



**JOINT SHADOW  
REPORT  
SUBMITTED BY  
GUATEMALAN  
CIVIL SOCIETY  
ORGANISATIONS  
TO THE  
COMMITTEE  
AGAINST  
TORTURE**

2014-2018

## Organisations who contributed to the Shadow Report

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2. Asociación El Refugio de la Niñez
3. Bufete Jurídico de Derechos Humanos (BDH)
4. Colectivo de Hombres Trans – Trans Formación.
5. Comité de América Latina y El Caribe para la Defensa de los Derechos de la Mujer-CLADEM enlace Guatemala
6. Disability Rights International (DRI)
7. Equipo de Estudios Comunitarios y Psicosociales (ECAP)
8. Grupo Guatemalteco de Mujeres (GGM)
9. Impunity Watch
10. Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG)
11. Observatorio de Derechos Humanos e Inclusión Social de personas LGBTI
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13. Plataforma Internacional contra la Impunidad
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  - Asociación Generando Liderazgo, Equidad y Oportunidades (ASOGEN)
  - Asociación Femenina para el Desarrollo de Sacatepéquez (AFEDES)
  - <sup>[SEP]</sup>Asociación de Mujeres en Solidaridad (AMES)
  - Asociación de Mujeres Empleadas y Desempleadas Unidas contra la Violencia (AMUCV)
  - Consejo de Mujeres Cristianas (CMC)
  - <sup>[SEP]</sup>Mujeres por la Justicia Educación y el Reconocimiento (MuJER)
  - Red Guatemalteca Mujeres Positivas en Acción (REDMPA)
16. Unidad de Protección a Defensoras y Defensores de Derechos Humanos de Guatemala (UDEFEGUA)
17. World Organisation against Torture (OMCT)

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## Preface

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This report has been written collectively with contributions from 17 national and international civil society organisations for consideration by the United Nations Committee against Torture (CAT), during its 65th period of sessions to be held from 12 November to 7 December 2018, during which the 7th periodic report of Guatemala will be examined.

The information contained in this report has been compiled from primary and secondary sources by the contributing organisations, during a process which took around six months, in which regular meetings were held to revise methodological and procedural issues prior to the drafting of the report, to discuss the information gathered and systematised and to define the report's structure.

The organisations were supported by a technical team comprised of the World Organisation Against Torture (*Organización Mundial Contra la Tortura* - OMCT), the Unidad de Protección a Defensoras y Defensores de Derechos Humanos (UDEFEH) and the Plataforma Internacional contra la Impunidad; with support from the Office of the United Nations High Commissioner for Human Rights in Guatemala.

The report is organised according to the priorities established by the contributing organisations and in line with the list of issues sent by the CAT to the Guatemalan State. The different chapters contain information provided by one or more organisations, with the authors specified at the beginning of the chapter or section. Each chapter also ends with a series of suggested questions for the CAT to ask the Guatemalan State, and at the end of the document there are a series of recommendations.

To be noted that the English language version of the report contains passages where information has been summarized vis-à-vis the original Spanish language version; therefore, the numbering of the paragraphs in the two versions does not necessarily correspond.

Guatemala City, November 2018

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## Acronyms and Abbreviations

CAIMUS	Centre for Comprehensive Support for Women Survivors of Violence ( <i>Centro de Apoyo Integral para Mujeres Sobrevivientes de Violencia</i> )
CAT	Un Committee against Torture
CC	Constitutional Court
CICIG	International Commission against Impunity in Guatemala ( <i>Comisión Internacional contra la Impunidad en Guatemala</i> )
CONAPREVI	National Coordination for the Prevention of Domestic Violence and Violence against Women ( <i>Coordinadora Nacional para la Prevención de la Violencia Intrafamiia y contra las Mujeres</i> )
CSJ	Supreme Court of Justice ( <i>Corte Suprema de Justicia</i> )
DEMI	Ombudsman for Indigenous Women ( <i>Defensoría de la Mujer Indígena</i> )
ECLAC	Economic Commission for Latin America and the Caribbean
FECI	Special Prosecutor against Impunity ( <i>Fiscalía Especial Contra la Impunidad</i> )
FCN	<i>Frente de Convergencia Nacional</i> (political party)
IACHR	Inter-American Commission on Human Rights
INACIF	Institute of Forensic Sciences ( <i>Instituto Nacional de Ciencias Forenses</i> )
INE	National Statistics Institute ( <i>Instituto Nacional de Estadística</i> )
MAI	Comprehensive Support Mechanism ( <i>Mecanismo de Atención Integral</i> )
MESECVI	Belém Do Pará Monitoring Mechanism ( <i>Mecanismo de Seguimiento de la Convención de Belém Do Pará</i> )
MINGOB	Ministry of the Interior ( <i>Ministerio de Gobernación</i> )
MNPT	National Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ( <i>Mecanismo Nacional de Prevención de la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes</i> )
MP	Public Ministry ( <i>Ministerio Público</i> )
OAS	Organisation of American States
ONPT	National Office for the Prevention of Torture ( <i>Oficina Nacional de Prevención de la Tortura</i> )
OSAR	Observatory on Reproductive Health ( <i>Observatorio de Salud Reproductiva</i> )
PDH	Human Rights Procurator ( <i>Procuraduría de los Derechos Humanos</i> )
PGN	Procurator General's Office ( <i>Procuraduría General de la Nación</i> )
PLANOVI	National Plan for the Prevention and Eradication of Domestic Violence and Violence against Women ( <i>Plan Nacional de Prevención y Erradicación de la Violencia Intrafamiliar y contra las Mujeres</i> )
PNC	National Civil Police ( <i>Policía Nacional Civil</i> )
SAI	Comprehensive Support System ( <i>Sistema de Atención Integral</i> )
SBS	Office for Social Welfare ( <i>Secretaría de Bienestar Social</i> )
SEPREM	Presidential Office on Women ( <i>Secretaría Presidencial de la Mujer</i> )
ECHR	European Court of Human Rights
VAW	Violence against Women

## I. GENERAL CONTEXT IN THE COUNTRY<sup>1</sup>

a. Guatemala is one of the most populated countries in Central America: according to the most recent census conducted by the INE (2014) “*the total population in Guatemala was 15.8 million inhabitants, with a high proportion of young people*”. The main economic activities are related to the growth of agricultural crops for export; including coffee, sugar cane, bananas, cardamom and, increasingly, African oil palm and crops destined for the production of agrofuels; and export industry products from the *maquilas*, including textiles and cybernetics; and mining exploitation. More than 60% of the population lives in rural areas, and a similar percentage is indigenous, which means that Guatemala has one of the largest indigenous populations in the region. The Mayan, Xinka and Garifuna peoples live in Guatemala together with the mixed-ethnicity or *mestizo* population. It is estimated that 51% of the population are women<sup>2</sup>. Internal displacement exists, motivated by violence and poverty; and migration, especially to North America, by those in search of better economic opportunities; this has resulted in more than 200 thousand deportations in the last two years. In 1996, peace agreements were signed to put an end to 30 years of internal armed conflict, during which state agents committed serious crimes such as genocide and enforced disappearances. The majority of those responsible have not been punished.

b. The country is undergoing one of the most difficult stages in its recent history, with a strong threat of regressing to the situation in the last century, before the signature of the Agreements for Firm and Lasting Peace. This seems hard to believe when, just three years ago, Guatemala was hailed as a beacon of hope for the Mesoamerican region, with strong citizen mobilisations against impunity and corruption, leading to the resignation and submission to the courts of justice of the President and Vice President of the Republic<sup>3</sup>. This was made possible by the joint work of the Public Ministry (*Ministerio Público* – MP) and the International Commission Against Impunity in Guatemala (*Comisión Internacional Contra la Impunidad en Guatemala* - CICIG). The Guatemalan State requested that the UN form this *ad hoc* Commission, firstly in 2004, and once again in 2006, in the face of the serious infiltration of illegal bodies and clandestine security apparatuses within the Guatemalan State, remnants of the internal armed conflict which were continuing to violate human rights and seeking impunity for their actions and those of their funders. In 2017, the Guatemalan government and pro-impunity groups launched a counter-offensive against the CICIG and the Public Ministry. In 2018, the new Public Prosecutor (*Fiscal General*) has demanded the resignation (without duly justified reasons) of prosecutors who had made progress within the MP, the CICIG Commissioner was forbidden to reenter the country in September and visas have been denied in October to 15 international members of the Commission team. Despite the fact that the United Nations Secretary General has maintained his support for the CICIG Commissioner and that there is a Constitutional Court (CC) resolution ordering the revocation of the ban on this international official's admission to the country, the Guatemalan Government has not revoked the measures and the Public Prosecutor's Office in the Public Ministry has allowed this lack of respect for the CC order go unpunished.

c. The Inter-American Commission on Human Rights (IACHR) convened an *ex officio* hearing on the situation described above. The Guatemalan Government made it a condition that this hearing be held in private and this condition was granted, with the hearing taking place on October 1, 2018, with the participation of the Human Rights Ombudsman (PDH), civil society organisations and the IACHR in the plenary session. The commissioners expressed

<sup>1</sup> Contribution by the Grupo Guatemalteco de Mujeres, Impunity Watch and the Plataforma Internacional contra la Impunidad.

<sup>2</sup> Campaña Guatemala sin Hambre-CGSH, Colectivo Social por el Derecho a la alimentación- CSDA, Fundación Guillermo Toriello-FGT, Red por la defensa de la Soberanía Alimentaria de Guatemala-REDSAG, *Situación sobre el derecho a la alimentación en Guatemala*, en Coalición EPU, Examen Periódico Universal EPU Tercer Ciclo, Guatemala, May 2018, p. 150

<sup>3</sup> Prensa Libre. Roxana Baldetti renounces Vice-Presidency. Available at: [y](#)

their concern about the human rights situation in Guatemala and asked the Government to receive a new visit to the country this year, to observe the situation more closely.

d. The country's institutions are in crisis: More than half of the deputies of the Congress of the Republic have links with alleged acts of corruption, which cannot be properly prosecuted by the judiciary because they enjoy immunity. Similarly, the President of the Republic himself received the support of this Congress in October 2018, when 82 of 158 deputies voted in favour of maintaining his immunity, thereby avoiding being investigated for the crime of illicit electoral financing during the campaign that brought him to power<sup>4</sup>. There are also questions about the suitability of the Procurator General of the Nation due to alleged links with criminal actors; however, he also enjoys immunity that prevents him from being investigated<sup>5</sup>.

e. This crisis has weakened the justice system. In particular, we draw the attention of the Committee to the situation of the Higher Risk Courts (*Tribunales de Mayor Riesgo*), created in 2009<sup>6</sup> with the purpose of hearing criminal proceedings that due to their characteristics require higher-level security for the parties and the justice operators involved. The judges from the Higher Risk system hear criminal cases with the greatest impact for the country; they were initially selected for their professionalism and independence; however, they have now become targets of attacks by the groups affected by their work. These judges hear cases of serious human rights violations that occurred during the internal armed conflict, as well as cases related to organised crime, drug trafficking, gangs and corruption<sup>7</sup>.

f. Meanwhile, the economic situation of the population is worsening, especially in the countryside, causing suffering to entire families. According to data from the World Food Program (WFP) in 2016, 33% of the population was at high to moderate risk of food insecurity and 58% had marginal food security<sup>8</sup>. On average, half of Guatemalan children suffer from chronic malnutrition; but the figures are higher among the rural child population and even higher among the indigenous population; practically two out of every three indigenous children suffer from chronic malnutrition.

g. According to the World Bank, "Guatemala, the biggest economy in Central America, has one of the highest inequality rates in Latin America, with some of the worst poverty, malnutrition and maternal-child mortality rates in the region, especially in rural and indigenous areas"<sup>9</sup>. The institutional framework for access to land is deficient and peasant and indigenous families are forced to live in areas of high environmental risk or occupy land exposing themselves to evictions. The Office of the United Nations High Commissioner for Human Rights observed in 2017 "Cases of forced evictions linked to land tenure insecurity, involving mainly indigenous communities, resulted in human rights violations and humanitarian challenges. (...) Women, including pregnant women, older persons and children,

<sup>4</sup> In spite of the fact that the businessmen who supported this illicit funding confessed and asked for public forgiveness. See:

<sup>5</sup> In 2014, for example, the CICIG provided information on Donado Vivar, when he ran as a candidate for the position of Public Prosecutor. This information showed the link between the lawyer and a family dedicated to drug trafficking and money laundering. The Centro de Medios Independientes states that in the background of Donado Vivar is his connection with lawyer Álvaro Vinicio Matus Flores, when they were both at the Public Prosecutor's Office and were singled out for obstructing the investigation of the murder of Víctor Rivera Azuaje, a police investigator of Venezuelan origin known for using arbitrary arrests and torture as methods to investigate kidnappings. See: "*Quién está detrás del nuevo PGN*", in

<sup>6</sup> Congreso de la República; Decreto 21-2009; Ley de Competencia Penal de Procesos de Mayor Riesgo.

<sup>7</sup> Including; Cases of Ixil Genocide, Case of the Fire at the Spanish Embassy, Cases against members of the Cartel de los Zetas, Cases against members and leaders from the *mara Salvatrucha* gang, etc.

<sup>8</sup> World Food Program.(2016). *Evaluación de seguridad alimentaria y nutricional 2015-2016*. Guatemala,

<sup>9</sup> World Bank. "Guatemala, general overview" consulted on 15 October, at:

were particularly affected.”<sup>10</sup> In addition, peasant organisations report the participation of non-state agents, such as security guards and groups of workers; as well as excessive use of force by the police. According to the Institute of Agrarian and Rural Studies (*Instituto de Estudios Agrarios y Rurales* –IDEAR) within the Coordination Group of Guatemalan NGOs and Cooperatives (*Coordinación de ONG y Cooperativas de Guatemala* –CONGCOOP), “the lower availability of land on offer for peasant families is also due to speculation related to the expansion of plantations of monoculture crops such as oil palm (the area under cultivation grew by 33% and production by 118% between 2013 and 2014), sugarcane (plus 7% area and an increase of 30%), and rubber (plus 3% but production grew by 280%). These agroindustries are not only causing the concentration of the land, through purchase, rent, concession or speculation, they are also creating subhuman working conditions, as well as monopolising and contaminating water”<sup>11</sup>.

h. From January to July 2018, 246 attacks have been registered against human rights defenders, and from January to the publication of this report, 24 murders of human rights defenders have been recorded. It is important to highlight the fact that these murders have mostly been committed against defenders belonging to peasant organisations demanding access to land and territory, or proposing alternative economic models. The murders have been concentrated in the interior of the country, and some have been marked by violence and cruelty. This is, for example, the case of Juana Raymundo, a 25-year-old nurse and human rights defender from the Maya Ixil people, member and coordinator of CODECA in the Nebaj Quiché region, and member of the Municipal Committee of the Movement for the Liberation of the Peoples (*Movimiento para la Liberación de los Pueblos*). On the night of July 27, Juana Raymundo was kidnapped while she was travelling from the Health Centre in San Juan Cotzal, where she worked, to her home in Nebaj. The following day, she was found murdered with signs of torture, on the road between Nebaj and the village of Acambalam. UDEFEGUA has verified that the National Civil Police and the Public Ministry delayed their arrival at the scene of the crime until between 4 to 12 hours later. In addition to violence against defenders, the current legislative agenda includes several projects that would place important restrictions on the right to defend human rights in Guatemala. The climate of constant persecution, harassment and criminalisation of those who defend human rights in Guatemala, particularly people belonging to indigenous or rural movements who resist interventions or evictions in their territories, has individual and collective psychological and emotional effects, (this is more clearly seen in very cohesive communities), which can reach a level of suffering similar to torture or abuse in both its psychological and physical dimensions.

## II. NATIONAL LEGAL FRAMEWORK (ART. 1 and 4, LOIPR 1)

[Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG)]

1. During the Committee against Torture’s revision process of the 5th and 6th reports presented by Guatemala, the Committee (hereinafter “the CAT”) expressed its concern about the classification of the crime of torture, since it does not comply with its recommendations and those of Constitutional Court (CC) resolution 18-22, which resolves that Article 201bis of the Penal Code must be completed through legislative action, with the additions resulting from the provisions contained in the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment and of the Inter-American Convention to Prevent and Punish Torture (CC, Judgment of July 17, 2012, Case File 1822-2011).

<sup>10</sup> A/HRC/37/3/Add.1, Para. 11

<sup>11</sup> IDEAR. Situación agraria en Guatemala: Conflictividad territorial y precariedad institucional, en Coalición EPU, Examen Periódico Universal EPU Tercer Ciclo, Guatemala, May 2018, p.146.

2. As indicated by the State in its report (paragraph 2), a Bill (No. 4998)<sup>12</sup> was presented in November 2015, by congress member Oliverio García Rodas. The aim of this initiative is to typify the crimes established in the Rome Statute within national legislation, and to reform criminal classifications, including article 201bis of the Penal Code, which would be modified as follows:

“Article 201 BIS. The crime of torture is committed by a person or persons who, upon the order of, or with the authorisation, support or acquiescence of the authorities of the State, intentionally inflicts on a person severe pain or suffering, whether physical or mental, or applies methods tending to annul personality, or to diminish physical or mental capacity, even when this does not cause physical pain or psychic anguish, in order to obtain from a person or a third party information or confession, to punish them for an act that they have committed or are suspected to have committed or to intimidate a person or persons, for any reason based on any type of discrimination. A person or persons, who are responsible for the crime of torture, will be punished with imprisonment of twenty to thirty years.”

3. In addition, the Bill seeks to reform article 425 of the Penal Code, which currently has a very limited scope, to include protection against inhuman, cruel and degrading treatment. This paragraph would read as follows:<sup>13</sup>

“Article 425. Cruel or inhuman treatment. The crime of cruel or inhuman treatment or punishment, is committed by an official or public employee, or another person acting on the instigation or with the consent or acquiescence of the State, when by action or omission they threaten the dignity or the physical or psychological integrity of the person or subject them to inhumane practices based on discrimination other than torture.

This offence is committed by an official who, in charge of the custody and care of a detained person, imposes a disciplinary sanction which is not legally established or limits or restricts a right not limited by law or judicial sentence.

The person or persons responsible will be punished with imprisonment of six to ten years”.

4. The initiative passed through the first reading in the plenary session of Congress on April 26, 2016 and received a favourable opinion from the Legislation and Constitutional Committee in October 2016<sup>14</sup>. However, since that date it has not passed again through the Plenary session of Congress for its second and third reading and approval; there are no known efforts to promote the approval of this initiative; the issue is absent from public discussion.

### Suggested questions

5.1. The State should indicate what actions it will take to promote the approval of Bill 4998 that establishes the approval of the Law on the Implementation of the Rome Statute of the International Criminal Court.

5.2. The State should indicate whether it has an adequate system for prosecuting cases of torture in the country and what activities it will undertake so that justice operators have the necessary training enabling them to apply this type of crime.

<sup>12</sup> Congreso de la República de Guatemala, accessed on 10 October 2018. Available at:

<sup>13</sup> Art 37 of the Initiative

<sup>14</sup> Ibid.

### III. NATIONAL MECHANISM FOR THE PREVENTION OF TORTURE (ART. 2, LOIPR 3)

[Instituto de Estudios Comparados en Ciencias Penales de Guatemala (ICCPG)]

6. Guatemala has been a signatory to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 1990<sup>15</sup> and its optional protocol since 2008.<sup>16</sup> In 2010 the Congress of the Republic issued the “*Law on the National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*”<sup>17</sup>. Through this law, the National Office against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was created with the mandate to “(...) *prevent torture and other cruel, inhuman and degrading treatment or punishment, via a system of periodic visits to places where people are deprived of their liberty*”<sup>18</sup>. In 2014 the first rapporteurs were elected, and many people criticised the selection process for its lack of transparency. Of the five incumbent rapporteurs, three were elected for a period of three years and only two for five years, so that on March 25, 2017, three rapporteurs concluded their functions.

7. On March 25, 2017 the Congress of the Republic initiated the process for the election of three new rapporteurs. This process was delayed for more than a year, with the result that the Congress failed to comply with the deadlines established in the Law. Moreover, it did not comply with the Constitutional Court resolution dated December 7, 2017<sup>19</sup>, in which Congress was ordered to carry out the election process for the three rapporteurs. The process was finally concluded on August 1, 2018, with the election and swearing in of the incumbent and substitute rapporteurs.

8. The Office is constituted by the rapporteurs and is chaired by Rapporteur Carlos Alberto Solórzano Rivera, who was a deputy for the *Partido Patriota*, a party that has links with several former officials and politicians who are being prosecuted for acts of corruption<sup>20</sup>. During his chairship of the Office, the media reported that he hired Raúl Manchamé Leiva, former director of the National Civil Police (PNC) as an advisor, who was accused of abuse of authority and breach of duty.<sup>21</sup>

9. With regards to the implementation of the National Mechanism for the Prevention of Torture (*Mecanismo Nacional de Prevención de la Tortura - MNPT*), it is important to note that different institutions and organisations have expressed their concern about the way in which the mechanism functions. In minutes 015-2016 from the extraordinary working sessions of the Human Rights Commission of the Congress of the Republic, dated July 20, 2016, the Commission recommends “...*urgently bringing to public attention the national rapporteurs on the prevention of torture, demanding that they comply with their duties and the legal mandate for which they were elected...*”. These minutes also highlight the fact that the Subcommittee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment reported that the National Office for the Prevention of Torture has not complied with its mandate, due to failures to make public statements or file complaints with the competent authorities, related to the mistreatment of persons deprived of their liberty. Added to this the minutes mention: “(...) *It is known to this Legislative Commission that there have been complaints and reports by different actors from the public sector, members of international cooperation agencies accredited in the country and individuals, related to the operation of the Office (...) and compliance with the legal mandate of the rapporteurs.*”

<sup>15</sup> United Nations Treaty Collections. Available at:

<sup>16</sup> United Nations Treaty Collections. Available at:

<sup>17</sup> Congreso de la República de Guatemala, Decreto 40-2010 “Ley del Mecanismo Nacional de Prevención de la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes.”

<sup>18</sup> Ibid, Article 1.

<sup>19</sup> Proceso de acción constitucional de amparo ante la Corte de Constitucionalidad (Expediente 2841-2017), 1-2. Available at:

<sup>20</sup> The *Partido Patriota* was a political party led by Otto Pérez Molina with Roxana Baldetti as Vice President. Both were linked with cases of corruption and drug-trafficking.

<sup>21</sup> El Periódico. “Requests of workers from the Office against Torture”. Nación. 24 April 2017

10. The Human Rights Procurator (PDH) has described the National Office for the Prevention of Torture (ONPT) as an inoperative body, since it has not made “(...) *any investment for the care of victims; in addition, it did not respond to complaints or identify alerts or warnings of torture cases.*”<sup>22</sup> The Prosecutor also indicated that “(...) *from January to August 2016, 42 complaints were received regarding torture in different prisons, and of these only 3 were resolved.*”<sup>23</sup>

11. In the Human Rights Procurator’s Supervision Report on the ONPT in August 2016, the Procurator notes that most of the budget was used for “*the payment of salaries (up to 84%) and a significant amount for the payment of per diems (...). However, no amount has been provided for assistance to victims or for the resolution of complaints (...)*”<sup>24</sup>. The report also identifies a number of situations that have affected the functioning of the MNPT, including the following: A) The lack of clarity on the part of the rapporteurs about the mandate given to them by law; B) The lack of suitability of the elected rapporteurs to form the ONPT, especially in relation to the minimum experience they should have in the field of human rights, prevention of torture and other cruel, inhuman or degrading treatment or punishment, and rehabilitation of the victims, as established by the Law on the MNPT (Article 19); C) The continuous existence of personal conflicts between the rapporteurs and Executive Secretary; reflected in different complaints filed before the Public Ministry about members of the MNPT<sup>25</sup>. In said report, the Human Rights Procurator recommends that the Congress of the Republic revoke the mandate of the titular and substitute rapporteurs “*for breach of the duties and functions assigned to them by their mandate*”<sup>26</sup>.

12. The same report also identifies inconsistencies and inaccuracies in the operational mechanisms and instruments for the verification of centres or places of deprivation or restriction of liberty, identifying that until that moment there had been no instruction on how to prepare the reports of the verifications carried out *in situ.*; that the ONPT should focus on identifying victims and situations of torture, cruel, inhuman or degrading treatment or punishment, in order to promote follow-up actions and pertinent recommendations. It also identifies that the majority of the visits have been made to detention centres run by the Penitentiary System to house adults and have been limited to verifying the infrastructure and overcrowding conditions. However, no cases of torture or other cruel or inhuman and degrading treatment or punishment have been identified, an aspect that is demonstrated by the lack of complaints before the corresponding authorities. There is also concern about the lack of visibility and dissemination of the activities of the ONPT, in breach of the obligation to provide information on its website, social networks and whenever else it may be required, in accordance with the Law on Access to Public Information, as observed by the PDH.

