



THE SITUATION OF
HUMAN RIGHTS DEFENDERS
WORKING ON ISSUES OF
BUSINESS AND HUMAN RIGHTS

GUATEMALA

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In the concluding observations of the Human Rights Committee's (the Committee) previous review of Guatemala in 2012, the Committee expressed concern at the 'very high levels of violence against and attacks on human rights defenders', regretting 'the lack of sufficient protection mechanisms for human rights defenders, as well as recent campaigns to undermine the initiatives of civil society organizations'.

It recommended the State 'publicly acknowledge the contribution of human rights defenders to justice and democracy. It should also take immediate measures to provide effective protection for defenders whose lives and security are endangered by their professional activities and also to support the immediate, effective and impartial investigation of threats, attacks and assassinations of human rights defenders, and to prosecute and punish the perpetrators'. It asked the State to ensure that the institutions charged with defender security be given proper human and financial resources, as well as political backing.¹

Lamentably, as reflected in the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD) to Guatemala this May, the situation for human rights defenders in Guatemala today is no better, with their civil and political rights subject to persistent violation.² What is more, as demonstrated by CERD,³ the UN Special Procedures, State and non-governmental actors, human rights defenders working on violations in the context of business operations are one of the most at-risk groups in the country, facing heightened and specific risks.

This paper aims to inform the List of Issues Prior to Reporting, on the occasion of the Committee's 115th pre-session, so that Guatemala be asked questions regarding what it is doing to ensure a safe and enabling environment for human rights defenders, and for defenders working on business and human rights in particular.

This paper was developed by the International Service for Human Rights in conjunction with International Platform against Impunity (Pi) in Guatemala. It is informed by both local and international sources, as well as first-hand interviews with affected human rights defenders, carried out in Guatemala in January 2015 with the support of Peace Brigades International (PBI).⁴

HUMAN RIGHTS DEFENDERS WORKING ON BUSINESS AND HUMAN RIGHTS FACE HEIGHTENED AND SPECIFIC RISKS

In Guatemala, human rights defenders are at risk and face obstacles to their work. Nonetheless, those whose work brings them into direct conflict with business interests have consistently been signalled as some of the most at-risk in recent years, reflecting a global trend.⁵ In Guatemala the majority of defenders in this category are working on issues of land, territorial and environmental rights, although trade unionists demanding labour rights face similar threats.

- According to documentation by the NGO 'Unit for the Protection of Human Rights Defenders' (Udefegua), in 2014 the highest number of aggressions in the country were against defenders of the rights to land, territory, consultation and the environment: 664 aggressions were registered against this group, meaning that they were victims of 82 percent of all the aggressions carried out against human rights defenders that year.⁶
- Of the seven most at-risk groups of defenders identified by Udefegua, using a register of aggressions against human rights defenders between 2000 and 2014, five represent groups

whose human rights work often brings them into direct conflict with business interests: environmental defenders, indigenous defenders, campesino activists, trade unionists and defenders working on development.⁷

- According to Frontline defenders, ‘trade unionists, along with campesino and indigenous rights defenders defending the right to prior consultation on development projects, continue to be targeted with a number of killings being reported... those defending the rights to land [are] increasingly being targeted and attacked. Environmental rights defenders, especially those working on issues relating to mining and the extractive industries, have been facing increased threats which include physical attacks and assassination attempts.’⁸
- The Observatory for Human Rights Defenders (the Observatory) and the US State Department are amongst other international actors which have signalled this group as one of the most vulnerable to attack.⁹
- Between 2011 and 2014, the UN Special Rapporteur on Freedom of Peaceful Assembly and of Association sent 9 communications to Guatemala regarding the cases of 29 individuals or collectives. These included 12 murders, 8 cases of public stigmatisation/defamation, 3 kidnaps, 2 attempted murders, 2 death threats, 1 arbitrary detention and 1 excessive use of force against protesters. 24 of the 29 victims - including all of the murder victims - were human rights defenders working on business and human rights, whilst the other 5 victims worked supporting human rights defenders including those working on business and human rights.¹⁰

