community leaders of Totonicapán<sup>29</sup>. The other consequences arising from this remilitarisation include former military personnel holding positions of power in the seat of government<sup>30</sup> and the approval of a budget in 2013 that was weighed in favour of the Ministry of National Defence and the Ministry of the Interior, while the amount allocated to the judicial system and the Public Ministry<sup>31</sup> was reduced.

And finally, it is vital to mention that the Government and former governments also resorted to declaring a state of siege in the Municipality of Santa Cruz Barillas, Huehuetenango in May 2012, and then in Santa Rosa and Jalapa the following year in May 2013. In both cases, the trigger for these actions lay in the conflicts associated with natural resource extraction investment projects<sup>32</sup>.

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<sup>24</sup> See Section 2.2 of this report: *Security, organised crime and violence*.

<sup>25</sup> See Prensa Libre, *Matanza en San José Nacahuil deja 11 muertos y 15 heridos (Massacre at San José Nacahuil leaves 11 dead and 15 injured)*, September 8, 2013. Available in Spanish at: [http://www.prensalibre.com/noticias/justicia/Masacre-San-Pedro-Ayampuc-muertos\\_0\\_989301109.html](http://www.prensalibre.com/noticias/justicia/Masacre-San-Pedro-Ayampuc-muertos_0_989301109.html)

<sup>26</sup> See United Nations Human Rights Council, *Periodic Report of the UN High Commissioner of Human Rights on activities of the Guatemalan Office for 2012*, UN Document A/HRC/22/17/Add.1, January 7, 2013, Guatemala p. 8.

<sup>27</sup> Idem.

<sup>28</sup> See OHCHR, *Report on activities of the Guatemalan Office for 2013*, UN Document A/HRC/25/19/Add.1, p. 10.

<sup>29</sup> See United Nations Commission on Human Rights, *Periodic Report of the UN High Commissioner of Human Rights on activities of the Guatemalan Office for 2012*, UN Document A/HRC/22/17/Add.1, January 7, 2013, Guatemala, p. 5.

<sup>30</sup> For example, regarding security: (...) "General Ricardo Bustamante, right hand to the President and former colleague in D-2, shall lead the National Security Council; Colonel Walter Zepeda Chavarría, shall act as Secretary of Presidential Administrative Affairs and Security (SAAS); Mauricio López Bonilla, retired Lieutenant Colonel, in the Ministry of the Interior; and Ulises Anzueto Girón, in the Ministry of Defence"; See Plaza Pública, Baires Quezada, Rodrigo, *Presupuesto: más represión que investigación y justicia (English translation - The Budget: more repression than investigations or justice)*. Available in Spanish at: <http://www.plazapublica.com.gt/content/presupuesto-mas-represion-que-investigacion-y-justicia>.

<sup>31</sup> See Plaza Pública, Baires Quezada, Rodrigo, *Presupuesto: más represión que investigación y justicia. (English translation - The Budget: more repression than investigations or justice)*. Available in Spanish at: <http://www.plazapublica.com.gt/content/presupuesto-mas-represion-que-investigacion-y-justicia>.



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## III. LEGAL AND INSTITUTIONAL FRAMEWORK UNDER WHICH DEFENDERS PURSUE THEIR ACTIVITIES

Following the recommendations from the UN's Universal Periodic Review (UPR) in 2008, Guatemala adopted certain regulatory reforms with ramifications at both a national and international level. In the second review that took place in 2012, the efforts that were made following the 2008 review were recognised, although further recommendations were made, especially in relation to: the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Second Optional Protocol to the International Covenant on Civil and Political Rights; the abolition of the death penalty; the need to adopt legislation that would protect the rights of indigenous peoples (in particular with regards the right to prior consultation), journalists and other human rights defenders, or prevent violence against women, child labour or better defend the rights of disabled workers.

### 3.1 National framework

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At the national level, the following legislative instruments that address human rights have recently been adopted:

- In 2008, the Femicide and other forms of Violence against Women Act was established, representing a major legal advancement in the field of protection of women's rights. A year later, the Sexual Violence, Exploitation and Human Trafficking Act was passed, allowing several offenses to be reformed under the Guatemalan Criminal Code, i.e. rape and human trafficking, as well as the inclusion of new criminal offenses, i.e. the offense of employing minors in work activities harmful to their integrity and dignity. Furthermore, offenses such as abduction and defilement, whose descriptive elements belong to the reformed offense of rape, were abrogated. The aim of the law is to prevent, repress, punish and eradicate sexual violence, exploitation and human trafficking, care for and protect the victims and compensate them for the damages caused.
- The Alba-Keneth Alert System Act passed on August 12, 2010 and reformed by Decree Number 5-2014 of the Congress of the Republic. The law aims to locate and immediately protect missing or abducted children.
- The Housing Act was enacted with the purpose of regulating and promoting State actions to coherently develop aspects related to housing, its services and social equipment in order to allow Guatemalan families access to decent, adequate and healthy housing with furnishings and services.
- In the field of strengthening national capacity for criminal prosecution, Decree Number 17-2009, Strengthening Criminal Prosecution Act, was passed including reforms of the Criminal Code, Code of Criminal Procedure, the Organised Crime Act and the Extradition Procedures Act.
- Regarding indigenous peoples, the following bills were presented to the Congress of the Republic of Guatemala: General Act relating to Indigenous Peoples, Consultation of Indigenous Peoples Act, Indigenous Costume Act and Indigenous Jurisdiction Act.
- On April 3, 2013, the government issued Governmental Agreement 145-2013 declaring the national urgency and public need to construct the works included in the Transport Expansion Plan (PET) and the Rural Electrification Plan (PER).
- Institutional Strengthening, Transparency and Quality of Public Spending Act, October 2013, which establishes reforms intended to reinforce controls in the Superintendence of Tax Administration (SAT), Comptroller of Public Accounts, National Budget Act, Public Procurement and Probity and Responsibility of Civil Servants Act.

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<sup>32</sup> In the case of Santa Cruz Barillas, and according to OHCHR, "the decree by which a state of siege was decreed lacked sufficient justification and an analysis of need, exceptionality and proportionality". See United Nations Commission on Human Rights, *Periodic Report of the UN High Commissioner of Human Rights on the activities of the Guatemalan Office for 2012*, UN Document A/HRC/22/17/Add.1, January 7, 2013, Guatemala, p. 8. See also Office of the United Nations High Commissioner, *Periodic Report of the UN High Commissioner of Human Rights on activities of the Guatemalan Office for 2013*, January 13, 2014, p. 15.

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At an institutional level, the Secretariat against Sexual Violence, Exploitation and Human Trafficking was established in 2009. Following this, in 2012, the Ministry of Social Development (MINDES) was also established, as was the Presidential Commission Against Femicide in Guatemala.

### 3.2 International framework

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In recent years Guatemala has adopted the following measures at an international level:

1. In 2012, the Rome Statute of the International Criminal Court was approved by Decree Number 3-2012 of the Congress of the Republic of Guatemala.
2. In 2010, Decree Number 40-2010 of the Congress of the Republic was passed, creating the National Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This mechanism is implemented via the establishment of the National Office for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. This process started with the deposit of the Optional Protocol to the Convention against Torture on 9th June 2008.
3. The Convention on the Rights of Persons with Disabilities was approved by Decree 59-2008 of the Congress of the Republic of Guatemala, and via Governmental Agreement 78-2009 it was agreed that the National Council for the Disabled (CONADI) would be the governing body responsible for implementing and ensuring compliance with the Convention, thus establishing a National Policy on Disability that would enable said Convention to be implemented.
4. In the field of Humanitarian International Law, on 3rd December 2008 Guatemala signed the Convention on Cluster Munitions. The Convention came into force in Guatemala on May 1, 2011.

The international treaties and conventions ratified by Guatemala are the following: International Covenant on Economic, Social and Cultural Rights (1988), International Covenant on Civil and Political Rights (1992), Optional Protocol to the International Covenant on Civil and Political Rights (2000), International Convention on Elimination of All Forms of Racial Discrimination (1982), Convention on Elimination of All Forms of Discrimination against Women (1982), Optional Protocol to the Convention on Elimination of All Forms of Discrimination against Women (2002), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2007), Convention on the Rights of the Child (1990), Optional Protocol to the Convention on the Rights of the Child and the Involvement of Children in Armed Conflict (2002), Optional Protocol to the Convention on the Rights of the Child, the Sale of Children, Child Prostitution and Child Pornography (2002), International Convention on Protection of the Rights of all Migrant Workers and their Families (2003), International Convention on the Suppression and Punishment of the Crime of Apartheid (2005), Convention on the Prevention and Punishment of the Crime of Genocide (1950) and the International Labour Organization (ILO) Convention No.169 concerning Indigenous and Tribal Peoples in Independent Countries (1996).

Human rights international treaties **not ratified** by Guatemala:

1. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1989).
2. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (signed in 2009 but not ratified)<sup>33</sup>.
3. International Convention for the Protection of All People against Enforced Disappearances (signed in 2007 but not ratified).

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<sup>33</sup> The signing of a treaty does not create a binding legal contract, it is merely an indication that the country is willing to partake in a nationwide analysis and consider ratifying it. Although the signing does not oblige the country to advance towards ratification, it does establish the obligation of the State to abstain from any act that may harm the objectives and proposals of the treaty, or from introducing any measures that weaken it.

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### 3.3 Regional framework

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The instruments ratified by Guatemala at a regional level are the following: American Convention on Human Rights (1978), Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights "Protocol of San Salvador" (2000), Inter-American Convention to Prevent and Punish Torture (1987), Inter-American Convention on Enforced Disappearance of People (2000), Inter-American Convention to Prevent, Punish and Eradicate Violence against Women "Belem do Para Convention" (1995), Inter-American Convention to Eliminate all forms of Discrimination against the Disabled (2003).

The regional conventions and treaties not ratified by Guatemala are the following:

1. Protocol to the American Convention on Human Rights to Abolish the Death Penalty of 1990.
2. Inter-American Convention against all forms of Discrimination and Intolerance, June 2013.
3. Inter-American Convention against Racism, Racial Discrimination and related forms of Intolerance, June 2013.

### 3.4 Overview of human rights in the country

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#### a. The right to life, personal integrity, human treatment and to health and well-being

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As mentioned before, the country has high levels of violence and impunity, including heinous crimes against women and children, which demonstrate the extreme violence typically used by members of organised crime<sup>34</sup>.

In addition, the country continues to suffer from overcrowding in prisons, which reaches 98%. In this regard, while the rated capacity of prisons and detention centres is cited at 6,500 people, their current population is 13,000<sup>35</sup>. Furthermore, control within the prison walls remains the responsibility of the "order committees" that are composed of inmates, thus facilitating cases of torture. The situation of detention centres for mentally disabled people and minors is of particular concern.

The maternal death rate of mothers, girls and teenagers continues to cause concern, as does the high level of underage pregnancy. As a result of these issues, 373 women died from pregnancy-related complications and 2,906 girls aged between 10 and 14 became pregnant in 2013<sup>36</sup>. With regards to chronic malnutrition, 54.4% of children don't reach normal height for their age.

#### b. The right to equality

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There are serious signs of structural inequity in the country, which becomes even more evident in the enjoyment of economic, social and cultural rights. In terms of employment equity, the pay gap between men and women is 41%, and even worse in rural areas. According to data from the National Institute of Statistics for 2012, 74.5 % of labour is considered informal. Only 6% of seasonal agricultural workers earn the minimum monthly wage of GTQ 2,324 (250 euros), 70% earn less than GTQ 1000 (107 euros) and the cost of the basic shopping basket is GTQ 4,668.61 (500 euros)<sup>37</sup>.

With respect to the right of equal access to justice, patent problems are observed regarding indigenous peoples' access to the courts, where lack of professional court interpreters has a major impact.

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<sup>34</sup> See Section 2.2 of this report: *Security, Organised crime and violence*.

<sup>35</sup> Information obtained from an interview belonging to the Institute of Comparative Studies in Penal Sciences in Guatemala that was given by the UDEFEGUA.

<sup>36</sup> See OHCHR, *Report on activities of the Guatemalan Office for 2013*.

<sup>37</sup> See OHCHR, *Periodic Report of the UN High Commissioner of Human Rights on activities of the Guatemalan Office for 2012*, UN Document A/HRC/22/17/Add.1, January 7, 2013, Guatemala, p. 18. See also OHCHR, *Periodic Report of the UN High Commissioner of Human Rights on activities of the Guatemalan Office for 2013*, January 13, 2014, p. 5 and 10.

.....  
c. The rights of indigenous people  
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Indigenous peoples continue to suffer from discrimination that could be described as institutional as it affects all areas: education, health, employment, justice, political participation, access to services, to land ownership, decision-making in matters that affect them, including gender inequity.

They also suffer numerous violations of their fundamental rights due to activities such as mining, hydroelectric projects, oil drilling and monoculture plantations, which threaten their own survival. When Guatemala ratified the ILO Convention No.169 in April 1996, it undertook the obligation to consult the indigenous peoples through appropriate procedures and by means of their representative institutions whenever consideration is being given to legislative or administrative measures that may affect them directly; an obligation also imposed by the Municipal Code, Decree 12-2002. In spite of this, the State of Guatemala has systematically contravened its obligation to consult on every licence granted to date.

Likewise, since 2005 to the present day the Government has delegitimized the more than 70 community consultations<sup>38</sup> carried out by the population being affected by these projects. For its part, the Constitutional Court has declared those consultations valid but "non-binding". This important question will be taken up again in the section of this report dedicated to consultation rights<sup>39</sup>.

**3.5 The right to defend human rights in Guatemala: legal and institutional framework**  
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In addition to the national and international legislation on human rights in Guatemala already described, human right defenders enjoy specific protection as contemplated in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereafter "UN Declaration on Defenders"),<sup>40</sup> as well as in the guidelines defined by the General Assembly of the Organization of American States (OAS), in its resolution "Support for the tasks undertaken by persons, groups or organisations belonging to civil society to promote and protect human rights in the Americas"<sup>41</sup>.

**3.5.1. Human rights legal frameworks essential to the work of human rights defenders**

National and international protection of certain **fundamental rights and freedoms** essential to the defence of rights in Guatemala:

a. Freedom of expression, association and peaceful assembly  
.....

Freedom of expression, association and peaceful assembly are enshrined in the Universal Declaration of Human Rights (articles 18, 19 and 20), ICCPR (articles 18 and 19), Resolution 59(I) of the United Nations General Assembly and Resolution 104 adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

At a regional level, the American Convention on Human Rights (ACHR) institutes the said freedoms in articles 13, 15 and 16, respectively. Moreover, the Declaration of Principles on Freedom of Expression, approved by the Inter-American Commission on Human Rights in 2000, reaffirmed this right within the OAS.

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<sup>38</sup> Community consultations are activities carried out at a local level to express the population's agreement or disagreement with different state projects, e.g. mining, hydroelectric or monoculture plantation projects.

<sup>39</sup> See Section 3. 5 of this report: *The right to defend human rights in Guatemala. Legal and institutional framework*.

<sup>40</sup> See UN, *Resolution of the General Assembly*, 1999, UN Document A/RES/53/144.

<sup>41</sup> See OAS, *Resolution of the General Assembly*, 2007, Res AG/RES.2280 (XXXVII-O/07).

.....  
In the context of the exercise of the right to freedom of expression, it should be noted that this right may be subject to restrictions, which must be established by law and ought to be necessary to ensure the respect of other people's rights or reputation, or to protect national security, public order and public health or morality<sup>42</sup>.

On another level, the Special Representative of the United Nations Secretary-General for Human Rights Defenders identified anti-terrorist legislation as one of the possible obstacles to the exercise of freedom of assembly. Likewise, too broad definitions of terrorism may endanger legitimate activities in democratic societies, such as participating in public demonstrations<sup>43</sup>.

At a domestic level, the right to **freedom of association** is granted in Article 34 of the Political Constitution of the Republic of Guatemala and, generally speaking, there are no formalized obstacles to the foundation of associations in the country.

The legislative development of this right was established by Decree 02-2003 of the Non-Governmental Organisations for Development Act, the Civil Code and the Municipal Code. According to the Civil Code, non-profit associations are considered legal entities through their registration in the register of the municipality where they are founded (articles 15, 16 and 18).