13. Added to this, it has been verified that several of the visits made by members of the MNPT have not been official, since they do not comply with the provisions of the Law on the National Mechanism for the Prevention of Torture, which requires that for visits to have an official character at least two rapporteurs must participate in them. Indeed, priority has been given to visits to centres of deprivation of liberty in military areas or bases<sup>27</sup>, which have been called “VIP” prisons, because people are being held there for crimes related to corruption or crimes against humanity, as is the case of former President Otto Pérez Molina, former Ministers of State and Members of

<sup>22</sup> El Periódico. “The Office against Torture: inoperative”. 26 February 2017. Available at:

<sup>23</sup> Ibid.

<sup>24</sup> Procurador de los Derechos Humanos, Informe de Supervisión del Procurador de los Derechos Humanos a la Oficina Nacional de Prevención de la Tortura, Guatemala, August 2016, p. 10. Available at:

<sup>25</sup> Ibid, p. 16.

<sup>26</sup> Ibid, p. 27.

<sup>27</sup> It is important to mention that using military facilities as centres of deprivation of liberty is unconstitutional and illegal, as article 19 of the Political Constitution of the Republic of Guatemala clearly states that the prison system is responsible for these centres, be they preventive or for prisoners serving sentences. In the same way the Penitentiary Regime Law is clear as to the types of centres that must exist and who should be in charge of them, namely the Penitentiary System.

Congress. Visits have also been concentrated in centres where people associated with organised crime, especially drug trafficking, and laundering of money and other assets are serving sentences. As a result, visits have been neglected to detention centres for “common or garden” prisoners. Finally, it should be mentioned that the Consultative Council of this Mechanism has not been re-formed. This Council was dissolved in 2016 due to a series of conflicts between the rapporteurs from the National Office for the Prevention of Torture and the Council, when the latter assumed the functions of advising, recommending and issuing opinions, in cases established by law.

14. Also of concern are recent reports submitted by the rapporteurs Silvia Villalta and Carlos Solórzano, denouncing alleged acts of torture and ill-treatment committed against former officials accused by the Public Prosecutor’s Office and the CICIG of corruption and crimes against humanity, without the corresponding technical opinions offering evidence for these claims, which places in doubt the impartiality and suitability of these rapporteurs to fulfil their mandate. In response to this, the Special Prosecutor’s Office against Impunity of the Public Ministry filed a complaint against rapporteur Silvia Villalta on August 8, 2018, since it considers that the report presented by said rapporteur contains false information<sup>28</sup>. On the other hand, on August 29, Judge Pablo Xitumul ordered the Public Ministry to investigate rapporteur Carlos Solórzano for a report he presented in which he recommends releasing two defendants in a corruption case, in the municipality of Chinautla, department of Guatemala<sup>29</sup>. These actions are a clear manifestation of the abovementioned rapporteurs overreaching their functions, and undermining judicial independence. Rapporteur Carlos Solórzano has also been questioned by the Office of the Comptroller General of Accounts, which pointed out that he receives a double salary, namely a pension from the State and, at the same time, a salary for his work as a Commissioner in the ONPT<sup>30</sup>.

15. In its report, the Guatemalan State mentions the creation of a Unit for the Reception of Complaints<sup>31</sup>, in which complaints enter via a System for Preventive Attention (*Sistema de Atención Preventiva - SAP*)<sup>32</sup>; however, since the installation of the ONPT, this Unit has not been formed as it should be, as it has only one person assigned to receive complaints<sup>33</sup> (who also performs other functions) and users have stated that “*there is no adequate service (...) and no solutions are offered to their demands*”.

16. Initially, the budget of the ONPT was 10 million Quetzales<sup>34</sup>, however due to the low execution and objections from the Comptroller General of Accounts detailing the misappropriation of funds, the budget has been reduced to less than 50%. Indeed, there are reports of high levels of expenses incurred during visits (35.5 visits per year), many of them at a cost of Q 38,000.00 (approximately 4,200 EUR)<sup>35</sup>.

17. While the State’s report<sup>36</sup> indicates that “...as a result of the visits to different centres where people are deprived of liberty, during 2015 and 2016; a total of 71 complaints were filed in 2016 before the MP...”, there is no record, nor

<sup>28</sup> Emisoras Unidas de Guatemala. “FECI files criminal complaint against torture rapporteur Silvia Villalta”. 8 August 2018.

<sup>29</sup> Emisoras Unidas de Guatemala. “Judge orders the MP to investigate torture rapporteur Carlos Solórzano”. 28 August 2018.

<sup>30</sup> Contraloría General de Cuentas, asimismo el OFICIO SE 1017-2015/NAOO/Djhjgd. Dated 27 October 2015.

<sup>31</sup> CAT/C/GTM/7. Examen de los informes presentados por los Estados partes en virtud del artículo 19 de la Convención: Séptimos informes periódicos que los Estados partes debían presentar en 2017. Guatemala. Informe Estado, para.18

<sup>32</sup> Ibid, para. 19.

<sup>33</sup> Procurador de los Derechos Humanos, Informe de Supervisión del Procurador de los Derechos Humanos a la Oficina Nacional de Prevención de la Tortura, Guatemala, August 2016, p. 15.

<sup>34</sup> Approximately 130,718.85 USD

<sup>35</sup> The Consultative Council also determined that: “...The strong rivalry between the Rapporteurs to maintain budgetary and job control is demonstrated by the judicial complaints made by Rapporteurs that include sexual violence against women. There are serious doubts about the capacity and profiles of the operational, technical and administrative personnel. The decisions of the “Plenary” of the OPT, at no time have considered the opinions and recommendations of the “Advisory Council”, the UN Sub Committee for the Prevention of Torture (SPT) and the Association for the Prevention of Torture (APT). Art. 23 clause 4, art. 28, 29, 34 inc. a and b. art. 35. Decree 40-2010”.

<sup>36</sup> CAT/C/GTM/7. Examen de los informes presentados por los Estados partes en virtud del artículo 19 de la Convención: Séptimos informes periódicos que los Estados partes debían presentar en 2017. Guatemala. Informe Estado, párr.121

does it appear in the report, that there has been any follow-up action or any result in these complaints (e.g., how many investigations have been opened by the MP, how many cases prosecuted, and how many convictions).

### Suggested questions

18.1. The State should provide information about the criteria of the Human Rights Commission of the Congress of the Republic governing their nomination, selection and dismissal of the members of the ONPT, whether experience or previous specialisation on human rights in general is indispensable and in particular on the prevention of torture, and how the impartiality and effectiveness of the candidates is guaranteed.

18.2. The State should provide information about how the selection process of the current rapporteurs was carried out, and whether persons were selected that were not on the lists, as well as indicating how this happened and for what reasons. It should also indicate whether and if applicable, how, the participation of or consultation with civil society organisations in the selection and appointment process is guaranteed.

18.3. The State should provide information about whether the advisory board is currently constituted, and if this is not the case, provide information on the reasons for this.

18.4. The State should indicate how many reports the National Office for the Prevention of Torture has issued, on its official visits, since it was constituted and began operating, how many complaints it has filed for findings of torture, ill-treatment, cruel, inhuman and degrading treatment, and which institutions or officials have been reported and how these cases have been followed up.

18.5. The State should provide information about the current budget of the National Mechanism for the Prevention of Torture and the budget item with the largest amount of funds assigned to it.

## IV. INDEPENDENCE AND IMPARTIALITY OF JUDGES AND PROSECUTORS (ART. 2, LOIPR 4)

[Impunity Watch]

19. Apart from problems that persist due to the lack of guarantees to ensure the professionalism, independence and impartiality of high-ranking judges, it is important to inform the Committee against Torture about the effects on judicial independence related to the misuse of the National Office for the Prevention of Torture (*Oficina Nacional para la Prevención de Tortura* - ONPT). This institution has become a political tool used to put pressure on and criminalise independent judges who fight against corruption and organised crime.

### The National Office for the Prevention of Torture and its interference in the independence of the judiciary

20. Recently, the ONPT, and in particular rapporteurs Carlos Alberto Solórzano Rivera and Silvia Villalta, have launched a campaign to accuse independent judges of having committed or been involved in acts of torture and to pressure them to grant alternative measures to defendants in cases of corruption. In the words of the rapporteur Solórzano, “*Overcrowding will not go down as long as there are no alternative measures, house arrest and means*

by which people can serve their sentence in their home"<sup>37</sup>. However, their actions in this regard have not been translated into an improvement in the situation of vulnerable groups found in prisons but have instead been focused on pressing for the release of senior officials accused of corruption offences.

21. In the **original Spanish version of this shadow report**, details are given about undue pressure and resolutions made by the ONPT against judges Erika Lorena Aifán Dávila, Iris Yassmin Barrios Aguilar and Pablo Xitumul de Paz. The authors of this report are available to resolve any doubts related to these cases.

### Suggested question

22.1. The State should provide information on whether it has implemented measures to guarantee impartiality and independence in investigations and resolutions of the ONPT, for example conducting investigations into the allegations that several actions taken by this institution are being promoted and instrumentalised to unduly affect the independence of judges and magistrates.

## V. VIOLENCE AGAINST WOMEN (ART. 2, LOIPR 6 and 7)

[Grupo Guatemalteco de Mujeres (GGM), Comité de América Latina y El Caribe para la Defensa de los Derechos de la Mujer (CLADEM) - Enlace Guatemala and Red de la No Violencia contra las Mujeres (REDNOVI)]

### The situation of violence against women in Guatemala

23. According to estimates of the Economic Commission for Latin America and the Caribbean (ECLAC) for the year 2018, the Guatemalan population is 16,838,489, of which 8,295,334 are men and 8,543,155 are women. In Guatemala, the population of women is relatively young, according to the estimates for the year 2018 from the same institution; 5,405,511 are between 0 to 29 years of age. Of these, 3,514,206 are between the ages of 10 to 29 years of age<sup>38</sup>.

### Violent deaths of women, Femicide

24. In the last six years, violence against women (VAW) is the most frequently reported crime and is considered by the Public Ministry (*Ministerio Público* - MP) to be of the most serious and recurrent crimes in the country<sup>39</sup>. According to information from the Guatemalan Women's Group (*Grupo Guatemalteco de Mujeres* - GGM)<sup>40</sup> for the year 2013 to June 31, 2018<sup>41</sup>, a total of **4,008 women** have died violently, and from January to July of this year alone, **409 women have died violently**. This information confirms the average of two violent deaths of women per

<sup>37</sup> Prensa Libre. "Initiatives to be analysed to regulate preventive prisons". Justice. 6 July 2018.

<sup>38</sup> Económica Commission for Latin America and the Caribbean. "Estimaciones y proyecciones de población total, urbana y rural, y económicamente activa". Available at:

<sup>39</sup> "The deaths of women have increased in number and in proportion to the occurrence of homicides of men. During the year 2012, 708 died violently, in 2013, 758 died and in 2014, 774 died in the same way, which translates into an increase of 0.60 on an annual average. The significant numbers of victims were more concentrated 18 to 30 year olds. The three departments of the country with the highest rate of violent deaths of women are Guatemala, Escuintla and Quetzaltenango" (Política Nacional Democrática, 2016 p. 76)

<sup>40</sup> Source: Compiled by GGM on the basis of data "Reporte de personas fallecidas ingresadas a sedes periciales del INACIF a nivel nacional". Data compiled on 30 June 2018.

<sup>41</sup> Grupo Guatemalteco de Mujeres. "Informe de muertes violentas de mujeres-MVM- en Guatemala: Primer semestre de 2018". 2018. Available at:

day. In addition, among these deaths, the proportion of very young women is growing. A comparative analysis of the first quarter of 2014 and 2018 shows that *“in the last five years a pattern has been observed that violent deaths of girls, female adolescents and young women (0-17 years old) is increasing”*<sup>42</sup>.

25. In 2017, the largest number of women died after being shot (68%), 11.4% were killed by knife wounds, and 7% were killed by asphyxia due to strangulation; *“Strangulation as modus operandi is more usual against women than against men; but also, it is worth emphasising that half of the violent acts, whose victims were women, were registered in the department of Guatemala and the other half was dispersed in the rest of the country’s departments”*<sup>43</sup>. During the first semester of 2018, according to the information analysed by the National Institute of Forensic Sciences of Guatemala (*Instituto Nacional de Ciencias Forenses de Guatemala - INACIF*), it was reported that *“62% of violent deaths of women occurred due to gunshot wounds; 13% due to knife wounds; 14% due to strangulation; 7% of deaths occurred due to blunt blows or other causes such as burns or bleeding (total or partial loss of blood that causes hypovolemic shock); in 4% body dismemberment or decapitation occurred (...)”*<sup>44</sup>. These figures show that in a significant number of cases forms of violence against women imply a very high level of cruelty and, subsequently, of physical and mental suffering. These practices, which have spread in various departments of the country, derive from a context of discrimination and misogyny where women are mistreated and killed in order to send intimidating messages, to punish them and to cause greater terror.

26. Several scenarios are observed in which the violent deaths of women occur: 1) Violent deaths of women as a method of control and with discriminatory motivation by authorities in charge of the custody or safeguarding of women, which we consider as institutional femicides: a clear example is the events at the Hogar Seguro Virgen de la Asunción, on March 8, 2017; 2) As a form of social control and to spread terror: these are femicides that aim to scare the population and demand the payment of extortion to gangs and members of organised crime. The cruelty and instrumentalisation towards women’s bodies are shown by the dismemberment of bodies, sexual violence, written notes left with bodies, and the use of multiple weapons to violate women before killing them.

## **Allegations of violence against women**

27. The Committee against Torture’s general comments on reviews 5 and 6, paragraph 13 a. requested that the State of Guatemala: *“Redouble its efforts to prevent and combat violence against women (...)”*, however in recent years it has been shown that the efforts that have been made to prevent and combat VAW have been insufficient as outlined below:

28. According to GGM, using source data from the MP from 2013 to 2017, the MP has reported 318,246 complaints of VAW. The INE<sup>45</sup> reported that for 2016, the MP reported receipt of 51,131 complaints, of which they report that 205 were reports of femicide; 10,992 were crimes of violence against women; 9,032 were crimes of physical violence; 18,996 were crimes of psychological violence; 11,216 were crimes of physical and psychological violence

<sup>42</sup> Ibid.

<sup>43</sup> Grupo Guatemalteco de Mujeres. Informe Narrativo de MVM segundo semestre 2017. Guatemala

<sup>44</sup> Grupo Guatemalteco de Mujeres. “Informe de muertes violentas de mujeres-MVM- en Guatemala: Primer semestre de 2018”. 2018. Available at:

<sup>45</sup> Instituto Nacional de Estadística. Estadísticas de Violencia en contra de la Mujer 2014-2016 Guatemala, December 2017.

and 690 were other types and combinations, and for this same period the National Institute of Forensic Sciences (INACIF) reported having evaluated 25,254 women within the framework of the Law against Femicide, which accounted for 47.3 % of the services it provided in the department of Guatemala, with the greatest proportion of these services, or 12,938 cases, involving psychological violence. In the first quarter of 2018, the MP reported receiving 14,458 complaints of physical, psychological, sexual and economic violence against women<sup>46</sup>.

## Allegations of sexual violence

29. Regarding complaints of sexual violence, according to the INE, from 2012 to 2016 there was an increase of 120% in reports of sexual crimes, as in 2012 there were 3,446 and in 2016 there were 7,594. It is important to mention that cases of women and girls aged between 10 and 19 years of age represented 50.8% of the reports at the national level<sup>47</sup>. For the year 2017, INACIF reported having performed 7,335 medical examinations for crimes of a sexual nature against women, and from January 1 to August 31, 2018, 8,091 were performed, again showing an increase in this type of crime.

## Pregnancies in girls and adolescents

[INCIDEJOVEN]

30. In this context, it is important to highlight the increase in pregnancies in girls and adolescents. The Observatory on Sexual and Reproductive Health (*Observatorio de Salud Sexual y Reproductiva – OSAR*) reported that in 2017 there were 86,704 pregnancies in girls, adolescents and young women aged between 10 to 19 years old, of which 4,195 were between 10 and 14 years old, representing a very high number of cases (leading the statistics for countries in the region). From January to July 2018 there were a reported “61,649 cases of pregnancies in girls and adolescents between 10 and 19 years, which reflects an increase of 5 thousand cases compared with the same period in the previous year”<sup>48</sup>. Despite these alarming figures, the State has not implemented comprehensive sex education and criminalises abortion, including that of minors, leading to forced pregnancies and maternity<sup>49</sup>.

31. There is a close link between sexual violence and pregnancies in girls and adolescents; it is estimated that 90% of pregnancies in girls under the age of fourteen are the direct product of sexual violence<sup>50</sup>. According to data from the PDH, in most cases the perpetrators are relatives of the girls<sup>51</sup>. A study conducted by Planned Parenthood on pregnancies in girls younger than 14 years old found that none of the pregnancies studied was wanted. Likewise, 55% of the girls had a caesarean delivery, which is worrying because at their age, this presents “serios riesgos

<sup>46</sup> Presentación: Acciones afirmativas para enfrentar el fenómeno criminal de violencia contra la mujer. Alejandra González Godoy, Secretaria de la Mujer. 2 May 2018.

<sup>47</sup> Instituto Nacional de Estadística. “Estadísticas de Violencia en contra de la Mujer 2014-2016 Guatemala”. December 2017.

<sup>48</sup> Diario La Hora. “A julio, OSAR reporta más de 61 mil casos de embarazos”. 21 de agosto del 2018. Available at:

<sup>49</sup> Forced child pregnancy occurs when a girl under the age of 15 gets pregnant without having sought or wanted it and the termination of pregnancy is denied, hindered, or delayed. Since 1998, forced pregnancy is considered a war crime and / or a crime against humanity by the Rome Statute (articles 7 and 8) when committed in the context of an armed conflict. But women who go through this experience in times of peace also suffer serious consequences, which mark their lives forever. The social cost is even higher in times of peace, since during wars or armed conflicts, the importance of social agreements is altered, while in times of peace social control is more accentuated and stigma and isolation can be greater. (CLADEM. “Jugar o Parir. Embarazo infantil forzado en América Latina y el Caribe”. 2018: (20) [https://www.cladem.org/images/jugar\\_o\\_parir\\_digital.pdf](https://www.cladem.org/images/jugar_o_parir_digital.pdf))

<sup>50</sup> Ibid: 14

<sup>51</sup> Mujeres Transformando el Mundo. “Los embarazos en niñas y adolescentes en Guatemala ¿Un eslabón más de la continuum de violencia contra las mujeres”.2015, *Guatemala*: 9.

inmediatamente después de la cirugía, complicaciones tardías (entre ellas la formación de adherencias), y riesgos durante la cirugía subsiguiente, así como una alta probabilidad de tener que tener partos por cesárea con sus futuros embarazos”.

32. Additionally, the Planned Parenthood study found that none of the girls who were victims of sexual violence had access to emergency oral contraception and abortion was not presented as an option. A study by Women Transforming the World (*Mujeres Transformando el Mundo – MTM*) found that the personnel responsible for the care and accompaniment of pregnant girls and adolescents have stereotyped attitudes, prejudices and personal beliefs when attending them.<sup>52</sup>

### Bill 5272, on the Law for the Protection of Life and the Family

[INCIDEJOVEN]

33. On April 27, 2017, Bill 5272, on the “Law for the Protection of Life and the Family”<sup>53</sup>, was presented, promoted by the National Evangelical Coordination Group (*Coordinadora Evangélica Nacional*). The reason given for this initiative states that “*at present there are minority groups in Guatemalan society that follow an agenda of an international order and propose currents of thought and incongruous practices against the right to life, the natural order of marriage and the family*”.

34. Currently, the voluntary interruption of pregnancy is classified as an offence in the Guatemalan Criminal Code in articles 134, 135, 136, 138, 139 and 140, except when performed in a therapeutic manner when the mother’s life is at risk (Therapeutic Abortion, article 137). The Bill proposes to double the penalties for any form of abortion and hinder the process for therapeutic abortion.

49. Likewise, the initiative seeks to establish a discriminatory definition of family and proposes to recognise only “men and women thus born”, to the detriment of the right to gender identity and expression. It also aims to prohibit “*public and private educational entities from promoting policies or programs with children and adolescents, related to sexual diversity and gender ideology or teach as normal any sexual behaviours other than heterosexuality or those that are incompatible with the biological and genetic aspects of the human being*” (article 15 of Bill 5272)

35. Finally, the initiative proposes that the official position of the State be in accordance with what is proposed in this initiative “*on matters of life, family, childhood, adolescence and marriage*”, and it annuls several human rights conventions, treaties and pacts assumed by the State stating that “*the positions or commitments expressed or acquired in contravention of this provision shall be null and void without prejudice to the criminal, civil and administrative responsibilities that shall be incumbent on the offender*” (article 19 of the initiative ).

36. On June 26, 2018, a judicial review (*amparo*) was requested, after a favourable ruling was granted to Bill 5272 with amendments, due to the possible offence caused by the transgression and misrepresentation of constitutional rights and human rights. This *amparo* request was declared null and void by the Constitutional Court on August 2, 2018.

### Suggested questions

37.1. The State should provide information regarding what actions have been taken to prevent and attend to forced pregnancies, in the fields of education, health and legislation.

<sup>52</sup> Mujeres Transformando el Mundo (2015), op.cit: 84.

<sup>53</sup> Congreso de la República. Available at:

37.2. The State should provide information about what actions it has taken to review the current legislation regarding abortion, which penalises it in the great majority of cases, including when the pregnancy is the result of sexual violence.

37.3. The State should provide information regarding the number of reported and registered therapeutic abortions, disaggregated by age and ethnicity.

37.5. The State should provide information regarding the measures of prevention, attention, sanction and eradication of violence against women that will be taken to stop the high rates of femicide and sexual violence.

37.6. The State should provide information about the current budget that the State allocates to prevent, address and punish violence against women.

### **Application of the Law against Femicide and other Forms of Violence against Women**

38. At present, GGM is conducting a monitoring process to comply with the Law against Femicide and other forms of Violence against Women (hereinafter the “Law against Femicide”)<sup>54</sup>. According to the preliminary results of the investigation, State actions to prevent violence against women are scarce and are the result of isolated initiatives or lack continuity. Advances in women’s rights have been weakened or even reversed since 2012, with the coming to power of former President Otto Pérez Molina, a situation that has worsened further and with greater impetus during the government of President Jimmy Morales.

#### ***Attempts to modify the Law against Femicide***

39. On May 31, 2016, Bill 5088 was received by the Legislative Directorate, the objective of which was to approve the Law regulating the procedures for the Femicide Law<sup>55</sup>. This Bill aimed to create a special criminal procedure for the implementation of the Law against Femicide. The argument used for the presentation of said initiative was that women “*lie when presenting their complaints<sup>56</sup>, take advantage of the Law, and that women use the Law to take revenge*” and that this therefore required the implementation of a special procedure. This initiative was rejected outright by women’s and feminist organisations<sup>57</sup>. Finally, the Women’s Commission in Congress issued an unfavourable opinion on September 7, 2016<sup>58</sup>.

40. On June 21, 2018, the Constitutional Court (CC) ruled in favour of the Bill, claiming general partial

<sup>54</sup> Preliminary findings from the monitoring study on compliance with the Law against femicide, by the Grupo Guatemalteco de Mujeres in the years 2017 and 2018, still to be published.

<sup>55</sup> Congreso de la República. no. Iniciativa. 5088. Iniciativa que dispone aprobar ley reguladora del proceso para la ley de femicidio y otras formas de violencia contra la mujer. Available at:

<sup>56</sup> Soy 502. Diputada crea controversias al proponer reformas a la ley de femicidio”. 31 May 2016. Available at:

<sup>57</sup> Prensa Libre. “Propuesta de Reformas a ley de femicidio recibe críticas”. 1 June 2016. Available at:

. The Committee of Experts on the Follow-Up Mechanism to the Belém Do Pará Convention (MESECVI) also sent a communication to the President of the Congress of the Republic warning that this Bill was a setback to progress achieved. Available at: ).

unconstitutionality, against the phrase “*and cannot be granted a reduced sentence for any reason*”<sup>59</sup>, contained in article 6 of the Law against Femicide. This has caused a series of reactions from institutions that have declared that this represents a setback<sup>60</sup>, including Executive institutions<sup>61</sup> and UN Women<sup>62</sup> who stated that said resolution “*puts at risk the life and dignity of women survivors of violence and their right to effective and full justice*”<sup>63</sup>.

### **Creation of prosecutors and prosecutors’ offices on women and Femicide (Article 14 of the Law against Femicide)**

41. Specialist prosecutors’ offices for crimes of VAW were created as of the year 2014. By June 2018 women’s prosecutors existed in 19 departments of the country.

42. According to information provided by the Women’s Secretariat in the Public Ministry (MP), “*all women’s prosecutors’ offices implement the Comprehensive Attention Model (Mecanismo de Atención Integral - MAI)*”<sup>64</sup>, however, there are currently a series of challenges that must be addressed in order for the MAI to be implemented to provide real support for women survivors of violence. Among these, taking into account that VAW is the most reported crime before the MP at the national level, it is urgent to expand the territorial coverage of these prosecutors’ offices, which do not exist in three departments (Totonicapán, Santa Rosa and El Progreso), and create women’s *agencias municipales* in 340 municipalities, taking into consideration that, due to the characteristics of the country, access to the departmental prosecutors’ offices continue to be a challenge for women.