STIGMATISATION AND DEFAMATION: The foundations for criminalisation and attacks against human rights defenders working on business and human rights

Human rights defenders working on business and human rights face frequent public stigmatisation by both State and non-State actors, including the media and business representatives. It takes various forms, including questioning their motives, labelling them a threat to the State or to public order, and accusing them of crimes which they have not been proven to have committed. Public stigmatisation of defenders makes them more susceptible to other threats and obstacles, such as physical attacks, judicial harassment or difficulties fundraising.

- Stigmatisation campaigns against defenders have been carried out by transnational companies, right-wing media and State authorities, through formal and social media outlets.¹¹
- ‘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’. Defenders reporting violations in the context of business operations have been labelled as ‘anti-capitalist’.¹²

- ‘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’.¹³
- 160 of the 172 human rights defenders subjected to defamation campaigns in 2013 were defenders of economic, social and cultural rights.¹⁴
- Stigmatisation affects women human rights defenders differently and disproportionately, given that they already face the additional threats of *machismo*. Women are criticised by State and non-State actors, including members of their own communities and households, for taking on roles of leaders and activists and ‘neglecting their duties’ in the home.¹⁵
- Some NGOs have stated that indigenous defenders face a double-discrimination and stigmatisation due to racist attitudes amongst some authorities.¹⁶
- Defenders also complain of cases where authorities take the decision unilaterally to end a process of dialogue, but then blame the community or the NGOs, leaving them open to criticism by a range of actors.¹⁷

JUDICIAL HARASSMENT : The criminalisation of the defence of human rights defenders in the context of business operations

Frontline Defenders, PBI, the Observatory and Udefegua have all signalled the criminalisation of human rights defenders as a phenomenon which has increased, and which has been used disproportionately to paralyse the work of defenders working on business and human rights. ‘The defenders most affected by criminalisation are those who have taken a stand against natural resource extraction projects’.¹⁸ With defenders arbitrarily detained and with criminal proceedings opened against them, they are obliged to use resources which ought to support their defence of other rights to simply defend themselves.

- The rise in public defamation/stigmatisation against defenders goes hand-in-hand with a rise in judicial harassment against them. Between 2009 and 2013, cases of the former rose from 4 to 39, whilst cases of the latter rose from 23 to 67.¹⁹

“Resistencia Pacifica Nuevo Amanecer” de Barillas: an emblematic case of the criminalisation of defenders working on human rights in the context of business, having their civil and political rights violated

In Santa Cruz Barillas, the pacific Resistencia Nuevo Amanecer have faced judicial harassment as a reprisal for their opposition to a hydroelectric project, in a clear case of collusion between authorities and the business.

Since 2008, the Hidro Santa Cruz company has filed several complaints against resistance members, accusing them of coercion, intimidation and illegal detention, whilst in 2012, 23 apprehension orders were emitted against members on charges of terrorism.

The same year saw community leader Andrés Francisco Miguel killed by members of the company’s private security firm. A state of siege was declared and nine resistance members arbitrarily detained, in a case documented by the UN Working Group on Arbitrary Detention. Two more members were detained in 2013.

In February of this year, Arturo Pablo, Francisco Juan and Adalberto Villatoro were accused of diverse crimes including kidnap and illicit protest, and put under orders of preventative detention. The accusations against them were made by Hidro Santa Cruz.