The Non-Governmental Organisations for Development Act and the Municipal Code state that the foundation of a non-profit association requires a public deed, as well as a minimum of seven members. The registration requirement is an essential condition for the recognition of legal personality.

In Guatemala access to financial resources is not limited by law. The Non-Governmental Organisations for Development Act (Article 2) provides for the right to *"personal equity arising from national or international resources"*.

However, access to said financial resources has indeed been affected in recent times by the criminalisation and defamation campaign launched against international cooperation, to which further reference will be made below, which has triggered a reduction in the funding of the activities of national human rights NGOs.

As to *freedom of expression*, this was enshrined by Article 35 of the Constitution. It guarantees that this right cannot be restricted and states that this freedom may be enjoyed whilst respecting private life and morals. Failure to do so shall be punishable in accordance with the law<sup>44</sup>.

It furthermore establishes that *"Those publications containing complaints, criticism or charges against civil servants or public officials for acts effected in the performance of their duties do not constitute a criminal offense or misdemeanour"*.

It should be noted that the Guatemalan parliament is currently debating a bill to prevent terrorism as well as commercial and industrial espionage<sup>45</sup>, which if adopted would threaten human right defenders, especially land rights defenders, as it would criminalise those who criticise companies merely to protect commercial reputation.

Concerning the **right to peaceful assembly and demonstration**, it is contemplated in Article 33 of the Constitution and requires prior notification to the authorities to be exercised<sup>46</sup>.

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<sup>42</sup> See International Covenant on Civil and Political Rights. Article 19.

<sup>43</sup> See United Nations General Assembly, *Report of the Special Representative of the Secretary-General on Human Rights Defenders*, 2007, UN Document A/62/225, para. 20..

<sup>44</sup> See Political Constitution of the Republic of Guatemala, 1985 (reformed by Legislative Agreement No. 18-93 from 1993), Article 35.

<sup>45</sup> See *Iniciativa de Ley para Prevenir el Terrorismo y Espionaje Comercial e Industrial* (Legislative Initiative to Prevent Terrorism and Commercial and Industrial Espionage).

<sup>46</sup> See Political Constitution of the Republic of Guatemala, 1985 (reformed by Legislative Agreement No. 18-93 from 1993), articles 33, 34 and 35.

.....  
In addition, Article 397 of the Criminal Code of Guatemala allows the restriction of public demonstrations. More specifically, this article states: *“Those who organise or promote any assembly or public demonstration violating the regulations governing this right, or participate in them, shall be punished with imprisonment from six months to two years”*<sup>47</sup>.

On the other hand, Decree 41 of 1995, known as the ‘anti-hoodie law’, regulates the exercise of the right to demonstration. It forbids participation in a demonstration whilst your face covered and approaching a police barrier within three metres.

It also establishes the obligation to inform the authorities whether the meeting is going to be held or not and of the planned route. It furthermore states the responsibility of demonstrators for damages caused to private or public property. It exempts from the obligation of prior notification in the case of spontaneous public demonstrations or those that, by their nature, have been impossible to notify<sup>48</sup>.

Within the context of the criminalisation of social protest that the country is undergoing, there is a concern about the enactment by Congress in February 2014 of Decree 8- 2014 adopting the Traffic Circulation and Obstruction of Roads Act, known as *“Ley de Tumulos”*.

This Decree opens the door to the prohibition of demonstrations held to exercise the legitimate right to assembly and demonstration, recognised, as previously stated, in the Political Constitution of Guatemala, and it particularly affects the fights of indigenous peoples as well as pacific community protests against mining.

Thus, it includes administrative sanctions of GTQ 1000 to GTQ 5000 for those who set up or build fences, sentry boxes, railings, mounds or other obstacles on the country’s roads without permission of the Directorate-General for Roads.

Provision is also made for criminal sanctions consisting of fines of the same amount and prison terms of one year for those who seriously endanger vehicle circulation through spillage of slippery substances, destruction of signalling or *“by any other means”*. The same penalty shall be applied to *“those who encourage others to set up mounds, barrels or other obstacles on the country’s roads”*.

The open formulas used, such as *“other obstacles”* or *“by any other means”*, make this law a legal tool that can be used to criminalise people who participate in organised demonstrations and mass mobilizations.

What is more, such a law amounts to a violation of the constitutional and international regulations on the right to free demonstration. In this sense, we recall that the Constitution of the Republic states: *“The rights to assembly and public demonstration cannot be restricted, diminished or undermined; and law will regulate them for the sole purpose of guaranteeing public order”*<sup>49</sup>.

Likewise, the aforementioned international obligations undertaken by the state of Guatemala concerning the right to free demonstration under the Universal Declaration of Human Rights and other international instruments may also be considered violated.

In particular, the Inter-American Commission on Human Rights (IACHR) has pointed out that, although on certain occasions the exercise of this right distorts day-to-day functioning routine, especially in large urban concentrations, and it can even cause nuisance or affect the exercise of other rights that deserve state protection and guarantee, such as the right to free

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<sup>47</sup> See Congress of the Republic of Guatemala, *Decree No. 17-73*, Penal Code, 1973, Article 397. Available in Spanish at: [www.oas.org/dil/esp/Codigo\\_Penal\\_Guatemala.pdf](http://www.oas.org/dil/esp/Codigo_Penal_Guatemala.pdf).

<sup>48</sup> See Congress of the Republic of Guatemala, *Decree No. 41-95*, 1995, articles 1-5. Available in Spanish at: <http://guatemala.justia.com/nacionales/leyes/decreto-no-41-1995-jan-6-1995/gdoc/>

<sup>49</sup> See Political Constitution of the Republic of Guatemala, Article 33.

.....  
movement “this type of disruption is part of the mechanics of a plural society, where different interests, many times contradictory, live side by side and must find spaces and channels to express themselves”<sup>50</sup>.

b) The right to access public archives and records  
.....

Article 30 of the Political Constitution of the Republic guarantees **access to information** and establishes that all administrative acts are public, except when it is a question of military or diplomatic matters related to national security, or information given by individuals under guarantee of confidentiality<sup>51</sup>.

There is also an Access to Public Information Act<sup>52</sup>. Articles 1 and 25, grant everyone interested, without any discrimination, the right to request and have access to public information held by authorities and individuals bound by said law; as well as the right to know and protect (his/her) personal information contained in state archives.

In addition, this law aims to ensure transparency in public administration; making the principle of maximum publicity and transparency mandatory, with the sole exception of information classified as confidential, which shall have to be published in the Official State Gazette.

This right is also enshrined in the fourth principle of the Declaration of Principles on Freedom of Expression adopted by the IACHR, which reiterates the obligation for states to guarantee access to information.

c) The right to prior, free and informed consultation  
.....

Let us come back to the right to consultation mentioned briefly above, considering its relevance in relation to the protection of land rights, a healthy environment and natural resources in Guatemala, especially in the light of projects dealing with hydroelectricity, mining and monocultures.

To understand the dimension of the issue, it is opportune to recall that in the mining sector alone, 345 licenses have been awarded to date, while another 592 applications are being processed. Looking at community consultations, often carried out by the population themselves due to State failing to do so, more than 70 such consultations have been carried out all over the country since 2005, all of which have resulted in a denial to mine natural resources in the concerned areas<sup>53</sup>.

Keeping this in mind, it is important to note that with respect to indigenous peoples, and on an international level, the right to consultation is enshrined in Convention No. 169 of the International Labour Organisation concerning Indigenous and Tribal Peoples in Independent Countries (hereinafter ILO Convention 169) in articles 6, 7 and 15. As mentioned earlier, this instrument has been binding on the State of Guatemala since its ratification in April 1996.

Furthermore, the International Convention on the Elimination of All Forms of Racial Discrimination, ratified in 1983, and the American Convention on Human Rights also oblige the State of Guatemala to consult indigenous peoples in relation to every legislative or administrative measure that concerns their territories or could possibly affect them directly. The United Nations Declaration on the Rights of Indigenous Peoples (Resolution 61/295 of 2007), adopted by the General Assembly of the United Nations with Guatemala’s vote, also establishes the right to prior, free and informed consultation.

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<sup>50</sup> See Organization of American States (OAS), IACHR, *Report on Citizen Security and Human Rights*, December 31, 2009 (OAS/Ser.L/V/II), para. 198..

<sup>51</sup> See Political Constitution of the Republic of Guatemala, 1985 (reformed by Legislative Agreement No. 18-93 de 1993) Article 30.

<sup>52</sup> See Republic of Guatemala Congress, *Decree 57-2008*.

<sup>53</sup> See United Nations Human Rights Council, *Periodic Report of the UN High Commissioner of Human Rights on activities of the Guatemalan Office for 2012*, UN Document A/HRC/22/17/Add.1, January 7, 2013, Guatemala, p. 15. See also Office of the High Commissioner for Human Rights, *Periodic Report of the UN High Commissioner of Human Rights on activities of the Guatemalan Office for 2013*, January 13, 2014, p. 14.

.....  
The Constitution of Guatemala does not expressly grant the right to consultation to indigenous peoples. It does, nonetheless, embody the freedom and equality of all human beings, recognise that social interest prevails over individual interest, offer protection to ethnic groups and recognise their individual forms of social organisation (articles 4, 44, 66 and 67).

With respect to internal legislation, the Municipal Code of Guatemala, Decree 12-2002 expressly refers to community consultations, both indigenous and non-indigenous, in the following terms.

Article 17 confers on residents the right to participate in consultations in accordance with the law, as also the right to demand public consultations on issues that are of great importance to the municipality.

On the basis of Article 63, the Municipal Council itself, through a two-thirds majority of all its members, can decide to hold a consultation (...) *"when the importance of an issue suggests the need to consult the opinion of the residents"*(...)<sup>54</sup>.

In addition, the residents have the right, through the signatures of at least 10% of the residents registered in the municipality, to demand that consultations be held on issues of a general nature that affect all the residents of the municipality. *"The results would be binding if at least twenty per cent (20%) of the registered residents participate and the majority votes in favour of the issue under consultation"*<sup>55</sup>.

Finally, said Code also contains a specific regulation about consultation in such cases where the nature of the issue particularly affects the rights and interests of the indigenous communities and authorities in a given municipality. In such cases, "the Municipal Council will carry out consultations at the request of the indigenous communities or authorities, while taking into consideration the specific criteria determined by the customs and traditions of the said indigenous communities"<sup>56</sup>.

With respect to the jurisprudence of the Constitutional Court in the matter, it is important to note that the High Court has ruled that the right to conduct consultation procedures on issues of community interest lies with the Municipal Council. In addition, it has also declared that a lack of internal legislation in this respect *"cannot lead to this right being nullified"*<sup>57</sup>. However, as we have stated, the court ruled that these community consultations are not binding<sup>58</sup>.

In this regard, the UN Special Rapporteur on the rights of indigenous peoples pointed out that community consultations are not simply about whether they are binding or not<sup>59</sup>. In the opinion of the Special Rapporteur, *"community consultations should not necessarily be considered as an end goal, but rather as a starting point for broader consultation processes"*<sup>60</sup>.

Many other international mechanisms have issued statements on this issue.

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the ILO has pointed out that "the lack of a consultation mechanism and the lack of specific consultation with regard to the abovementioned draft legislation as provided for in the Convention are the main reason for the existing unrest"<sup>61</sup>; referring to the high level of social unrest that exists in Guatemala in relation to the exploitation of natural resources through projects dealing with hydroelectricity, mining and monocultures.

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<sup>54</sup> See Decree 12- 2002, Municipal Code of Guatemala. Article 63.

<sup>55</sup> Idem. Article 64.

<sup>56</sup> Idem. Article 65.

<sup>57</sup> See Constitutional Court, Expediente 1408-2005 (Record 1408-2005), September 4, 2007.

<sup>58</sup> Idem.

<sup>59</sup> See UN Special Rapporteur Report on the rights of indigenous peoples, James Anaya, *Observations on the rights of indigenous peoples in Guatemala in their traditional territories with regards to extraction projects and other types of projects*, UN Document A/HRC/18/35/Add.3, 2011, para. 32.

<sup>60</sup> Idem.

<sup>61</sup> See ILO, *Observation* (CEACR), Agreement 169 Guatemala, Adopted: 2011, Publication: 101st Session CIT, 2012.



.....  
On the basis of the above, the Committee of Experts has repeatedly called “for the establishment of an appropriate consultation and participation mechanism”, and to incorporate the right to consultation in internal laws<sup>62</sup>. In a similar vein, the Committee on the Elimination of Racial Discrimination (CERD) reminded the State that a lack of internal regulation on ILO Convention 169 does not impede processes of prior consultation. They have also recommended that the indigenous population be consulted and their agreement obtained before projects dealing with the extraction of natural resources be carried out<sup>63</sup>.

The CEACR and the CERD have highlighted the need to align internal legislation on the right to consultation with international regulations<sup>64</sup>.

Similarly, the UN Special Rapporteur on the rights of indigenous peoples in his observations about the situation of indigenous peoples in Guatemala stated that the Mining Act, the Regulatory Standards for Environmental Assessment, Control, and Monitoring, the Forestry Act, the Hydrocarbons Act, and the Electricity Act all lack specific mechanisms for the consultation of indigenous peoples affected by projects. Furthermore, the Special Rapporteur also recalled that the duty to consult remains binding in spite of a lack of internal regulation<sup>65</sup>.

In 2011, the government of Álvaro Colom presented a draft regulation on the consultation process that was stayed by the Constitutional Court because it considered that the draft did not comply with the legal ramifications of ILO Convention 169<sup>67</sup>.

#### d) Measures against offenders, resistance and others .....

The Constitution of Guatemala states that everybody can bring those violating human rights to trial and this can be done simply by lodging a complaint, without any kind of deposit or formality.

In Article 45, it also guarantees the people legitimate resistance towards protecting and defending the rights and guarantees enshrined in the Constitution<sup>68</sup>.

In this way, the right of the people of Guatemala to defend the rights and guarantees enshrined in the Political Constitution of the Republic of Guatemala is protected by the Constitution itself<sup>69</sup>. In addition, the constitutional framework also states that with respect to human rights, treaties and conventions ratified by Guatemala take precedence over internal legislation<sup>70</sup>.

Even one of the Peace Accords, namely the Comprehensive Agreement on Human Rights (AGDH) contains a clause entitled “Safeguards and protection of individuals and entities working for the protection of human rights”<sup>71</sup>. In virtue of this accord, the State has pledged to guarantee and protect the work of those working as human rights defenders.

.....  
<sup>62</sup> See ILO, *Observation* (CEACR), Agreement 169 Guatemala, Adopted: 2013, Publication: 103st Session CIT, 2014.

<sup>63</sup> See CERD, *Final observations of CERD Guatemala*, UN Document CERD/C/GTM/CO/12-13, March 29, 2010, para. 11.

<sup>64</sup> See ILO, *Observation* (CEACR), Agreement 169 Guatemala, Adopted: 2013, Publication: 103st Session CIT, 2014; See CERD, *Final observations of CERD Guatemala*, UN Document CERD/C/GTM/CO/12-13, March 29, 2010, para. 11.

<sup>65</sup> See UN Special Rapporteur Report on the rights of indigenous peoples, James Anaya, *Observations on the rights of indigenous peoples in Guatemala in their traditional territories with regards to extraction projects and other types of projects*, 2011, UN Document A/HRC/18/35/Add.3, para. 22-23.

<sup>66</sup> *Idem*, para. 24.

<sup>67</sup> See United Nations General Assembly, *Periodic Report of the UN High Commissioner of Human Rights on activities of the Guatemalan Office for*, 2012, A/HRC/19/21/Add.1, para. 61.

<sup>68</sup> See *Political Constitution of the Republic of Guatemala*, 1985 (reformed by Legislative Agreement No. 18-93 de 1993) Article 45.

<sup>69</sup> *Idem*.

<sup>70</sup> *Idem*. Article 46.

<sup>71</sup> See *Acuerdo Global sobre Derechos Humanos* (Comprehensive Agreement on Human Rights), signed by the Government of Guatemala and Unidad Revolucionaria Nacional Guatemalteca (URNG), March 29, 1994, commitment 7.