### **Creation of jurisdictional bodies for the crimes of femicide and other forms of violence against women**

43. Since 2010, courts and tribunals specialising in the crimes of femicide and other forms of violence against women (hereinafter “specialist courts”) were created. Specialist judges and courts have been created in 13 (of the 22) departments of the country<sup>65</sup>.

44. It is important to mention that the specialist courts “*have a System for Comprehensive Victim Support (Sistema de Atención Integral - SAI), which is composed of psychologists, social workers and childcare professionals, who compile relevant information on the victim*”<sup>66</sup>. In addition, the Protocol for Attention to Victims or Survivors of Violence against Women and Sexual Violence has been prepared to support the work carried out in the SAI. However, both the SAI and this protocol are only implemented in the specialist courts.

45. One aspect of concern is the improper use of the Law against Femicide against state and non-state actors that carry out actions in favour of freedom of expression and ensure transparency, such as José Ruben Zamora<sup>67</sup>, the

<sup>59</sup> Corte de Constitucionalidad. Sentencia Expediente 1749-2017. Guatemala, 2018.

<sup>60</sup> Further information is available on the following websites:

;;y.

<sup>61</sup> La Secretaría Presidencial de la Mujer-SEPTEM, la Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos-COPREDEH

<sup>62</sup> AFP. Prensa Libre. “ONU Mujeres: fallo de la CC deja vulnerable a la mujer guatemalteca”. 30 June 2018. Justicia.

<sup>63</sup> Ibid.

<sup>64</sup> Personal communication with the Women’s Office in the Public Ministry, May 2018

<sup>65</sup> CENADOJ. Acuerdos de la Corte Suprema de Justicia. Available at:

<sup>66</sup> According to information from the Office on Planning and Institutional Development of the Judicial Branch, 2018.

<sup>67</sup> CERIGUA. “Libertad de expresión, un derecho que debe blindarse”. 5 January 2014.

director of the newspaper El Periódico, or the former Superintendent of Tax Administration.

### **Situation of the National Coordination Group for the Prevention of Violence against Women (*Coordinadora Nacional para la Prevención de la Violencia contra las Mujeres-CONAPREVI*)**

46. Since 2012, progress made in addressing, preventing, punishing and eradicating violence against women has been weakened, and such is the case of CONAPREVI.

47. Between 2012 and 2016, the government took the following measures, through the Presidential Secretariat for Women, which weaken progress related to violence against women: a) **administrative measures**: revoking an internal agreement to strengthen CONAPREVI, which led to the dismissal of most of the staff hired for CONAPREVI, the closure of its headquarters located in Guatemala and the regional headquarters located in Quetzaltenango, the transfer of goods, materials and equipment of CONAPREVI to the Presidential Secretariat for Women (*Secretaría Presidencial de la Mujer - SEPREM*); b) **financial measures**: in 2013, the budget line of 5 million quetzales assigned to CONAPREVI was removed; c) **legal measures**: the agreement which created CONAPREVI was modified through Government Agreement 463-2013 and for four years the Presidential Commission against Femicide was created, through Governmental Agreement 46-2012, a parallel body to CONAPREVI.

48. As a result of this, CONAPREVI remained inactive and could not fulfil its mandate from June 1, 2012 to October 6, 2016, the date on which members of CONAPREVI are sworn in, which occurred after the Government of President Morales requested an amicable solution<sup>68</sup> to a complaint that was filed in a thematic hearing by GGM and REDNOVI before the Inter-American Commission on Human Rights (IACHR), in which they reported the setbacks that had occurred regarding the right of women to live free from violence. To this day, CONAPREVI is under the coordination of the Ministry of the Interior, which in recent months has not given concrete support to strengthen it, despite the fact that it is a very weak body that has not fulfilled its mandate and that does not have its own budget allocated for its operation.

### **Processes for training and capacity-building on VAW with state officials and staff**

53. According to the provisions of article 18 of the Law against Femicide, CONAPREVI is responsible for *“the advice, follow-up and monitoring of training processes and capacity-building on violence against women, with an ethnic-cultural relevance, addressed to public officials, with special emphasis on justice operators”* due to the paralysis of CONAPREVI.

54. Although training processes on violence against women exist, both for justice operators and the MP, according to information gathered by GGM, they are not sufficient, so that justice system operators continue to face significant difficulties because of a lack of knowledge and specialist tools. On the other hand, there is no information available

<sup>68</sup> On April 5, 2016, the 157th session of the Inter-American Commission on Human Rights was held, during which the Hearing on the Right of Women to a Life Free from Violence in Guatemala was held, where the government of President Jimmy Morales requested a friendly solution from the petitioners.

on what kind of follow-up is taking place, to evaluate the effectiveness of the workshops and training courses carried out by the State and whether these translate into substantive changes in the investigations carried out by the MP and in the sentences issued by justice operators.

**National Plan for the Prevention and Eradication of Violence against Women (*Plan Nacional de Prevención y Erradicación de la Violencia contra las Mujeres-PLANOVI*)**

55. To date, there is no updated National Plan for the Prevention and Eradication of Violence against Women (PLANOVI), which was in force from 2004 to 2014, although it has been assessed by international human rights protection mechanisms as a very important step forward and tool.

**Creation of Comprehensive Support Centres for Women Survivors of Violence (*Centros de Apoyo Integral para Mujeres Sobrevivientes de Violencia-CAIMUS*)**

56. Since 2008 (with the approval of the Law against Femicide) the State has been obliged to provide the financial resources for the operation of Comprehensive Support Centres for Women Survivors of Violence (CAIMUS). Currently CAIMUS provide comprehensive support<sup>69</sup> 365 days a year, 24 hours a day, to women survivors of violence and their children, as well as to family members of victims of femicide. They are also a mechanism for the prevention of violence, since one of their aims is to prevent femicides.

57. According to the State's general budget for income and expenditure for the fiscal year 2017, article 20 of Decree 50-2016 indicates that for the operation of the CAIMUS a budget line will be designated within the Ministry of the Interior of a minimum of 9.5 million Quetzales to be designated to the Guatemalan Women's Group (*Grupo Guatemalteco de Mujeres - GGM*), to support the comprehensive care of women survivors of violence. The contribution must be registered no later than January 31 and the scheduling of the respective payments must be made, and in addition 11 million should be designated to support the other CAIMUS. However, to date (September 28, 2018), the CAIMUS have not received the resources that were designated to them, and around 8 months have passed without the agreements being signed and without knowing when the resources will be delivered. In spite of this, the CAIMUS have been functioning and providing comprehensive care to women who request it, continuing to function during these eight months.

58. The signing of agreements between the Ministry of the Interior (MINGOB) and women's organisations has been confirmed by the State itself in a report sent to the Committee, in which it states that "*on August 12, 2014, Convention 19-2014 of June 13, 2014 was approved, by means of which Q9,500,000.00 was transferred to the GGM association, specifically for the operation of the CAIMUS*"<sup>70</sup>. However, it should be noted that while it is indicated that on August 12, 2014 an agreement was approved to transfer an amount of money, the money was not transferred to GGM, despite the fact that the Agreement was already signed<sup>71</sup>.

<sup>69</sup> The centres provide initial care, social support, medical care, legal advice, psychological support, temporary shelter, support groups, self-help groups and telephone support.

<sup>70</sup> CAT/C/GTM/7. Para 66, P. 16.

<sup>71</sup> It is important to mention that under the agreement that the State informs the Committee, the GGM did not receive any resources, even though the agreement was already signed.

59. It is important to note that from January 1 to July 10, 2018 the CAIMUS<sup>72</sup> National Network has provided initial comprehensive care to a total of 3,229 women and follow-up care to 7,135 women. However, the possibility of continuing to provide comprehensive care is increasingly reduced due to the late delivery of resources. The multidisciplinary teams have not received a salary for 8 months.

## Suggested questions

60.1. The State should provide information about the actions that it will carry out in the short and medium term to strengthen the institutions of SEPREM, DEMI and CONAPREVI.

60.2. The State should provide information about the reasons why CONAPREVI is paralysed and does not have resources for its functioning.

60.3. The State should indicate the measures it will take to promote the implementation of the prosecutors' offices and specialist jurisdictions on violence against women.

60.4. The State should indicate the reasons why it has not complied with the disbursement of the budget allocated for the CAIMUS, even though this is already allocated in the Annual Budget for 2018.

## VI. Human trafficking (art. 2, LOIPR 7)

[El Refugio de la Niñez]

61. The scourge of human trafficking in Guatemala continues, without the Guatemalan State having the institutional capacities for its prevention and for the care of victims. According to figures from the Office of the Human Rights Procurator (PDH)<sup>73</sup>, during 2017 the Prosecutor's Office against Human Trafficking, within the Public Ministry, detected 460 cases of possible victims of trafficking, a number considerably less than in previous years.

62. In fact, according to the same study, in 2013 the number of victims detected was 570, 548 in 2014, 673 in 2015 and a total of 596 in 2016. Although this data coincides with that reported by the State, it also reflects a decrease in the number of cases reported, which requires attention, as will be discussed below.

63. The same report states that the structural causes that give rise to the exploitation and trafficking of persons continue to be perpetrated, so that said decrease should not be understood as a decrease in the number of cases, but rather as a reduction in the capacity of the public institutions to detect them.

64. As stated by the Department of State of the United States of America, *"the government identified fewer trafficking victims for the second consecutive year; did not address underlying problems in the nation's shelters providing for children, including trafficking victims; and specialized victim services remained inadequate given the*

<sup>72</sup> The CAIMUS National Network is integrated by the CAIMUS located in Guatemala, Quetzaltenango, San Juan Sacatepéquez, Sololá, Chiquimula, Petén and Chimaltenango

<sup>73</sup> Procuraduría de Derechos Humanos. *Informe de situación de trata de personas en Guatemala*. Guatemala, 2018, p. 15.

*scope of the problem and lack of services for adult victims. Corruption and complicity remained significant concerns, inhibiting law enforcement action*<sup>74</sup>.

65. In turn, according to the US Department of State “*The government decreased efforts to identify and protect victims*”, having identified 316 victims of trafficking in 2017, a significant decrease compared to 484 in 2016 and 673 in 2015. The reported data did not specify the types of trafficking involved in the cases. Of the 316 victims of trafficking identified, 292 were children and 24 were adults.

66. In any case, the figures above show: 1) Reduced capacity to identify victims; 2) Inability to address the situation of public shelters; 3) Lack of specialist attention; 4) Absolute lack of support for adult victims.

67. This requires that the Guatemalan State “*Review shelter standards and operations in shelters providing for child trafficking victims nationwide and address overcrowding, abuse, and neglect; investigate and hold government officials criminally accountable for complicity in trafficking; improve access to and quality of specialized services for adult victims; sustain efforts to identify trafficking victims, particularly among vulnerable populations, such as working children, returning migrants, individuals in prostitution, and children apprehended for illicit gang-related activities...*”<sup>75</sup>.

68. During the year 2017 232 victims of human trafficking were institutionalised, who were initially provided with emergency care<sup>76</sup>.

69. Of these, only 89 were sheltered in the Secretariat against Sexual Violence, Exploitation and Trafficking of Persons (SVET), that is to say, specialist public shelters for victims of trafficking, which shows a decrease compared to previous years, since between 2014 and 2016, the number of victims sheltered was 696<sup>77</sup>. Victims of human trafficking are only given emergency care and, in the best of cases, very precarious, second level support, which is key to reducing the vulnerability factors of victims of trafficking and strengthen their empowerment, and implies the restitution of rights, monitoring of the victims’ human rights, their comprehensive recovery and their reintegration into the family, community or alternatives other than institutionalisation.

70. CICIG and UNICEF explain that the Human Rights Procurator has expressly requested “*that victims of trafficking should receive second level support, but at the time of preparing this report, no response has yet been received from the SVET*”<sup>78</sup>. Along the same lines, the PDH affirms that victims of human trafficking are not beneficiaries of the social programs of the Ministry of Development (MIDES), even though they are a population in conditions of vulnerability.

71. In this regard, it should be noted that in accordance with the Migration Code, under Decree 44-2016 of the Congress of the Republic, these specialist shelters for victims of human trafficking, which today depend on the SVET, will be transferred to the responsibility of the Ministry of Social Welfare (*Secretaría de Bienestar Social* -

<sup>74</sup> US Department of State. *Trafficking in Persons Report 2017*, June 2018.

<sup>75</sup> Ibid.

<sup>76</sup> In accordance with the Protocol of inter-institutional coordination for the protection and assistance to victims of human trafficking approved by the authorities of the State of Guatemala, emergency care is understood as that provided in order to prioritise the protection of life, physical integrity and the health of the victim; physical security, attention to their health and taking of means to avoid that it can be captured again by traffickers, with actions of lodging or temporary shelter when the case warrants it .

<sup>77</sup> The Secretariat Against Sexual Violence, Exploitation and Trafficking of Persons only offers emergency support, but its capacities to provide mechanisms and capacity to the victims for the restitution of their rights and the undertaking of processes to develop an independent life are very limited.

<sup>78</sup> United Nations Children’s Fund (UNICEF) and Comisión Internacional para Guatemala (CICIG). *Trata de personas con fines de explotación sexual en Guatemala*, 2016.

SBS) during 2018. This measure is cause for concern, taking into account the notorious structural deficiencies and lack of institutional capacity on the part of the SBS, which is currently responsible for shelters and protection of children and adolescents who have experienced rights violations. The SBS has administered these centres precariously, the most palpable evidence being their overpopulation and the lack of definition of the population profiles (*see specific section*), aspects that, among others, gave rise to the tragedy of the Hogar Virgen de la Asunción in 2017, so it is highly worrisome that this institution, already overwhelmed by its capabilities, will assume control of the human trafficking shelters as of the last quarter of this year.

72. As stated by the United Nations Children’s Fund (UNICEF) and the International Commission for Guatemala (CICIG)<sup>79</sup>, the lack of institutional capacities of the State of Guatemala to give an assertive response, place in danger a proper specialist service for victims of trafficking, particularly in terms of the coordination of prevention, attention and protection mechanisms for victims, placing in evidence their scarce budget.

73. Because of the few concrete advances in prevention and protection, the Government of the United States of America has degraded the State of Guatemala to “category 2, under observation”, considering that “*the Government of Guatemala does not fully meet the minimum standards for the elimination of trafficking*”, despite certain efforts that have been made.

74. Investigations have been initiated, in relation to 254 complaints of trafficking-related offences in 2017. In 2017, the government reported that 127 of these complaints were specifically crimes of human trafficking. The authorities prosecuted 52 defendants for trafficking for the purpose of sexual exploitation and labour exploitation. There were 19 convictions, including labour exploitation, in 2017, compared to 13 convictions in 2016, with penalties ranging from eight to 15 years in prison. The government has not reported on investigations, prosecutions or convictions related to government employees complicit in crimes of human trafficking<sup>80</sup>.

### **Training on Human Trafficking (art. 2, LOIPR 7)**

75. It is necessary that all the training activities developed in this area by the Training Unit (*Unidad de Capacitación* - UNICAP) of the Public Ministry have a culturally relevant approach. The use of interpreters in legal proceedings is essential.

76. It is important to note that the PDH<sup>81</sup> has recommended to the State of Guatemala that the SVET should continue with actions related to the prevention of and training on human trafficking and that these should not be focused only in the department of Guatemala, but at the national level, with a gender focus and respecting each linguistic community.

77. In addition, the PDH also recommends that the SVET reactivate all departmental VET networks to reduce current figures related to the crime of trafficking and coordinate with the Ministry of Education to strengthen its monitoring systems for the prevention activities and campaigns that it undertakes.

78. The Ministry of Public Health and Social Welfare, the Ministry of Labour and Social Provision and the Ministry of Social Development must develop programs for the incorporation and reintegration of children and adolescents who have been victims of human trafficking, aspects that to date have not been practically addressed. Although the

<sup>79</sup> Ibid.

<sup>80</sup> US Department of State. Op. Cit.

<sup>81</sup> Procuraduría de los Derechos Humanos. Op. Cit., p. 77.

social programs developed by the Government should be directed and focused on the most vulnerable population, these have unfortunately not incorporated the victims of human trafficking

## VII. DEPRIVATION OF LIBERTY AND OVERCROWDING (ARTICLES 2, 11 and 16)

[Instituto de Estudios Comparados en Ciencias Penales de Guatemala]

79. According to information provided by the Guatemalan Institute for Comparative Studies in Criminal Sciences (*Instituto de Estudios Comparados en Ciencias Penales de Guatemala - ICCPG*), the excessive use of pre-trial detention and the deprivation of liberty, used as a priority sentence, has led to overcrowded conditions in Guatemalan prisons, and constant overcrowding for a number of years in the prison system. The prison population increases year after year, causing worrying overcrowding conditions for the safety and dignity of the inmates. Indeed, the Penitentiary System currently has a rate of overcrowding that exceeds 300%. According to the in 2017 Report on the Situation of Human Rights in Guatemala<sup>82</sup> from the Inter-American Commission on Human Rights (IACHR), the capacity of the Penitentiary System is for 6,320 people and as of September 21, 2018 the population had risen to 24,341 persons deprived of liberty, of which 21,593 are men and 2,643 are women, distributed throughout 21 prisons. Of the total of persons deprived of liberty, 51.75% (12,597 people) are held in preventive detention and 48.25% (11,706 people) are serving a sentence. This overcrowding is exacerbated by the precarious conditions of the infrastructure in the prisons, which do not meet the minimum conditions to guarantee the dignity of those deprived of their liberty.

80. Another situation of concern is the uncertainty about policies to tackle overcrowding; while mechanisms such as the progressive penitentiary regime and penitentiary benefits are contemplated in the Penitentiary Regime Law, it is unknown to what extent these measures are applied in a regular and systematic way; in the case of the progressive regime, this tool has not been implemented since the creation of this law in 2006, no objectives or indicators have been established and nor has the appropriate personnel been designated<sup>83</sup>. Nor has the existing Telematic Control Law for Criminal Proceedings been implemented by the Ministry of the Interior. It is also important to mention that this law has limitations to the extent that not all the population can access this type of control mechanism because, in the first instance, it is the person who is facing the criminal proceedings who must pay the cost of the telematic device.

81. With regards to the large percentage of detainees on pre-trial detention, it is worrying that in some cases this measure for the deprivation of liberty lasts from 2 to 4 years. In several prisons the population held on preventive detention and those already sentenced are held in the same facilities (there are no separate facilities and they are not suitable for both populations), which is also of serious concern and violates the Mandela Rules.<sup>84</sup>

82. Guatemala has a dual prison system. Although article 19 of the Political Constitution of the Republic of Guatemala establishes that the only institution responsible for the custody of prisoners is the Penitentiary System General Directorate (see also article 48 of the Law on the Penitentiary System), the National Civil Police (*Policía Nacional Civil - PNC*) is in charge of 13 centres of deprivation of liberty distributed throughout the country. According to information obtained from the Unit for Access to Public Information in the Ministry of the Interior, as of July of this year, 3,240 detainees are being held in these centres: of which 3,064 are men and 176 are women. Of

<sup>82</sup> [www.oas.org/en/iachr/reports/pdfs/Guatemala2017-en.docx](http://www.oas.org/en/iachr/reports/pdfs/Guatemala2017-en.docx)

<sup>83</sup> El Periódico de Guatemala. "Prisons: black holes in a system which refuses to change". 15 April 2018:

<sup>84</sup> Public information obtained via the Unit for Access to Public Information in the Interior Ministry.

this total population 3,096 people are in preventive detention and 144 are serving a sentence. This situation is completely illegal, since none of these centres is legally authorised to have in its custody people in preventive detention or serving sentences.

83. In the prisons run by the PNC there are also precarious conditions of overcrowding aggravated by inadequate infrastructure, as many of these prisons are or operate as *de facto* police stations. That is, they were not built to house people permanently. In addition, the PNC agents who guard the inmates have received different training to that received by prison guards and do not have multidisciplinary teams that provide care to prisoners, with food being the only obligation assumed by the Directorate General of the Penitentiary System.

84. Despite the fact that on numerous occasions it has been insisted that there is a need for the Prison System to assume custody of the PNC prison population, it is unknown whether there are plans for this to happen.

85. This series of conditions prevents the State from guaranteeing treatment aimed at the rehabilitation of persons deprived of their liberty, as well as resulting in constant violations of their personal integrity, therefore it is extremely urgent that the State undertake actions to address the permanent crisis in the Guatemalan Penitentiary System.

### **Torture and ill-treatment of lesbian, gay, bisexual and transgender persons deprived of liberty**

[LAMBDA, Colectivo de Hombres Trans. Transformación y Observatorio de Derechos Humanos e Inclusión Social de personas LGBTI]

86. In prisons in Guatemala, biological sex prevails over gender, which is why transgender people are confined according to their biological sex, placing them in situations of extreme vulnerability, with high rates of sexual violence against trans women incarcerated in male prisons.

87. The Constitutional Court issued a ruling<sup>85</sup> in favour of transgender people following internal regulations (a circular) that forced transgender people to dress and look “according to their natural gender”, including being coerced into cutting their hair. However, despite this ruling, cruel and degrading acts continue against LGBTI persons, especially trans people.

88. LGBTI persons are particularly exposed to torture and ill-treatment in situations of deprivation of liberty, because the structural, systemic and procedural deficiencies in the criminal justice system create highly vulnerable environments. In 2015, the National Network for Sexual Diversity (*Red Nacional de la Diversidad Sexual - REDNADS*) and the LAMBDA Association worked together with the Ministry of the Interior and the Penitentiary System, to document the situation in 7 prisons in the country and to draft minimum standards of attention to LGBTI persons in situations of deprivation of liberty<sup>86</sup>, in order to prevent systematic violations of the rights of LGBTI persons, including sexual violence, isolation, the obligation to pray and the prohibition of leave from their cells on visiting days. These standards should have been converted into a governmental agreement, however this has not occurred and there is little evidence of openness in the security and justice institutions for these standards to be institutionalised.

89. Rule 81 of the Nelson Mandela Rules establishes that no male official may enter the women’s wing unless they are accompanied by a female official, however in women’s prisons there is a high presence of male staff. In the diagnosis of needs of LGBTI people deprived of their freedom, carried out by the National Network for Sexual

<sup>85</sup> Corte de Constitucionalidad. Apelación de sentencia de Amparo. Expedientes acumulados 635-3013 y 636-2013.

<sup>86</sup> REDNADS, LAMBA y Dirección del Sistema Penitenciario de Grupos Vulnerables. “Primer Diagnóstico: necesidades de la población LGBTI Privada de Libertad”. Guatemala, 2015: 95.

Diversity (REDNADS) and the LAMBDA Association and published at the beginning of 2015<sup>87</sup>, a particular case was reported in which a lesbian woman was raped by a male guard. She never reported this due to fear of reprisals. As a result of this sexual violence she became pregnant and when she gave birth to her son, she was not allowed to go to the maternity ward because of her sexual orientation, with the result that her right to remain with her son in the first years of life was violated. This case led to the suggestion of including effective and independent complaint mechanisms in a differentiated care protocol, which has been developed collaboratively between State and civil society bodies, but has not yet been approved.

90. In Guatemala, isolation has been used as a punishment mechanism in centres of deprivation of liberty, and used disproportionately against LGBTI persons for lengths of time that far exceed international limits<sup>88</sup>, which has an impact on psychosocial wellbeing.

91. Body searches, in particular invasive and strip searches, are a common practice for LGBTI persons, and at times they are carried out in a disproportionate, humiliating or discriminatory manner, especially when the person is transgender. During these searches there are frequent reports of inappropriate touching and groping, comparable to sexual harassment. People who are accused of drug-related crimes are subjected to systematic anal and vaginal examinations.

92. Most of the prison health policies and services have not been designed to meet health needs, and the lack of specialist attention is worrying, moreover, health mechanisms and their providers do not safeguard the confidentiality of diagnoses, as in the case of people living with HIV, which leads to stigmatisation and discrimination from other persons deprived of liberty, as well from prison staff.

### **Situation of persons held in sector 11, Zone 18 Preventive Detention Centre.**

[Oficina de Derechos Humanos del Arzobispado de Guatemala —ODHAG—]

93. Zone 18 Preventive Detention Centre<sup>89</sup> houses people in preventive situations and also those serving a sentence. Among the most vulnerable groups are people interned in sector 11. In December 2017, some of these people were interviewed<sup>90</sup> and described different types of conditions and actions that may constitute torture or ill-treatment.

94. The main conclusions are as follows: a. these prisoners are subjected to degrading treatment and sexual violence by the prison authorities; b. their rights are limited, including recreation time and access to food rations; c. of the 463 people in this sector, between 10% and 15% have contracted diseases related to tuberculosis and have not been offered medical attention; d. they described confessions being obtained via beatings, and threats made against prisoners and relatives, in exchange for obtaining benefits; e. absence of reinsertion policies as the few tools available for work are constantly withdrawn.

<sup>87</sup> REDNADS, Primer diagnóstico necesidades de personas LGBTI privadas de libertad. Guatemala. 2015. Available at: <http://www.gayguatemala.com/index.php/actualidad/news/nacionales/2880-diagnostico-privadoslib>

<sup>88</sup> REDNADS, Primer diagnóstico necesidades de personas LGBTI privadas de libertad. Guatemala. 2015. ACNUR- LAMBDA, Diagnóstico Sin RAIZ, Guatemala. 2016.