Pacific Resistencia Nuevo Amanecer, de Barillas, continues to defend the right to free, prior and informed consent, denounce human rights violations and demand that the project be stalled.²⁰

- Judicial harassment of defenders is initiated by authorities, community members, staff and employees of business projects and justice operators amongst others. It often takes the form of preventative imprisonment, the judicial basis for which is unclear.²¹
- Many criminal proceedings are launched by private companies related to the mining and hydroelectric sectors, accusing defenders of crimes such as terrorism, usurpation of land, kidnappings and others.²² Human rights defenders have also been accused of participating in organised crime.²³
- Every human rights defender interviewed by ISHR spoke of how criminalisation is being used to slow their work, with activists in almost every community either subject to apprehension orders (meaning they could be detained in any moment) or preventative prison. The crimes they are accused of are diverse.²⁴
- In March in Huehuetenango, local authorities closed down an indigenous community radio station and detained two indigenous leaders on dubious charges of ‘kidnapping, abduction and instigation to commit a crime’. Both the radio station and the leaders were at the forefront of community resistance to large scale development projects with alleged negative human rights impacts.²⁵
- The Observatory has alleged that ‘the Public Prosecutor is attempting to prosecute defenders for serious crimes without having the evidence to back up the accusations’.²⁶ Many cases are of defenders working on business-related issues, exemplified by the cases detailed below. Cases are usually dropped after months of judicial harassment due to the lack of evidence.
- For example, Abelardo Curup, an indigenous leader involved in stopping a cement manufacturing project, 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’.²⁷
- Last year the Ministry of Government announced the expulsion of two foreign citizens from the NGO Peace Brigades International, who for years have accompanied and observed human rights defenders resisting large scale development projects, for supposed violent acts in violation of their visa terms. The Ministry later reversed its decision, recognising the lack of proof behind the accusations.²⁸
- In the emblematic case of the La Puya pacific resistance movement (which was instrumental in ensuring a recent court decision in favor of the right of residents to be consulted about projects that affect them and ordering the suspension of mine construction activities²⁹), nine activists have faced judicial processes based on accusations of coercion, illegal detention and threats, made by actors linked to the mining company. Three were sentenced in April 2014 to nine years in prison. Many experts have questioned whether due process and the principle of judicial independence have been followed in the processes.³⁰ Three dozen more activists are still under investigation for crimes alleged by the company and/or the electricity distribution business. A judge has ordered the investigation of the public prosecutor for falsification of evidence in the first case.

DEATH THREATS, ATTACKS AND MURDERS: The risks for human rights defenders working on business and human rights

Human rights defenders in Guatemala, including those working on issues related to business projects, are frequently victims of physical attacks and death threats. The impact of such threats is grave given that murders of defenders working on these issues are reported frequently.

- In June 2013, local communities protested against the proposed construction of the Xalalá hydroelectric dam in Alta Verapaz and Quiché departments. In August, three people from the community of Monte Olivo, Alta Verapaz department were killed. They were reportedly shot by police officers during the forced eviction of a community opposed to the construction of a hydroelectric project in the area.³¹
- In August 2014, Gustavo Illescas, a journalist with the Independent Media Centre in Guatemala, was threatened after he reported on police violence during the forced eviction in Monte Olivo. One of his colleagues was detained by masked men and told to convey a threatening message to Gustavo Illescas. The colleague was also beaten and sexually assaulted. By the end of the year 2014 nobody had been held to account for his ill-treatment or for the threats against Gustavo Illescas.³²
- On 29 July 2015, shots were fired outside the offices of human rights organisation Centro de Acción Legal Ambiental y Social de Guatemala (CALAS), which has been active in denouncing abuses committed by mining companies in the region. The threats came one day prior to a scheduled hearing in which evidence would be brought against Mr Alberto Rotondo, the security manager of the San Rafael Mine. Mr Rotondo is facing criminal charges of assault and obstruction of justice as a result of accusations that he ordered and then attempted to cover up an attack, on 27 April 2013, in which seven members of the community were left injured. It is believed that the shots fired at the CALAS offices were linked to the criminal complaint against Mr Rotondo.³³ PBI, the Observatory and Frontline Defenders have documented several previous death threats against CALAS staff.
- Carlos Antonio Hernández Mendoza, leader of the Asociación Campesina Camoteca from the department of Chiquimula, was killed by several gunshots on 8 March 2013. His killing culminated a series of threats, attacks and criminal persecution that Carlos Antonio suffered as a result of his human rights activities and for organising protests to defend the natural resources of indigenous peoples.³⁴
- On 13 June 2012, in San José del Golfo, Yolanda Oqueli – a La Puya activist campaigning on business and human rights issues – was walking home from a protest when she was shot by an unknown subject on motorbike. One bullet entered her body above her right kidney. To date, the bullet has not been extracted and the case remains in impunity.³⁶
- As well as explicit death threats against activists, many communities in resistance to large scale development projects are subject to an excessive presence of State and non-State security forces,³⁵ which is often interpreted as a militarised threat against possible actions of protest and human rights defence.³⁷
- Activists also complain that criminals associated with organised crime are sometimes contracted to kill human rights defenders who are exposing human rights violations around business projects.³⁸
- The US State Department has documented credible reports of retaliation by employers against workers who exercise their rights or participate in union activity. ‘Common practices included termination and harassment of workers who attempted to form workplace unions, creation of illegal company-supported unions to counter legally established unions, blacklisting of union organizers, and threats of factory closures’.³⁹