.....  
e) The criminal offense of aggravated usurpation  
.....

As this offense affects the protection of land rights, it is considered a necessary addition to this section, which aims to detail the legal and institutional framework within which human rights defenders carry out their work in Guatemala.

Articles 256 and 257 of the Penal Code of Guatemala define the crimes of usurpation and aggravated usurpation respectively<sup>72</sup>. Article 257 has been drafted so as *“to criminalise and repress the actions of peasants in cases of claims where they are the ones occupying the land”*<sup>73</sup>.

Through an amendment of the Penal Code in 1997, the sentences of imprisonment for said crimes were raised from one year to three years and from two years to six years imprisonment respectively. In addition, this modification of the Penal Code criminalised action that can be carried out by lawyers and social organisations to support peasants laying claim to land after it has been taken from them.

f) Defenders and the judicial system  
.....

One of the characteristic traits of the situation of defenders in Guatemala, which is also one of the key factors of vulnerability, is the **impunity of the attacks** that they are subjected to because of their work. However, it must be said that some advances have been made in this respect in recent years.

There is no law in the country specifically protecting human rights defenders and the Support Institute for the Analysis of Attacks against Human Rights Defenders - which will be looked at further on - is not fulfilling its mandate to collect information about such attacks, recommend criteria about risk patterns and ensure that the concerned authorities and institutions collaborate to enforce the prevention and protection measures.

It is also important to remember the regular denial of justice faced by human rights defenders which, on one hand, consists of criminal proceedings against them that are often fast-tracked and, on the other, of demands presented by communities and human rights defenders related to the attacks against them that are ignored. One can conclude that the justice system in Guatemala has shortcomings with respect to independence and impartiality.

Furthermore, the fact that investigations produce meagre results has led to many human rights defenders choosing not to collaborate with the Public Ministry, demonstrating their lack of confidence in the judicial system<sup>74</sup>. According to figures from UDEFEGUA, of the 85 cases of aggression against human rights defenders filed in the Public Ministry in 2011, only 12 cases were solved<sup>75</sup>. As for cases filed in 2012, of the total 80 cases, proceedings were completed for a mere 7, with 5 dismissals and 2 sentences. Another key issue within the judicial system with respect to defenders is **judicial independence**.

.....  
<sup>72</sup> See **Article 256**. Usurpation. The crime of usurpation is committed by he or she who, for unlawful gain or wrongful acts, dispossess or attempts to dispossess another of their possession or tenure of property or legal rights of said property, or he or she who unlawfully, for any other ends, invades or occupies a property.

The continued occupation of the property constitutes an in flagrante delicto. The police, Public Ministry or judge shall be forced to act to prevent the continuation of such acts and their continued effects by using, as necessary decrees or processes to perform immediate eviction. He or she who is convicted of usurping shall be sentenced to between one and three years in prison.

**Article 257**. Aggravated Usurpation. The penalty shall be set at two to six years of prison should any of the causes set out in the aforementioned article combine with any of the following factors:

- When the offense is performed by more than five individuals,
- When the usurpasser or usurpassers occupy the property for more than three days,
- When the holders or owners of the property, its workers, employees or dependents are refused access to the property or are made to leave by the usurpassers or feel forced to abandon it as a result of intimidation against them originating from the usurpassers,
- When the act is accompanied by harassment, public disorder, violence, trickery, abuse of trust, clandestine practices or intimidation,
- When any losses or damages arise that affect the property, its crops, installations, access routes or natural resources.

The penalties set out in this Article or the previous one, according to the case in question, shall also be applied to those who instigate, propose, or mislead others into committing an offense, or cooperate in the planning, preparation or execution of said offense.

.....  
The independence of the Judiciary is guaranteed in the Constitution (Article 203), which states that judges and magistrates are independent, subject only to the Constitution and the laws of the country and that any attempt to undermine the independence of the Judiciary is a criminal offense.

It also declares that the judicial apparatus has the exclusive power to judge and execute sentences, and that no other authority can intervene in the administration of justice.

In this vein, the constitutional framework provides for certain fundamental guarantees in the administration of justice that comply with the principle of separation of powers.

However, corruption in the administration of justice is widely known and documented<sup>76</sup>. Judges, magistrates and lawyers are pressured by illicit interests and are also the targets of threats. Local justice operators, in particular, live under extreme pressure, squeezed between threats and corruption.

Against this background, advances in the disciplinary investigation of Public Ministry officials are considered a necessary measure. Nonetheless, it is worrisome that the purging of this institution has been paralysed while the members of the Public Ministry Council, elected by the Congress, are being appointed. Almost 120 lawyers faced with a dismissal decision are still exercising their activity as they wait for the results of the appeal process related to their removal<sup>77</sup>.

On the other hand, it is important to highlight that the human rights movement in Guatemala has been recognised thanks to the professionalism and impartiality shown by Attorney General Claudia Paz y Paz while exercising her functions. The progress achieved in the fight against impunity in corruption cases and the genocide case were, to a large extent, attributed to the Attorney General.

In meetings within the mission, her role was always seen as a ray of hope in the fight against impunity. As a result, rumours began circulating in November 2013 about the pressure to remove her from her post<sup>78</sup>. Groups interested in evading liability for their contribution to human rights violations committed during the armed conflict wanted to remove her from her post before the second genocide trial began.

Before this report was finalised, six persons had been nominated for the post of Attorney General to be elected by the Postulation Committee, and this list did not include Attorney General Claudia Paz.

The mission is concerned about the irregularities<sup>79</sup> in the election of the next Attorney General and believes that they are the result of political pressure on the process and act as a blow against the Rule of Law in Guatemala. There are sectors in Guatemala that are still quite powerful and enjoy impunity. Therefore, the conflict surrounding the election of the new Attorney General is a fight for the future of democracy in the country.

.....  
<sup>73</sup> See International Land Coalition, Velásquez, Helmer, *Serie marcos legales de acceso a la tierra. Estudio Guatemala*, no. 7, 2011, p. 15-16. Available in Spanish at: <http://americalatina.landcoalition.org/node/2732>.

<sup>74</sup> See UDEFEGUA, *Quitémonos el tabú. Defendamos nuestros derechos. Informe anual 2012*, p. 48-49.

<sup>75</sup> *Idem*, p. 44.

<sup>76</sup> Interviews with civil society, November 7-9 and 11, 2013. In one interview with citizens of Santa Cruz Barillas on November 9, 2013, it was claimed that the company had paid 50,000 quetzals for an arrest warrant, and for an arrest, and that the judge posted bail at 100,000 quetzals.

<sup>77</sup> Interview with the Attorney General Claudia Paz y Paz, November 14, 2014.

<sup>78</sup> *Idem*.

<sup>79</sup> The sentence of the Constitutional Court on February 11, 2014 arbitrarily terminated the mandate of the General Attorney in May 2014 instead of December 2014, the original date upon which the four-year mandate would end marking the candidate election process of the Postulation Committee. In the election process, the Postulation Committee did not name Claudia Paz y Paz, despite her excellent work record. Furthermore, they named three candidates against whom the CICIG had raised serious concerns about their candidacy. Lastly, during its time in Guatemala the mission was informed of concerns about the impartiality of the Postulation Committee, a body of Congress responsible for selecting candidates for the position of General Attorney. The mission was also alerted to the fact that, in accordance with the Constitution, university deans from schools of law were occupying positions in the committee; however, it was claimed that certain private universities exist that have no enrolled students.

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One of the direct results of a lack of judicial independence on the work of human rights defenders is the risk of their becoming victims of judicial harassment. The Santa Cruz Barillas, San José del Golfo and San Pedro Ayampuc (La Puya) as also Mataquescuintla cases are examples of the same.

As a result, judicial independence is key to the fight against impunity in Guatemala, and specifically in the fight against the criminalisation of human rights defenders due to their efforts to defend and protect human rights.

### 3.5.2. Institutional mechanisms for protecting human rights defenders

Following the analysis of the legal framework under which human rights defenders pursue their activities from which it has been concluded that there has recently emerged a pattern of criminalisation of social protest, we must now analyse the **institutional mechanisms** that exist in the country that are either directly or indirectly related to the work of human rights defenders. It is worth noting that in this sense, and as shall be explained further on, that although there are many more institutional mechanisms in this country in comparison to other countries, the protections afforded to defenders are not effective enough.

#### a) Human Rights Ombudsman

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The role of this individual is to protect the human rights of the population, and he or she has the power to: receive individual complaints, to report allegations of abuses of human rights by civil servants and to recommend actions to improve procedures and the protection of human rights.

In Guatemala, although the majority of complaints of aggression against defenders being processed through the Public Ministry, they may also involve the Human Rights Ombudsman.

As shall be dealt with in more detail in the corresponding section of this report, in August 2013 the Human Rights Ombudsman ruled in favour of the defense of human rights in the country in the context of the smear campaigns and stigmatization of defenders that took place during the genocide trial.

#### b) Support Institute for the Analysis of Attacks against Human Rights Defenders

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This organisation consists of a mix between governmental and international agencies and civil society. In order to fulfil its mandate it works as centralised administrative department that processes formal complaints of aggressions against human rights defenders and analyses patterns of attacks against this group for the purposes of supporting criminal investigations.

The organisation worked effectively from 2007 to 2008, but in 2009 it because to suffer as a result of changes introduced by the Ministry of the Interior. Its activities were officially suspended on 20th May of that year before recommencing in August 2012.

During 2013, the organisation became weaker and gradually lost direction. Representatives of state institutions were replaced by technicians, some attacks against defenders were legitimised by this body, and dissenting opinions expressed by civil society were not welcomed. All this led to the organisation being abandoned by the Human Rights Federation<sup>80</sup> in August 2013, thus making the organisation somewhat obsolete<sup>81</sup>.

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<sup>80</sup> The Human Rights Federation (in Spanish *Convergencia por los Derechos Humanos* – CDH) is an alliance consisting of eleven organisations that defend the right to fully exercise human rights, including: the Centro de Análisis Forense y Ciencias Aplicadas (CAFCA); the Centro de Acción Legal, Ambiental y Social (CALAS); the Centro para la Acción Legal en Derechos Humanos (CALDH); the Centro Internacional de Investigaciones en Derechos Humanos (CIIDH); the El Refugio de la Niñez; the Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP); the Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG); the Oficina de Derechos Humanos del Arzobispado de Guatemala (ODHAG); the Asociación de Seguridad en Democracia (SEDEM); the Unidad de Protección a Defensoras y Defensores de Derechos Humanos en Guatemala (UDEFEHUA); the Unión Nacional de Mujeres Guatemaltecas (UNAMG). Its headquarters are in Guatemala.

<sup>81</sup> See United Nations General Assembly, *Periodic Report of the UN High Commissioner of Human Rights on activities of the Guatemalan Office for 2014*. UN Document A/HRC/25/19/Add.1, para. 49.

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As such, it is important to conclude by stating that the organisation has great potential to foster social dialogue but given its nature its use very much depends on the government's will.

c) Presidential Human Rights Commission (COPREDEH)  
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The COPREDEH has the support of the Department of Protection Mechanisms for Human Rights Defenders, judicial officials, journalists and social commentators. The role of this organisation is to offer protection to human rights defenders who are the beneficiaries of precautionary measures granted by the Inter-American Commission on Human Rights, or interim measures granted by the Inter-American Court of Human Rights.

The stance adopted by the State of Guatemala in some of the precautionary measure files of human rights defenders has worsened with the current government, especially with regards to environmental activists and natural resource defenders. By way of example, we cite the cases of **Yolanda Oquelí** and that of **Lolita Chávez**. The Observatory has observed that the State has a tendency to minimise the risks that these parties face, and to criticise the fact that defenders carry out their activities, including demonstrations, protests or other public acts, whilst accompanied by security guards.

Please note that these measures were adopted as a direct result of the danger to life and physical integrity that these individuals suffer as a consequence of acting in the defense and promotion of human rights.

d) Human Rights Unit of the Specialist Division for Criminal Investigations (DEIC)  
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This unit belongs to the National Civil Police and is specialised in the investigation of crimes committed against civil servants of the judiciary, human rights defenders, union members and journalists.

This unit supports the Public Prosecutor for Human Rights, but only in cases dating prior to and including 2012. The unit is also called on to support cases that are not related to human rights.

e) Public Ministry. Human Rights Prosecutor's Office. Investigative Unit for Crimes against Human Rights Defenders, Trade Union Members and Journalists  
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The goal of the Public Prosecutor is to achieve adequate specialisation and improved efficiency in the response to offenses committed against human rights defenders, union members and journalists. According to the information received during interviews with defenders and from published reports, it has been concluded that despite minor improvements, levels of impunity remain as high as they were eight years ago, and predominantly affect cases involving aggressions against defenders.

f) Journalist Protection Program in Guatemala<sup>82</sup>  
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The President of the Republic publically announced this program on November 28, 2013. The authorities heralded that day as the first step to implementing a plan that, according to official declarations, consisted of three phases that should have been completed in the 60 days prior to the official public announcement.

These three phases involve: 1) signing a convention with the relevant bodies, 2) a transferral of information to the country's capital and 3) the training of journalists in issues of protection. In the time that has unfolded since this public announcement, and during the established timeframes laid out for the completion of these three phases, the State has not undertaken any further action to this regard.

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<sup>82</sup> Idem.

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### 3.6 Conclusions on the legal and institutional framework under which defenders pursue their activities

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At an international level, we cite intergovernmental institutions and non-governmental organisations that do the important work of raising awareness and accompanying and protecting human rights defenders in Guatemala, most notably: the Office of the High Commissioner of the United Nations for Human Rights in Guatemala (OACNUDH), Peace Brigade International (PBI), Network in Solidarity with the people of Guatemala (NISGUA), Coordination of International Accompaniment in Guatemala (ACOGUATE) and the Guatemala Human Rights Commission (GHRC).

In spite of the legal and institutional frameworks that have been described and despite some advances being made with regards to the sentencing of crimes against defenders, and despite the State's intentions to protect professional journalists, the situation of defenders as described in the following sections highlights the State of Guatemala's inefficiency and lack of real political will with regards to guaranteeing the conditions that will allow human rights defenders to carry out their work freely and safely.

The aforementioned reflects the repeated recommendations offered by national and international organisations.

For example, the former UN Special Rapporteur on Human Rights recommended that the Government of Guatemala approve the government agreement on the prevention and protection of human rights defenders, provide the necessary resources to the different existing organisations, and clarify its strategy and effective procedures<sup>83</sup>.

Also, the UN Committee against Torture in its '*Final Observations on combined Periodic Reports 5 and 6 for Guatemala*'<sup>84</sup>, adopted by the committee in the 50th session held from May 6 to 31, urged the State of Guatemala to:

- (a) Redouble its efforts to guarantee the protection, safety and physical integrity of human rights defenders against any threats or attacks they could be exposed to during the course of their activities.
- (b) Ensure the prompt, thorough and effective investigation of all threats and attacks committed against human rights defenders, and also ensure that all those responsible for such actions are prosecuted and duly punished in accordance with the gravity of their acts.
- (c) Guarantee the continued services of the Support Institute for the Analysis of Attacks against Human Rights Defenders.

Lastly, it is important to note that the Inter-American Court of Human Rights in its ruling on the Case *Human Rights Defenders et al. -v- Guatemala*<sup>85</sup>, ordered the State of Guatemala to implement public policy to protect human rights defenders. This public policy must be elaborated in collaboration with those persons directly connected to the protection measures. To this effect, the State must develop a risk-analysis model that allows each case to be studied independently depending on the needs of the defender(s) in question. The program must address the issue from a comprehensive and inter-institutional perspective and also provide sufficient financial and human resources to ensure that the protection is truly effective.

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<sup>83</sup> See United Nations General Assembly Report by Margaret Sekaggya, Special Rapporteur on the situation of human rights defenders, 2009, UN Document A/HRC/13/22, para. 78.

<sup>84</sup> See UN Committee Against Torture. *Final Observations on combined Periodic Reports 5 and 6 for Guatemala*, adopted by the CAT in its 50th session held from May 6-31, para. 14.

<sup>85</sup> Inter-American Court of Human Rights, Case: Defender of Human Rights et al. -v- Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgement of August 28, 2014. Series C No. 283, para. 262-264.