<sup>89</sup> Zone 18 Preventive Detention situated in the department of Guatemala has capacity for 1,338 persons deprived of liberty according to the Penitentiary System; by June 2018 it was reported to be housing more than 5,000 people.

<sup>90</sup> On 9 December 2017 an on-site visit took place to Sector 11 of Zone 18 Preventive Detention, in which 26 people participated as follows: 4 “spokesmen” described conditions and ill-treatment, 11 people interviewed described having symptoms of tuberculosis, 2 people had lower body disabilities, 4 people had gastro-intestinal problems and 5 had skin problems due to an excess of iodine in the food and lack of access to sunlight. Due to the poor conditions in which the interview took place this sample of the population was used.

## Suggested questions

95.1. The State should provide information about what actions are being taken to diversify the range of coercive measures and penalties in prisons.

95.2. The State should provide information about what actions are being taken so that the Penitentiary System takes control of and safeguards all persons deprived of liberty.

95.3. The State should provide information about what actions are being taken to prevent torture by the population deprived of their liberty and the agents in charge of the prisons (National Civil Police and Penitentiary System).

95.4. The State should provide information about how many persons deprived of their liberty could be eligible for: penitentiary benefits and alternative measures.

95.5. The State should provide information about actions to prevent and eradicate cruel and inhuman treatment against LGBTI persons in prisons and whether these actions have been institutionalised and implemented.

95.6. The State should provide information about detention centres in which trans women and trans men are being detained and which social reintegration programs are implemented among these populations, and indicate when modules for LGBTI persons will be separated and adapted, in particular to address the high risk of torture and ill-treatment currently suffered by trans people deprived of their liberty

## VIII. PERSONS DETAINED IN PSYCHIATRIC HOSPITALS AND OTHER INSTITUTIONS FOR PERSONS WITH PSYCHOSOCIAL DISABILITIES (ART. 11, LOIPR 20)

[Disability Rights International]

96. In July 2018, Disability Rights International (DRI) and the *Colectivo Vida Independiente de Guatemala* published the report “*Still in Harm’s Way: International voluntourism, segregation and abuse of children in Guatemala*”<sup>91</sup>, which describes the situation of children and adolescents held in institutions in Guatemala, where they face torture and cruel, inhuman or degrading treatment. The DRI team has visited the Federico Mora National Mental Health Hospital (hereinafter “Federico Mora”) for the past six years. DRI last visited the “Hospital” in March 2018. During this visit, DRI observed that the life and personal integrity of the “Federico Mora” patients are still at risk.

### Children with disabilities (Article 11, LOIPR 17)<sup>92</sup>

97. The vast majority of children and adolescents in institutions are there because of poverty and/or disability. According to the IACHR and UNICEF, children and adolescents face indefinite institutionalisation due to the lack of alternatives in the community and support for their families.<sup>93</sup>

<sup>91</sup> Disability Rights International, *Still in Harm’s Way: International voluntourism, segregation and abuse of children in Guatemala* (2018). Available at: .

<sup>92</sup> Committee against Torture, *List of issues prior to the submission of the seventh periodic report of Guatemala, due in 2017*, CAT/C/GTM/QPR/7 (June 9, 2015), para. 17.

<sup>93</sup> Inter-American Commission on Human Rights, *The right of boys and girls to a family. Alternative Care. Ending institutionalisation in the Americas* (2013).

98. Children with disabilities who do not receive the support that they and their families need are at risk of being institutionalised, abandoned, and abused. In 2016, DRI visited two private institutions for children with disabilities: “Hogar Virgen del Socorro” (“Virgen del Socorro”) and “Obras del Hermano Pedro” (“Albergue del Hermano Pedro”) both in Antigua, Guatemala. In both institutions, children face abandonment, inhuman and degrading conditions and abuses that could constitute torture.

99. In “Virgen del Socorro” there are around 175 children and adolescents with and without disabilities. When DRI visited the institution, the girls and teenagers had short hair and wore the same uniform as the boys. Children and adolescents had no way of expressing their personality and it was difficult to distinguish between males and females. Some of them have mobility in their extremities, but the caregivers fed them all with bottles.

100. “Virgen del Socorro” has several buildings, each one has 3 to 4 floors and a central courtyard. Persons with disabilities are divided into buildings based on their age and sex. In each of the buildings and floors that DRI visited, all the girls and boys with disabilities were strapped into wheelchairs around the central patio, regardless of their disability or degree of mobility. Some of the girls and boys we watched could walk, so they tried to move the wheelchair with their feet. We noticed that, in addition to being strapped into wheelchairs, some were also tied to railings. The youngest children were in a room also tied to wheelchairs, watching television

101. The “Albergue del Hermano Pedro” is a private institution that houses 65 girls, boys and adolescents with disabilities. In this institution, DRI also found children with disabilities tied up. In the “rehabilitation” room there were 4 teenagers tied up with their hands behind their backs, lying on mats.<sup>94</sup>

102. The World Health Organisation (WHO) has found that the use of prolonged restraints are “practices that have been linked to muscle atrophy and skeletal deformity”.<sup>95</sup> According to Juan E. Méndez, former United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Punishment, this practice can “cause muscle wasting, deformities and even the failure of vital organs, and aggravates psychological damage”.<sup>96</sup> He also noted that “any restriction to people with mental disabilities even for a short period of time may constitute ill-treatment”<sup>97</sup> and torture.<sup>98</sup>

103. In one of the buildings for adolescents with disabilities, DRI saw two rooms designated as isolation rooms. During the visit, DRI observed a 3 square metre cage where two girls had been locked up. According to the staff, in each building there are cages where the children are locked up when they “become aggressive or enter into a crisis. They are isolated until this passes”.<sup>99</sup> The “Albergue del Hermano Pedro” also has a cage where minors are locked up.<sup>100</sup> Juan E. Méndez, former Rapporteur against Torture, affirmed that “the imposition of a regime of isolation of minors, whatever their duration, is cruel, inhuman or degrading treatment or even torture.”<sup>101</sup>

<sup>94</sup> DRI interview with staff from the “Albergue Hermano Pedro”, July 2017.

<sup>95</sup> World Health Organisation, *Treatment of Mental Disorders: A Review of effectiveness* (Norman Sartorius et al., editors) (1993), p. 345. See also, Mental Disability Rights International, *Torment not Treatment: Serbia's Segregation and Abuse of Children and Adults with Disabilities* (2007), p. vi. Available at: (Last visited, May 25, 2018).

<sup>96</sup> Juan E. Méndez, *Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment, UN, Doc. A/HRC/28/68*, para. 33 (March 5, 2015).

<sup>97</sup> *Ibid.* para. 77-78.

<sup>98</sup> *Ibid.* para.63.

<sup>99</sup> DRI interview with staff from the “Hogar Virgen del Socorro/Obras Sociales del Hermano Pedro”, July 2017.

<sup>100</sup> DRI interview with staff from the “Albergue Hermano Pedro”, July 2017.

<sup>101</sup> Juan E. Méndez, *supra* note 8, para. 77-78.

## Persons with psychosocial disability. Alternative methods of treatment, community rehabilitation services and other outpatient treatment programs<sup>102</sup>

104. The budget allocated to the special needs of persons with disabilities deprived of liberty, through the National Disability Policy, dropped from 5 million quetzales in 2011 to 70,000 quetzales in 2016,<sup>103</sup> without this budget decrease having been reflected in treatment alternatives, community rehabilitation services, other outpatient treatment programs or improvements in detention conditions. The “Federico Mora” patients, for example, continue to be segregated indefinitely without treatment alternatives and without enjoying their right to live independently and to be included in the community, in accordance with the provisions of the United Nations Convention on the Rights of Persons with Disabilities (CRPD).<sup>104</sup> Most of the people who are living in “Federico Mora” could leave today if they had a place to live and if they could receive the mental health services and support they need in the community.<sup>105</sup> In March 2018, during a monitoring visit, DRI found that people who are detained in “Federico Mora” remain deprived of their liberty because of their disability and because of a lack of options to live in the community. In this regard, the Inter-American Commission on Human Rights (IACHR) regretted that the Guatemalan State has not created services and support in the community that allow people with disabilities to live in society on inclusive and equal terms with others.<sup>106</sup> Since 2016, the Committee on the Rights of Persons with Disabilities (CRPD) has required the Guatemalan State to:

“a) Ensure the appropriate provision of community health services for persons with disabilities throughout the country, on the basis of free and informed consent, and ensure that the pharmacological treatments needed on account of disability are provided as part of the support system, at a low cost or free of charge; b) Develop community mental health services, adopting a human rights approach; [...] d) Provide training for all health system personnel on the rights of persons with disabilities in terms of health service access.”<sup>107</sup>

## Federico Mora National Mental Health Hospital<sup>108</sup>

105. On November 20, 2012, the IACHR granted precautionary measures MC-270/12 in favour of 334 patients from the Federico Mora Hospital in Guatemala. Among the main issues that led to the request for IACHR precautionary measures, was the risk of serious physical and psychological damage, including loss of life, for 334 children and adults in the centre, due to the following: (1) allegations of physical and sexual abuse, (2) denial of adequate medical care, (3) exposure to contagious diseases and preventable infections, (4) risk of contracting HIV (problem aggravated by widespread sexual abuse within the institution) and (5) confinement in isolation rooms and submission to almost total social and sensory isolation. According to information gathered by the Human Rights Office of the Archdiocese of Guatemala (*Oficina de Derechos Humanos del Arzobispado de Guatemala - ODHAG*), during recent years, at least seven people have died as a result of injuries and damage caused in isolation

<sup>102</sup> Committee against Torture, *List of issues prior to the submission of the seventh periodic report of Guatemala, due in 2017*, CAT/C/GTM/QPR/7 (June 9, 2015), para. 20.

<sup>103</sup> Report on the State of Guatemala, *Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure Seventh periodic reports of States parties due in 2017*, CAT/C/GTM/7 (July 5, 2017), para. 110.

<sup>104</sup> The Convention on the Rights of Persons with Disabilities entered into force on 3 May 2008. Article 19 of the Convention deals with the right to live independently and to be included in the community.

<sup>105</sup> IACHR, *Situation of Human Rights in Guatemala* (2017), para. 469.

<sup>106</sup> *Ibid.*, para. 460.

<sup>107</sup> CDPD, *Concluding observations on the initial report of Guatemala. Convention on the Rights of Persons with Disabilities*, CRPD/C/GTM/CO/1 (September 30, 2016), para. 62.

<sup>108</sup> Committee against Torture, *List of issues prior to the submission of the seventh periodic report of Guatemala, due in 2017*, CAT/C/GTM/QPR/7 (June 9, 2015), para. 24

rooms.<sup>109</sup> It has not been possible to obtain exact figures on the number of deaths<sup>110</sup> in the facilities; however, hospital psychiatric staff estimate that the death rate is at least 20 people per year (approximately 6% of the total population).<sup>111</sup>

106. It is important to note "*recent allegations of excessive sedation, internment in solitary confinement, vexations and mistreatment, including sexual abuse, to patients admitted to the Federico Mora National Mental Health Hospital*".<sup>112</sup> In March 2018, DRI visited "Federico Mora", and found that unless the State reinstates the people detained in this centre into the community with adequate support and services, their rights will continue to be violated and their life and integrity will continue to be at risk. In its report, the State of Guatemala indicated that a complaint was made of crimes of "torture, abuse against individuals, breach of duties" in "Federico Mora", without providing more information about who was responsible and the sanctions imposed<sup>113</sup>.

### Isolation rooms, physical and chemical restraint

107. In August 2016, a nurse in ward V (forensic patients) explained to DRI that there had been a significant cut in medicines available to treat patients and many of them were not receiving the medicines they needed. This "unbalanced them" and caused an increase in the use of isolation rooms and physical restraints.<sup>114</sup> In 2017, DRI documented the case of Mr. Moskovits, an American citizen who was admitted to "Federico Mora" and who, while trying to escape, was beaten and locked in an isolation room.<sup>115</sup> In the same year, DRI documented the case of Angelina Sales H., a 30-year-old woman who was pregnant when she was taken to an isolation room.<sup>116</sup>

108. In its annual reports for the last four years, the PDH has stated that "the dignity of the patients is violated",<sup>117</sup> as isolation rooms continue to be used to "keep the population in lock-up or padlocked for 22 hours a day".<sup>118</sup> In the visit made by DRI in March 2018 to "Federico Mora", the staff reported that the doors of the isolation rooms had been removed. However, it should be noted that one of the patients hospitalised in Pavilion II, referred to the fact that isolation rooms continue to be used.

### Abuse of a sexual and physical nature

109. In February 2016, DRI obtained the testimony of Mercedes, a woman who reported having been a victim of vaginal, anal and oral rape by police and other male patients.<sup>119</sup> Likewise, DRI observed a woman lying on the

<sup>109</sup> ODHAG. Interview with the coordinator of the Human Rights Commission in the hospital and with a social worker, March and August 2012. This information was also referred by a former psychiatrist in March 2012, and by the psychiatrist in Halls III and IV (Chronic patients) in August of the same year.

<sup>110</sup> ODHAG. Interview with a former psychiatrist from the hospital, March 2012;

<sup>111</sup> This number includes the deaths of patients who are referred to general hospitals because of their medical condition, and who die there; as collected by ODHAG. Interview with psychiatric hospital staff, March 2012.

<sup>112</sup> Committee against Torture, *List of issues prior to the submission of the seventh periodic report of Guatemala, due in 2017*, CAT/C/GTM/QPR/7 (June 9, 2015), para. 24.

<sup>113</sup> Report on the State of Guatemala, *Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure Seventh periodic reports of States parties due in 2017*, CAT/C/GTM/7 (July 5, 2017), para. 121.

<sup>114</sup> Nurse from Federico Mora, 2016.

<sup>115</sup> DRI visit to "Federico Mora", 2017.

<sup>116</sup> *Ibid.*

<sup>117</sup> PDH, *Informe Anual Circunstanciado Situación de los Derechos Humanos y Memoria de Labores*, (2017), p. 322.

<sup>118</sup> *Ibid.*, p. 322.

<sup>119</sup> DRI visit, 2016.

ground, and when they asked Mercedes if she knew what was wrong, she replied that a few days ago she had suffered anal rape perpetrated by “Bingo”.<sup>120</sup> To date, these events remain unpunished.

110. DRI has gathered various testimonies from patients who have witnessed or been victims of physical abuse. In 2016, Elba, a woman who was being held in the pavilion for chronically ill women patients, was attacked by a nurse, who took hold of her by the neck, dragged her 30 metres along the ground and then threw her.<sup>121</sup> Rosario Cal also said that she was beaten by staff at Federico Mora.<sup>122</sup> In 2017, Mr. Moskovits resisted being admitted to Federico Mora and was suffocated and beaten for it. Finally he was admitted and left in an isolation room.<sup>123</sup> In the same year, DRI learned of the case of a 23-year-old man who had recently been admitted and who said he had been mistreated by the staff and raped.<sup>124</sup>

111. The IACHR urged the State of Guatemala to “establish an independent mechanism to oversee the institutionalization of patients at the Federico Mora Hospital in order to protect against acts of torture or mistreatment”.<sup>125</sup> This mechanism was created; however, it is not an independent body, because it is managed by “Federico Mora” staff, which prevents patients from this centre accessing the mechanism without fear of reprisals.

## IX. CHALLENGES AND SETBACKS IN REPARATION FOR VICTIMS OF THE INTERNAL ARMED CONFLICT (ART. 14, LOIPR 25)

[ECAP]

112. In Guatemala a high percentage of people were disappeared during its non-international armed conflict. The Commission for Historical Clarification (*Comisión del Esclarecimiento Histórico* –ECH) records 45,000 missing persons and more than 250,000 victims. The victims and organisations that accompany them have carried out a constant struggle for justice for these crimes.

113. In recent years Guatemala has achieved important sentences for human rights violations committed during the Internal Armed Conflict, such as in the Sepur Zarco case, who, in February 2016, was sentenced for sexual violence, sexual slavery and domestic slavery perpetrated against indigenous women. 138. Other cases have faced legal setbacks, such as the Ixil Ríos Montt genocide case, for which the process of oral and public debate will restart in 2017, which implies that the witnesses will be revictimised. It is worth remembering that, after the death of General Ríos Montt, the process against him has been dismissed, so the criminal process only continues against former intelligence chief José Mauricio Sánchez.<sup>126</sup>

114. In August of this year, an oral and public debate was scheduled to open in the Dos Erres case against the former *kaibil* special forces soldier Santos López Alonzo, whom the Public Ministry has accused of at least 200 murders and crimes against humanity against the members of the “Las Dos Erres” community, which was

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*

<sup>123</sup> DRI visit to “Federico Mora”, 2017.

<sup>124</sup> *Ibid.*

<sup>125</sup> IACHR, *Situation of Human Rights in Guatemala* (2017).

<sup>126</sup> EFE, “Guatemalan Court closes the criminal proceedings against Ríos Montt after his death”, 06 April 2018. Consulted on 06 September 2018.

Available at:

massacred from December 6 to 8, 1982. The trial was finally scheduled for May 2021, which is a clear example of undue delay in the justice system in relation to crimes against humanity committed in the context of the internal armed conflict.

115. In this regard, it is important to remember that the victims seeking justice were victimised by the State during the Internal Armed Conflict and that State has revictimised them, due to the fact that they have not been guaranteed access to prompt and comprehensive justice, including a reparation process. This secondary revictimisation is caused by the victim's relationships with institutions such as social services, the health system, the media, and the judiciary, among others.

116. This is a broader definition that defines institutions as responsible for re-victimisation, and in the context of socio-political violence this can include legal processes which revictimise people by subjecting them to unnecessary interrogations, causing them to relive the traumatic experience or indirectly referring to situations that violate their dignity. This is the case for women victims of sexual abuse, for example, when they are asked to what extent their behaviour or attitude may have contributed to the sexual violence. Other situations may include the use of third parties as informants and/or witnesses to make false accusations about the victims. The lack of efficiency in the administration of justice and permanent impunity increase the suffering of the majority of victims.

117. Revictimisation has psychosocial impacts because it causes victims to relive traumatic situations which violated their dignity and rights. It is not enough to mention the effects of this revictimisation, it is also necessary to understand the reasons for it and its perpetrators, as revictimisation makes the situation worse for survivors of human rights violations and leads to further violations against them, as is the case for victims of State crimes. These victims remain exposed not only to a continuation of the violation of their rights; they are also made invisible, as in the midst of formal progress towards democracy, they continue to be subjected to new techniques and methods of persecution.

118. When reference is made to victims of State crimes in which the State denies being the perpetrator, victims face a double need: to be recognised as victims and to claim their rights at the same time<sup>127</sup>.

119. Another recent emblematic example is the Molina Theissen case, which has undergone a long journey in the search for justice. In 2004, the Inter-American Court of Human Rights condemned the State of Guatemala for the forced disappearance of Marco Antonio Molina Theissen and for the damage caused to his family, events that occurred in the Republic of Guatemala, during the Armed Conflict in 1981. The State of Guatemala has failed to comply with several of the reparation measures that the Court issued and one of the most significant issues for the family is that the State of Guatemala has yet to locate and deliver the mortal remains of Marco Antonio Molina Theissen to his family<sup>128</sup>.

120. Civil society organisations, together with the Molina Theissen family, have established that the Court's ruling enables the State of Guatemala to develop comprehensive reparation measures, including the immediate and necessary reparation of the family knowing the whereabouts of their missing relative. However, the State of

127 COMISIÓN INTERECLESIAL DE JUSTICIA Y PAZ, Equipo Psicosocial, "Los Efectos Psicosociales de la Revictimización", 22 September 2010. Consulted on 07 September 2018. Available at:

128 INTER-AMERICAN COURT OF HUMAN RIGHTS. "Ficha Técnica: Molina Theissen Vs. Guatemala", Consulted on 07 September 2018. Available at:

Guatemala has changed the meaning of this ruling and has only prioritised economic compensation, showing its inability and disinterest in implementing the other reparation measures.

121. The family continues their struggle, because it is extremely important for them to find the remains of their missing family member. Denying them this right leads to serious impacts as it is not possible for them to fully grieve. When the whereabouts of the remains are not known, relatives are engaged in a constant search for their loved ones, which leads to a situation of complex grief, or grief which cannot be fully expressed<sup>129</sup>.

122. In 2018, after three decades, the Molina Theissen case was tried in the Guatemalan courts. Higher Risk Court C heard the case and issued a sentence in which they found guilty four former members of the Guatemalan Army. The sentence recognises that the practice of sexual violence, torture and forced disappearance was part of a military strategy during the internal armed conflict in Guatemala. It is important to mention that the Molina family did not request economic reparation as part of its requests for comprehensive reparation in this case.

123. The State of Guatemala has not implemented the IACHR remedies, thereby failing to provide the family with their right to full and dignified reparation. This situation was clarified before the Sentencing Court by the PGN, as the third party civil defendant. This breach revictimises the family, taking into account that the psychosocial impacts caused by forced disappearance are permanent, and considering that the crime persists until the missing person's whereabouts are made known. Indeed, the State of Guatemala has not recognised itself as being responsible for these events, and therefore it has not prioritised the approval of Law 3590 on the search for disappeared persons. This Law was presented to the Guatemalan Congress on December 14, 2006 and heard at the Congress Plenary Session on January 18, 2007. Since then it has been awaiting its second reading for more than 10 years<sup>130</sup>.

124. The path of justice is not easy for the victims and their families, because they are faced with scenarios that violate their rights. The Guatemalan justice system is not capable of creating protective conditions for victims who attend the courts to demand justice. Although it is true that the Molina Theissen family were granted protection by the Public Ministry during the entire oral hearing process, the family was not protected from intimidation and verbal attacks by the defendants and/or their relatives. The attacks made during the hearings included comments that sought at all times to place the blame on the victims. Of all the attacks on the family inside the courtroom, only on one occasion did the president of the Court order the immediate withdrawal of the wife of the defendant Hugo Zaldaña Rojas<sup>131</sup>.

125. The justice system has been incapable of creating conditions for trials to take place without violence and in conditions where the protection and physical and psychological integrity of the victims can be guaranteed, as can be seen in the fact that the Molina Theissen family and the family of defendants shared the same health services, a situation that was used to attack the Molina Theissen family. Another example was that, during hearing recesses, the Molina family had to wait in the corridors of the Courthouse because the infrastructure of the building does not include spaces for the victims. This situation was also used to intimidate the family.

126. Following the sentencing in the Molina Theissen case, lawyer Karen Fischer (who is publicly known for her role

129 GOMEZ DUPUIS, Nieves, *Peritaje Psicosocial por Violaciones a Derechos Humanos*, 6 colección Psicología Social. ECAP. 2009, p. 32.

130 FAMDEGUA, "Propuesta de Ley 35-90", 21 de noviembre de 2013. Consulted on 31 August 2018. Available at:

131 DIARIO LA HORA, "Judge removes from court the wife of Colonel Zaldaña", 24 April 2018. Consulted on 07 September 2018. Available at:

supporting impunity in Guatemala<sup>132</sup>) filed a lawsuit against the Molina Theissen sisters, for the crimes of False Accusation and Complaint and Simulation of Crime, as well *for arraigo*<sup>133</sup>. This led to legal difficulties, delaying final sentencing, and also revictimised the family, as psychological manipulation was used as a torture mechanism, by trying to dissuade the family from continuing with the search for Marco Antonio and delaying the sentence. Fischer's complaint demands that a DNA test be performed on the husband of one of the Molina Theissen sisters, arguing that this is Marco Antonio Molina Theissen.

127. It is publicly known that there are various efforts to ensure that cases of transitional justice do not progress. The most troubling instance of this for the victims of the internal armed conflict is the fact that several deputies from the Guatemalan Congress are promoting reforms to the National Reconciliation Law, with the aim of guaranteeing impunity for persons who committed serious human rights violations during the conflict.

128. In January this year, several deputies presented initiative No. 5377 that establishes the approval of reforms to decree number 145-96 of the Congress of the Republic, the National Reconciliation Law. This initiative reforms articles 1, 5 and 11, and repeals articles 2, 4 and 8.

129. The initiative establishes that the amnesty contemplated in the negotiation of the Agreements on Firm and Lasting Peace, and included in the National Reconciliation Law (Decree 145-96), must respect the principles of legality and non-retroactivity, in order to offer legal certainty to all those affected. This includes respect for "due process", through the clear declaration of a total amnesty, including for the crime of torture and ill-treatment, which allows all those involved in the armed conflict to have these rights respected, as they will not be prosecuted for crimes that were not typified in the same way as they are currently<sup>134</sup>.

130. The initiative obtained a favourable opinion from the Legislation and Constitutional Points Commission. If approved, this legislative reform would imply a setback in terms of the enforcement of human rights, in addition to revictimising those who access justice processes as family members and/or survivors of the crimes of mistreatment and torture, among others, during the internal armed conflict, and also violating the rights of the witnesses who testify in said legal proceedings.