Lolita Chavez Ixcaquic:⁴⁰ facing exacerbated risks as an indigenous woman defending human rights in the face of big business

Lolita Chavez, leader of the Council of K’iche’ Peoples in Defense of Life, Mother Nature, Earth and Territory (CPK), an organisation grouping 87 communities and their traditional authorities that work to protect their land and resources, has suffered frequent threats, attacks and criminalisation. Many of the communities in the Council have voted against large-scale mining and hydroelectric projects.

In 2012, Lolita was ambushed along with her companions on a bus, by a group of men armed with machetes, knives and sticks. She has also faced trumped-up criminal charges and has been accused of representing a threat to national security, on several occasions.

She was granted precautionary measures by the Inter-American Commission on Human Rights, due the threats against her life, that require the Government to provide protection but these measures have not been properly implemented. For example, in January 2015, the defender didn’t receive any protection from

the State for over three weeks, due to changes decided unilaterally by the authorities (without prior notice or consultation). The protection was reestablished thanks to the mediation of an international NGO and the UN Office of the High Commissioner for Human Rights.

Lolita explains that the backlash is even stronger against indigenous women human rights defenders given the discrimination those groups already face and official and community opposition to their role in decision-making, whilst it is also extremely difficult to gather the financial resources necessary to stand up to such large interests.

Five international NGOs⁴¹ have said Lolita's case is emblematic of wider issues: 'It is precisely this, the process of isolating, wearing down and requiring inordinate outlay of time, energy, money and legal supports from activists and their allies that is central to the strategy of stigmatisation and criminalization of dissent'.

FORCED EVICTIONS (DESALOJOS): Attacks on social protests against human rights abuses in the context of business operations

Last October, Peace Brigades International spoke out against the increase in forced evictions (*desalojos*) against protests, particularly when they question economic investments, land rights and natural resource exploitation.⁴² Forced evictions are often accompanied by judicial harassment and an excessive use of public force. Local defenders allege that violent *desalojos* are often planned and carried out in collusion between the Policía Nacional Civil (PNC) and private security firms employed by the business which feels threatened by the activities of human rights organisations and resistance movements. Some allege that individuals and groups associated with organised crime also form part of this violent collusion to repress community resistance.⁴³

- In September 2014, international observers from PBI reported that protesters in Ch'orti' de Camotán y Jocotán were subject to *desalojo* by the PNC using firearms, tear gas bombs, rocks and stones, leaving several injured, including one with a bullet wound. Human rights defenders from Central Campesina Ch'orti' Nuevo Día were detained for three days under unfounded allegations of threatening public order. Frontline defenders labelled this an 'attempt by the authorities to criminalise human rights defenders' with the objective of 'causing fear amongst those who defend their land and rights against the interests of national and foreign extractive businesses'.⁴⁴
- In May 2014, during an ongoing process of a high level dialogue between the community, the President and State institutions regarding opposition to a mining project, activists protesting as part of the Resistencia Pacífica de La Puya, were violently moved from a protest camp by elements of the PNC. PBI observers reported an excessive use of force, whilst Udefegua reported 23 people injured. Witnesses stated that the majority of injured persons were women, with two of them receiving tear gas canister injuries after PNC agents fired them at their bodies and heads. Resistencia Pacífica de la Puya have faced persistent risks as a reprisal for their demands regarding access to information and consultation around gold extraction, whilst

denouncing the lack of community participation and the negative environmental impact of the projects.⁴⁵