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## IV. ANALYSIS OF THE SITUATION OF HUMAN RIGHTS DEFENDERS

### 4.1 General approach

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Human rights defenders in Guatemala carry out their activities in extremely vulnerable conditions. What has become most noticeable and troubling in recent years are the smear campaigns being launched against them and the criminalisation and persecution of their actions.

The year 2013 was a particularly difficult year for defenders. In this period 657 cases of aggressions against defenders were documented. This is the highest number of recorded incidents since the UDEFEGUA began keeping records in 2000<sup>86</sup> and reflects a 100% increase on figures from the previous year, 2012, in which 305 cases were documented. The figure from 2013 includes 18 deaths and 19 attempts against life<sup>87</sup>.

Although the high incidences of common violence in the country also affect human rights defenders, the cause for the dramatic increase in documented aggressions in 2013 was primarily connected to **changes in transitional justice** that took place that same year; the result was that 326 of the 657 documented aggressions **affected defenders working in the field of truth and justice**<sup>88</sup>. We are referring to the trial of genocide and to the media smear campaign targeting defenders, both of which shall be dealt with further on.

Secondly, concerns exist about the reports of violence against human rights defenders emerging in the context of natural resource extraction<sup>89</sup>. In this sense those who defend land rights, the environment, natural resources and the right to prior consultation constitute the second most vulnerable group.

The most common types of attacks suffered by this group include: verbal threats, attempts against their lives and physical attacks, and criminal persecution and defamation. This social conflict relating to mining and extraction projects, hydroelectric projects or monoculture plantation projects is widespread across the country, and the way it has been mishandled by government authorities has led to an unsettling climate of hostility and violence.

It should also be noted that out of the 657 aggressions against human rights defenders documented in 2013, the most typical was that of defamation, with 168 cases<sup>90</sup>.

Human rights defenders, environmental campaigners, defenders of indigenous peoples, those who fight against impunity and those who provide legal assistance are the targets of smear campaigns in the national press. Their actions, which are for the purpose of defending human rights, are attacked in newspaper columns, press releases, and even in sponsored campaigns.

This defamation is part of a strategy to delegitimise and disparage the proposals and efforts of social organisations, the indigenous peoples and the legal advisors and organisations that represent them. At the same time, this de-legitimation opens the door to further aggressions including the criminalisation of their actions, threats or actual physical harm<sup>91</sup>.

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<sup>86</sup> See UDEFEGUA, *El silencio es historia. Estado de Situación 2013, 2014*, p. 1. Available in Spanish at: [http://udedefegua.org/wordpress/wp-content/uploads/2014/11/informe\\_anual\\_2013.pdf](http://udedefegua.org/wordpress/wp-content/uploads/2014/11/informe_anual_2013.pdf).

<sup>87</sup> Idem, p. 2.

<sup>88</sup> Idem, p. 1.

<sup>89</sup> See Observatory for the Protection of Human Rights Defenders, *Annual Report 2011*, p. 226.

<sup>90</sup> See UDEFEGUA, *El silencio es historia. Estado de Situación 2013, 2014*, p. 2. Available in Spanish at: [http://udedefegua.org/wordpress/wp-content/uploads/2014/11/informe\\_anual\\_2013.pdf](http://udedefegua.org/wordpress/wp-content/uploads/2014/11/informe_anual_2013.pdf).

<sup>91</sup> See UDEFEGUA, *La Difamación: un mecanismo de Agresión a los Defensores/as de Derechos Humanos en Guatemala, 2010*, p. 8.

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In this respect, it is important to highlight the impact of this strategy on the local communities. It has been well documented that defamation creates local conflict, as witnessed in the cases of San Miguel Ixtahuacán<sup>92</sup> and San Juan Sacatepéquez<sup>93/94</sup>. In these cases there is a pattern of defamation that can be identified: defamation leads to tensions, and finally these tensions manifest themselves in actual violence. Rumours, a lack of transparency along with the inability to verify information, and a lack of concrete answers from the authorities are all common factors in this pattern. This same pattern was revealed in the communities that were studied as part of the fact-finding mission: San José del Golfo and San Pedro Ayampuc, Mataquesuintla and, in particular, Santa Cruz Barillas.

European member states have also been drawn into the smear campaign that originally targeted the civilian population of Guatemala. Newspapers and television reports have accused the international community of financing terrorists and murderers. Several embassies that support local NGOs through financial donations were attacked. These media campaigns have led to the suspension of working partnerships with NGOs, and in the case of one NGO, formal cooperation was withdrawn<sup>95</sup>. As already mentioned, these smear campaigns drastically affect the ability of civil society to access foreign funds.

Defamation and unfounded accusations are used to justify death threats or other harassment, an example of which can be observed in the threats made against **Claudia Samayoa**, Coordinator of the Unit for Protecting Human Rights Defenders in Guatemala (UDEFEGUA) and against other human rights defenders participating in the Human Rights Convergence of 2012. In a press release reportedly signed by the Counter-Terrorism Foundation (FCT) Claudia Samayoa and other human rights defenders were accused of adopting an anti-capitalist stance and carrying out terrorist acts and they were warned that if they continued their activities they would pay the consequences.

With regards to the **criminalisation** of defenders, the following table shows the alarming increase in this phenomenon in recent years

**Aggressions arising from Criminalisation in Guatemala**

	2009	2010	2011	2012	2013
Lawsuits	23	31	65	86	67
Arbitrary arrest	0	9			5
Illegal detention	9	6	82	33	40
Defamation	4	4	3	39	172

Source: UDEFEGUA (2013)

It is important to remember that the criminalisation of human rights defenders in Guatemala has the effect of turning all political protest into a punishable crime<sup>96</sup>. As such, the State promotes political and judicial policies that treat freedom of expression, the right to association and the right to assembly as illegitimate choices<sup>97</sup>. By reacting to social conflict with criminal prosecutions, *“the nature and origin of the conflict is left unaddressed”*<sup>98</sup>, and in certain instances results in the use of violence.

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<sup>92</sup> The Marlin mine is located between San Miguel Ixtahuacán and Sipacapa. On September 27, 2003, the Ministry of Energy and Mining granted the company Montana Exploradora a licence to begin operations using a 40 million dollar loan provided by the bank Banco Mundial. As a result of disagreements a resistance movement called Frente Nacional de Resistencia a la Minería (FRENA) was formed through with neighbouring communities have been voicing their discontent throughout the entire process with regards to the granting of a licence to this company. It is important to point out the military presence in the area and the rise in the number of private security agencies and social unrest in the communities.

<sup>93</sup> On May 13, 2007 8950 people participated in the Community Consultation to determine whether they agreed or disagreed with mining project that would be undertaken by the company Cementos Progreso, S. A. The results showed 8948 NO votes and only 4 YES votes in favour of the mining project. The consultation was performed in accordance with the uses and local customs set out in Agreement 169. The social unrest was enough justification for the President of the Republic to declare a state of alert in the Municipality of San Juan Sacatepéquez, Guatemala on June 23, 2008.

<sup>94</sup> See UDEFEGUA, *La Difamación: un mecanismo de Agresión a los Defensores/as de Derechos Humanos en Guatemala*, 2010 p. 5-6.

<sup>95</sup> See Observatory for the Protection of Human Rights Defenders, *Violations of the right of NGOs to funding: from harassment to criminalisation*. Annual Report 2013, p. 74.

<sup>96</sup> See UDEFEGUA, *Criminalización en contra de defensores y defensoras de derechos humanos*, 2009, p. 7.

<sup>97</sup> See International Commission of Jurists, *Criminalización de la Protesta Social*, 2013, p. 3.

<sup>98</sup> See UDEFEGUA *Criminalización en contra de defensores y defensoras de derechos humanos*, 2009, p. 7.



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What is more, the high number of open cases and arrests of human rights defenders, in addition to creating significant financial burdens, family problems, psychological stress, and health concerns, also leads to the social stigmatisation of the individuals involved, and some of them are seen as lawbreakers. In this sense, it is very concerning that arrest warrants remain in force indefinitely without being revoked.

Another worrying pattern seen in the phenomenon of criminalising human rights defenders and social leaders is the use of criminal indictments that carry the penalty of pre-trial detention.

Likewise, it is also worrying that the Public Prosecutor is attempting to prosecute defenders for serious crimes without having the evidence to back up the accusations. The cases of Jalapa and Santa Cruz Barillas, which we shall explore in detail further on, are examples of such practices.

Another example of this is the case of **Abelardo Curup**, community leader of San Juan Sacatepéquez who, in the efforts of 12 indigenous communities to fight against a cement manufacturer, was sentenced to 150 years in prison after being charged with the murders of three people. During proceedings certain evidence used against him was entirely fabricated<sup>99</sup>.

It is possible to confirm that the defenders most affected by criminalisation are those who have taken a stand against natural resource extraction projects, as later determined in the interviews held with resistance groups during the Observatory's fact-finding mission.

Under the phenomenon of criminalisation, it is also possible to observe consistent patterns in that way in which human rights defenders are denied justice, how (im)promptly proceedings are undertaken, and that there is a lack of effective responses to complaints presented by the community, indigenous peoples, or human rights defenders who are defending either an individual's rights or the rights of specific groups against attacks to these rights; the latter could also be interpreted as a pattern of discrimination with regards to access to justice.

#### 4.2 Criminalisation and attacks against activists defending land rights and the rights of indigenous peoples

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Another group of defenders to have been particularly affected, besides those for truth and justice, is the group that defends land rights, environmental protection and natural resources, and the rights of indigenous peoples in relation to extraction, hydroelectric and monoculture plantation projects. There is a situation that is worsened, in part, by the following: institutional discrimination against indigenous peoples, inequality and poverty, the systematic violation of the right to prior consultation mentioned earlier, re-militarisation, and the poor handling of social conflicts.

On the one hand, this set of circumstances results from the application of a repressive political stance that relies on the use of such tactics as declaring states of siege or the use of violence during forced evictions. And on the other hand, as a result of the lack of legitimacy and effectiveness of the processes and mechanisms that have been put in place. What is more, all of this occurs within the context of criminalisation, defamation and stigmatisation of those who oppose the projects.

Delving deeper into the use of the State of Siege, we would like to draw attention to the fact that within the framework of international human rights law the conditions under which states of siege may be called are set forth in Article 4 of the International Covenant on Civil and Human Rights (ICCPR) and Article 27 of the American Convention on Human Rights (ACHR), both of which have been ratified by Guatemala.

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<sup>99</sup> See Peace Brigades International, *Inversiones económicas y derechos humanos: aprendizajes de un conflicto. El caso de las comunidades maya kaqchikeles de San Juan Sacatepéquez*, 2012, p. 22.  
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According to these instruments, this tool should be limited to: cases of extreme danger to life at a national level (Article 4, ICCPR); states of war; danger to public safety; and emergencies that jeopardise the independence or security of the State (Article 27, ACHR). Even when states of siege are permissible under international law, certain rights continue to remain in force no matter what, these include: the right to safeguards against the arbitrary deprivation of liberty, the right to an impartial trial, and the right to the presumption of innocence<sup>100</sup>.

Articles 138 and 139 of the Republic's Constitution govern the restrictions of fundamental rights protected and enshrined in fundamental principals and point to the Public Order and States of Siege Act<sup>101</sup> to regulate the measures and powers that are permissible during a state of siege.

The overuse of states of siege is a reflection of how social conflicts are mishandled and how such a measure is transformed into a tool for social control<sup>102</sup>. This phenomenon has worsened the situation faced by human rights defenders, community leaders and indigenous populations.

The United Nations Human Rights Committee in its review of Guatemala's compliance with its obligations pertaining to the ICCPR recommended reforms to the Public Order Act of 1965. These reforms would limit the use of states of siege and respect the conditions set for in the ICCPR. The committee also expressed concerns about the increasing numbers of repressive measures being taken as they reflected a restriction in civil liberties. As a result, the committee emphasised that the State's priority should be to implement actions that would have the greatest impact on preventing violence<sup>103</sup>.

With regards to the inefficiency of the **mechanisms and tools of dialogue**<sup>104</sup>, the OACNUDH, in its 2012 report, stated that *"social conflicts had put dialogue tools to the test, and as such it was necessary to continue strengthening them and ensure an intercultural approach to the institutional causes that were generating conflict in order to avoid the overuse of security forces in response to such issues"*<sup>105</sup>.

With regards to patterns of aggressions suffered by the communities that oppose the projects, and the organisations that support them, the following aggressions have been documented: physical attacks and attacks against life, threats, defamation, and criminalisation. Regarding the improper use of criminal sentencing against them, the defenders are accused of committing crimes such as: unlawful association; conspiracy; terrorism; inciting crime; acts against homeland security; offenses against the life, security and personal freedoms of others, such as murder, abduction or kidnapping, unlawful detention, etc.

Furthermore, community leaders are tendentiously labelled as delinquents, hell-raisers, terrorists, murderers and thieves in certain sectors of the media.

In the majority of criminalisation cases, as can be appreciated in the details of the cases described in the section entitled "Communities taking a stand against projects", human rights defenders are persecuted or criminalised in order to restrict the rights of the community to consultation and to the freedom of association, assembly and protest. In other words, it is used as a strategy to limit citizen's participation in decision-making on issues that affect them.

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<sup>100</sup> See CCPR, *General observation No. 29 States of Siege* (Article 4) UN Document CCPR/C/21/Rev.1/Add.11, August 31, 2001, para. 11.

<sup>101</sup> See *Political Constitution of the Republic of Guatemala*, 1985 (reformed by Legislative Agreement No. 18-93 from 1993) Article 139.

<sup>102</sup> See *Convergencia de Derechos Humanos, Informe Alternativo EPU*, 2012, para. 44.

<sup>103</sup> See UN Human Rights Committee, *Final Observations: Guatemala*, UN Document CCPR/C/GTM/CO/3, 2012, para. 12.

<sup>104</sup> This inefficiency is expressed in the recommendations made by the OHCHR regarding this matter. For example, in its 2012 report: "g) Urges the Government to strengthen the mechanisms and institutions responsible for resolving social conflicts by including a human rights approach, in order to be able to respond to the structural causes of these conflicts and guarantee the rights of indigenous peoples". See United Nations Human Rights Council. *Periodic Report of the UN High Commissioner of Human Rights on activities of the Guatemalan Office for 2012*, UN Document A/HRC/22/17/Add.1, January 7, 2013, Guatemala, p. 22.

<sup>105</sup> See United Nations Human Rights Council. *Periodic Report of the UN High Commissioner of Human Rights on activities of the Guatemalan Office for 2012*, UN Document A/HRC/22/17/Add.1, January 7, 2013, Guatemala, p. 6.

For example, **Carlos Antonio Hernández Mendoza**, leader of the peasants association called *Asociación Campesina Camoteca* from the department of Chiquimula, was killed by several gunshots on March 8, 2013 by persons who intercepted his return from Honduras. The killing was part of a series of threats, attacks and criminal persecution that Carlos Antonio Hernández Mendoza suffered as a result of his human rights activities and for organising protests to defend the natural resources of the indigenous peoples.

Likewise, **Yuri Melini** and **Rafael Maldonado**, Director and Legal Advisor to Guatemala's Centre for Legal, Environmental and Social Action (CALAS) have also been threatened. On August 29, 2011 they received anonymous messages saying: *"Anyone they want to lock away will be locked away and the show will go on. Nothing is going to happen to this government. We will settle our scores after January 14, 2012 [...]".*

As mentioned above, on October 19, 2012, **Claudia Samayoa**, Coordinator of the Unit for Protecting Human Rights Defenders in Guatemala (UDEFEFUGA), together with other human rights defenders was accused in a press release, which was supposedly signed by the Counter-Terrorism Foundation (FCT), of having an anti-capitalist stance and terrorist attitude. They were warned that if they continued they would pay the consequences, and they [the FCT] would have to defend themselves. The week of November 12, 2012 Claudia Samayoa received a warning that her life was in danger. The case was initially investigated by the Human Rights Prosecutor's Office in the month of February 2013. With the evidence gathered, the Attorney General's Office requested that the Attorney General transfer the case to the Special Anti-Impunity Prosecutor's Bureau (FECI) as a result of finding evidence of a parallel group. However, no advances followed once this report was submitted.