## **X. SITUATION OF HUMAN RIGHTS DEFENDERS (ARTS. 1 y 16, LOIPR 29)**

[Unidad de Protección a Defensoras y Defensores de Derechos Humanos, Guatemala]

### **Actions against human rights defenders**

131. Human rights defenders are continually being attacked. In recent years, the Unit for the Protection of Human Rights Defenders in Guatemala has been in charge of gathering information about aggressions against human rights defenders.

132 GARCES, Marisol, "Karen Fischer and her role supporting impunity", in *Prensa Comunitaria*, 20 June 2018. Consulted on 07 September 2018. Available at:

133 NOTICIERO EL VIGILANTE, "Karen Fischer ratifies her complaint against Molina Theissen family", 13 July 2018. Consulted on 06 September 2018. Available at:

134 CONGRESO DE LA REPÚBLICA DE GUATEMALA, "No. Iniciativa 5377", 11 June 2018. Consulted on 06 September 2018. Available at:

132. During 2014, there were 814 reported attacks<sup>135</sup>; in 2015, 493 attacks<sup>136</sup>; in 2016, 263 attacks<sup>137</sup>; in 2017, 493 attacks<sup>138</sup>; and during 2018 (from January to September) there have been 303 attacks<sup>139</sup> against human rights defenders, a significant increase in the number of attacks. The number of murders against human rights defenders has doubled, rising to 24 murders during the period from 1 January to 15 October 2018<sup>140</sup>.

133. In this regard, it is worth noting that the type of aggressions that are recurrent against human rights defenders are: threats, intimidation, arbitrary detention, unfounded criminal charges, and surveillance. Illegal detentions occur in the interior of the country, especially in departments<sup>141</sup> where agrarian conflict prevails and where aggressions against defenders of indigenous peoples' rights, the right to land, to a healthy environment and natural resources, and defenders who belong to peasant organisations, suffer the most aggressions.

134. In 2014, of the total of 814 assaults, the places that registered the highest number of attacks were the department of Guatemala with 528 attacks, Alta Verapaz with 207 attacks and Huehuetenango with 17 attacks. Environmental defenders suffered 510 aggressions, making them the type of defender suffering the greatest number of aggressions, and representing 62.65% of the total number of aggressions recorded during that year (814)<sup>142</sup>.

135. In 2014, there was a case of criminalisation against the social communicator, Norma Lila Sut Sancir, and human rights defenders Carlos Alfredo Juárez Días, Domingo Perez Avalos, Santos Bernaldino Perez Avalos and Marco Tulio Vasquez Martinez, who were victims of abuse of authority by the National Civil Police (PNC). The human rights defenders were arrested when they were documenting a demonstration by the peasant organisation *Central Campesina Ch'ortí Nuevo Día*, which was repressed by the PNC in Camotán, Chiquimula, where 150 policemen arrived with the objective of dissolving the demonstration. It is important to highlight the particular case of Norma Sancir who stated that she had not yet arrived at the peaceful demonstration when a National Civil Police patrol intercepted her with at least 10 police officers<sup>143</sup> when they realised that she was going to take photographs of what was happening: *"I was going to take pictures of what was happening to do my journalistic work. When they saw me, ten officers grabbed me, they pushed me around and then they handed me over to some other officers and they immediately put the handcuffs on me"*<sup>144</sup>. In addition, in the police version of the facts, the officers who arrested her classified her as "a well-educated housewife", despite the fact that she repeatedly indicated that she was a journalist<sup>145</sup>.

136. In addition to this, the first statement was taken from the defenders three days after their arrest, under the argument that the Criminal Judge of the First Instance for Drug Trafficking and Crimes against the Environment Court of Chiquimula, had no space in his calendar and that he had to attend a course in Guatemala City; this

<sup>135</sup> UDEFEGUA. "Informe sobre situación de Defensoras y Defensores de derechos humanos: enero a diciembre de 2014". 2014.

<sup>136</sup> UDEFEGUA. "Mi esencia es la resistencia pacífica, soy defensora-soy defensor: Informe sobre situación de Defensoras y Defensores de Derechos Humanos, Enero a Diciembre 2015". 2015.

<sup>137</sup> UDEFEGUA. "Informe sobre Situación de Defensoras y Defensores de Derechos Humanos: Enero a Diciembre de 2016". 2016.

<sup>138</sup> UDEFEGUA. "Informe sobre Situación de Defensoras y Defensores de Derechos Humanos: Enero a Diciembre de 2017, Guatemala". 2017.

<sup>139</sup> Data from UDEFEGUA which will be included in its Report of 25 October 2018 which will be available at:

<sup>140</sup> Ibid.

<sup>141</sup> Guatemala is comprised of 22 departments and 340 municipalities, which are organised into 8 administrative regions.

<sup>142</sup> UDEFEGUA. "Informe sobre situación de Defensoras y Defensores de derechos humanos: enero a diciembre de 2014". 2014. Available at:

<sup>143</sup> Comunitaria Press "Journalist Norma Sancir: Statement by Front Line Defenders upon her arrest". 24 September 2014. Available at:

<sup>144</sup> Guatemala Comunitaria. "Journalist Norma Sancir: her arbitrary arrest violates freedom of expression. 18 September 2014. Available at:

<sup>145</sup> Through UDEFEGUA investigations, it was learned that Marco Tulio Vásquez (detained defender) was arrested in front of his mother's house while watching the demonstration; Domingo and Santos Bernaldino Pérez (detained defenders) Ávalos detained them on their property while they were stripping corn. In addition, at the place of detention, the defender Norma Sancir was not allowed to make any phone call to let a relative know where she was.

happened in spite of the existence of Duty Courts that have among their functions to give priority to those making their first statement, so that they do not remain in detention for more than 24 hours after their arrest, and so they can make their first statement according to the Political Constitution of the Republic of Guatemala.

137. A criminal proceeding was initiated against the human rights defenders in which the Public Ministry requested that they be prosecuted for the crimes of public disorder and assault against the public administration. However, the First Instance Criminal Judge issued a lack of merit in the human rights defenders' case. It should be noted that in the section leading up to his resolution the judge argued that the case was related to "possible illegal arrests against members of the community (...)"<sup>146</sup>.

138. In 2015, the departments in which UDEFEGUA registered the highest number of attacks were Guatemala, Huehuetenango and Petén, with 358, 46 and 24 assaults respectively. In the case of Petén, the increase in the number of aggressions was due to the ecocide in the La Pasión River. Part of the population in the area was suing the inhabitants of the Sayaxché municipality, in order to dismantle their resistance and struggle, and as a result human rights defender Rigoberto Lima Choc<sup>147</sup> was murdered. Lima Choc was the first person to document the contamination in the river. The highest number of attacks 235<sup>148</sup> were committed against defenders of Indigenous Peoples' rights and environmentalists.

139. It is also important to mention the case of Ana Sandoval, who was arbitrarily detained during the general elections of September 2015, while she was filming a Voting Centre in San José el Golfo. Ms. Sandoval was arrested while trying to film the moment when the National Civil Police (PNC), was arresting two individuals. The Police Commissioner gave the order to handcuff her, remove her recording equipment, and force her to erase the camera's memory. Currently, the case is being heard, awaiting the opinion of the 6th Criminal Court in which the PNC Commissioner and an agent of the PNC who guarded the journalist during her illegal detention are on trial.

140. In 2016, 263 attacks were registered against human rights defenders. The departments with the highest number of attacks were the department of Guatemala, Huehuetenango, followed by the departments of Alta Verapaz and Quetzaltenango, with 122, 32, 28 and 18 assaults, respectively<sup>149</sup>.

In 2017, 493 attacks against human rights defenders were registered, and it is important to note that that surveillance and monitoring against defenders increased, affecting 39 people. The departments that registered the highest number of attacks were Guatemala, Huehuetenango, Alta Verapaz, Chiquimula and Jutiapa, with 210, 105, 32, 30 and 24 respectively, which account for 81.34% of the total number of attacks recorded in the year. The departments of Huehuetenango, Alta Verapaz and Chiquimula registered high levels of agrarian conflict<sup>150</sup>.

141. Human rights defender Carlos Maaz was killed on October 27, 2017, while he was with members of the Artisanal Fishermen's Association of El Estor (*Gremial de Pescadores Artesanal de El Estor, Izabal*) at a demonstration against the contamination of Lake Izabal by the CGN-Pronico Mine. When the riot police arrived,

<sup>146</sup> UDEFEGUA. "Informe sobre situación de Defensoras y Defensores de derechos humanos: enero a diciembre de 2014". 2014. Available at: Pág. 55.

<sup>147</sup> Front Line Defenders. Case history Rigoberto Lima Choc. Available at:

<sup>148</sup> UDEFEGUA. "Mi esencia es la resistencia pacífica, soy defensora-soy defensor: Informe sobre situación de Defensoras y Defensores de Derechos Humanos, Enero a Diciembre 2015". 2015.

<sup>149</sup> UDEFEGUA. "Informe sobre Situación de Defensoras y Defensores de Derechos Humanos: Enero a Diciembre de 2016". 2016.

<sup>150</sup> UDEFEGUA. "Informe sobre Situación de Defensoras y Defensores de Derechos Humanos: Enero a Diciembre de 2017, Guatemala". 2017.

they fired shots into the air<sup>151</sup> and used tear gas. As a result, Carlos Maaz was injured and fell to the ground, a situation which was not helped by the continuation of the shooting. After the event, some of the fishermen from the trade union communicated with the public prosecutor in Morales, Izabal, who according to the testimonies of the fishermen told them to “take your dead friend and bury him and then they will dig him up later”. The Public Ministry did not analyse the crime scene on the day of the events. It is also known that 9 members of the Fishermen’s Association of El Estor have been criminalised for their defence of land and the environment.

142. From January to September 2018, 303 attacks against human rights defenders were registered, and from January to the presentation of this report there have been 24 murders of human rights defenders<sup>152</sup>, which represents an increase from 2009 to 2017 when an average of 13 murders per year were reported. These murders have been mostly committed against defenders belonging to peasant organisations that fight for access to land and territory, as well as alternative economic models, within a climate where President Jimmy Morales has made speeches against peasant organisations<sup>153</sup>. The murders have been concentrated in the interior of the country. It should be noted that some of these murders have been characterised by violence and cruelty that is very disturbing. This is, for example, the case of Juana Ramírez Santiago<sup>154</sup>, midwife, founder and member of the Board of Directors of the Ixiles Women’s Network. On September 21, 2018, on the road she usually used back to her home, 2 or 3 young people on a motorcycle shot her 9 times, killing her. It should be noted that according to UDEFEGUA investigations, following her murder, a defamatory video has been circulated about her in order to undermine her role as a human rights defender. In accordance with investigations and verification of the murder cases, UDEFEGUA has reported that the National Civil Police as well as the Public Ministry delayed arrival to the scene of the crime by between 4 to 12 hours.

143. Attacks on human rights defenders in Guatemala are intensifying and becoming more serious, particularly over the last two years. In addition, the current legislative agenda includes several projects that would place significant restrictions on the right to defend human rights in Guatemala.

144. Finally, it should be noted that the climate of constant persecution, harassment and criminalisation of human rights defenders in Guatemala, particularly those belonging to indigenous or rural movements that resist interventions or evictions in their territories, is having both individual and collective psychological and emotional effects (particularly in highly cohesive communities), which constitute a level of suffering similar to torture or abuse in both its psychological and physical dimensions.

## **Criminalisation of land defenders**

[ECAP]

145. It is important to note that criminalisation through the improper use of criminal law is often preceded by actions to delegitimise the work of human rights defenders, such as defamation campaigns used to stigmatise them. This stigmatisation facilitates and enables defenders of land and territory to be prosecuted as their protest movements are linked to criminal phenomena.

<sup>151</sup> Information compiled by UDEFEGUA.

<sup>152</sup> Data from UDEFEGUA which will, be presented in a report on 25 October 2018 and which will be available at:

<sup>153</sup> Prensa Libre. Reports against Jimmy Morales for inciting violence. 18 May 2018. Available at:

<sup>154</sup> See Urgent Intervention GTM 012 / 0818 / OBS 101 of the Observatory for the Protection of Human Rights Defenders, available at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/guatemala/2018/08/d24986/>

146. Stigmatisation has been achieved through various regional defamation campaigns, thus facilitating the prosecution of community leaders who defend territory and other rights. Stigmatisation has also been used to begin prosecutions against leaders exercising their right to peaceful demonstration, and defamation also contributes to the process of criminalisation as indicated by the UN special rapporteur on indigenous peoples: “*the initiation of criminal proceedings against indigenous authorities and leaders who defend their rights to their lands are often preceded by smear campaigns, including on social networks, which label them as violent criminals seeking conflict, campaigns that are carried out with the aim of discredit the legitimate exercise of their rights*”<sup>155</sup>. This facilitates the existence of a climate prone to discriminate against and stigmatise indigenous peoples and their leaders who live in difficult conditions, with high rates of malnutrition and poverty, an ideal environment to fabricate crimes and prosecute leaders defending their territory from international companies, by making use of the laws and provisions in the penal code to prevent them from carrying out their work as human rights defenders. In this way, “the country’s historical racism persists”<sup>156</sup>.

147. Indigenous peoples suffer constant racism and discrimination. This situation is aggravated by the lack of adequate mechanisms for the protection of their collective rights, affecting their means and ways of life. In 2018, the situation is the same as when “*Rapporteur Stavenhagen visited in 2001, the same statistics and the same reality exists regarding extreme poverty, discrimination, expulsion of land and the lack of a legal regime to protect these people*”<sup>157</sup>, a situation that has been increasing and is linked to the imposition of large-scale development projects that result in the eviction of indigenous communities from their lands and areas close to their lands.

148. There are many cases of criminalisation against defenders, specifically cases of defenders of land and territory who oppose the installation of projects that threaten their subsistence and that of their families without their communities having been consulted, thus violating their right to self-determination. Among the cases that should be mentioned as examples of this situation, are the cases of Abelino Chub Caal and Bernardo Caal Xol, who were both q’eqchies’ indigenous teachers from Estor (Izabal) and Cobán (Alta Verapaz) respectively.

149. In the specific case of Bernardo Caal (who is currently facing two legal proceedings) significant smear campaigns were fabricated against him after a ruling ordering the suspension of the Oxec I and Oxec II hydroelectric plants was made public. In March 2017, less than a month after the issuance of this ruling, an arrest warrant was issued against him for alleged fraud against the State. On January 30, 2018, he was arrested during the 2017 trial hearing, and accused of aggravated robbery, instigation to commit crimes, threats and illegal detentions.<sup>158</sup>

150. At the end of 2016 Abelino Chub Caal suffered facial wounds when he was attacked with a bottle while he was leaving work. Despite this attack Abelino continued his work supporting the communities. He was then accused of five crimes and arrested in front of his wife and children, a situation that increased the emotional anguish for himself and his family. As in the cases of other human rights defenders from Barillas, Huehuetenango, he was removed

155 Office of the United Nations High Commissioner for Human Rights. Final Declaration of the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli Corpuz, on concluding her visit to Guatemala, 11 May 2018. Consulted on 10 September 2018. Available at:

156 Oliva, William. UN Special Rapporteur reports that racism and discrimination persist in Guatemala, in Prensa Libre, 10 May 2018. Consulted on 6 August 2018. Available at:

157 Franco, Marina. In Guatemala, violations against indigenous peoples are the tip of the iceberg, says the UN Special Rapporteur in The New York Times 10 May 2018. Consulted on 6 August 2018. Available at:

158 Sam, Eduardo. Arrest of community leader Bernardo Caal for 4 crimes in Prensa Libre 30 de enero 2018. Available at:

from his family, friends and grassroots organisation and transferred to the Zone 18 Preventive Detention Centre in Guatemala City.<sup>159</sup>

151. In both cases, defenders are detained at a distance from their families, friends and grassroots organisations and allies, which results in a sense of uprooting and impotence. Defenders' families suffer prolonged emotional and economic exhaustion due to attending legal proceedings as well as being exposed to defamation, stigmatisation and attacks or aggression by those who have criminalised their relatives, in the territory where they continue to live. The distance required to participate in the legal process represents various economic and security difficulties for the families of the imprisoned defenders.

152. The constant delays in the hearings as part of the legal process increase the levels of anxiety, uncertainty, fear, anger and insecurity which cause somatic affects in defenders deprived of liberty and the members of their families, complicating everyday decision-making; modifying their daily rhythm and habits considerably. These situations also lead to structural life changes, as defenders modify and halt their subsistence projects in order to respond to the situation, which can cause frustration, uncertainty and guilt. Paying lawyers and organising visits to try to guarantee the safety of the defender deprived of liberty increases the economic pressure on indigenous families who in many cases already suffer from poverty and/or economic problems due to historical dispossession. Another element to emphasise, which is of the utmost importance to human life and is part of the situation for criminalised defenders, is the gradual and considerable restriction of spaces for community organisation, which forms part of their human rights.

153. Private security companies play an important role in cases where defenders are criminalised and/or repressed, specifically, those who oppose the imposition of megaprojects without free, prior and informed consultation. These companies have been involved in various cases in which defenders have been imprisoned and/or injured. *"This situation is worrying because, in addition to usurping functions of State security, there is clear evidence that these companies operate with many irregularities that range from unregistered agents to their involvement in criminal structures."*<sup>160</sup>

154. The hearings in the Bernardo Caal and Abelino Chub Caal trials have been postponed several times. In the case of Abelino Chub Caal, who has been deprived of his liberty since February 2017, a hearing scheduled for April was postponed due to the absence of the lawyer representing the complainant, adding five months' delay, while he continues in detention<sup>161</sup>. In the case of Bernardo Caal Xol, the judge handling the case presented an excuse (which was later rejected), which put a halt to the proceedings, and on a second occasion, the absence of the Public Ministry delayed the hearing, resulting in its postponement, while Bernardo remains deprived of his liberty.<sup>162</sup> These constant delays in the hearings increase suffering and anguish, added to high levels of frustration and impotence when the hearings are suspended. The constant postponement of hearings in these criminal proceedings reaffirms the widespread mistrust in state institutions.

155. There is concern about defenders being subjected to long preventive detention, and their lack of separation from highly dangerous prisoners, leaving them at the mercy of the many deficiencies of a prison system suffering from overcrowding, corruption and a lack of policies for the reinsertion of inmates who live in the same spaces as

159 Velasquez, Elmer. Abelino Chub Caal, illegally arrested in El Periódico 18 May 2017. Available at:

160 Patzán, José. Illegal activities of private police persist, in Prensa Libre, 5 January 2017. Available at:

161 Defender Abelino Chub Caal continues behind bars 19 April 2018. Available at:

162 Pensamientos Guatemala, MP and Judge from Cobán prolong prison sentence of Bernardo Caal in Pensamientos Guatemala 9 July 2018. Available at:

criminalised defenders. Although hearings are sometimes suspended due to other types of circumstances<sup>163</sup> there is growing mistrust on the part of the people subjected to said processes, their families, communities and organisations that accompany them. All these facts respond to a clear repressive strategy by the State to eliminate all possible opposition, including those who fight against impunity, corruption and threaten its economic interests.

### Situation of criminalised women defenders

[Plataforma Internacional contra la Impunidad]

156. Peoples, their leaders and their authorities have been criminalised during the implementation of extractive projects, affecting community life, and the lives of women in particular. There are few women in positions of authority, but they participate extensively in community resistance struggles, and this is why criminalisation directly impacts their lives. The kinds of gender-based violence used against them and the multiple impacts on their lives are not well documented.

157. In 2018, the International Platform against Impunity documented the testimonies of 24 women defenders, located in three of the eight regions of the country: the Maya Mam Communities in the municipality of San Pablo, department of San Marcos; the Maya Q'anjob'al communities of the municipalities in Santa Cruz Barillas and Santa Eulalia, department of Huehuetenango; and the Xinca and Ladino and/or *mestizo* communities in the municipalities of San José del Golfo, and San Pedro Ayampuc, department of Guatemala. Of the total number of interviewees, 33% have been criminalised individually by having a criminal complaint brought against them and all expressed a deep fear of being detained and described how that fear affects them in their daily lives. When these WHRDs were asked how their lives have been affected by criminalisation, they identified economic, health, organisational, family and community impacts. The most common of these multiple impacts were anxiety, sadness, feelings of helplessness, hopelessness, fear, repetitive thoughts of persecution, and feelings of anger and mistrust, all of which are expressions of psychological and emotional distress.

158. The following testimony offers an example of this situation: *"I am afraid of leaving my house and even of being inside of it. A few days ago I decided to travel because I needed to sort out some paperwork in Quetzaltenango, but the reality is that outside of the municipality, you are at risk of being arrested. And most of all, I don't know if it's trauma, or fear, I don't even know what to call it, because they took one of my brothers, one day we were talking with my mum and we got a call to let us know they had arrested him and he was in jail. Since then, I feel that every time I go out, the same thing will happen to me. I feel alone, as I live alone with my baby, like something is going to happen to me, they are going to knock on the door, I don't know, I feel like they are going to take me away, I already feel like it's a disease that I have right now, that I can't go on anymore. Sometimes I tell my son, baby, please, if they ring the bell, first you have to open the window, don't open the door, because I feel like that now, like I can't live in peace"*.<sup>164</sup> This testimony expresses what the women feel when they know that arrest warrants have been issued against them; before they used their territories as protective mechanisms, but they know that they cannot take any further risks. They describe living like prisoners within their territory.

<sup>163</sup> Antonio, Simón. Political Prison: Delays of one month in Abelino Chub Caal hearing in Prensa Comunitaria 20 March 2018. Available at:  
<sup>164</sup> Sta. Eulalia, Huehuetenango. Interviewee 4

159. There is a significant risk that women will suffer sexual torture and other cruel and degrading treatment in prison.<sup>165</sup> An investigation carried out in women's prisons to establish the situation of respect for women's human rights in their journey through the criminal justice system, concluded that arrests and illegal detentions; verbal and physical aggressions; torture; sexual violence; extortion and threats constitute the most serious human rights violations for women deprived of their liberty. In addition, during pre-trial detention and while serving their sentences, acts of discrimination are committed against indigenous women. They are not provided with translation or interpreting assistance and are systematically denied access to services, such as education, health and legal assistance; and they are also assigned the heaviest and most dirty jobs within the prison.<sup>166</sup>

160. Authorised arrest warrants therefore represent a powerful form of symbolic violence used against women defenders: a type of permanent suffering that 75% of the women interviewed had been facing for 3 years, 13% for 6 years and 12% for 5 years. In one of the testimonies, reference was made to the case of another woman who was arrested, beaten and dragged from the Public Ministry to the park. She was then subjected to ill-treatment, as she was told that she was going to be stripped, that they wanted to cut off her head and cut her hair off. She was later hospitalised as a result of all the blows she suffered. The victim has refrained from reporting because she still fears the perpetrators.

161. Finally, the fact that WHRDs are not able to leave the community has serious impacts on them, they feel imprisoned for fear of being arrested if they leave their territory. Those women that have had to flee their territory to avoid being arrested consider that their living conditions and life plans have completely changed, since now their priority is to stay safe without giving up their struggle; but they know that this causes them to face significant limits and risks. The defenders affirm that since the arrival of the companies, peace has ended in their communities. They say that the situation reminds them of times during the internal armed conflict; they speak of fear, distrust, of a never-ending cycle of fleeing from persecution.

## Institutional response

[Unidad de Protección a Defensoras y Defensores de Derechos Humanos]

162. In 2008, after demands from human rights organisations, the Unit for Analysis of Attacks on Human Rights Defenders was created via a Ministerial Agreement, as a Temporary Unit within the Ministry of the Interior. In 2016 and 2017, the Unit had no legal basis as the Agreement was only enforceable until 2015, however, in the year 2018, as a result of civil society's efforts, Ministerial Agreement 23-2018 was passed, once more giving legal validity to the actions of the Unit.

163. However, in 2018, the Unit's mandate began to be distorted by a series of actions by the State authorities. Significant analysis was carried out into attacks against police officers, as well as mayors, who were publicly known to have participated in corruption, but there was no focus on analysis into attacks against human rights defenders. Likewise, the authorities have sought to limit the participation of human rights defenders by introducing accreditation in order to participate in the Unit. This means that defenders' dialogue with the authorities has been bureaucratised. A letter has also been sent to the Minister of the Interior detailing how to manage requests to the

<sup>165</sup> One example of this was the case of 41 girls who burned to death on 8 March 2017, in the Hogar Virgen de la Asunción, after they attempted escape and reported that they were being mistreated. These girls and adolescents were being held under the care of the authorities due to disobedient conduct or because their families had abandoned them.

<sup>166</sup> Morán, Lucía. Paz y Paz, Claudia y otros. **Mujeres y Prisión. Su tránsito conflictivo en la justicia penal.** Pp. 118-120

authorities for support, without taking into account the urgency of the case; above all, in cases that require the support and protection of officers from the National Civil Police to human rights defenders. This is of serious concern because the Unit has become one of the few inter-institutional spaces where human rights defenders have been involved in building adequate mechanisms for the protection of human rights defenders. The human rights defenders who are involved in the Unit have therefore not attended the meetings since April this year as a way to express their dissatisfaction with the new measures. The authorities have not taken action to improve the functioning of the Unit, which is a major concern since this indicates a clear lack of political will to improve the protection of human rights defenders in Guatemala.