- Many defenders complain that the collusion between State and private security forces to carry out *desalojos* is emblematic of the more general priority use of State resources to protect private business enterprises.⁴⁶

A RESTRICTIVE LEGAL ENVIRONMENT FOR THE DEFENCE OF HUMAN RIGHTS

In Guatemala, vague laws are arbitrarily used to criminalise and restrict the work of human rights defenders. In recent years, this restrictive legal environment has had a disproportionate effect upon defenders whose work threatens business interests.

A. The arbitrary and abusive use of states of siege and or emergency

- In Guatemala the Public Order and State of Siege Act (*la Ley de Orden Público*) has been repeatedly invoked to limit excessively the right to peaceful assembly and to violently repress human rights defence in the context of business operations.⁴⁷
- The *Ley de Orden Público* was created in 1965 in contradiction to the rights recognised in the Guatemalan constitution since 1985.
- According to Udefegua, states of seige are called with arbitrary regularity and under conditions which fall out of those permitted by international law,⁴⁸ and with the effect of granting the public forces free reign to break up meetings, repress social movements by force and arbitrarily detain their members without a court order.⁴⁹

B. La ley de Tumulos⁵⁰

- In February 2014, the *Traffic Circulation and Obstruction of Roads Act* (Decree 8- 2014),⁵¹ known as *Ley de Tumulos* was adopted. This Decree opens the door to the prohibition of demonstrations held to exercise the legitimate right to assembly and demonstration, and it particularly affects the fights of indigenous peoples as well as pacific community

protests against mining’.

- Administrative sanctions of up to USD \$650 will apply to those deemed to have erected fences, mounds or other obstacles on the country’s roads without permission of the Directorate-General for Roads.
- Criminal sanctions mean that prison terms or fines can be imposed upon anybody deemed to have seriously endangered vehicle circulation ‘by any other means’ or ‘those who encourage others to set up mounds, barrels or other obstacles on the country’s roads’.

These vague and arbitrary terms mean the law violates the International Covenant on Civil and Political Rights (the Covenant), as well as the Guatemalan constitution, which states that ‘*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*’.

C. Counter-terrorism legislation

- Udefegua have documented the widespread use of the terrorism law to criminalise activists, with criminal processes often instigated by private businesses related to mining or hydroelectricity projects. Many cases are closed given the lack of evidence beyond individual testimony.⁵²
- A bill being debated since May 2014 in the Guatemalan parliament to prevent terrorism and commercial and industrial espionage (*Iniciativa 4843*), has been signalled as potentially threatening to journalists, given that – under its current terms – it could criminalise any person who emits an opinion regarding the activities of a business or who denounces abuses against the rights of consumers of the product.⁵³

D Legislation restricting freedom of expression and access to information

- The criminalisation of some community radio stations in Guatemala is of concern, given the crucial role they often play in exposing business violations and educating communities regarding their rights, usually in the local language.
- Few efforts have been made to ensure that community radio stations can obtain legal frequencies, leaving them vulnerable to possible closure or seizure of their equipment, given that the authorities view them as illegal. The 2012 telecommunications law exacerbated the situation as, according to Reporters Without Borders, it endorsed concentration of media ownership in few, establishment, hands.⁵⁴

THE ROOT CAUSE OF RISK:

The lack of free, prior and informed consent

An adequate response by the State to the risks facing defenders working on business and human rights would have to address the root causes of the violations which these activists expose, given that these also represent the roots of the threats they face. These are to be found in the ‘systematic violation’⁵⁵ of the right of communities to a free, prior and informed consultation and consent before any business project goes ahead which might affect their rights. It is under these conditions which communities feel obliged to become human rights defenders.⁵⁶

- The ILO has stated that the lack of a consultation mechanism and of specific consultation with regard to the exploitation of natural resources through projects dealing with hydroelectricity, mining and monocultures are ‘the main reason for the existing unrest’ in Guatemalan communities.⁵⁷
- The Observatory has argued that legislative changes (such as the Small-Scale Mining Act and reforms to the Mining Act) aimed at making it easier to grant mining permits and eliminating the need for express written permission from the landowner for a mining project, have ‘contributed to the increasing amount of social conflict surrounding land tenure’. The State of Guatemala has systematically contravened its obligation to consult on every licence granted to date.⁵⁸
- From 2005 to 2014, 72 communities affected by extractive industries and hydroelectric dams organised and held community consultations processes, as registered by the organization Resistencia de los Pueblos.⁵⁹ The consultations were organised by invoking the *ILO Convention 169*, the *UN Declaration on Indigenous Peoples*, and the *Guatemalan Municipal Code*.⁶⁰ None of these consultation processes were initiated by the State and only a handful have been recognised by the authorities.
- ‘Since 2005 to the present day the Government has delegitimized the Community consultations carried out by the population being affected by these projects. For its part, the Constitutional Court has declared those consultations valid but “non-binding”’.⁶¹
- Indigenous representatives expressed concerns that a number of regional development projects failed to consult meaningfully with local communities and disproportionately benefited corporations, government officials, and their associates, while posing risks to indigenous lands and cultures.⁶²
- According to the Ministry of Energy and Mines currently there are 342 mining exploration and production licenses with another 552 in process,⁶³

hydroelectric projects,⁶⁴ and 4 oil production contracts.⁶⁵ None of these have been accompanied by a formal consultation process. It is concerning, therefore, that the seeds of future conflicts and threats for communities and defenders continue to be sown.

- The Central American Institute for Fiscal Studies, in a 2014 study on mining in Guatemala, reported that in municipalities that have mining projects, 70 percent report conflicts whereas only 10 percent of municipalities without mining report conflicts.⁶⁶
- Former Special Rapporteur for Indigenous Peoples, James Anaya, has made explicit statements, generally and in reference to Guatemala, that indigenous communities have the full right to reject projects on their territories.⁶⁷ Nonetheless, State and non-State actors frequently assert that community opposition is unacceptable. This damages public perception of indigenous rights groups and the consultation process, whilst creating further threats to the ability of human rights defenders to conduct their work on the issue free from harassment and physical violence.
- Local activists complain that the current government has closed the few spaces which used to exist for dialogue between the authorities and civil society particularly regarding business projects. They analyse that this closure of dialogue, when coupled with the militarisation of public spaces, leaves defenders exposed to increased risks.⁶⁸

IMPUNITY:

The green light to aggressors

A climate of impunity prevails regarding crimes against human rights defenders, in spite of the country having taken the positive step of appointing a Special Prosecutor for crimes against human rights activists (*Fiscalía para activistas de derechos humanos*).

- In 2012, Udefegua registered 305 human rights violations against defenders. This translated into 80 cases filed within the public prosecutor's office, with 22 of them passing to the Special Prosecutor for crimes against human rights activists. Of the 80 total cases, only 7 were resolved, 2 of them within the office of the Special Prosecutor.⁶⁹
- There is a clear disparity in the way in which the justice system deals with crimes reported in which a human rights defender is the victim, and those where the defender is the alleged perpetrator. In cases of the former, impunity is the likely outcome. In the latter case (as documented earlier under Judicial Harassment), judicial harassment and presumption of guilt are the likelier outcome.