### 4.3 The criminalisation of other human rights defenders

#### 4.3.1 Defamation of defenders of truth and justice

We shall now return our attention to the defamatory offensive launched against the defenders of justice and the clarification of the grave human rights violations committed by the Guatemalan army during the period of internal armed conflict.

This campaign took place during the judicial trial of former military personnel Efraín Ríos Montt and José Rodríguez Sánchez for the crimes of genocide and crimes against humanity. This campaign was planned and then executed in the general press, on television programmes, in opinion columns and on social media sites. Celebrities and far-right organisations with military connections were involved, such as the Counter-Terrorism Foundation (FCT). The goal was to discredit and defame certain key players in the judicial proceedings that were being held.

Along these lines, the FCT published leaflets in which it offered its own version of events during the internal armed conflict. It discredited and smeared the work of organisations, defenders and victims who were fighting for truth and justice, especially those parties who were directly related to the case: the victims legal advisors, the Attorney General Claudia Paz y Paz, judges, etc.<sup>106</sup>.

Following the formal complaints made by human rights defenders regarding these events to the Human Rights Ombudsman's Office (PDH), in August 2013 the Ombudsman issued a resolution stating that the right to dignity, personal integrity and safety of the human rights defenders had been breached, and that their rights to life and free association had been

<sup>106</sup> See Fundación Contra el Terrorismo (FCT), *Los rostros de la infamia*, May 3, 2013.

.....  
threatened<sup>107</sup>. In this statement, Ricardo Rafael Méndez Ruiz Valdés (President of the FCT) was named as being the author of said violations. It should also be stated that the PDH confirmed that finger pointing and the criminalisation of human rights defenders fuels hatred and social unrest.

As well as defamation, defenders also became the targets of other aggressions in relation to genocidal practices that included the tailing of victims and their companions, direct threats, and breaking and entering into the UDEFEGUA offices in Nebaj<sup>108</sup>.

On June 28, 2013, the Inter-American Commission on Human Rights (IACHR) granted precautionary measures in favour of the judges forming part of the tribunal in the case against General Efraín Ríos Montt - Judge Yassmin Barrios, Judge Patricia Bustamante and Judge Pablo Xitumul – in order to protect their safety. At the time of publishing this report, no formal case has been presented before the IACHR because in the case of Judge Yassmin Barrios an internal procedure is still in the process of being completed.

Responding to the events taking place, the United Nations Committee against Torture (CAT) states in its final observations adopted during the sessional period May 2013 that it asks that the State “...prevent agents of the State for making statements or acting in such that may negatively affect the impartiality of the Judicial System” and that “ensures the safety of victims, witnesses, and all those persons participating in legal proceedings, and in this sense, it urges the government to provide the necessary financial support to those bodies responsible for providing protection to ensure their correct workings”<sup>109/110</sup>.

#### 4.3.2 Women’s human rights defenders

Women’s human rights defenders are key players in the search for truth and justice in Guatemala. In addition to fighting for the rights of women and for gender equality, they are also important allies for the victims and survivors of sexual assault, which was a standard tool used during the internal armed conflict<sup>111</sup>. The search for justice in these cases is an indispensable part of the fight against impunity in Guatemala.

Within this backdrop, attacks against female defenders have increased, and the violence experienced includes a gender-specific element<sup>112</sup>; messages and attacks of a sexual nature indicate that for female defenders the barriers to gender equality still remain very high and undermine their position as defenders<sup>113</sup>.

We would like to reiterate that Guatemala has the second highest rate of registered femicide in the world. Violence against women is the most widely reported offense in the country, with 40,948 police reports filed in 2012<sup>114</sup>.

The 2008 law against femicide contemplates the creation of specialised courts and tribunals for dealing with gender-based violence against women. Up until 2012 such courts and tribunals were opened in five departments of the country reflecting significant advances in this field<sup>115</sup>.

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<sup>107</sup> See PDH, *Resolución por denuncia de amenazas a defensores de derechos humanos*, August 27, 2013.

<sup>108</sup> See FIDH, *Genocide in Guatemala: Rios Montt Guilty*, 2013, p. 19-21..

<sup>109</sup> See CAT, Final observations on combined Periodic Reports 5 and 6 in Guatemala, June 24, 2013, p. 10.

<sup>110</sup> On April 2, 2014 the Honour Tribunal of the Bar Association of Guatemalan Lawyers and Notaries suspended the judge Yassmin Barrios Aguilar from professional activities for one year. At the same time, the Public Ministry was asked to open a criminal investigation to look into the cases on which this judge could have participated. Her suspension is part of a wider network of harassment, threats and intimidation against judge Barrios in retaliation to her participation in the Efraín Ríos Montt trial.

<sup>111</sup> See Comisión para el Esclarecimiento Histórico (Commission for Historical Clarification), *Guatemala, Memoria del Silencio*, 1999, para. 2478.

<sup>112</sup> See UDEFEGUA, *Informe final 2012* (2013), p. 6.

<sup>113</sup> Idem.

<sup>114</sup> See Grupo Guatemalteco de Mujeres, Red de la No Violencia contra las Mujeres (Guatemalan Women’s Group, No Violence against Women Network), the Women’s Studies Institute, *Progress Report on the strengthening of CONAPREVI and enforcement of the Femicide and other Acts of Violence against Women Act during the 2012 Strategic Agenda of Guatemalan Women 2012-2016*, 2013, p. 5.

<sup>115</sup> Chiquimula, Guatemala, Quetzaltenango, Huehuetenango and Alta Verapaz.

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However, during the meetings the mission held with representatives of women's organisations, it was informed that since 2012 a campaign of criminalising defenders who work to fight femicide had begun.

The mission spoke to representatives from the women's movement who had been charged with several criminal actions, including genocide<sup>116</sup>. In addition, they shared information about a case involving charges of usurpation of functions<sup>117</sup>. The interpretation offered by the defenders themselves was that the objective is to weaken the advances that have been made in gender-based violence and the mechanisms for implementation.

The women who were interviewed described a state of permanent unease and feeling unsafe that led them to censure themselves as a means of protecting both themselves and the women accompanying them.

It is worth noting that in the context of protests against megaprojects in the communities, women reaffirm their desire to participate in protests, however, being the fact that they are female may prove to be a source of problems when it comes to participating in consultations or protests. In addition, it is clear that states of siege pose a particularly hostile environment for women who are most at risk of sexual harassment, for example.

Lastly, female defenders experience the effects of defamation differently to their male counterparts. Defamation damages the public persona of the female defender and casts doubts over her personal integrity. Consequently, it can be much more difficult for the defender to work in the public sphere and thus participate in the decision-making process<sup>118</sup>.

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<sup>116</sup> See Interview with GGM, Guatemala, November 15, 2013.

<sup>117</sup> Idem.

<sup>118</sup> See WHRD International Coalition, *Global report on the situation of women human rights defenders*, 2012, p. 49.

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## V. COMMUNITIES TAKING A STAND AGAINST THE NEGATIVE IMPACTS OF MINING AND HYDROELECTRIC PROJECTS

The fact-finding mission travelled to Huehuetenango, San José del Golfo and Mataquescuintla to interview representatives from the communities that have been taking a stand against mining and hydroelectric projects located in these areas.

The communities have organised themselves to act collectively in order to demand respect for one or several communities that enter under the category of human rights defenders. These individuals or groups are known as land rights defenders or environmental rights defenders and they are dedicated to defending human rights linked to the lands they live on. Just as in the cases mentioned above, land rights defenders peacefully protest against the adverse impacts that investment projects and land grabbing practices have on those who use the local lands.

### 5.1 Santa Cruz Barillas

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The case of Santa Cruz Barillas, a department of Huehuetenango, was one of the cases verified by the mission's rapporteurs first hand via in situ interviews that were held with several land rights defenders, environmental activists and natural resources rights defenders, some of whom were being held in pre-trial custody<sup>119</sup>.

According to the UDEFEGUA, "*The Municipality of Barillas is an example of a town carrying out a legitimate resistance struggle, but also an example of repression employed against it*"<sup>120</sup>. This collective action group is formed by the following indigenous communities: Maya Q'anjobal, Mam, Chuj, Akateko, K'iché, Kaqchiquel and the mestizo population residing in the Municipality of Santa Cruz Barillas. The municipality's inhabitants work predominantly in the agricultural sector, more specifically sowing milpa fields with maize, beans, coffee, cardamom and tending livestock. The second most important economic activity is trade.

In response to the business and governmental projects aimed at implementing an extractive model in the municipality, a community consultation was held in Barillas on June 23, 2007. A total of 46,481 people participated<sup>121</sup> in the consultation and 46,472 of them voted NO against the mining of natural resources in the area<sup>122</sup>.

In 2008, the company Hidro Santa Cruz (a subsidiary of the Spanish company Econer Hidralia Energía based in Guatemala) began the task of developing the hydroelectric project Q'ambalam in Barillas.

According to the accounts from the communities, the land was sold by Ranfery Molina who granted land title deeds using extra-legal measures. This marks the beginning of community grievances<sup>123</sup> as all of this took place without consulting the population, thus violating the right to prior informed consultation of indigenous peoples<sup>124</sup>.

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<sup>119</sup> Those interviewed were:

- Community members taking a stand against the hydroelectric station: Saúl Aurelio Méndez Muñoz, Antonio Rogelio Velásquez López and Mynor López (who at the time this report was being drafted were still being held in pretrial custody), Esteban Gaspar, Marcos Mateo Miguel, Andrés León, Isabela Gaspar and Rubén Artemio Herrera Herrera. The latter is a member of the Indigenous Peoples Caucus of Huehuetenango in the Defence of Territory (Asamblea de Pueblos de Huehuetenango Por La Defensa del Territorio - ADH).  
- Bishop of the Diocese of Huehuetenango: Monseñor Álvaro Ramazzini Imeri.

<sup>120</sup> See UDEFEGUA, *Las voces del río. Relatos de la persecución política en Barillas*. Available in Spanish at: <http://protection-line.org/es/2014/02/27/publicacion-de-udefegua-las-vozes-del-rio-relatos-de-la-persecucion-politica-en-barillas/>.

<sup>121</sup> According to the population census of 2010 there are 127,170 inhabitants in the municipality.

<sup>122</sup> If the project in question was a hydroelectric project the consultation was expanded to include mining activities in order to address the issue of natural resources more broadly.

<sup>123</sup> See Convergencia de Derechos Humanos, *Estado de Sitio Santa Cruz Barillas. Informe de Verificación*. 2012. Available in Spanish at: [http://www.semillerosdepensamientos.org/include/uploads/nodo/Barillas\\_informe\\_UDEFEGUA.pdf](http://www.semillerosdepensamientos.org/include/uploads/nodo/Barillas_informe_UDEFEGUA.pdf).

<sup>124</sup> Idem.

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For some communities the damages arising from the hydroelectric project are imminent, whilst others do not see themselves as being directly affected by the project or they see themselves benefiting from specific temporary elements. This set of circumstances has led to divisions within the community that in turn has led to the emergence of a new grievance, community estrangement; the once united community is becoming estranged as new quarrels start to appear<sup>125</sup>.

From this moment on a conflict emerged between the company and the defenders who oppose it, which has led to murders, criminalisation, states of siege, estrangement within the community, attempted murder, threats, intimidation, militarisation and defamation. All of this is a result of the stance taken by the State, which is one that has continued to ignore the legitimate complaints of the population and which has failed to comply with its international and national obligations regarding the right to consultation<sup>126</sup>.

Listed below are some of the most serious incidents affecting environmental activists and natural resource defenders in the municipality:

**(a) The death of Andrés Francisco Miguel, community member against the hydroelectric project.**

On the May 1, 2012, the land rights defenders **Esteban Bernabé Mateo, Andrés Francisco Miguel** and **Pablo Antonio Pablo** were walking from a site called "El Recreo 'B'" towards Poza Verde when they crossed paths with two private security guards contracted by the company Hidro Santa Cruz. The guards' names were Oscar Armando Ortiz Solares and Ricardo Arturo García López. Without saying a word the guards opened fire, shooting and killing Andrés Francisco Miguel. Pablo Antonio Pablo was hit by two bullets, one in his left forearm and the other in his nose. Esteban Bernabé Mateo was also injured.

The employees, who had been subcontracted by the hydroelectric company, were put on trial for the crimes of homicide and causing serious bodily harm. However, when the ruling was announced on September 11, 2013, the two employees were declared innocent of the charges of homicide, and Oscar Armando Ortiz declared innocent of causing serious bodily harm. The other security guard, Ricardo Arturo García López, was sentenced to five years in prison with probation for the crime of causing serious bodily harm. The sentence went to appeal.

**(b) Declaration of a state of siege and illegal arrests of nine defenders.**

In response to the protests and disturbances that were triggered by the death of Andrés Francisco Miguel, a state of siege was declared on May 1 in the Municipality of Santa Cruz Barillas, despite the fact that the circumstances did not comply with the conditions set forth in Article 27 of the ACHR<sup>127</sup>.

As a result of the state of siege that was decreed in Santa Cruz Barillas there were military incursions into the towns, raids in people's homes, and in many instances without the necessary search warrants. Citizens were harassed during the raids and their personal property was damaged<sup>128</sup>. Two minors were beaten during one such raid. It was also reported that money and food was stolen and personal identification documents seized.

In addition, on May 2 the following nine defenders who are members of the resistance movement against the hydroelectric project were unlawfully arrested: **Armando Pedro Miguel, Andrés León Andrés Juan, Antonio Rogelio Velásquez López, Diego Juan Sebastian, Joel Gaspar Mateo, Marcos Mateo Miguel, Pedro Vicente Nuñez Bautista, Saúl Aurelio Méndez Muñoz, and Juan Ventura.**

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<sup>125</sup> Idem.

<sup>126</sup> Idem.

<sup>127</sup> According to Art. 46 of the Political Constitution of the Republic Guatemala, "concerning human rights, the treaties and conventions that have been agreed upon shall take precedence over domestic law".

<sup>128</sup> See Convergencia de Derechos Humanos, *Estado de Sitio Santa Cruz Barillas*. Informe de Verificación. 2012, p. 10-11.

.....  
The violations of the constitutional and legal norms that govern the regulation of lawful arrest that took place during said arrests include<sup>129</sup>:

- The absence of arrest warrants for these individuals.
- Only two of these defenders were arrested by the National Civil Police (PNC); the remaining seven defenders were apprehended by civilians who took four of the defenders to the National Civil Police and the remaining three to the military detachment.

According to the Criminal Procedure Code a 'citizen's arrest' may only be performed in circumstances of in flagrante, and the detainees must be immediately handed over to the Public Ministry, the police or the nearest judicial authority, never the Army<sup>130</sup>.

- Those arrested were not informed of the motives for their arrests. The Justice of the Peace in the Municipality of Santa Cruz Barillas refused to take their statements and the defenders were paraded in front of the press and their photos taken.

This was in direct violation of Article 13 of the Constitution that states in paragraph two that the authorities *"must not expose to the media any person(s) who has not yet been indicted by the competent court."* Furthermore, it also breached the conditions required for a later identity parade by witnesses.

- They remained in pre-trial custody without providing their first testimony for 16 or 21 days, depending on the case.

Lastly, on the May 18 and 23, 2012 they were formally indicted which began legal proceedings that included accusations of: abduction and kidnapping; specially aggravated breaking and entering, coercion, unlawful detention, aggravated robbery, terrorism, specifically aggravated attack, inciting crime and disorderly conduct. Some of these offenses carry mandatory preventive custody<sup>131</sup>.

As mentioned, the case went before the United Nations Working Group on Arbitrary Detentions, which in its 63rd sessional period of November 2012 issued its Opinions Report<sup>132</sup> in which it stated that it considered the detainment of the nine defenders arbitrary in the sense defined in Categories I, II and III of the Working Group's methods<sup>133</sup>. In its conclusions, the Working Group recommends that the State: 1) release these persons forthwith and 2) provide fair compensation that is commensurate with the injury suffered by each of the persons concerned.