### Protection framework

164. Following efforts by civil society organisations in conjunction with the Public Ministry, the state framework for the protection of human rights defenders was expanded in May 2018, when General Instruction 5-2018 was approved after four years of effort (since 2015 when the work began), establishing the *Protocol for the Investigation of Crimes Committed against Human Rights Defenders*. The General Instruction foresees specific actions to improve the work of the Public Ministry and to implement new ways to improve investigations. As a result of this effort, the Public Ministry is expected to become more specialised in the investigation of crimes committed against human rights defenders. To date only one known case of torture against human rights defenders has been prosecuted and the perpetrator convicted<sup>167</sup>.

### Suggested questions

165.1. The State should indicate the number of murders cases against human rights defenders that are currently being investigated by the Public Ministry.

165.2. The State should indicate what actions have been taken to publicise Public Ministry General Instruction 5-2018 which establishes the Protocol for the investigation of crimes committed against human rights defenders, with staff from the Public Ministry and human rights defenders. The State should also indicate whether it has included within its action plan a campaign to raise awareness on the General Instruction.

165.3. The State should indicate the number of convictions in cases of crimes committed against human rights defenders from 2014 to 2018.

165.4. The State should indicate what actions have been taken to reactivate the Unit for the Analysis of Attacks against Human Rights Defenders and the results of the Unit in the period from 2014 to 2018, specifically in the analysis of patterns of attacks against human rights defenders.

## **XI. VIOLENCE AGAINST SEXUALLY DIVERSE PERSONS/ /LGBTI (ART. 16, QUESTION 30)**

[Observatorio de Derechos Humanos e Inclusión Social de personas LGBTI, Asociación LAMBDA and Colectivo de Hombre Trans – Formación.]

## Obligatory heterosexuality as a mechanism of torture

166. The State of Guatemala has created COPREDEH, a body that is currently making efforts to develop a comprehensive public policy to guarantee the human rights of LGBTI persons. This effort has the support of the Pan American Health Organisation (PAHO), and training meetings have been held for public officials, with the participation of the Office of the Ombudsman for Sexual Diversity and representatives of civil society organisations. The process also has the support of the President's Planning and Programming Office (*Secretaría de Planificación y Programación de la Presidencia* - SEGEPLAN).

167. In Guatemala, few families understand the dimension of sexual and gender diversity, which leads many to act against their LGBTI relatives, using for example therapies to convert them to heterosexuality, forced marriage and maternity, and sexual violence used as a means to force LGBTI people become heterosexual.

168. Although homosexuality is not a crime in Guatemala and it is accepted that it is not a mental illness, a number of health professionals continue to endorse and use psychiatric and medical processes to try to "normalise" homosexual people. In many cases the aggressors are their parents, which is why the victims, faced with a moral and cultural conflict, fail to denounce the atrocities to which their families subject them in order to convert them into heterosexuals. This is the case, for example, of 24 year old "Juana"<sup>168</sup>, whose psychologist mother found her having sex with her female partner. In the days following this event, her mother took her to different psychiatrists and she was medicated in order to inhibit her sexual behaviour. The cases that come to light are a bare minimum of the practices used to alter the sexual orientation or gender identity of LGBTI people in Guatemala. One of the regional focal points of the Observatory on the Human Rights and Social Inclusion of LGBTI Persons (*Observatorio de Derechos Humanos e Inclusión Social de personas LGBTI*) in Quetzaltenango, reported that religion is another mechanism used as a method of conversion. The sexual orientation of a young lesbian was discovered by her family, who decided to send her to live in the garage of the house in uncomfortable, cold and unwelcoming conditions, and every day at 4a.m. her mother forced her to pray in order to become heterosexual. Social legitimacy, the lack of legislation to punish such acts and a legal and social system that allows these acts of conversion against LGBTI persons within their families are fertile ground to justify laws that seek to criminalise homosexuality and deem heterosexuality to be the only normal sexual orientation. Congress representatives have promoted legislative initiative 5272 that seeks to regulate heterosexuality as the norm and justify violence based on prejudice, opening the door to hate crimes based on sexual orientation and gender identity.

169. Individuals subjected to practices of heterosexualization, suffer the effects not only of the action *per se*, some LGBTI people also describe to the Observatory's local focal points in Jalapa, Quetzaltenango, Izabal and Huehuetenango, collateral effects such as depression, psychological trauma due to the abuse they receive, and an internalised constant prejudice that being who they are is unhealthy and abnormal.

170. It is important to note that hate crimes based on sexual orientation, gender identity and sexual characteristics continue in impunity. One of the most recent is the case of Zulma Alegría Robles, a transgender woman who had precautionary measures granted by the IACHR, but was nevertheless tortured and murdered in November 2016. Zulma was an eyewitness to the extrajudicial execution of OASIS Communications Assistant Rachel Paulina Marrot in 2005<sup>169</sup>.

<sup>168</sup> Case referred to the Observatorio de DDHH e Inclusión Social de personas LGBTI en Guatemala; for reasons of privacy a pseudonym has been used.

<sup>169</sup> Taken from OASIS. Informe de OASIS sobre la Situación de los Derechos Humanos de las Comunidades de la Diversidad Sexual y de Género en Guatemala, en Coalición EPU, Examen Periódico Universal EPU Tercer Ciclo, Guatemala, May 2018, pp. 54-55.

171. The persecution suffered by LGBTI persons is directly related to religious statements and declarations, which promote stigmatisation and violence against them. One example of this is a statement from the Episcopal Conference of Guatemala -CEG (2017) “*We reject gender ideology as an attack on the dignity of people, which promotes policies according to which people can claim identities other than the sexual identity of their bodies, which are either masculine or feminine*”. In June 2013, the CEG stated that “(...) *the conduct of homosexual persons is not consistent with their own personal dignity*”.

172. Another form of persecution towards LGBTI people are the so-called sexual orientation conversion therapies practiced by private entities such as the *Casa Hogar León de Judá*<sup>170</sup> and the *Asociación Cristiana de Rehabilitación Jehová Jirhe*<sup>171</sup>, with the intention of *curing* the homosexuality of homosexual children, adolescents and adults, against their will.

### Transgender People

173. In Guatemala, ill-treatment against transgender people is perpetrated by the police, prison staff and other law enforcement officers. The Committee against Torture has stated: “men, like women and children, can be victims of infractions of the Convention because of their real or apparent disagreement with the functions that society determines for each sex”<sup>172</sup>.

174. The Trans-Formation Collective (*Colectivo Trans-Formación*) also compiled the case of a trans man who could not enter the (public) School of Nursing in the municipality of Mixco in the department of Guatemala. The authorities, specifically the director of the educational centre, a State official, did not permit the use of this person’s social name and gender expression, and forced him to wear a skirt. This made him vulnerable to acts of harassment and cruel or degrading treatment within the educational centre. Under this arbitrary rule, the transgender man chose not to study because he was denigrated and his gender identity was not respected.

175. On the other hand, it is necessary to highlight sexual abuse against transgender people as a form of torture or cruel, inhuman and degrading treatment motivated by discrimination. The Special Rapporteur on violence against women has pointed out that sexual violence is combined with other forms of discrimination such as those based on race, ethnicity, religion, gender identity, social status or disability<sup>173</sup>. According to an ongoing exploratory report by the Trans-Formation Collective on transgender men in 2018, 27% of transgender men surveyed (a total of 33 people according to data collected on September 5) have suffered some type of sexual violence. Of that 27%, some 21% have suffered sexual abuse or rape and 6% have been threatened with rape. According to written testimonies, threats of sexual abuse are based on the need to “correct” or “cure” trans people, based on discrimination.

### Looked-after LGBTI Children and Adolescents

176. Most of these minors have previously suffered abuse and violence, which are the main reason for their entry into the State’s protection system. The physical and mental health needs of LGBTI children often go unnoticed and imprisonment exacerbates their trauma.

<sup>170</sup> Billy (a minor, now deceased) was interned at then orders of his mother and suffered sexual violence and other physical and emotional aggression. Expediente MP 369/2004 Caso OAV 2445-2004.

<sup>171</sup> Eduardo José Mendoza Tzi (adult) was kidnapped for twenty-two days and subjected to torture and other violations of his fundamental rights with the aim of “curing his sin” (homosexuality). He was to be interned for 3 years, but was rescued via *habeas corpus* 01141-2014-00360 interposed by the Director of OASIS on 5 February 2014. A collective *habeas corpus* was also brought by OASIS, via the PDH, to rescue some 200 people illegally deprived of their liberty Exp. ORD.GUA.1020- 2014 of 10 February 2014. This centre has 14 complaints against it and yet it continues to function. Complaint for kidnapping interposed by OASIS. Files MP001-2014-13940 and MP001-2014-14081.

<sup>172</sup> Committee against Torture. General Comment No. 2 para. 22.

<sup>173</sup> Sexual Violence and Multiple Discrimination: Report of the Special Rapporteur on violence against women (A/HRC/14/22/add.1) para. 17

177. Many LGBTI girls, boys and adolescents enter the protection system because their families expel them from their homes, considering them to be abnormal, however, this pattern of violence within families is reproduced in most of society, as institutions do not step outside of this pattern. Thus, street children and adolescents are looked after in homes that do not have a differential focus on sexual orientation and gender identity and are therefore violated in multiple ways, undermining their human dignity.

178. The tragedy of the “Hogar Seguro Virgen de la Asunción” on March 7 and 8, 2017, included Lesbian, Gay, Bisexual and Transgender children who had been denied and made invisible in the system and were marginalised and subjected to multiple forms of violence, exacerbated in the processes of institutionalisation, partly due to ignorance and confusion between sex, gender, gender identity, gender expression and sexual orientation. The System for the Protection of Children and Adolescents by the State lacks protocols for the attention and dignified treatment of LGBTI persons.

179. LGBTI children and adolescents who are expelled and/or thrown out of their family nuclei, are left without recourse to their family, and many find themselves on the streets or without protection, and so they enter the State protection mechanism. Many of these children, mainly transgender girls and boys, do not have access to differentiated attention and protection with respect to their gender identity. The system’s ignorance towards LGBTI issues means that victims who are not classified as “normal” are revictimised and do not manage to confront in a safe and effective way the different traumas they face throughout their lives.

180. After the Hogar Seguro tragedy, trans girls and adolescents were treated as second-class citizens, to the extent that no institution under the mandate of the Social Welfare Secretariat (*Secretaría de Bienestar Social – SBS*) was able to provide them with protection. Some were sent to shelters run by the Secretariat against Sexual Violence, Exploitation and Trafficking (*Secretaría contra la Violencia Sexual, Explotación y Trata de personas – SVET*) and others went for several days without being relocated despite the trauma they had suffered. This was the case of two young trans people who some institutions required to behave according to their biological sex before taking them into care. When a safe place was not found for these young people, two weeks after the event, partly due to the lack of specialist knowledge for the treatment and care of the LGBTI children, LGBTI activists were asked whether they wanted to take charge of the young women, an unfeasible situation due to the risk and insecurity conditions in which LGBTI activists live in Guatemala. This situation highlighted the lack of attention to the issue, and the fact that the State does not have inclusive and effective protection mechanisms for LGBTI persons.

181. At present, the justice system, especially in the family and childhood sectors, disintegrates many diverse families; some children are institutionalised because of the sexual orientation and/or gender identity of other members of their family. Many lesbian women and gay men have lost the parental rights to their sons and daughters because of their sexual orientation.

### **Criminalisation of the existence of LGBTI persons**

182. Guatemala is a country where homosexuality is not criminalised, but where LGBTI persons are not recognized as such. During recent years, political and religious sectors have tried to pass Bill 5272 twice to “prohibit the forbidden”. The aim of this Bill is to prohibit homosexual marriage, which is not recognised in the country, and to promote hate crimes based on prejudice under the argument that only heterosexuality will be taken as the norm.

183. Guatemala’s legislative agenda is increasingly becoming more conservative in relation to LGBTI issues. Bill 5395 on a Gender Identity Law obtained an unfavourable opinion in the Congress of the Republic of Guatemala, which means that the human rights of transgender people will remain unrecognised and, therefore, they will continue to be excluded from full enjoyment of their rights as transgender people. This leaves them vulnerable to torture and cruel, inhuman and degrading treatment because: 1) trans people do not exist legally in Guatemala because gender identity is not recognised, so they cannot be conceptualised for actions to protect them from

discrimination and 2) not being able to rectify their identity documents leaves them vulnerable to discrimination in multiple spaces, including government institutions.

184. The Human Rights Council has already told more than 70 States who still criminalise lesbian, gay, bisexual and transgender people, that there is a clear relationship between criminalising them and crimes motivated by hatred, police abuse, family and community violence and stigmatisation of a homophobic and transphobic nature<sup>174</sup>. Guatemala, a signatory to the American Convention on Human Rights, as well as other international instruments that recognise the existence and rights of LGBTI persons, is promoting this kind of legal initiative, normalising violence towards people because of their sexual orientation or gender identity, and this is a clear violation of its international obligations.

### **Suggested questions**

185.1. The State should provide information about the percentage of the Annual National Budget allocated to the LGBTI population in Guatemala and about the specific budget lines.

185.2. The State should provide information about the actions that have been implemented in its security and justice institutions to avoid cruel and inhuman treatment towards LGBTI persons.

185.3. The State should provide information about which laws or specific public policies for LGBTI persons exist to safeguard their civil, political, economic, social and cultural rights.

185.4. The State should provide information about what steps it has taken to recognise the gender identity of transgender people.

185.5. The State should provide information about the detention centres where trans women and trans men are detained and which social reintegration programs are implemented for these populations.

## **XII. CORPORAL PUNISHMENT USED AGAINST CHILDREN AND ADOLESCENTS IN DETENTION CENTRES AND CARE HOMES**

### **Situation of looked-after children and adolescents in care homes and protection centres**

[Asociación El Refugio de la Niñez]

186. The Law for the Comprehensive Protection of Children and Adolescents, regulates a series of protection measures, including empowering the courts of childhood and adolescence to be able to decree, among the protection measures, the temporary shelter of children and adolescents, in a public or private entity, which will be responsible for their shelter and protection, until their rights are restored and suitable family reintegration is viable.

187. Under this framework, two kinds of care and protection centres in Guatemala are established. On the one hand are the public centres, which depend on the Social Welfare Secretariat (SBS), a body which is currently regulated in accordance with article 15 of Governmental Agreement 101-2015, which creates the Under-Secretariat for the Protection and Care of Children and Adolescents, which in turn oversees the Directorate of Special

<sup>174</sup> A/HRC/19/41. Consejo de Derechos Humanos, 19º período de sesiones Temas 2 y 8 de la agenda. Informe anual del Alto Comisionado de las Naciones Unidas para los Derechos Humanos e informes de la Oficina del Alto Comisionado y del Secretario General Seguimiento y aplicación de la Declaración y el Programa de Acción de Viena Leyes y prácticas discriminatorias y actos de violencia cometidos contra personas por su orientación sexual e identidad de género.

Residential Protection called the “Hogar Seguro Virgen de la Asunción”. There are also private centres, which will be discussed later.

188. It was precisely in the public care and protection centre called “Hogar Seguro Virgen de la Asunción”, located in San José Pinula, department of Guatemala, that a series of human rights violations took place against the life, freedom, sexual integrity and security of the population housed there, under judicial resolution. The serious and systematic violations of the human rights of children who were under the protection of the State in the aforementioned home gave rise to recurrent complaints by young people, which ultimately led to a disproportionate and unjustifiable response from the Guatemalan State on Wednesday, March 8, 2017, when 41 girls and adolescents who had been locked in a classroom while claiming their rights burned to death and a further 15 suffered serious burns<sup>175</sup>.

189. It can be affirmed that this tragedy was caused by the irresponsibility of the Guatemalan State. At the time of the fire, the centre housed approximately 800 children and adolescents in different blocks, although the maximum capacity of the centre was a maximum of 500<sup>176</sup>. In addition, the looked-after children were not distributed according to a defined profile; victims of abuse and neglect and children belonging to gangs all lived together. Testimonies relate, in addition to the constant violation of rights, practices of abuse constituting torture and cruel, inhuman and degrading treatment, as well as the existence of internal networks of human trafficking<sup>177</sup> in which authorities of the centre were involved, removing looked-after adolescents and transferring them against their will to unknown places for sexual exploitation, according to reports. There are also accounts of how some other children and adolescents victims of rights violations, were taken from the centre and given to criminal groups, who recruited them to join gangs for the commission of criminal acts, mainly as hired killers and to carry out extortion, which in Guatemala constitutes a form of human trafficking<sup>178</sup>.

190. To date (September 2018), the Public Ministry has not carried out in depth investigations regarding the various accusations that exist regarding acts of torture, ill-treatment and trafficking in persons in the Care Home. The criminal proceedings that followed the tragedy itself, led, at the time, to the arrest of the then Secretary of the Social Welfare Secretariat, Carlos Antonio Rodas Mejía, the Undersecretary Anahí Keller and the Director of the Home, Santos Torres, who resigned from their positions as public officials shortly after what happened, as did lower-ranking officials.

191. As stated by the Inter-American Commission on Human Rights, in resolution 8/17, granting Precautionary Measure No. 958-16 “Hogar Seguro Virgen de la Asunción”, with respect to Guatemala, issued on March 12, 2017 “...after this fire, the children and adolescents, victims of burns and various physical or psychological effects required, given the seriousness of their condition, the adoption of immediate measures for their protection, in accordance with their best interests. In light of these aspects, the Commission notes with concern that, according to the information available to the applicant, in the Home there was a continuous lack of inter-institutional coordination

<sup>175</sup> Inter-American Commission on Human Rights. Resolution 8/17 Precautionary Measure No. 958-16 “Hogar Seguro Virgen de la Asunción” in relation to Guatemala 12 March 2017.

<sup>176</sup> UNICEF. *Crisis de Hogar Seguro*. Crisis de la niñez institucionalizada y del sistema de protección de la infancia en Guatemala Ocho meses después: Informe de Situación.

<sup>177</sup> Information compiled by the Asociación El Refugio de la Niñez.

<sup>178</sup> Sentencia del Juzgado de Primera Instancia de la Niñez y Adolescencia del Área Metropolitana del 12 de diciembre 2016 (E-01174-2016-1379).

*and protocols to guarantee the safety of the children and adolescents*<sup>179</sup>. This highlights the responsibility of the State in the events of March 2017 and in causing the conditions for the prior human rights violations.

192. In the request for these precautionary measures, the petitioner, the Human Rights Procurator, made it clear that, as a result of an inspection carried out in November 2016, the existence of a series of human rights violations had been noted, in particular related to the freedom and safety of the children and adolescents subject to special shelter and protection, including overcrowding greater than 100% of the capacity of the Home; a lack of inter-institutional coordination and protocols to guarantee the safety of the population; insufficient security staff; alleged abuse towards the population by some of the staff (public employees) in charge of accompanying and caring for children and adolescents (monitors).

193. During the same visit, the Human Rights Procurator expressly stated: “*Due to various expressions from personnel of the institution, we do not rule out the possibility of recruitment of children and adolescents for illegal activities for trafficking purposes*”<sup>180</sup>, an aspect that demonstrates the very high level of risk for victims in the public home in San José Pinula.

194. As early as December 2016, the Court of First Instance for Children and Adolescents of Guatemala issued a resolution (sixth judge), which obliged the Ministry of Social Welfare to introduce a series of improvements to the Home. In that resolution, the judge referred to the existence of a specific place called the “henhouse”, in which acts of sexual, physical and psychological violence were committed, among other forms of torture against the children and adolescents admitted. The judge identified violations of the rights to life, personal integrity and health, among others. That is to say, the Human Rights Ombudsman and a judicial body had already warned about facts constituting torture and ill treatment in the Home, without this leading to concrete subsequent actions by the responsible governmental authorities to investigate, prevent and punish any act that threatens or harms the life and integrity of the looked-after children and adolescents.

195. Added to the aforementioned situation are the acts of reprisal against the population that reported these abuses, which meant that the Ministry of Social Welfare itself intentionally inflicted physical and mental assault as punishment, an act that in itself must be considered to be torture<sup>181</sup>.

196. As a result of the tragedy and a series of judicial resolutions, the State was ordered, through the Social Welfare Secretariat, to close the “Virgen de la Asunción” home. As such, this institution has changed from a macro-institution, the “Hogar Virgen de la Asunción” in San José Pinula, to a model of residential homes distributed in different parts of the country, housing the children and adolescents sent to them by judicial resolution<sup>182</sup>.

197. Today, these centres, located in different parts of the urban area of Guatemala City, as well as in San Bartolomé Milpas Altas and Jocotenango, Sacatepéquez, are characterised, by the following attributes<sup>183</sup>:

<sup>179</sup> Inter-American Commission on Human Rights. Resolution 8/17 Precautionary Measure No. 958-16 “Virgen de la Asunción” Residential Institution, Guatemala, 12 March 2017 (Unofficial translation).

<sup>180</sup> Solicitud de Medidas Cautelares por parte de la Procuraduría de los Derechos Humanos a la Comisión Interamericana de Derechos Humanos, formalizada el 11 de noviembre de 2016.

<sup>181</sup> Resolución de la Procuraduría de los Derechos Humanos del 29 de octubre de 2013 (Expediente ORD.GUA.3153-2013/DE).

<sup>182</sup> Judicial proceedings within the process brought before the Court of First Instance of Children and Adolescents of the Metropolitan Area, initiated in April 2018 (E-01174-2018-0331);

<sup>183</sup> Information gathered during the verification of these centres by El Refugio de la Niñez, by virtue of a judicial mandate, within the process brought before the Court of First Instance for Children and Adolescents of the Metropolitan Area, which began in April 2018 (E-01174-2018-0331);

- Lack of a correct definition of the profiles of the population that enters, which produces interaction between children and adolescents with different characteristics. This results in a non-specialist therapeutic accompaniment, nor is the situation ideal to meet the particularities that each case presents;
- Overpopulation in the centres, thereby causing a constant violation of the rights of the population, attacking their safety;
- Lack of specialisation and suitability of the staff from the Social Welfare Secretariat for the care of looked-after children and adolescents;
- Use of property originally intended for family homes or commercial premises, which often lack the spaces or green areas and distraction necessary for the proper development of the therapeutic processes required by the population.

198. Also, in some communities where attempts have been made to open care and protection centres (for example in the urban centres of Chimaltenango and Quetzaltenango and in San Felipe de Jesús, Sacatepéquez) or where such centres have been opened (San Bartolomé Milpas Altas and Jocotenango, both in Sacatepéquez), the communities have organised, under the leadership of their municipal authorities, in collaboration with local members of congress, and have opposed or rejected the opening of these protection centres.

199. Accordingly, it can be affirmed that the Guatemalan State has not complied with its obligations set out in the aforementioned Precautionary Measures from the Inter-American Commission, since the necessary measures have not been taken to ensure that the conditions in which children and adolescents in public care homes comply with international standards. Likewise, the State has not implemented effective measures to seek family reintegration for looked-after children and adolescents in those cases where it may be appropriate.

200. Private protection centres must be registered and duly authorised by the governing body on the matter, the National Council on Adoptions (*Consejo Nacional de Adopciones* - CNA), in accordance with the Adoption Law.

201. However, the institutional weakness of the Council to fulfil this purpose has been notorious. For this reason, although there are currently 114 care and protection centres authorised by the National Council on Adoptions (CNA), at least 200 more are operating, without the CNA having the necessary institutional capacity to prevent this<sup>184</sup>. In this way, coupled with the institutional weaknesses of the State to guarantee public care and protection, there is a notorious inability to supervise the authorised private centres, and to prevent improper centres from operating<sup>185</sup>.

202. There have been reports of violations of the rights to personal integrity, sexual freedom and security in some authorised and unauthorised private protection centres, which have been presented by the Human Rights Procurator before the Courts for Children and Adolescents, an aspect that highlights the institutional weaknesses of the National Council on Adoptions in fulfilling its mandate, thus increasing, even more, the risks of the vulnerable population subject to care and protection<sup>186</sup>.

<sup>184</sup> Ibid.

<sup>185</sup> Information compiled by the El Refugio de la Niñez.

<sup>186</sup> Legal action brought before the Court of First Instance for Children and Adolescents of the Metropolitan Area, which began in April 2018 (E-01174-2018-0901)

### **XIII. CASE OF THE HOGAR SEGURO VIRGEN DE LA ASUNCIÓN**

[Bufete Jurídico de Derechos Humanos]

#### **Context of human rights violations**

203. The *Hogar Seguro Virgen de la Asunción* is a home for the temporary care and protection of children and adolescents that have had their rights threatened or violated. It houses minors of both sexes between eight to seventeen years of age with care needs that include the after-effects of physical and/or sexual abuse, abandonment, dependence on addictive substances, irregular adoption, street children, children with disabilities and victims of trafficking. This wide diversity of profiles makes it impossible to provide effective and specialist care and assistance, in a manner contrary to applicable international standards on the rights of children and adolescents<sup>187</sup>.

204. The Hogar Seguro Virgen de la Asunción has been the subject of several accusations, both nationally and internationally, of multiple human rights violations due to its poor conditions and inhumane treatment of children, including overcrowding, corporal punishment, forced exercise, expired food or food in poor condition, as well as complaints of sexual violence and human trafficking.