GUATEMALAN STATE RESPONSE

Guatemala has an array of mechanisms⁷⁰ through which the State, on paper, ought to articulate actions for the recognition and the protection of human rights defenders. Nonetheless, none of them are currently fully functional. Serious political will, proper resourcing and a real effort to work together with civil society is needed for their implementation. Some of the bodies which require strengthening are as follows:

- The *Institute for the Analysis of Attacks against Human Rights Defenders* (found within the Interior Ministry in 2007, but mandated to incorporate civil society representatives) is effectively inoperative, having been consistently weakened since 2009 and fully undermined since 2012. The Institute ought to process complaints of aggressions against defenders and analyse their patterns and causes, with the aim of formulating recommendations to the Attorney General Office and other national institutions.⁷¹
- The *Journalist Protection Program* was announced in 2013, with the aim of receiving complaints of crimes against journalists, ensuring judicial investigations, guaranteeing their security and training them in protection. Implementation has been slow. In August 2014, the UN Special Rapporteur on freedom of opinion and expression said that the level of aggression against the press had reached a level not seen in a decade. Between August and September 2015, the Program should be validated by the President.⁷²
- The *Department of Protection Mechanisms for Human Rights Defenders*, within the Presidential Human Rights Commission (COPREDEH) is mandated to guarantee the safety of those activists beneficiaries of precautionary or interim measures granted by the Inter-American human rights system. Its effectiveness has recently weakened, with accusations that it has questioned the legitimacy of defenders working on issues related to business and human rights, as well as the seriousness of the risks they face. Implementation is slow.⁷³
- In 2014, the Interior Ministry enacted an internal *Protocol for the Implementation of Immediate and Preventive Security Measures for Human Rights Activists*. However, these guidelines were not previously consulted with civil society organizations and human rights defenders and the risk analysis methodology required has not been fully finalised. So far, the Protocol is not being successfully implemented.⁷⁴
- As discussed in the previous section, the Special Prosecutor's Office for Crimes against Human Rights Activists requires strengthening if it is to tackle the impunity for violations against defenders.
- In October last year, the Inter-American Court of

Human Rights found the Guatemalan State guilty of failing to adequately investigate the death of a human rights defender, in the case *human rights defender and others vs Guatemala* from August 28, 2014, as well in failing to protect the activist's daughter. The sentence obliged the Guatemalan State to implement public policies of legislative, institutional and judicial character to guarantee the protection of defenders, yet all of the defenders interviewed by ISHR complained of a lack of implementation of protective measures.⁷⁵

CONCLUSION

Guatemala is not protecting the civil and political rights of human rights defenders, with those working on issues related to business facing increased and particular risks and obstacles to their activities. These activists are particularly susceptible to having their rights to a fair trial (articles 14-16 of the Covenant) and to freedom of expression, peaceful assembly and association (articles 17-22) violated. Those who are women and/or indigenous defenders face additional discrimination, in violation to articles 26 and 27. What is more, it is the persistent violation of Article 25 of the Covenant, through the denial of free, prior and informed consultation and consent

of communities affected by business projects, which represents the root cause of all other threats to the rights of these defenders.

Furthermore, the undue suppression of NGOs, human rights defenders and communities in resistance who work to prevent the violation of, and seek to advance, the civil and political rights enshrined in the Covenant, is a corollary violation of those self-same rights.

Both State and non-State actors are violating the rights of human rights defenders working on business and human rights. The present administration not only has done little to prevent, mitigate and remedy violations against human rights defenders, but has overseen a weakening of the very institutions designed to protect them and an increase in the public stigmatisation of their work.

The Human Rights Committee must therefore ask Guatemala to outline how it will act to protect human rights defenders, particularly when their work involves signalling abuses carried out in the context of business operations.