According to the same document, the State of Guatemala failed to respond to the Working Group within the 60-day deadline, but did request an extension of a further 60 days. Based on the gravity and urgency of the situation affecting the detainees, the Working Group chose not to grant the requested extension<sup>134</sup>. The Working Group also concluded that the declaration of a state of siege *"does not appear to be in accordance with article 4 of the International Covenant on Civil and Political Rights. A public demonstration, even one that results in some property damage (...) and forced entry into a barracks, can in no way be characterized as an emergency situation that threatens the life of the nation."*<sup>135</sup>.

Furthermore, a state of siege was declared on May 2, two days prior to the introduction of the corresponding Government decree, which was published in the Official Gazette on May 4.

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<sup>129</sup> See Art. 6-11 Political Constitution of the Republic Guatemala, Art. 257 CPP.

<sup>130</sup> See Art. 257 CPP, para. 3.

<sup>131</sup> See Art. 264 CPP, para. 4.

<sup>132</sup> See UN Document A/HRC/WGAD/2012/46.

<sup>133</sup> Idem points 28, 29, 31 and Decision (point 32).

<sup>134</sup> Idem point 19.

<sup>135</sup> See UN Document A/HRC/WGAD/2012/46, point 25.



.....  
The detainees were held in pre-trial custody for eight months and, according to the information received, their freedom was granted at a trial held in Santa Eulalia in January 2013 on the condition that they accepted a 'fast-track trial'<sup>136</sup>. In order for this type of procedure to apply – a procedure that carries a penal sentence of a maximum of five years in prison and leaves a criminal record against the defenders – they would have to admit their participation in the events and, in some cases, may have to pay compensation for damages. To date the final sentencing has not been reached.

It is worth noting that the Public Ministry's prosecutor opened an internal investigation<sup>137</sup>. Likewise, the Human Rights Ombudsman investigated the actions of the four judges involved in the case and concluded that there had been a violation of the detainees' rights to a fair trial<sup>138</sup>.

### **(c) False allegations of femicide and murder against Saúl Aurelio Méndez Muñoz and Antonio Rogelio Velásquez López**

On August 27, 2013, the human rights defender Saúl Aurelio Méndez Muñoz and Antonio Rogelio Velásquez López were rearrested whilst in the Tribunal Towers in the capital city attending a hearing on the unlawful detentions described above. They had previously been arrested on May 2 by the Unit for Arrests of the Specialist Division for Criminal Investigations (DEIC) using an arrest warrant. The arresting agents were dressed in plain clothes. The charges were for murder and femicide during two lynchings that took place in August 2010 during an alleged robbery in the Poza Verde community. The complaint against them was filed on May 7, 2013 by Nohemi Francisco Francisco, the daughter of one of the individuals who had been lynched.

The fact that the complaint was filed more than three years after the events took place is somewhat strange, given that the complainant says that she witnessed events that she could not have witnessed as she was at home at the time, under her mother's recommendation, which she herself admitted<sup>139</sup>.

In addition, the fact-finding performed by the UDEFEGUA further revealed that the accused defenders could not have participated in the lynchings: Rogelio Velásquez was not in the town on the day in question because he was sowing cardamom on his family's land, and although Saúl Méndez was in the town on that day, witnesses saw him walking "*in a line following other people*", but not leading the way nor committing acts of vandalism such as hitting, undressing, or tying a rope around the victim, as detailed in the statement made by the complainant.

Social groups believe that the lynching victim's daughter was tracked down and "*paid off*" by the company Hidroeléctrica Santa Cruz, in order to "*neutralise*" the two defenders and prevent them from continuing their fight against the imposition of the hydroelectric project.

It is worth noting that both the crime of murder and of femicide form part of a group of 'non-bailable' offenses (in Spanish: *crimines inexcusables*); in other words, they carry a mandatory pre-trial prison sentence for anyone who is a member of a union or organisation<sup>140</sup>.

Both defenders have large families, with five and six children respectively. Rogelio Velásquez's youngest daughter was born whilst he was being held in prison in October 2013.

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<sup>136</sup> See Art. 464s. CPP.

<sup>137</sup> See El Periodico, *Caso Barillas: Juzgado da marcha atrás en diez órdenes de captura* (Barillas case: Court reverses ruling on ten arrest warrants), September 25, 2013.

<sup>138</sup> See PDH, *Violación al debido proceso de nueve personas, declara PDH* (Violation of due process for nine individuals, declares PDH), March 1, 2013. Available in Spanish at: <http://www.pdh.org.gt/noticias/noticias-destacadas/item/1318-violaci%C3%B3n-al-debido-proceso-de-nueve-personas-declara-pdh.html#.U2vZ4leqTo>.

<sup>139</sup> A copy of the filed complaint is held in the records of UDEFEGUA.

<sup>140</sup> For murder: Art. 261 para. 4 of the CPP; for femicide: Art 6/ last paragraph of Ley FEM.

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Saúl Aurelio Méndez Muñoz and Antonio Rogelio Velásquez López are still being held in pre-trial custody on charges of murder<sup>141</sup> and femicide<sup>142</sup>.

According to the information received, both individuals have been criminalised for their role in opposing the hydroelectric project.

**(d) Process of criminalising Rubén Artemio Herrera Herrera**

**Rubén Artemio Herrera Herrera** is a member of the Coordination Committee of the Indigenous Peoples Caucus of Huehuetenango in the Defence of Territory, and is one of the most well respected leaders of the communities that are opposing Hidro Santa Cruz.

He has been the subject of several abusive criminal proceedings designed to intimidate him, some of which still remain open.

d.1 In one of them the criminal charges against him were for "unlawful detention", "abduction", "breaking and entering" and "incitement to commit crime", an arrest warrant was issued, and following his apprehension on March 15, 2013, pre-trial custody was ordered.

In the intermediate hearing held on May 30, 2013, the Public Ministry requested the case be dismissed. The judge overseeing the hearing granted the dismissal as there was a lack of sufficient evidence for a conviction and because it was not possible to ascertain whether the defendant had participated in the crimes he was accused of.

The reflections offered by the Presiding Judge upon declaring the case dismissed were interesting as they clearly reflect the incorrect workings of the judicial system, the worrying lack of impartiality within it, and they also served to highlight the attempts at criminalising human rights defenders by those willing to present unfounded accusations<sup>143</sup>:

*"We Guatemalans are creating problems for ourselves and, quite frankly, not even we know what we are getting ourselves into,...international conventions are not what's getting us into trouble,... the lack of compliance with international conventions is what is causing our problems... the problem here is that we are not talking about just one location here; now, there are processes relating to mining, hydroelectric projects and so on, and the biggest problem is that those working in the judicial system, and here I am referring to the national police force, the public prosecutor's office and the legal system are making these issues more complicated than they need be because we are acting irresponsibly...the problem is that arrest warrants are issued for so many offenses and there are times when the person testifies for one or two offenses and its at that moment when we realise that there is no relationship between them; in this sense I believe that we need to act prudently as judicial officials..."*

d. 2 In the second set of proceedings he is charged with nine criminal offenses that allegedly took place in April 2012: "threatening behaviour", "breaking and entering", "coercion", "unlawful detention", "abduction", "terrorism", "arson and aggravated robbery", "acts threatening homeland safety" and "attacks against the safety of public services". The respective arrest warrant was issued at the same time as the aforementioned case, and it was during the same intermediary hearing on May 30, 2013 that the provisional ruling on the proceedings was decreed.

With regards to the impact of the arrest warrants and pre-trial custody on the defender, he states that obviously, in addition to the emotional and physical stress caused, the breakdown of family life, and the economic repercussions, "you cannot participate in public events and political participation and protesting is left to one side".

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<sup>141</sup> See Art. 132 CP.

<sup>142</sup> See Art. 6 Femicide and Other Violent Acts against Women Act, Decree 22-2008.

<sup>143</sup> Audio transcription of the trial provided by UDEFEGUA.

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### (e) Act of aggression against Isabela Gaspar

**Isabela Gaspar** is a community leader in the resistance against the hydroelectric project. She was assaulted by an employee of Hidro Santa Cruz on November 25, 2012, whilst walking in the park in Santa Cruz Barillas with her son and his father. The aggressor told her “*stop protesting because it’s progress*”, in reference to the hydroelectric project.

### (f) Arrest of Mynor López Melgar

On September 28, 2013 **Mynor López**, another leader of the Santa Cruz Barillas resistance movement, was arrested. His arrest was carried out by armed civilians, upon which he was transported by helicopter to a detention centre<sup>144</sup>. During these events, threats were made against his life and they also threatened to harm his family members. The charges against him were read to him a week after his arrest<sup>145</sup>.

The arrest of Mynor López, as an active leader of the resistance movement, triggered peaceful protests that included marches and roadblocks in response to what was seen as an attack on him as a community leader and as a human rights defender<sup>146</sup>.

The authorities responded with force, and a group of National Civil Police (PNC) and military personnel confronted a group of local citizens. The result of this confrontation was the setting alight of a military vehicle<sup>147</sup>. Between September 28 and 30 there was a large police presence in Santa Cruz Barillas, involving the use of helicopters and tear gas<sup>148</sup>. The results were high levels of stress and fear amongst the population<sup>149</sup>, the death of a soldier<sup>150</sup>, and various injuries.

## 5.2 La Puya

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In 2010, local communities began the La Puya peaceful protest movement as a means to oppose the negative impacts on human rights caused by the mining project “*El Tambor, Progreso VII Derivada*”, which is currently under the ownership of the U.S mining company Kappes, Cassidy & Associates, and its subsidiaries Exploraciones Mineras de Guatemala S.A, Explotaciones Mineras de Guatemala (EXMINGUA), and Servicios Mineros de Centro América S.A.

While dialogues have been established at a national level, the latter has advocated that the community should renounce its attempts to protect its right to impartial information and the right to consultation.

It is with grave concerns that the Observatory has received information regarding the judicial harassment of several land rights defenders and environmental activists and natural resource defenders in relation to the mining activities in La Puya, an area located between the municipalities of San José del Golfo and San Pedro Ayampuc.

On April 30, 2014 at 15:00, Judge Félix García del Juzgado Octavo, Single-Guardianship Judge of the Court for Criminal Sentencing, Drug Trafficking and Environmental Crimes passed final sentence in the criminal proceedings Court Case 01079-2012-00214, against **Alonso de Jesús Torres Catalán, Valerio Carrillo Sandoval** and **Jorge Adalberto López Reyes**, in which they were found guilty of the crimes of “unlawful detention”, in concurrence with the offenses of “coercion” and “threatening behaviour”. They were sentenced to

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<sup>144</sup> Interview with Mynor López, Huehuetenango prison, November 8, 2013.

<sup>145</sup> See PDH, *Informe Anual Circunstanciado, Informe de Situación 2013*, p. 350.

<sup>146</sup> See GHRC, *El Quetzal* Issue 15, December 2013. Available in Spanish at: <http://www.ghrc-usa.org/resources/publications/el-quetzal-2/>.

<sup>147</sup> See PDH, *Informe Anual Circunstanciado, Informe de Situación 2013*, p. 349.

<sup>148</sup> See GHRC, *El Quetzal* Issue 15, December 2013 Available in Spanish at: <http://www.ghrc-usa.org/resources/publications/el-quetzal-2/>.

<sup>149</sup> Interviews with representatives from Santa Cruz de Barillas, Huehuetenango, November 9, 2013.

<sup>150</sup> Ministry of the Interior, Press Release: *Se impondrá el orden en Santa Cruz Barillas* (Order shall be brought to Santa Cruz Barillas), September 29, 2013..

.....  
9 years in prison, or a commutable prison sentence equivalent to GTQ 10.00 (ten quetzals) a day instead of spending time in prison.

The sentences passed down by Judge Octave, Single-Guardianship Judge of the Court for Criminal Sentencing, Drug Trafficking and Environmental Crimes, condemned Alonzo de Jesús Torres Catalán, Valerio Carrillo Sandoval and Jorge Adalberto López Reyes of the crimes committed on May 3, 2012, at 17:40, when, in the Municipal Cemetery of San José Del Golfo, they allegedly detained Oscar Danilo Alvarado Monterroso, Marco Tulio Aquino Garrido and Hery Arodi Gálvez Rivera, former employees of the mining company EXMIGUA, and threatened them so they would quit their jobs in mine.

According to the version of events described by the Public Prosecutor, Mr Torres Catalán physically assaulted one of the individuals being held and insulted and intimidated the other two. However, according to the accused they argue that they only approached the alleged victims in order to talk to them and make them understand the environmental impacts of the mine and the work they are involved in. They also state that at no time did they physically attack them, and argue that the injury caused to one of the alleged victims was caused accidentally by the machete that he was carrying.

According to the same sources, said sentencing infringes the principles of due process, as it does not contain sufficient arguments to conclusively demonstrate the guilt of the accused because of a lack of thorough investigation relating to the allegations, and in addition the clear examples of inconsistencies and contradictions in witness testimonies. Furthermore, during proceedings the judge partook of certain observations that were not in accordance with the principle of impartiality and his mandate, for example: he offered the opinion that the poor work performed by the Public Prosecutor and his inability to demonstrate that the alleged victims were even employed by the mining company was the result of *"influences, within the Public Ministry aimed at benefitting the unions"*. In addition, he repeated on several occasions that despite the lack of evidence, in his opinion the events had been proven, as had the guilt of the accused parties.

At this time Alonzo de Jesús Torres Catalán, Valerio Carrillo Sandoval and Jorge Adalberto López Reyes have been freed and their legal advisors are considering the possibility of initiating further legal proceedings before a firm sentence is declared.

On May 6, 2014, a redress hearing was held in which the Eighth Tribunal Sentencing sentenced Alonzo de Jesús Torres Catalán, Valerio Carrillo Sandoval and Jorge Adalberto López Reyes to each pay compensation in the amount of GTQ 22,500 (twenty two and a half thousand quetzals) for mental anguish and material damages in favour of the three employees of the mining company in San Pedro Ayampuc who had allegedly been detained.

The Observatory has routinely condemned the lack of thorough independent investigation surrounding these events, as well as the convictions of Alonzo de Jesús Torres Catalán, Valerio Carrillo Sandoval and Jorge Adalberto López Reyes, as it is believed that it was motivated by their involvement in defending environmental rights and natural resources rights<sup>151</sup>.

What is more, the Observatory has received serious reports regarding judicial harassment and the house arrests of the land rights defenders **Jacinto Pineda Catalán, Fernando Castro Carrillo, Eusebio Muralles Díaz** and **Gregorio de Jesús Catalán Morales** in connection with the same offenses for which Alonzo de Jesús Torres Catalán, Valerio Carrillo Sandoval and Jorge Adalberto López Reyes were convicted.

According to the information received, on May 27, 2014 the Seventh Tribunal of the Court of First Instance held a hearing to take evidence of the first statement in Case 01079-2014-00050 against the individuals Jacinto Pineda Catalán, Fernando Castro Carrillo, Eusebio

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<sup>151</sup> See Observatory, Urgent Appeal GTM 001 / 0514 / OBS 036, dated May 9, 2014.

.....  
Muralles Díaz and Gregorio de Jesús Catalán Morales, and also **Telma Yolanda Oquelí del Cid**, and environmental activists and natural resources defender, in relation to the mining activities in La Puya.

According to the same sources, the defence lawyers of Jacinto Pineda Catalán, Fernando Castro Carrillo, Eusebio Muralles Díaz and Gregorio de Jesús Catalán Morales argued that there had been a violation of the principal of due process and the Constitution of the Republic as a result of the indictment because the Public Ministry had not pressed individual charges against each of the accused. In response, the licensed judge, Judge Adrián Rolando Rodríguez Arana, established that the criteria for individualising charges were only applicable to the only woman being charged, Yolanda Oquelí, who had been accused of inciting the aggressions, as it would appear that a woman could not wield a machete nor carry out threatening behaviour because women were only able to “scold”.

However, this argument revealed the lack of evidence in the indictment against Yolanda Oquelí and her release was ordered once all charges against her had been dropped.

The Observatory has once again condemned the lack of thorough independent investigation in relation to these events and also the judicial harassment of Jacinto Pineda Catalán, Fernando Castro Carrillo, Eusebio Muralles Díaz, Gregorio de Jesús Catalán Morales, Alonzo de Jesús Torres Catalán, Valerio Carrillo Sandoval and Jorge Adalberto López Reyes, as it believes that it was a direct result of their participation in the defence of environmental protection and natural resource rights<sup>152</sup>.