#### **Events that occurred on March 7 and 8, 2017**

205. On March 7, 2017, female adolescent residents of the Hogar Seguro Virgen de la Asunción left the home to escape the inhumane treatment to which they were being subjected. Agents from the National Civil Police (hereinafter “PNC”) located, captured and detained the adolescents who had left the home, using verbal and physical violence, even using their firearms to intimidate them. The agents gathered the adolescents together outside the Home, where they were detained for approximately nine hours, during which time they suffered harassment and cruel, inhuman and degrading treatment by the PNC officers that violated their human dignity, and to an even greater extent went against the best interests of the child. Several of the girls received blows from truncheons and police shields, they were made to lie on the ground face down, handcuffed, some were sprayed with pepper spray, and an electric shock device was used on them. According to information contained in the investigation carried out by the Public Ministry, the President of the Republic, Jimmy Morales, was notified of what was happening in the Hogar Seguro Virgen de la Asunción, and he did not ask the PNC to leave the place, instead ordering that police reinforcement be sent.

206. Rocío Murillo, the Justice of the Peace in the municipality of San José Pinula, refused the *habeas corpus* requested in favour of the children and adolescents, ignoring their significant right to recourse due to the imminent risk that was reported, under this measure that is used when there is a high risk to the integrity and the life of the person or persons for whom it is being invoked. Faced with this refusal and the need to resolve the adolescents’ situation, at approximately midnight, the authorities of the Home, the SBS, the Human Rights Procurator’s Office (hereafter the “PGN”) and the PNC made the decision to admit the adolescents to the Home facilities. Fifty-six female adolescents were locked away under conditions of extreme overcrowding in a small classroom that meant each of them had less than one metre of space (the classroom measures 6.8 by 7 metres). The male adolescents were locked in a higher capacity auditorium, also under lock and key.

<sup>187</sup> As observed by the United Nations Special Rapporteur on the sale of children, child prostitution and the use of children in pornography, NajatMaallaM’jid, in their report on Guatemala: A/HRC/22/54/add.1, 21 January 2013, para. 89.

207. After locking up the adolescents, the authorities of the Home, the SBS and the PGN left the place, leaving them in the custody of the PNC. In the case of the female adolescents, they were guarded by 20 female officers. The adolescents spent all morning in the classroom in inhuman conditions, without being able to change or bathe, after walking in a river of sewage in their attempt to leave the home, without drinking water, without sheets, pillows or jackets against the cold, without an emergency exit, and they were denied access to toilets, which forced them to relieve their physiological needs in the classroom. As a result of the multiple abuses by state authorities and in an extremely desperate attempt to attract attention and to have the door opened, the victims set fire to a mat. The fire spread rapidly inside the classroom, however, the sub-Inspector of the PNC who was carrying the key and was in charge of the group of policewomen, refused to open the door for a period of nine minutes<sup>188</sup>, preventing the departure of the teenagers in time. When she opened the door, the fire had already produced tragic consequences: 19 teenagers died in the Home, another 22 in the healthcare facilities to which they were transferred, and 15 – one of whom was pregnant - survived with very serious injuries, several of them with permanent scars on their body and face, and suffering amputations.

208. On March 8, 2017, after the fire, the male adolescents were kept in detention in the auditorium until the afternoon. Meanwhile, the Justice of the Peace of the Municipality of San José Pínula proceeded to order the reinstatement of several children and adolescents who were in the Home, without making the appropriate and corresponding assessment of the appropriate care modality. Several days after the fire, the survivors were transferred to the United States, where they received specialist treatment for their injuries. This was made possible by the efforts of the Alba Kenneth Operative Alert Unit in the Human Rights Procurator's Office.

### Investigation and criminal prosecution

209. The investigation into the facts began quickly and a criminal proceeding is being carried out against the State authorities for their individual responsibility in the events. On April 7, 2017, a writ of indictment was issued against a first group of three defendants<sup>189</sup>, authorities of the SBS and the Hogar Seguro Virgen de la Asunción, for the crimes of abuse of authority, breach of duty, mistreatment of minors, culpable homicide and serious injuries (which was subsequently reformulated to wrongful injuries). These criminal charges do not reflect the seriousness of the actions, but the most important aspect is that the Public Ministry has not included the context of serious human rights violations that were committed by public officials and employees against the children and adolescents affected by the events that occurred on March 7 and 8, 2017; a series of serious antecedents that demonstrate systematic and widespread patterns of inhuman and degrading ill-treatment that violate human dignity and even more so the principle of the best interests of the child. The oral and public trial for this first group is scheduled for February 2019.

210. On June 24, 2017, an indictment was issued against a second group of five defendants from the Hogar Seguro Virgen de la Asunción, the Human Rights Procurator's Office and the PNC, for the same crimes as the first group. After several events that lengthened the process, the discussion of the final charges (intermediate stage) is still pending, therefore it has not been determined whether they will be sent to oral and public trial and for what crimes.

<sup>188</sup> Shouting words like "Let the bitches burn" (*Que se quemem esas hijas de la gran puta*), according to declarations made in the Public Ministry investigation.

<sup>189</sup> See the detailed report of the case for the names and functions of the people charged.

236. The first hearings of a third group of accused persons are scheduled for the week of January 14 to 18, 2019. The accused are the Justice of the Peace from the Municipality of San José Pinula for the crimes of ideological falsification, delay of justice, and breach of duties; her secretary for the crime of ideological falsification; staff of the Hogar Seguro Virgen de la Asunción and the SBS for the same crimes as the first two groups.

211. It should also be noted that a request for a preliminary hearing was filed against the President of the Republic, Jimmy Morales Cabrera, following a complaint filed by two congressional representatives before the Public Ministry for his participation in the events of 7 and 8, 2017. However, this request was rejected by the Supreme Court of Justice (CSJ) on the grounds that the preliminary hearing was political and spurious, and that it lacked evidentiary elements<sup>190</sup>.

## Concerns

212. The criminal proceedings described above raise many concerns that we consider it pertinent to inform the Committee. In the first place, we are concerned about the legal charges made by the Public Ministry and the comptroller judges against the accused in relation to the events. The minor offences do not reflect the seriousness of the events, in which specialist public officials in charge of guaranteeing the human rights of children, used State power in a totally disproportionate way against a vulnerable population, resulting in the deaths and tragic injuries of 56 teenagers. Serious physical and psychological sufferings were inflicted on the adolescents on March 7 and 8, 2017 to intimidate and punish them for the demands they were making against the abuses they had to endure within this State protection home. Despite having the obligation to implement the Manual for the effective investigation of torture and other cruel, inhuman or degrading treatment or punishment (Istanbul Protocol) when there are indications of acts of torture<sup>191</sup>, neither the Public Ministry nor the comptroller judges gave it the necessary importance and did not give value to the psychological effects of torture.

213. The requests of the victims' representatives to change the legal charges within the criminal proceedings, to include the crimes of torture, extrajudicial execution and illegal detention, have been rejected by the comptroller judges. Their analysis reflects their limited knowledge of the crime of torture and applicable international standards, in particular regarding the permissible purposes of torture that include intimidation, as well as the psychological effects of torture as recognised in the Istanbul Protocol. The psychological and physical sufferings of the survivors still persist, several of them have post-traumatic stress and other emotional impacts; likewise, their families suffer from the emotional impact of the events, which is aggravated by the stigmatisation they are subjected to. The case also demonstrates the consequences of not adapting the crime of torture in domestic law to international standards, as recommended by the Committee<sup>192</sup> and the Constitutional Court of Guatemala<sup>193</sup>.

<sup>190</sup> Corte Suprema de Justicia, Antejuicio 162-2017, 22 June 2017; Corte de Constitucionalidad, Expediente 3157-2017, 20 March 2018; Corte Suprema de Justicia, Antejuicio 162-2017, 4 April 2018.

<sup>191</sup> Fiscal General y Jefe del Ministerio Público, Instrucción General para la Investigación del Delito de Tortura, número 13-2008, art. 2.

<sup>192</sup> CAT/C/GTM/CO/4, para. 10; CAT/C/GTM/CO/5-6, para. 8

<sup>193</sup> Inconstitutionality due to omission. Sentence of 17 July 2012, within case file 1822-2011. Available at:

214. Secondly, there are concerns regarding the independence and impartiality of the judges who will hear the case. One aspect of special concern is the participation of the PGN in multiple roles. Firstly, **the PGN is acting on behalf of the State of Guatemala as the aggrieved party**, for damages caused to the facilities of the Hogar Seguro Virgen de la Asunción property belonging to the State. It is worrying that the State is in this way looking to blame the adolescents for damages they may have caused, seeking to criminalise the victims. Secondly, the PGN is acting as a private prosecutor on behalf of the adolescent survivors, citing a mandate granted by law<sup>194</sup>, which has been questioned by the complainants<sup>195</sup>. Thirdly, the PGN was called as a third party civilly sued for the joint and several liabilities of the State with the public officials responsible for the damages caused<sup>196</sup>.

215. This multiple participation of the PGN is even more worrying considering that one of the defendants in the second group, Harold Augusto Flores Valenzuela, is the Chief of the Procurator's Office for Children and Adolescents in the PGN, and continues to hold office despite the criminal proceedings against him for acts committed on March 7 and 8, 2017 in the exercise of his functions. Considering that the Procurator's Office for Children and Adolescents is in charge of the legal representation of children and adolescents in judicial proceedings<sup>197</sup>, in this case it means that Harold Flores is in charge of the representation of the surviving plaintiffs, and at the same time is accused of committing crimes against them: he is as a representative of the victims and an accused party in the same criminal proceedings.

216. In the third place, the multiple fragmentation of the case constitutes a major obstacle to the comprehensive investigation of the facts, and is a factor in impunity<sup>198</sup>. On the one hand, there is fragmentation at the procedural level, since the defendants are being prosecuted in three different groups despite the case being related to the same events, which is a drain on both the justice system and the Public Ministry and the private prosecutors. In addition, as a result of the refusal of the comptroller judge to classify the events according to their gravity, the complainant organisation Mujeres Transformando el Mundo has filed a new complaint in which it reports the acts of torture committed before, during and after March 7 and 8, 2017<sup>199</sup>. However, the judge has rejected the request to

<sup>194</sup> Article 1 of Decree 512. The Public Ministry (now the PGN) is an auxiliary institution of the Courts and the Public Administration, which is in charge of: ... 2. Temporarily representing the absent minors, as long as they do not have a legitimate representative according to the Civil Code and other laws;

<sup>195</sup> See detailed report by the BDH sent directly to the CAT on 15 October 2018.

<sup>196</sup> Constitución Política de la República de Guatemala, artículo 155: "*Responsabilidad por infracción a la ley. Cuando un dignatario, funcionario o trabajador del Estado, en el ejercicio de su cargo, infrinja la ley en perjuicio de particulares, el Estado o la institución estatal a quien sirva, será solidariamente responsable por los daños y perjuicios que se causaren.*"

<sup>197</sup> Ley de Protección Integral de la Niñez y Adolescencia, Decreto 27-2003, artículo 108(a).

<sup>198</sup> The Inter-American Court of Human Rights has defined impunity as "*la falta en su conjunto de investigación, persecución, captura, enjuiciamiento y condena de los responsables de las violaciones de los derechos protegidos por la Convención Americana, toda vez que el Estado tiene la obligación de combatir tal situación por todos los medios legales disponibles ya que la impunidad propicia la repetición crónica de las violaciones de derechos humanos y la total indefensión de las víctimas y de sus familiares*". Inter-American Court of Human Rights. Case of Bámaca Velásquez V. Guatemala. Merits. Sentence of 25 November 2000. Series C No. 70, para. 211.

<sup>199</sup> Ministerio Público, Fiscalía de Sección de Delitos contra la Niñez y Adolescentes víctimas, Expediente No. MP001/2017/76971.

accumulate the cases, despite that fact that they are in part related to the same facts and the same accused persons<sup>200</sup>.

217. On the other hand, there is fragmentation in the investigation of the facts, preventing them from being considered in a comprehensive manner with a human rights approach and taking into account the previous context of multiple violations that existed within the Hogar Seguro Virgen de la Asunción. The main case is being investigated by the Prosecutor's on femicide and crimes against women within the Public Ministry, and is limited to the acts committed against the female adolescents. The acts committed against adolescent males are the responsibility of the Prosecutor for crimes against Childhood and Adolescent Victims. No progress is known within this case file. The Prosecutor for Crimes against Childhood and Adolescent Victims is also in charge of investigating the torture complaint filed by the organisation Mujeres Transformando el Mundo, which considers both the male and female adolescents as victims. Apart from the events of March 7 and 8, 2017, there are several previous complaints related to the Hogar Seguro Virgen de la Asunción, including allegations of trafficking which are being investigated by the Prosecutor on Trafficking. Several arrests were also recently made of ex-employees from the Home for the death of a teenager inside the Home's facilities in 2013<sup>201</sup>. Mrs. Brenda Julissa Chamám Pacay, who is being prosecuted for the events of March 7 and 8, 2017, was arrested on this occasion, forcing the suspension and rescheduling of the intermediate stage hearing of the second group of defendants in this proceeding in the absence of Mrs. Chamám, causing additional delays. The investigation into the events of 2013 is the responsibility of the Prosecutor for administrative crimes.

218. All this results in cancelling out the useful effects of judicial mechanisms in Guatemala, which become ineffective, leading to a context of impunity.

### Reparation initiatives

219. In relation to the obligation of the State of Guatemala to make comprehensive reparation for the damages caused not only by the events of March 7 and 8, 2017, but also by the previous human rights violations committed while the minors were under state protection, the attention given by the corresponding authorities has been disjointed and has lacked the proper approach. There is no comprehensive approach to reparation and fair compensation, much less specialist attention for the traumas suffered by children and their families.

220. On August 22, 2018, the Congress of the Republic approved the "*law declaring March 8 a national day for the victims of the tragedy that occurred in the hogar seguro 'virgen de la asunción', and approving a payment to the surviving girls and adolescents*"<sup>202</sup>, which became effective on September 21, 2018. Although the law may be a positive initiative for survivors, several elements weaken this initiative and do not correspond to a comprehensive approach to reparation. It is alarming that the SBS, the institution responsible for the victims at the time of the events of March 7 and 8, 2017, is in charge of administering the payments to the survivors until they reach adulthood. Also, the law provides the SBS and the Congress with a great deal of power and control over the lives of the survivors, since they will have the details of their expenses in monthly or quarterly reports. The Congress will also have the faculty to suspend the reparation payment to the victims, under other criteria unrelated to the

<sup>200</sup> Juzgado Cuarto de Primera Instancia Penal, Narcoactividad y Delitos Contra el Ambiente de Guatemala, Expediente 1069-2017-000123, audiencia de fecha 6 de marzo 2018.

<sup>201</sup> Pia Flores, "La explicación breve del caso de la niña que murió en el cuarto de la reflexión", Nómada, 12 October 2018. Available at: .

<sup>202</sup> Congreso de la República, Decreto Número 16-2018, Diario de Centro América, No. 56 Tomo CCCX, 20 de septiembre de 2018.

obligation to provide reparation. Failure to comply with the obligation to file reports, as well as negligence in the use of the resources, are grounds for temporary suspension of the payment. A definitive suspension will be declared in cases where an illegal act is found to have been committed, and a conviction made<sup>203</sup>.

221. It is important to mention other positive reparation initiatives, which must be prioritised by the State of Guatemala. On the one hand, during the process to protect one survivor's childhood, a final sentence for the restitution of rights was issued, in which comprehensive reparation measures were granted not only to the survivor who was part of the process, but also to all the survivors of the events. These measures have a comprehensive and transformative approach, addressing all the needs of the victims and their families. In addition, they involve the different State institutions in charge of ensuring respect for and guaranteeing the rights of children. It is essential that the State implement this sentence in a completely diligent manner in order to repair the damages caused, and further, that this becomes a State Policy in relation to the comprehensive protection and reparation of vulnerable children and adolescents whose rights have been violated by the State.

### **Suggested questions<sup>204</sup>:**

223.1. The State should provide information about the actions it has taken to investigate the acts of torture, cruel, inhuman and degrading treatment reported by the adolescents of the Hogar Seguro Virgen de la Asunción and allegedly committed by public officials and employees in the exercise of their functions, and in what way the Istanbul Protocol has been considered and implemented in the investigation of the case, directly applicable to prosecutors from the Public Ministry via General Instruction 13-2008

223.2. The State should provide information about the reasons why Harold Augusto Flores Valenzuela remains in his position as Head of the Child and Adolescent Prosecutor's Office despite the criminal proceedings brought against him for serious acts committed in the exercise of his functions as a result of his presence on the day of the events and having taken the decision in conjunction with authorities of the SBS to lock up adolescents in inhumane conditions.

223.3. The State should provide information about whether there is a plan for the comprehensive reparation of the damages caused to the victims, both male and female, as well as their relatives, what its stages are and how they will be implemented.

223.4. The State should provide information about what it has done to develop an effective State policy in relation to the comprehensive protection and reparation of vulnerable children and those whose rights have been violated by the State, that provide immediate and sustainable solutions.

223.5. The State should provide information about the actions it has taken to identify the underlying problems that led to the events of March 7 and 8, 2017 and to implement institutional reforms to the child protection system as a guarantee of non-repetition of the facts.

<sup>203</sup> art. 5, primer párrafo, art 6, primer párrafo, art 7, segundo y tercer párrafo leg.cit.

<sup>204</sup> See report on this case for the full list of questions.

## **XIV. ABOLITION OF THE DEATH PENALTY (QUESTION 33)**

[Instituto de Estudios Comparados en Ciencias Penales de Guatemala]

[Instituto de Estudios Comparados en Ciencias Penales de Guatemala and UDEFEGUA]

224. Although in the period covered by this report there was no legislative effort to abolish the death penalty at the level of ordinary legislation, the Constitutional Court, in two judgments<sup>205</sup> that respond to two complaints of unconstitutionality<sup>206</sup> of a partial and general nature, brought by private lawyers, in which the preambles to the articles that established the death penalty in the Penal Code<sup>207</sup> were declared unconstitutional, as well as in the Law against Narco-activity<sup>208</sup>, thereby removing them from national legislation.

225. Specifically, these are the following articles or offences:

a) in the Criminal Code: Parricide (art. 131), murder (art. 132), extrajudicial execution (art. 132 bis), kidnapping or plagiarism (art. 201), enforced disappearance (art. 201 ter), and case of death (art. 383); in most of these criminal types, the punishment was provided “*if the circumstances of the act, the manner of carrying it out and the determining motives, reveal a greater and particular danger in the perpetrator*”<sup>209</sup>.

b) in the Law against Narcoactivity: art 12, which contains the catalogue of penalties applicable under that law and had the death penalty as one of them; and art 52, which established the death penalty if the punishable act had caused the death of one or more persons, as an alternative to a penalty of thirty years in prison.

226. The majority of the preambles to the aforementioned articles were declared unconstitutional because they were subsequent to the ratification of the American Convention on Human Rights by Guatemala and did not comply with the provisions of Article 4, numeral 2 of said Convention.

### **Suggested question**

227. The State should provide information about the activities it has carried out to inform the population, subjects of rights, about progress made to suppress the death penalty in criminal law.

## **XV. EXCESSIVE USE OF FORCE DURING SOCIAL PROTESTS AND EVICTIONS**

### **Cruel, inhuman or degrading treatments in the context of evictions in Guatemala (article 16 of the Convention).**

[Bufete Jurídico de Derechos Humanos]

<sup>205</sup> Exp. 1097-2015, sentencia de 11/02/2016 (surte efectos a partir del 23/03/2016) con respecto al delito de asesinato (art 132 CP); Exp. 5986-2016, sentencia de 24/10/2017 (surte efectos a partir del 07/11/2018) con respecto a los demás delitos mencionados del Código Penal, así como la Ley contra la Narcoactividad.

<sup>206</sup> Artículos 133 al 142 Ley de Amparo, Exhibición Personal y de Constitucionalidad, Decreto 1-86 de la Asamblea Nacional Constituyente.

<sup>207</sup> Decreto 17-73 del Congreso de la República

<sup>208</sup> Decreto 48-92 del Congreso de la República

<sup>209</sup> Por ejemplo, los art. 131, 132, 383; y el 132 bis con redacción similar: por una “mayor peligrosidad del agente”

228. Forced eviction and the destruction and burning of homes, as well as appropriation of movable property and farm animals of families, is one of the patterns observed in community evictions, which can affect several hundred families, and which violate the prohibition of committing cruel, inhuman and degrading acts, in accordance with the general obligations of the State of Guatemala established the Convention against Torture and other cruel, inhuman and degrading treatment or punishment. It is also important to mention a statement made by a spokesperson from the Office of the United Nations High Commissioner for Human Rights [(...) Given the widespread problem of land tenure insecurity in Guatemala, forced evictions are common. Such evictions should only be carried out as a last resort, after exhausting all other alternatives, and in accordance with adequate measures before, during and following the eviction, with special protection provided for women, children and indigenous peoples, among others]

210.

229. Evictions are carried out in Guatemala with excessive use of force by agents from the State security forces, a situation which, as confirmed by the CAT and the Special Rapporteur on torture in his 2017 report<sup>211</sup> on this issue, can violate the absolute prohibition of torture and ill-treatment. The use of force in these contexts includes the arrival without prior notification or notice (and often without a legal order) of a disproportionate or massive number of heavily armed State agents (in several cases there have been reports of joint operations between the police with the army and/or private security companies), who surround and point their weapons at the communities, and ask them to leave immediately; they then burn and destroy houses and property, in front of minors and elders from the community, depriving them of shelter and sustenance, forcing them to abandon their place of residence and to rebuild their lives in another place; on site arrests, including of pregnant persons; use of tear gas; this set of interferences, events and circumstances cause a very high level of anguish, which can reach the level of terror, in the evicted communities, aggravated when the threats become real acts (physical aggression, arrests, use of firearms, etc.)<sup>212</sup>.

230. The ECHR has also considered that “*bearing in mind in particular the manner in which the applicants’ homes were destroyed and their personal circumstances, it is clear that they must have been caused suffering of sufficient severity for the acts of the security forces to be categorised as inhuman treatment within the meaning of Article 3*”<sup>213</sup>. This criterion has also been supported by the Inter-American Court of Human Rights (hereinafter “IACtHR”) because the people whose homes were destroyed, were forced to move having lost their home and all their belongings, causing them particularly serious suffering, which deserves greater attention<sup>214</sup>.

231. For the use of force to be justified, the principles of **legality, absolute necessity and proportionality** must be met.

232. In the case of the indicated communities, the following should be considered:

- a. Regarding the **principle of legality**, the State of Guatemala has in force General Instruction 3-2012 of the Public Ministry and the PNC’s protocols for action, which include certain minimum guarantees of respect for human rights in eviction processes, however, these are insufficient and ineffective in practice. It should also

<sup>210</sup> OHCHR. Press briefing note on Iraq, Al Jazeera, Venezuela and Guatemala. 30 June 2017. Available at:

<sup>211</sup> Report of the Special Rapporteur on torture and cruel, inhuman or degrading treatment, Nils Melzer, “Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment of punishment”, Doc. ONU A/72/178, 20 July 2017.

<sup>212</sup> **IACtHR. Case of the Ituango Massacres Vs. Colombia. Sentence of 1 July 2006. Series C No. 148.** The Court here follows the criteria of the following cases Corte IDH. **Case of the Ituango Massacres Vs. Colombia. Sentence of 1 July 2006. Series C No. 148.** Para. 168; **IACtHR. Case of the Moiwana Community Vs. Surinam. Excepciones Preliminares, Merits, Reparations and Costs. Sentence 15 June 2005. Series C No. 124.** para. 110; and **IACtHR. Case of Ricardo Canese Vs. Paraguay. Merits, Reparations and Costs. Sentence of 31 August 2004. Series C No. 111.** para. 115. Similarly, see, United Nations Committee on Human Rights, General Comment n°. 27 of 2 November 1999, para. 1, 4, 5 y 19.

<sup>213</sup> European Court of Human Rights. **Case of Selçuk and Asker Vs. Turkey.** (12/1997/796/998-999). Sentence of 24 April 1998. Para. 78.

<sup>214</sup> **IACtHR. Case of the Ituango Massacres Vs. Colombia. Sentence of 1 July 2006. Series C No. 148. Para. 270.**

be noted that evictions are rarely notified in advance or preceded by a consultation process with the communities to find alternatives;

- b. The use of force in evictions is **unnecessary**, because agents from the State security forces, in the performance of their duties, must use as far as possible, non-violent means before resorting to the use of force, except in cases of self-defence or against third parties, in the face of imminent danger of death or serious injury; circumstances that do not occur in the cases that arise because they are civil, indigenous and peasant protests, without the use of weapons, which do not represent a real danger to the State security forces.
- c. With regards to **proportionality**, it has been observed that evictions usually end with the burning of houses and crops, destruction of property, and the appropriation for the purpose of consumption and sale, of domestic animals owned by the community, measures that are in no way justifiable, moderate or proportional, and that are even more traumatic and serious if we take into account that they are a repetition of the practices carried out by the State during the Internal Armed Conflict.