QUESTIONS TO THE GUATEMALAN STATE

- What steps is the Guatemalan State taking to prevent attacks against those defenders working on issues related to business and human rights, including through ensuring that non-State actors such as businesses make contributions to a safe and enabling environment for local activists, guaranteeing the free prior and informed consent of affected communities and through the implementation of the UN Guiding Principles on Business and Human Rights?
- What actions has the Guatemalan State taken in order to implement the Inter-American Court sentence in the case of "human rights defender and others vs Guatemala", which ordered the State to implement an effective public policy for the protection of human rights defenders? What have the principal advances in implementation been and what does this sentence mean for the future of existing institutions responsible for the protection of human rights defenders?
- What steps will the Guatemalan State take to guarantee due process to human rights defenders, end the criminalisation of their work, and sanction those responsible (both in terms of public stigmatisation and judicial harassment)?
- What is the Guatemalan State doing to review the nature and the use of the existing legislative framework in order to guarantee a safe and enabling environment for human rights defenders, in particular those working on business and human rights? Such a review should include an appraisal of the use and abuse of exceptional figures such as states of siege.
- What has the Guatemalan State done to avoid impunity for attacks against human rights defenders? Currently, what percentage of reported crimes against defenders are sentenced? How has the analysis of the Institute for the Analysis of Attacks against Human Rights Defenders been used to strengthen investigations of crimes against defenders and avoid new cases?

RECENT TREATY BODY RECOMMENDATIONS TO GUATEMALA REGARDING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

The Committee on the Elimination of Racial Discrimination recently recognised the additional risks facing defenders working on issues of business and human rights, and made pertinent recommendations to Guatemala in that respect,⁷⁶ including:

- Investigate and sanction those responsible for attacks on human rights defenders, in particular those working on indigenous rights;
- Adopt and implement, in consultation with civil society and indigenous peoples, an effective protection mechanism for human rights defenders and journalists, taking into account the danger in which indigenous leaders are found defending their right to consultation, to the land and to their natural resources.

In 2013, the Committee against Torture also spoke out on human rights defender issues,⁷⁷ recommending that Guatemala:

- 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.
- Ensure the prompt, thorough and effective investigation of all threats and attacks against human rights defenders, and also ensure that all those responsible for such actions are prosecuted and duly punished.
- Guarantee the continued services of the Support Institute for the Analysis of Attacks against Human Rights Defenders.

1. Concluding observations, [Human Rights Committee review of Guatemala](#) (CCPR/C/GTM/CO/3), 19 April 2012.
2. Concluding observations, [Committee on the Elimination of Racial Discrimination review of Guatemala](#) (CERD/C/GTM/CO/14-15), 15 May 2015.
3. *Ibid.*, The Committee ‘observed that in many cases, attacks and murders occurred in the context of conflicts linked to the exploitation of natural resources’ and made recommendations regarding the high risk faced by indigenous leaders defending their rights to consultation, land and their natural resources.
4. ISHR interviewed several internationally respected Guatemalan defenders, including Rafael Maldonado, Director and Lawyer with the Centro de Acción Legal-Ambiental y Social de Guatemala (CALAS), Antonio Reyes of La Puya, Lorena Cabnal of AMISMAJ and Omar Jeronimo of Chortí Nuevo Día. See [www.ishr.ch/news/guatemala-protect-human-rights-defenders-working-corporate-accountability-and-land-rights#sthash.MOX9F49I.dpuf](#)
5. Last year, the UN Special Rapporteur on human rights defenders identified human rights defenders working on economic, social and cultural rights and minority rights, environmental defenders, and defenders who work in the area of business and human rights as three of the five most vulnerable groups of defenders, recommending that States pay particular attention to them (A/HRC/28/63, paragraph 54). Meanwhile, The Inter-American Commission for Human Rights has identified trade unionists, campesino and community leaders, indigenous and afrodescendent leaders, environmental rights defenders and migrant workers’ rights defenders as five of the seven groups of defenders facing a special situation of risk (Segundo Informe sobre la Situación de las Defensoras y Defensores de Derechos Humanos en las Américas, 2012).
6. Information provided by the Unidad de Defensores y Defensoras de Derechos Humanos de Guatemala (UDEFEQUA)
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