The most recent incidents in this fight against mining activities in La Puya took place in the early hours of May 23, 2014. The National Civil Police (PNC) attended the area to protect the new digging equipment that was due to arrive for the mining company. The peaceful protest movement had assembled to protest the mining activities whilst the Human Rights Ombudsman, the United Nations Office of the High Commissioner for Human Rights and other NGOs tried to enter talks with the Government and the PNC in order to avoid violence. However, around two in the afternoon that same day, the anti-riot police moved towards the site where the protest movement had peacefully gathered, and proceeded to disperse them violently.

According to the information received, as a result of these police actions eight people were hospitalised in the Hospital general San Juan de Dios having sustained different types of injuries. In some cases, inhaling tear gas had poisoned individuals and fifteen individuals required medical attention, which was provided in ambulances or in medical centres.

### 5.3 San Rafael Las Flores (Santa Rosa) and Mataquescuintla (Jalapa)

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On April 3, 2013, the Ministry of Energy and Mines granted a license for the gold and silver mining project called “*El Escobal*” to the mining company Minera San Rafael, owned by Canada’s Tahoe Resources.

This license was granted illegally during a time of significant social opposition, and without prior, free and informed consultation. In fact, 276 petitions had been filed with the Ministry of Energy and Mines, none of which had been processed, thus violating administrative procedures set forth under the Mining Act and a lawsuit has been filed against the San Rafael mine for industrial pollution.

On April 8, 2013, the communities of San Rafael Las Flores, Santa Rosa began a permanent sit-down protest at the site “*El Escobal*”, prior to the arrival of the San Rafael mine in an attempt to have the exploitation license revoked. The license granted the company the rights to operate in San Rafael for a period of 25 years. For this purpose the community members of San Rafael Las Flores, Santa Rosa and other municipalities joined together and formed the Committee in Defence of Life and Peace.

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<sup>152</sup> See Observatory Urgent Appeal GTM 001 / 0514 / OBS 036.1, dated June 3, 2014.

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The resistance movement has led to threats being received by the defenders and their actions criminalised. There have also been violent acts perpetrated against the defenders and an armed group has also attempted to disrupt the peaceful nature of the protest movement.

**Record of events:**

**(a) Case: "Ancianitos". False allegations against five defenders, San Rafael Las Flores**

In November 2011, following a protest against the San Rafael mine, the mining company pressed charges against five community leaders, four of whom were older than 60 years old. They were accused of holding 22 Canadians against their will (foreign investors visiting the mine), "abduction", "terrorism" and "unlawful association". The Observatory fears that these actions and the criminalisation of community leaders who are defending human rights are designed to intimidate the protest movement.

The five leaders were indicted and called to attend a Board of Conciliation and Arbitration where they were intimidated, insulted, and pressured into accepting conciliation. In other words, they were told charges against them would be dropped if they accepted the following conditions: 1) To stop speaking out against the mine - this would obviously breach their right to free speech; 2) To accept that the protest march had been a mistake; and 3) To accept that opposing the mine was equivalent to opposing "progress". The accused did not have any legal representation at this conciliation board meeting and did not accept the offer.

At the next board meeting they attended with legal representation and the mine's representatives, upon realizing that they would not be accepting the offer, dropped the charges against them.

The methods used by the mine as seen as a way to generate fear and place pressure on those citizens who are defending their rights.

**(b) Improper use of the Femicide and Other Forms of Violence Against Women Act, San Rafael Las Flores<sup>153</sup>.**

In August 2012, Dr **Yuri Giovanni Melini Salguero**, Director of the Centre for Legal, Environmental and Social Action (CALAS) and **Rudy Antonio Pivaral Véliz, Oscar Roderico Morales García** and **Gustavo Martínez López**, members of the Committee in Defense of Life and Peace in San Rafael Las Flores, found themselves being criminalised having been indicted for the crime of "violence against women"<sup>154</sup>, and they were informed that 13 female employees of the San Rafael mine had also requested that injunctions to be taken out against them. The Justice of Peace of San Rafael Las Flores ruled against the defendants on both counts.

The argument offered by the claimants was that they had suffered from mental anguish as a result of Dr Melini's television appearance in which he states that the mine was harmful; they argued that because of this, and in their position as employees and sympathisers of the mine, they had been ostracized in their town. According to their version of events, this rejection was also a consequence of the activities of the other three individuals who, as members of the Committee for the Defense of Life and Peace, had called for a public consultation of the affected neighbours<sup>155</sup>.

The resolution was opposed and when the hearing was held it turned out that several of the women did not know that a formal request had been made in their name, and who wished to withdraw the request. The judge who awarded the injunction rejected their requests to halt the legal proceedings.

It was not until the resolution of the injunctions appeal process that these were repealed and the criminal case overturned.

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<sup>153</sup> See CALAS available in Spanish at: [http://guatemalacontaminada.blogspot.com/2012\\_08\\_01\\_archive.html](http://guatemalacontaminada.blogspot.com/2012_08_01_archive.html)

<sup>154</sup> See Art.7 Ley FEM.

<sup>155</sup> Established in Municipal Code.

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**(c) Unclarified violent acts**

The tensions that arose surrounding the mining project led to outbreaks of violence in which two private security guards belonging to the company were killed in 2013<sup>156</sup>. On March 17, four human rights defenders and leaders of the Xinca indigenous people were arrested when returning from a community consultation on the San Rafael Las Flores mine. One of them, **Exaltación Marcos Ucelo**, Secretary of the Xinca Parliament, was found dead the following day; the other three managed to escape or were freed<sup>157</sup>.

**(d) Unlawful imprisonments of 27 protestors, Municipality of San Rafael Las Flores, department of Santa Rosa, April 2013**

On April 11, 2013, a peaceful protest was held in the Municipality of San Rafael Las Flores to protest against the unlawful issuing of an extraction operating license.

On that day, the National Civil Police (PNC) and private security guards who had been contracted by the mine illegally detained 27 protestors; there were no arrest warrants, and no crimes had been committed. On the way to the courts, the police beat several protestors, and the police prevention report was falsified in such a way so it led to their detention in preventative custody for 4 days (for the offenses of inciting violence and unlawful association). In his first statement, the judge declared a lack of legitimate evidence and expressed the opinion that those who had been detained were merely exercising their right to protest.

**(e) Wilful attacks on life and physical integrity, April 2013**

On April 27, 2013, members of the private security company of the San Rafael mine fired shots against some of the citizens who had gathered near to the entrance of the mining company.

Apparently, the security guards were responding to orders from their boss, Alberto Rotondo, who was arrested a few days later at the airport as he attempted to flee the country.

In the documentary *"Más pequeños que David"*<sup>158</sup>, one of the community members, Adolfo García, recalls the words used by Mr Rotondo that day: *"Let's kill this scum and make them fall"*. Following this, according to the defender's account, they began to shoot and the community members began to run away.

Six people were injured, two seriously. One of these two, Luis Fernando García, who was 18 years old at the time of the attack, was shot in the face from only a few metres away.

According to information from the Guatemalan Human Rights Commission (GHR) from June 2014, Luis's health remains severely affected and he has had to undergo several operations. He now has difficulty breathing, he is unable to work and he has lost his sense of smell.

During the course of these events, a group of police were overpowered by the population and held for one day<sup>159</sup>, and one police officer died during an incident in San Rafael<sup>160</sup>.

With the help of the organisation CALAS, legal action is being taken against Tahoe Resources Inc., the parent company of the San Rafael mine in a civil court in Canada, demanding that they be held responsible for the actions of its subsidiary in Guatemala<sup>161</sup>.

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<sup>156</sup> Ver See United Nations General Assembly, *Periodic Report of the UN High Commissioner of Human Rights on activities of the Guatemalan Office for 2014*, UN Document A/HRC/25/19/Add.1, para. 63.

<sup>157</sup> Interview with CALAS, November 15, 2011.

<sup>158</sup> The documentary, entitled *"Más pequeños que David"* (English translation: "Smaller than David") can be found on the official websites and social networks of the two organisations that make up the Observatory – the OMCT and the FIDH.

<sup>159</sup> Interview with detainees at Mataquescuintla, December 12, 2013.

<sup>160</sup> See United Nations General Assembly, *Periodic Report of the UN High Commissioner of Human Rights on activities of the Guatemalan Office for 2014*, UN Document A/HRC/25/19/Add.1, para. 63.

<sup>161</sup> For more information: <http://tahoeontrial.net/>

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**(f) Unlawful imprisonments and pre-trial detention of 5 defenders / State of Siege, May 2013**

Deriving from the events described in the previous section, on May 1, 2013, a State of Siege was declared in the municipalities of San Rafael Las Flores and Santa María Xalapan, coming into force on May 3, without any of the criteria in Article 27 of the ACHR or Article 138 of the Political Constitution of the Republic of Guatemala being met.

In addition to a breach of the Constitution, there was also a breach of correct procedure when Congress was not informed of the government's declaration of a state of siege for several days. Article 138 of the CPRG states that the congress must ratify, modify or reject a state of siege "*within three days*".

In the first days of the state of siege, five community leaders from San Rafael were arrested using arrest warrants issued by a judge who did not have the authority to do - we are referring to Carol Patricia Flores, from Criminal Trial Court of First Instance "B" for Major Risk, to whom these cases had not been assigned - for the alleged crimes of "unlawful association", "conspiracy" (these are crimes governed by the Organised Crime Act)<sup>162</sup>, "aggravated robbery" and "abduction".

It should be noted that although criminal acts may have been committed (for example the unlawful detention of 23 police officers), arrest warrants were not issued in the names of those supposedly responsible for said acts; in fact, warrants were issued in the names of community leaders who were opposing the mine, not those responsible for said acts.

They were held in pre-trial custody for seven (in the case of three defenders) and five months respectively, before adjudication, burdened by the economic, legal, family and emotional stresses that this carries.

The mission was able to interview Esperanza Vásquez, the daughter of one of the accused who was freed a few days following the mission's visit.

**(g) Alternative measures should not affect the defence of human rights, San Rafael Las Flores<sup>163</sup>.**

This case is noteworthy given the Presiding Judge's arguments upon decreeing alternative measures against the criminalised defender:

On May 30, 2013, Camilo Ernesto Medina Mazariegos, Operations Manager of the San Rafael mine, filed a formal complaint with the Public Ministry against **Oscar Morales**, Community Mayor and President of the Community Development Committee in the Municipality of San Rafael Las Flores, for alleged threats that the accused had made against him on May 25, 2013. As a witness to the events, the mine's manager provided the name of a person who had not been present on the day nor at the location of the events, but who nonetheless confirmed the threats.

On July 29, 2014, the judge from Turno de Villa Nueva, in the preliminary hearing, found probable cause against Oscar Morales and decreed the following alternative measures: signing the book every 20 days; not leaving the country without prior permission; and a restraining order to prevent him going near the manager or his family.

However, the judge did not accept the prosecution's request to include an additional alternative measure in which the union member would be prohibited from going near the mine. It was rejected based on the prosecutor's reasoning in which he argued that the accused was a human rights defender and it had been said that "*there had been human rights violations at the mine*", thus the defender could not be denied access to the mine.

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<sup>162</sup> See Decree 21-2006.

<sup>163</sup> See UDEFEGUA urgent alert 5-2014.



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## VI. CONCLUSION

Despite the issues affecting the legal and institutional framework described above, some advances have been made with regards to sentencing for crimes against defenders or with regards to the State's intentions to protect journalists. Human Rights defenders in Guatemala undertake their work in extremely vulnerable conditions, which serve to highlight the inefficiency of the State of Guatemala and its unwillingness to ensure the safety and liberty of human rights activists when they perform their work.

The fact-finding mission focused on land rights defenders because of the grave concerns the Observatory held about the gravity of violence faced by human rights defenders who were speaking out against the negative impacts of the activities of natural resource extraction companies. However, it is also necessary to mention that during this time the rapporteurs also investigated the situation of women's rights defenders and defenders fighting impunity.

In this sense, land rights defenders are the second most vulnerable social group in Guatemala. The most common types of attacks suffered by this group include: harassment and threats, attempts against their lives and physical attacks, and criminal persecution and defamation. This is all part of a strategy to delegitimise and disparage the proposals and efforts of social organisations, the indigenous people and the legal advisors and organisations that represent them. At the same time, this de-legitimisation opens the door to further aggressions including the criminalisation of their actions, threats or physical harm

Under the phenomenon of criminalisation, it is also possible to observe a consistent pattern in which human rights defenders are denied justice, how promptly proceedings are undertaken, and the lack of effective responses to complaints presented by the community, indigenous peoples, or human rights defenders who are defending either individual's rights or the rights of specific groups against attacks on their rights, which could also be interpreted as a pattern of discrimination with regards to access to justice.

Furthermore, within the context of the criminalisation of social protest that the country is undergoing, there is a concern about the enactment by Congress in February 2014 of Decree 8- 2014 adopting the Traffic Circulation and Obstruction of Roads Act, known as "*Ley de Túmulos*".

This decree opens the door to the prohibition of demonstrations held to exercise the legitimate right to assembly and demonstration, recognised, as previously stated, in the Political Constitution of Guatemala, as well as international human rights laws.

In addition, the stance adopted by the State of Guatemala in some of the precautionary measures reports relating to human rights defenders has worsened with this government, especially with respect to environmental activists and natural resource defenders. In this sense, it has been noted that the government tends to minimise the risks that these defenders face whilst also criticising defenders for participating in protests and marches or other public acts in the company of security guards.

The situation of land rights defenders is being aggravated by the re-militarisation of certain areas and by the mishandling of social conflict, but also because of a lack of answers regarding the structural issues that are giving rise further conflicts, such as the lack of agrarian reforms that were planned in peace treaties that would strengthen the legal framework relating to land rights, institutional racism affecting indigenous peoples, inequality and poverty, or the systematic violation of the right to prior consultation.

The reason all this is happening is in part due to the application of a repressive political regime that resorts to the use of measures mentioned above, such as declarations of states of siege or the use of violence during forced evictions, and also because of the lack of legitimacy and effectiveness of the processes and mechanisms that have been put in place to facilitate dialogue.

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As affirmed by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the International Labour Organization in reference to the high levels of social conflict in Guatemala surrounding the exploitation of natural resources by mining, hydroelectric and monoculture plantation projects, it is important to remember that, "*The absence of means for consultation and the lack of specific consultation with regards to said projects, as set forth in the Convention, is to a great extent the cause of said conflicts*". The fact that the Constitutional Court does not consider community consultations to be legally binding not only contravenes international human rights laws that enshrine the right to prior, free and informed consultation for the population affected by extraction or hydroelectric projects, but it also contributes to increasing social unrest.

Without a doubt, the findings detailed in this report place utmost importance on the Guatemalan authorities truly committing themselves to protecting human rights defenders and resolving the institutional and structural causes of social conflict. Furthermore, the international community should provide a more effective support strategy for those individuals or groups working in the defence of human rights in a hostile environment and without adequate protection from the State of Guatemala

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## VII. RECOMMENDATIONS

Based on the circumstances presented in this report, the Observatory for the Protection of Human Rights Defenders offers the following proposals to ensure full recognition of the legitimate role of the work that human rights defenders and land rights defenders carry out, thus ensuring that they are able to undertake their activities effectively without fear of attacks, and to challenge the impunity of the attacks and violations mentioned in previous sections.

### 1. For the State of Guatemala

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Respect and protect human rights defenders in accordance with the UN Universal Declaration of Human Rights, creating an environment conducive to their work, full and visible recognition of the legitimacy of the work they undertake, with particular attention paid to vulnerability, by undertaking the following recommendations:

#### **Regarding respecting the right to peaceful protest and the criminalisation of human rights defenders:**

- Put an end to the abusive use of states of siege as a means of dealing with social conflict, and the use of the military in public safety tasks.
- Repeal '*Ley de túmulos*' which could be used to prohibit the legitimate right to peaceful assembly and demonstration.
- Reform the offense of aggravated usurpation to removed drafted legislation that facilitates the criminalisation and repression of the peasant population in claim cases in which they occupy the real estate.
- Guarantee that those responsible for ensuring compliance with the law have the necessary personnel and training, and that they are subject to the scrutiny of civil watchdogs and have effective human rights and anti-discrimination policies in place.