233. Eviction orders are granted within criminal proceedings, as a precautionary measure for the protection of property, and they are decreed without carrying out a hearing with the people from the affected communities. This is because it is considered that the community members who live on the land where the eviction has been ordered are committing the crime that is attributed to them *in flagrante delicto* (because of their presence on the land), and so arrest warrants are not required to stop them.

234. In addition, the people affected are forcibly displaced from their communities, which causes humanitarian crises and they are forced to live in conditions that are not compatible with the dignity of the human being, and which can result in loss of life, especially in children and old people, and miscarriages in pregnant women.

235. It should be recalled that the Committee against Torture (hereinafter the "CAT") noted the recognition by the State of Guatemala of *"its responsibility in emblematic cases of human rights violations substantiated under the Inter-American system for the protection of human rights and the announcement of willingness likewise to recognise its responsibility in other pending cases"*<sup>215</sup>, meaning that cases involving serious human rights violations cannot continue in impunity. In spite of the State's international obligations and this recognition, to our knowledge no actions have yet been initiated to investigate the facts that have given rise to five precautionary measures related to evictions of indigenous and peasant communities<sup>216</sup>, or to apply the administrative, disciplinary or criminal sanctions to be determined in the course of the investigation, where appropriate.

236. Forced evictions primarily affect indigenous and peasant communities, leaving them in situations of extreme vulnerability; without access to land to cultivate, without adequate food in nutritional and cultural terms, or access to contaminated drinking water, which has a direct impact on gastrointestinal diseases, living in improvised housing, which causes respiratory or skin diseases, all of which affects the psychological and moral integrity of the evicted persons, who are crowded into makeshift camps<sup>217</sup>.

237. We also emphasise that the insufficient attention to basic assistance during displacement can compromise the State's responsibility with respect to the right to personal integrity, if the physical and mental conditions that the victims have to face are not in accordance with the minimum standards required. It is important to remember that

<sup>215</sup> Committee against Torture. Report on the fifty-sixth period of sessions. Supplement No. 44 (A/56/44), 18 June 2001. Para. 71 b).

<sup>216</sup> The illustrious IACHR has granted precautionary measures in favour of: 14 Q'echi indigenous communities from the Municipality of Panzos, Laguna Larga, families from the Maya Q'eqchi Community "Nueva Semuy Chacchilla", indigenous families from the Chaab'ilCh'och' Community and families from the Maya Q'ueqchi Community "La Cumbre Sa'kuxhá".

<sup>217</sup> IACtHR. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Sentence of 24 August 2010. Series C No. 214. Para. 244. IACtHR. *Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operación Génesis) v. Colombia*. Preliminary Exceptions, Merits, Reparations, and Costs. Sentence of 20 November 2013. Para. 323.

international organisations have declared violations of personal integrity related to displacement in cases where there were specific impacts in addition to those caused by displacement<sup>218</sup>.

### **Eviction of the Community of Nueva Esperanza, Sierra Del Lacandon, Libertad, Petén.**

238. The eviction of the La Nueva Esperanza community in the Sierra del Lacandón, La Libertad<sup>219</sup>, occurred on August 22, 2011. Sixty-six families were evicted, violently, amid gunfire and destruction of their crops by the army and the National Civil Police. To this day, the evicted families continue to live in critical conditions and without dignified living conditions.

239. A year and a half after the displacement, the government of Guatemala relocated them on February 28, 2013, to a new farm named Ebenecer, located on the side of the road leading to Melchor de Mencos, in the municipality of Flores, El Petén. On that occasion, the government made several promises, including housing, urbanisation of streets, drinking water installation, school, electric power, health post, etc., none of which has been fulfilled.

### **Eviction of the Laguna Larga, Libertad, Petén.**

240. The operation consisted of some 1,450 soldiers, police, agents from the Nature Protection Division of the National Civil Police (DIPRONA) and officials from the National Council of Protected Areas; accompanied by the Human Rights Procurator's Auxiliary in charge of "monitoring" the eviction<sup>220</sup>. Around 490 community members<sup>221</sup>, reliving the suffering they endured during the armed conflict, made the decision to leave the village hours earlier so as not to suffer a violent eviction, protect their lives and integrity and avoid a confrontation that without doubt would have brought fatal consequences and greater tragedy.

241. Thus, from the night of June 1, 2017, the families began to collect their belongings and leave their homes to travel to the border between Mexico and Guatemala, which is three kilometres from the village<sup>222</sup>. According to one of the inhabitants, some of them went to the nearest town, El Desengaño, to ask for refuge with the town commissioner, but when they were not granted this refuge, they chose to remain at the border, like the community of Nueva Esperanza had done in past years<sup>223</sup>, trying to find security in this border area of less than 25 metres wide.

242. To date, the State has still not complied with the precautionary measure granted by the Inter-American Commission on Human Rights and the evicted persons continue to live in inhumane conditions that put their lives and integrity at risk of irreparable harm, as illustrated by the death of a girl, 30 hours after she was born on July 24, 2018, due to lack of medical attention<sup>224</sup>.

<sup>218</sup> IACtHR. *Case of Yarce and others v. Colombia*. Exceptions, Merits, Reparations, and Costs. Sentence of 22 November 2016. Para. 226.

<sup>219</sup> Ibid.

<sup>220</sup> In the report presented by the PDH on the eviction, the human rights violations are not registered:

<sup>221</sup> Plaza Pública. Laguna larga: un desalojo en nombre de la naturaleza. 17 July 2017. Available at: <https://www.plazapublica.com.gt/content/laguna-larga-un-desalojo-en-nombre-de-la-naturaleza>

<sup>222</sup> Espoir Chiapas. Desplazados de Guatemala en condición de emergencia en México. 5 June 2017. Available at:

<sup>223</sup> El drama de familias desplazadas de Petén .

<sup>224</sup> See, among others, a statement from the International Commission of Jurists (ICJ) on 26 July 2018:

## Community of Chab'il Cho'ch, Livingston, Izabal.

243. The Community of Chab'il Cho'ch was notified about the eviction on the same day it took place, namely October 30, 2017. The eviction ended the following day. Approximately 1157 police officers and other private individuals hired by the complainant arrived to evict around 180 people. Despite the fact that the community had initiated a process of land recovery, it was adjudicated to the complainant, without guarantees of due process.

## Community of La Esperanza in Fraijanes, Santa Rosa

244. On May 19, 2018 an international delegation<sup>225</sup> visited a community of 350 families (around 1200 people) that has been evicted twice in the last year, but that has remained in nearby lands since they “need housing and a piece of land to sow” and have collective rights to their land acquired through a title. The community members reported that, during the most recent eviction, at 6 o'clock in the morning, some 5,000 police officers arrived, pointing guns at them, without prior notification, and gave them half an hour to leave. Police officers took several trucks of objects from the community, and burned documentation. During the eviction they stepped on and destroyed the families' belongings, including women's underwear, threatened to take the children and alerted them that “if you do not leave here, we're going to finish you all off”. They also threatened to arrest a pregnant woman, shoved and insulted community members and did not allow the police action to be recorded or photographed. The displaced persons reported that they had some land titles that they had been able to collectively acquire, but that they had been dispossessed through a judicial process that did not respect the basic procedural guarantees. The community did not only face warnings and violence during the evictions, which were attempts to make them leave the area, the villagers also explained how shots were fired at night to intimidate them, and several community members were shot by anonymous people in the vicinity and this led to “constant anxiety”, and to a young person “losing his mind” and being transferred to “Federico Mora”. It should be noted that according to statements from the community, National Civil Police anti-narcotics units have been installed in the vicinity of the community as a form of intimidation towards them.

## Excessive use of force during Public Protests

[ECAP and the Unidad de Protección a Defensoras y Defensores de Derechos Humanos, Guatemala]

245. The following cases exemplify the use of excessive force during peaceful demonstrations and protests:

## Peaceful Resistance in La Puya

246. On March 2, 2012, a group of people from communities near the *Progreso VII Derivado* mining project, located between the municipalities of San José del Golfo and San Pedro Ayampuc in the department of Guatemala, organised a sit-in at the entrance of the mining project with the intention of preventing the entry of machinery and materials that enable the mining to take place.

247. After the installation of the sit-in outside the mining area, several violent attempts were made to enter the machinery and those people who remained in the sit-in suffered serious harassment. Workers from the mining company intimidated, threatened and insulted the men, women and children taking part in the sit-in. There were

<sup>225</sup> The visit of the delegation comprised of members of the OMCT, UDEFEGUA and FCSPP - CCCT (Colombia), was carried out as part of an international OMCT visit to Guatemala.

multiple reports of intimidation and aggression, to the point that sentences have been brought against former members of the security staff of the company who were “convicted of coercion and threats in a hearing on July 3, 2013”<sup>226</sup>.

248. On May 23, 2014, a sit-in by the La Puya Peaceful Resistance (*Resistencia Pacífica La Puya*) was evicted by agents of the PNC Special Forces<sup>227</sup>, a few metres from the entrance to the San Rafael mining company. The eviction took place as part of high-level dialogue held three days earlier between the community and public institutions, which was suspended due to a lack of compliance by the State when it did not accept the participation of an organisation as observers at the table. The State used around 500 agents from the Special Forces Division of the PNC. The excessive use of force included using tear gas against the members of the Resistance, as well as throwing sticks and stones at them. According to information from the Unit for the Protection of Human Rights Defenders, 23 people were injured, one of whom was seriously wounded and taken to hospital<sup>228</sup>. Attempts were made to arrest several leaders and representatives of the resistance; members of human rights organisations that were accompanying the eviction were asked to show their identification. Two months later, two companions from Peace Brigades International were summoned by the Migration General Directorate to be informed of the cancellation of their temporary residence permits<sup>229</sup>. In 2015, 250 police from the PNC arrived at a sit-in in San Pedro Ayampuc with the aim of evicting members of the La Puya Peace Resistance. Members of the resistance were kicked and beaten, with 6 people suffering injuries.

249. On June 29, 2018, more than a thousand members of the Resistance Group from Coatepeque Quetzaltenango, were evicted by the PNC’s anti-riot squad. Resistance leaders attempted to dialogue with the PNC agents, however, the anti-riot squad began to launch tear gas and arrest the protesters and other people who happened to be nearby. Due to the excessive use of force, around 20 people were injured, 50 people suffered poisoning due to the tear gas and 19 people were arrested.

250. Another case to highlight is related to peaceful demonstrations organised in September 2018 following the decision of President Jimmy Morales not to renew the mandate of the CICIG and to deny Iván Velásquez entry into the country. The response of the State to these peaceful demonstrations, on September 12, 2018, was to deploy more than two thousand policemen to surround the area around the Congress of the Republic, and to dissolve protests in those streets. A group of elite soldiers from the Guatemalan Army in charge of carrying out special operations (*kaibiles*) were also deployed. This Unit is held responsible for the commission of massacres during the armed conflict (e.g. Las Dos Erres Massacre). The State justified the presence of said Unit by saying that “it is part of the President’s third security ring”<sup>230</sup>. It should be noted that there were a total of 2067 agents from the National Police at the demonstration<sup>231</sup>.

<sup>226</sup> De León, Quimy, Condenan a ex militar: trabajador de una empresa minera por amenazas a periodistas en Prensa Comunitaria 3 July 2013. Consulted on 10 September 2018, available at

<sup>227</sup> UDEFEGUA. “Informe sobre situación de Defensoras y Defensores de derechos humanos: enero a diciembre de 2014”. 2014.  
<sup>228</sup> Ibid.

<sup>229</sup> Movimiento Mundial de los Derechos Humanos.

<sup>230</sup> Publinews. Kaibiles, policías y fuerte armamento: un despliegue “desproporcionado” por presencia de Presidente. 12 September 2018. Available at:

<sup>231</sup> UDEFEGUA Twitter feed. Available at:

## **XVI. RECOMMENDATIONS**

In light of the abovementioned facts and concerns, the organisations who are sending this report to the Committee against Torture submit for your consideration the following recommendations:

### **On structural change**

251.1. Build justice operators' capacity via training programs, so that they comply with standards related to their obligations to prevent, investigate, sanction and offer reparation for the crimes of torture and cruel, inhuman or degrading treatment, to enable them to identify cases and take the corresponding measures.

251.2. Define a strategy for the investigation and criminal prosecution of cases of torture and ill-treatment in the country in line with the Istanbul Protocol.

251.3. Guarantee reparation for victims of human rights violations, by creating a program or public policy which includes specific measures for the treatment and rehabilitation of victims of torture and ill-treatment, independently of the criminal conviction of those responsible.

### **On the legal framework**

251.4. Modify article 201 Bis of the Penal Code, to guarantee that the typification of the crime of torture is in line with the standards established in the Convention against Torture.

251.2 Typify cruel, inhuman or degrading treatment or punishment as a crime.

251.3 Ratify the International Convention for the protection of all persons against forced disappearances; the Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at abolishing the death penalty; and the Optional Protocol to the Convention on the Rights of the Child related to a communications procedure.

### **On the National Mechanism for the Prevention of Torture**

251.5. The MNPT should implement the recommendations established in the report of the Human Rights Ombudsman (August 2016) and the recommendations of the Subcommittee on the Prevention of Torture (SPT).

251.6. The Consultative Council of the National Mechanism for the Prevention of Torture must be created, observing that its members comply with the functions of this body established in law.

251.7. The Human Rights Commission of the Congress of the Republic of Guatemala should initiate the process of convening and selecting two replacements for rapporteurs who will end their mandate in 2019 (Rapporteurs Carlos Solórzano and Silvia Villalta), through a process that is carried out in a transparent manner and that includes the participation of civil society.

251.8. The Public Ministry must initiate an investigation to identify responsibilities related to the handling of funds of former rapporteurs Roderico Pineda, Otto Marroquín Guerra and Mario Enrique Carrera, Secretary Marco Antonio Posadas Pichillá<sup>232</sup> and rapporteurs Silvia Villalta and Carlos Solórzano.

<sup>232</sup> Contraloría General de Cuentas. Examen Especial de Auditoría a Oficina Nacional de Prevención de la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, 01 enero a 30 septiembre 2015, a copy of which will be given to the CAT on 15 November 2018.

251.9. The ONPT should urgently develop methodological, technical and administrative mechanisms to carry out its mandate, including general regulations, per diem allowances, profiles, positions and salaries, monitoring of places of detention and working protocols, including information on how their actions will be publicised and how they will guarantee access to public information produced by the Mechanism.

251.10. The State of Guatemala must implement all the necessary measures to ensure the independence, suitability and impartiality of the rapporteurs in the National Office for the Prevention of Torture. The investigations carried out by said Office must be conducted objectively and that they are not used to criminalise and adversely affect the independence of Judges and Magistrates.

### **On deprivation of liberty and overcrowding**

251.11. Carry out a prison census, specifically including the numbers of: a) persons in pre-trial detention (before and after first conviction or, as the case may be, in the second instance); b) persons who have already served their sentence but have not been released; and c) persons who have served the duration of the maximum penalty provided for the crime charged, without even having received a final conviction.

251.12. Improve the infrastructure conditions of centres of deprivation of liberty and in general guarantee dignified conditions of detention.

251.13. Resolve the situation of overcrowding in the country's prison system, through the diversification of coercive measures and the implementation of a progressive regime that has been suggested by various civil society organisations, in their proposals for a comprehensive reform of the Penitentiary System.

251.14. Diversify the catalogue of coercive measures and penalties. Define the mechanisms and allocate the resources so that the Law on Telematic Control for the Criminal Process<sup>233</sup> can be implemented and benefit all persons deprived of liberty, without any discrimination.

251.15. Review the imposition of fines on those deprived of liberty, so that they are appropriate to their socio-economic profile, to avoid the conversion of these fines into a custodial sentence.

251.16. Establish appropriate protocols and procedures for the care of LGBTI persons in the Penitentiary System, developed collaboratively between the State and organisations from the LGBTI community.

251.17. Establish an independent mechanism for receiving complaints from persons deprived of their liberty that allows investigations to be initiated and guarantees for the protection of persons who report reprisals.

251.18. Carry out actions to prevent and eradicate torture and ill-treatment against LGBTI persons in prisons, guaranteeing the immediate separation and adaptation of modules for LGBTI persons and abolishing laws and regulations that discriminate against LGBTI persons due to their sexual orientation and gender identity

### **On violence against women**

251.19. Implement an annual plan to monitor training on nonviolence against women provided to justice operators that contains qualitative and quantitative evaluation standards.

251.20. Implement a system to follow-up on the recommendations issued by the human rights protection systems related to the prevention, attention and sanction of violence against women that allows monitoring by civil society and is easily accessible.

251.21. Assign and guarantee sufficient resources for the operation of the specialist justice system that includes the Office of the Prosecutor for Women, specialist jurisdictional bodies, the National Institute of Forensic Sciences and the National Civil Police Victim Support Offices, and in which a model of comprehensive care for women survivors of violence is implemented.

251.22. Strengthen mechanisms for the protection of women victims of violence, and in particular CONAPREVI by not creating parallel institutions that weaken the mechanisms already created and ensuring the political, financial and administrative strengthening of CONAPREVI, including the formulation of a specific Law for CONAPREVI.

251.23. Urgently specify the formulation of the new PLANOVI and ensure that each responsible institution allocates specific resources for its implementation.

251.24. Urgently modify the creation agreements of the SEPREM and the DEMI and their reforms, with the aim of including the participation of women, including indigenous women, in the process of selecting the officials in charge of these institutions.

251.25. Urgently deliver the resources assigned to the CAIMUS to continue specialist care for women survivors of violence.

251.26. Increase financial resources to strengthen the existing CAIMUS and expand their coverage to other regions at the departmental and municipal levels.

### **On trafficking of persons**

251.27. Guarantee that victims of trafficking are identified, protected and duly supported, through measures for their care and rehabilitation in the areas of education, nutrition, language, incorporating an intercultural perspective.

### **On pregnancy in girls and adolescents**

251.28. Conduct long-term systematic campaigns to eradicate stereotypes and harmful practices that violate the rights of girls and adolescents in schools and raise awareness among students, teachers, parents and community leaders.

251.29. Implement Comprehensive Sex Education in all schools in the country in a gradual way, and guarantee that this education is secular, scientific and based on human rights, and increase the budget of the educational system assigning a percentage to Comprehensive Sex Education in a proportional way to the budget assigned in other areas for all educational levels to guarantee quality education with a gender-specific focus.

251.29. Monitor and guarantee accountability in the supply of modern contraceptive methods in all health centres and guarantee access to sexual and reproductive health services specific to adolescents and young men and women.

251.30. Guarantee access to therapeutic abortion to reduce maternal deaths in adolescents and rates of unsafe abortions in the country. In addition, it is essential to expand access to abortion in cases of sexual violence, considering the high rates of violence against girls and adolescents and review abortion legislation and broaden the debate on the legalisation of abortion.

### **On persons confined in psychiatric centres and other institutions**

251.31. Urge the State of Guatemala to end the institutionalisation of girls, boys, adolescents, women, men and elderly people with and without disabilities, and instead create alternatives based in the community, giving preference to family reintegration (nuclear or extensive); and specifically urge the Ministry of Health to build a model

that moves away from institutionalisation towards prevention, care and reintegration within the family, community and municipalities.

251.32. To the Public Ministry: investigate, clarify and impose administrative and/or criminal sanctions on public officials and employees responsible for the serious violations of human rights and adopt precautionary measures in the case of patients admitted to the Federico Mora Hospital.

251.33. To the Ministries of Government and Health, and the General Directorate of the Penitentiary System: build mechanisms to separate people according to their legal situation where hospital is considered for people in conflict with the law.

251.34. To the Congress of the Republic: approve a Law on Mental Health.

251.35. *Comply with international recommendations on processes of de-institutionalisation.* The Human Rights Committee in its fourth periodic report of 2018 has urged Guatemala to outline a strategy for de-institutionalisation accompanied by the creation of community support and the allocation of sufficient resources, as well as to develop a public policy to prevent the internment of children and adolescents with and without disabilities<sup>234</sup>.

251.36. *Establish services in the community for adults with disabilities.* The budget allocated to the National Disability Policy can be used to support an alternative form of community-based treatment that allows people with disabilities to return to the community on equal terms with others.

251.37. *Train mental health staff and family members.* It is necessary to build capacity on how to provide all services with a comprehensive and human rights perspective that includes information for both personnel responsible for mental health and family members of people with disabilities, with clear objectives that are based on the recognition of people with disabilities as subjects of rights.

251.38. *Punish the people responsible for committing abuses.* The vast majority of abuses within institutions go unpunished. It is important to develop independent protection and monitoring mechanisms for people who are institutionalised to guarantee them access to justice through formal complaint mechanisms that lead to the identification, apprehension and punishment of the person responsible for violating their rights.

251.39. *Offer comprehensive support with a gender perspective.* DRI has documented cases of women who continue to be confined in “Federico Mora” and have been abused, including sexually. Comprehensive support with a gender perspective is therefore required to address this type of case free of prejudices and gender stereotypes, preventing the women’s revictimisation.

### **On the situation of human rights defenders**

251.40. The State of Guatemala must continue with the construction of the Public Policy for the Protection of Defenders of Human Rights that includes the active participation of human rights defenders.

251.41. The Ministry of the Interior must develop a public roadmap on the actions that will be implemented to reactivate the Office for the Analysis of Attacks against Human Rights Defenders and disclose in a report whether it has carried out an analysis into patterns of attacks against human rights defenders, giving information on the results of this analysis.

<sup>234</sup> Human Rights Committee, Final observations on the fourth periodic report of Guatemala, CCPR/C/GTM/CO/4 (7 May, 2018). para. 26, 27 and 33.

251.42. The Public Ministry must develop a roadmap to raise national awareness of General Instruction 5-2018 that approves the Protocol for the investigation of crimes committed against human rights defenders.

### **On the Case of the Hogar Seguro<sup>235</sup> and on children looked-after by the State**

251.43. That the Public Ministry comprehensively investigate all complaints regarding the Hogar Seguro both before, during and after the events of March 7 and 8, 2018, as well as identifying and punishing all those responsible in accordance with the seriousness of their actions, investigating and punishing them for the appropriate crimes (including torture) and applying appropriate penalties to all those responsible, including high-ranking officials, in the cases of human rights violations committed at the Virgen de la Asunción Home on the 8th March, which takes into account the context and previous patterns of abuse against children housed in the centre.

251.44. That the State urgently provides reparation to the victims, developing an individual comprehensive reparation plan for the victims of the Hogar Seguro and their families, with their participation at each stage, including adequate compensation and physical and psychological rehabilitation which is as complete as possible and ensuring that they receive psychosocial support throughout the process.

251.45. That the State ensures that the accused Harold Augusto Flores Valenzuela is suspended from his duties as Children's Procurator in the Public Procurator's Office, until the criminal proceedings against him end, in accordance with the recommendations made by the Committee at the time<sup>236</sup>.

251.46. That the State guarantees impartiality and independence during the criminal proceedings currently in progress in relation to this case.

251.47. That the State urgently implements the necessary institutional reforms to prevent the events of March 7 and 8 from happening again in the Hogar Seguro, such as the gradual reduction of institutionalisation until it is completely eliminated, reinforcing social policies in support of families and guarantees for social, economic and cultural rights, ensuring that the separation of a child from their family is the last resort and only exceptionally occurs, reforms to the Alba Kenneth Alert System so that it meets its objectives, implementation of child care protocols by the PNC.

251.48. Establish an independent grievance mechanism to report abuses as well as a protection system that prevents retaliation in public and private care homes.

### **On violence against sexually diverse persons/LGBTI**

251.48. Enact laws that protect the rights of diverse families, as well as their economic, political, civil, economic, social and cultural rights, including those of LGBTI persons and the Gender Identity of transgender people. The State must recognise and protect diverse families to avoid ruptures based on prejudice, and respect the rights of the children of LGBTI people to avoid discrimination by association.

251.49. Typify hate crimes based on prejudice towards LGBTI people.

<sup>235</sup> See case report for the full list of recommendations.

<sup>236</sup> CAT/C/GTM/CO/5-6, 24 June 2013, para. 9(b).

251.50. Sanction, prohibit and punish violent acts by public servants, or public and private agents, ensuring that the appropriate laws are applied equally to all people, regardless of their real or apparent sexual orientation, and their gender identity.

251.51. Establish appropriate treatment protocols and processes for LGBTI Children and Adolescents under the State System for the Protection of Children and Adolescents.

### **On the excessive use of force during evictions**

251.52 Adopt and implement protocols that guarantee the observance of international norms and standards on human rights and the use of force, including adherence to the principles of legality, exceptionality, proportionality and suitability in the context of evictions.

251.53 Investigate exhaustively, effectively, independently and impartially cases in which excessive use of force has been reported or recorded in the context of evictions, clarifying whether the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment has been violated, punish those responsible and guarantee reparation to the affected communities.

251.54 Ensure that people who are affected by an eviction can take photos and record the intervention of the security forces.

251.55 Ensure that public or private security agents who participate in evictions, always carry visible identification on their uniform. In any case, both the military and private security agents should be prohibited from participating in tasks related to the maintenance of security and public order and, in particular, in evictions.

This report is being submitted by the following organisations:



Alcanzado la Justicia, construimos la Paz



With the technical assistance of