#### **Regarding the protection of human rights defenders:**

- Guarantee the physical and psychological integrity of all human rights defenders under any circumstances, including those working on issues relating to land rights, and develop effective protection strategies through consultation with land rights defenders.
- Legitimise human rights defenders in general, and land rights defenders in particular, in government discourse and in public statements, include land rights defenders in debates and consultations and talk in unequivocal terms to demonstrate support for defenders who have been the victims of threats or physical assault.
- Implement public policy to protect human rights defenders enforcing the ruling of the Inter-American Court for Human Rights in the case Human Rights Defenders et al. -v- Guatemala; as decreed in the sentencing, this public policy must be drawn up in collaboration and participation of those persons who are directly connected to protection measures, and it must specifically provide thorough and comprehensive actions regarding protection measures, as well as ascribing adequate human and financial resources to the task to ensure its efficiency. To this effect, the State must develop a risk-analysis model that allows each case to be studied independently depending on the needs of the defender(s) in question.
- Adopt legislation to protect human rights defenders that includes the possibility of applying provisional protection measures, paying specific attention to the needs of the most vulnerable groups, such as: land rights defenders, defenders of indigenous peoples' human rights and the leaders of rural communities, defenders fighting impunity, journalists and human rights defenders. The State of Guatemala is specifically recommended to reintroduce the Guatemalan Journalist Protection Program and the Draft Proposal for Prevention and Protection Measures for Human Rights Defenders and Other Vulnerable Groups, following collaboration with civil society.

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- Revise existing legislation and policies whilst consulting human rights defenders in order to full compliance with the human rights law and thus create a conducive environment in which land rights defenders may work effectively, and in which there is no threat of attacks or judicial harassment from state or non-state actors. This review should specifically tackle the following mechanisms: strengthening the Support Institute of Analysis of Attacks against Human Rights Defenders that in 2013 was weakened; strengthening of the Presidential Human Rights Commission (COPREDEH) to end the trend of minimising the risks that defenders face, and to end the criticism of those who attend events in their role as human rights defenders, such as demonstrations, protests or other public acts, accompanied by security guards.
  - Fight against impunity relating to attacks against land rights defenders and the violation of their rights by state and non-state actors. This includes carrying out thorough, independent and transparent investigations for cases involving violations against land rights defenders in order to identify those responsible, take them to court, and guarantee adequate damages and compensation.
  - Adopt legislative measures or any other necessary measures to guarantee and strengthen the mechanisms in place for monitoring the activities of transnational enterprises in the following ways: ensuring that those companies with registered domicile in the territory or jurisdiction of Guatemala are obliged to monitor and study the impact of their investment projects on human rights; regularly monitoring and enforcing compliance with their due diligence relating to human rights via regular significant participation with the local population and affected communities, including land rights defenders.
  - Offer full cooperation with international and regional human rights mechanisms, including the special procedures of the UN's Human Rights Council and UN treaty bodies, by applying, amongst others, the relevant decisions and recommendations as well as the provisional measures or safeguards for said mechanisms; likewise, invite the UN's Special Procedures experts regional mechanism bodies to visit the country.
  - Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights to enable land rights defenders to access the resources created to these ends.

**Regarding the judicial framework that governs land rights and dialogue mechanisms and participation as a means of responding to and preventing social conflict:**

- Adopt national policies that allow fair access to land, that guarantee land tenure, and that scrupulously honour the protection of unwritten, traditional and customary land rights, that must be duly protected. Carry out the agrarian reforms in line with the Peace Treaties.
- Strengthen the protection the right of participation, in law and in practice, in particular by establishing the obligation to prior consultation of the affected parties (and those individuals who may be in the future) regarding projects that affect land rights, such as hydroelectric and extraction projects. More specifically, the following laws and regulations must contain measures to said effects: the Mining Act; Regulatory Standards for Environmental Impact Assessment, Control and Monitoring; the Forestry Act; the Hydrocarbons Act; and the Electricity Act.
- Establish mechanism for dialogue that guarantee an integrated international approach for addressing the structural causes that generate conflicts, in order to prevent the recurrent use of military force in response to social conflict.
- Promote and support initiatives such as the UN's open-ended Intergovernmental Working Group on the rights of peasants and other people working in rural areas, and guarantee that said initiatives and policies includes clauses that recognise and protect the role of human rights defenders.
- Support the process of drafting a legally-binding international instrument, in the framework of the UN, governing business practices and human rights that includes a clear reference to the protection of human rights defenders who take a stand against the negative impacts of business activities on human rights, which also includes reference to land rights defenders.
- Promote the systemisation of protections for human rights defenders in general, and land rights defenders in particular, amending, revising and ensuring the inclusion of specific clauses on the protection of agreements, treaties and laws or action plans that have an

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impact on land rights, including commercial and investment agreements, national action plans for the application of UN Guiding Principles on Business and Human Rights, the human rights clauses of international treaties, etc.

- Guarantee states do not contribute to human rights violations through their development policies by reflecting human rights issues in relevant legislation and administrative regulations in such a way so as to ensure significant participation, and the protection of affected persons (or those who may be affected) and their right to access information and of those who are defending their human rights.
- Guarantee respect for the rights of indigenous peoples, in law and in practice, to prior, free and informed consultation, as well as respect for the rights conceded to them in international law.

## **2. For regional and international intergovernmental organisations and for private, institutional or governmental donors or investors:**

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- Completely integrate a human rights approach into the monetary allotment for transactions policies for large-scale land purchases to ensure that the financial projects do not aggravate nor contribute to the human rights violations of land rights defenders. Guarantee that funding and loans provided for development projects are used within a human rights approach and that they ensure the protection of land rights defenders.
- Perform thorough and independent impact assessments on human rights that include the participation of the populations and communities that are being affected, land rights defenders, and include such assessments as a financial investment requisite, and guarantee the inclusion of safeguards that deal with, mitigate and effectively resolve the negative impacts of any given project on human rights.
- Pay special attention to the protection measures adopted to guarantee the protection of those who are affected by investment project, and who is fighting to ensure that such projects respect human rights.
- Support the essential role played by human rights organisation, community groups, and social movements working with land rights defenders by providing them with specific technical or financial support and publicly recognising their legitimacy.
- Assign funds to empowering those affected by investment projects and those who are defending their rights.
- Actively disclose information pertaining to the investment projects, including key documents such as investment contracts and impact assessment reports, with the aim of assisting the work of land rights defenders and eliminating the risk of social conflicts.
- Establish independent grievance procedures for the projects being financed, including mechanisms to deal with human rights violations of land rights defenders, and that measures that guarantee that mechanisms comply with standards governing confidentiality and contain early warnings for cases involving threats or other abuses against those who present, or may wish to present, grievance claims.
- Coordinate activities with other donors via the relevant forums to ensure that all are aware of the plight of land rights defenders and that human rights are respected.
- Place pressure on those managing investment projects whenever necessary to ensure that they comply with international human rights laws.
- Promote the creation of bridges between rural defenders or land rights defenders and human rights organisations and global support networks. Support political dialogue aimed at improving the protection of defenders, and support land rights defenders by using international and national protection mechanisms

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## ANNEX 1: OBJECTIVES

### **General objective:**

Fact-finding mission aimed at helping raise understanding and awareness of the situation of human rights defenders in Guatemala from an international viewpoint in order to identify patterns of aggressions and risk factors that are present when undertaking their activities.

### **Specific objectives:**

- To meet with key players who work with human rights defenders in order to verify to what extent the State of Guatemala is prepared to and capable of fulfilling its obligation of adequately protecting human rights defenders in the country;
- To maintain open dialogue with the Guatemalan authorities and with civil society regarding the obstacles and aggressions suffered by human rights defenders in the country, as well as the adoption of protective measures, and specifically, the effective implementation of precautionary measures.
- To show international support and denounce attacks against human rights defenders in Guatemala.
- To analyse the situation and circumstances under which human rights defenders perform their activities in Guatemala from the perspectives of regional, national and international law.
- To gather information and analyse the political, institutional, legal and administrative context in which human rights defenders operate in the country, and establish whether they present legal or practical obstacles or affect their work in any way. Special attention should be paid to the defamation and criminalisation of activities carried out by human rights defenders, civil society organisations, and to attacks against defenders as a result of exercising their land rights (environmental problems, consultations of indigenous peoples...).
- To compile information and analyse the role of private parties (national and international companies and businesses, private security agencies...) with regards to the violation of the human rights of defenders in Guatemala.
- To try to obtain the support of diplomatic institutions Guatemala (foreign embassies) in the fight to gain respect for human rights in the country and to report grave violations of human rights.
- To assess the impact and extent to which EU directives relating to human rights defenders are applied by the EU Delegation Guatemala and by the European embassies in Guatemala.
- To create a list of recommendations that shall be submitted to the Government of Guatemala, the Inter-American Commission on Human Rights (IACHR), the European Union, the UN, and in particular to the Special Procedures and Treaties Body, placing special emphasis on the issue of protecting human rights defenders.

### **Objective of the documentary film “Más pequeños que David”**

(English translation: ‘Smaller than David’):

To document the situation of human rights defenders in Guatemala who find themselves at risk due to their performing human rights activities. In particular, the mission focused its attention on the issues of criminalisation and smear campaigns against human rights defenders. Also included in the scope of the mission were land rights defenders and environmental activists, defenders of women’s human rights, and defenders fighting against impunity – a group that is steadily increasing in size in the country.

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## ANNEX 2: METHODOLOGY

### **Mission rapporteurs:**

- Eric Sottas, Expert and former Secretary-General of the OMCT (Switzerland)
- Fernando Mejía, former Vice-Director of the OMCT (Honduras)
- Guro Engstrøm Nilsen, European Representative for the OMCT (Norway)

### **The mission included in-situ visits at the following geographical locations:**

- Guatemala City (*Ciudad de Guatemala*), department of Guatemala.
- La Puya, the municipalities of San José del Golfo and San Pedro Ayampuc, department of Guatemala.
- The Municipality of San Rafael Las Flores, department of Santa Rosa.
- Huehuetenango, department of Huehuetenango.

La misión contó también con un cineasta encargado de filmar las actuaciones de los delegados, con el fin de recopilar información para hacer un posterior documental de la visita.

A documentary filmmaker accompanied the mission's rapporteurs and was responsible for filming their activities and then producing a follow-up documentary of the mission upon its completion.

The documentary, entitled "*Más pequeños que David*" (English translation: 'Smaller than David'), can be found on the official websites and social networks of the two organisations that make up the Observatory – the OMCT and the FIDH.

The local organisations that collaborated and supported the mission were: the Unit for Protecting Human Rights Defenders (UDEFEQUA) and the International Platform Against Impunity in Guatemala.

During their visit to Guatemala, the mission held meeting with the following Guatemalan State authorities: the President of the Republic, the Secretary of Peace, the President of the Presidential Human Rights Commission (COPREDEH), the Republic's Attorney General, the Human Rights Ombudsman, and representatives of government.

The mission also interviewed representatives of organisations from civil society that included: *Centro de Acción Legal, Ambiental y Social de Guatemala (CALAS)*, *Madre Selva*, *Convergencia de Derechos Humanos*, *Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP)*, *Unión Nacional de Mujeres Guatemaltecas (UNAMG)*, *Comité de Unidad Campesina (CUC)*, *Grupo Guatemalteco de Mujeres (GGM)*, *Colectivo Artesana*, *Guatemala Human Rights Commission (GHRC)*, *Plataforma Internacional Contra la Impunidad*, *Brigadas Internacionales de Paz (PBI)*, *La Coordinación de Acompañamiento Internacional en Guatemala (ACOGUATE)* and the *Centro para la Acción Legal en Derechos Humanos (CALDH)*. In addition, the mission also interviewed independent journalist Andrés Cabanas.

In Huehuetenango, the mission interviewed the Bishop of Huehuetenango, the Western Maya Cultural Council, the Indigenous Peoples Caucus of Huehuetenango in the Defence of Territory, and the victims and representatives of the communities from Santa Cruz Barrillas. In prison, interviews were held with the environmental activists and natural resource defenders Mynor López, Antonio Rogelio López and Saúl Méndez Muñoz.

In San José del Golfo, interviews were held with members of the resistance movement known as 'La Puya'. In Mataquescuintla, a department of Jalapa, the mission was able to interview community leaders and the Mayor of Mataquescuintla.

Finally, the mission held meetings with the following international authorities: the United Nations Office of the High Commissioner for Human Rights in Guatemala; the Norwegian, Swiss, and US embassies; and the EU delegation to Guatemala.

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Created in 1986, the World Organisation Against Torture (OMCT) is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 297 affiliated organisations in its SOS-Torture Network, OMCT is the most important network of NGOs working for the protection and the promotion of human rights in the world.

Based in Geneva, OMCT's International Secretariat provides personalised medical, legal and/or social assistance to victims of torture and ensures the daily dissemination of urgent interventions across the world, in order to prevent serious human rights violations, to protect individuals and to fight against impunity. Moreover, some of its activities aim at protecting specific categories of vulnerable people, such as women, children and human rights defenders. OMCT also carries out campaigns relating to violations of economic, social and cultural rights. In the framework of its activities, OMCT also submits individual communications and alternative reports to the United Nations mechanisms, and actively collaborates in the respect, development and strengthening of international norms for the protection of human rights.

OMCT has either a consultative or observer status with the United Nations Economic and Social Council (ECOSOC), the International Labour Organisation, the African Commission on Human and Peoples' Rights, the Organisation Internationale de la Francophonie, and the Council of Europe.

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## Establishing the facts

Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

## Supporting civil society

Training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

## Mobilising the international community

Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

## Informing and reporting

Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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## The Observatory for the Protection of Human Rights Defenders: a joint programme of OMCT and FIDH

Created in 1997, the Observatory is an action programme based on the belief that strengthened co-operation and solidarity with and among human rights defenders and their organisations will contribute to break their isolation. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims. The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With this aim, the Observatory operates the following actions:

- a mechanism of systematic alert of the international community on cases of harassment and repression of human rights defenders, particularly when they require urgent intervention;
- the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- international missions of investigation and solidarity;
- a concrete material assistance aiming at ensuring the security of defenders victims of serious violations of their rights;
- the publication and world-wide dissemination of reports on violations of the rights and freedoms of human rights defenders or organisations around the world, including its Annual Report;
- sustained action with the United Nations in particular with the Special Rapporteur on Human Rights Defenders, as well as sustained lobbying with various regional and international intergovernmental institutions.

**To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger.**

### Emergency Line:

Email: [Appeals@fidh-omct.org](mailto:Appeals@fidh-omct.org)

Tel: + 41 22 809 49 39 Fax: + 41 22 809 49 29 (OMCT)

Tel: + 33 1 43 55 55 05 Fax: + 33 1 43 55 18 80 (FIDH)



UDEFEQUA

## UDEFEQUA

**Mission:** To provide comprehensive support to human rights defenders in order to empower them regarding the autonomous management of their own safety.

**Vision:** Safe conditions under which human rights defenders are able to work.

**Description:** We are an organisation providing support services for human rights defenders in Guatemala and in other countries in Central America in order to generate individual and collective autonomy with regards to risk management.

### Areas of work

- **Fact-finding:** This area of work deals with the reception of formal complaint cases that are dealt with by UDEFEQUA. Once the complaint is received a period of fact-finding and information gathering begins that is aimed at analysing the cases so that they can be then be entered into the UDEFEQUA information database (Sistema de Información - "SIU") and tracked as necessary.
- **Legal:** This area of work deals with legal counselling and the follow-up of the cases involving human rights defenders. UDEFEQUA, together with other organisations, develops strategies for the strategic litigation of cases linked with defenders within both the national and Inter-American systems.
- **Counselling and Support:** This area of work provides psychological counselling and support to human rights defenders who suffer emotional stress as a result of the different types of assaults they have faced.
- **Safety:** This area of work offers consulting services to human rights defenders and their organisations regarding the issue of risk management.

### Contact

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