
“We are not trespassers: this is our land”

Agrarian conflict and Indigenous peoples’ rights in Alta Verapaz

A report by the Independent Delegation of International Lawyers to Guatemala

September 2023





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Executive summary

I.

1. The present report has been prepared by an independent delegation of international lawyers at the request of Guatemalan human rights defenders. The delegation was invited to conduct a fact-finding investigation and legal analysis of potential rights violations taking place in the Alta Verapaz department of Guatemala, on the foot of recent reports which raise alarms about the deteriorating human rights situation facing Indigenous communities and human rights defenders in the context of agrarian conflict in the country.
2. The delegation met with four Maya Q'eqchi communities (the Nuevo Chintún, Lajeb Kej, Choctun Basila and Rio Cristalino communities) and two organisations of Indigenous campesino human rights defenders (the Union of Campesino Organisations of the Verapaces and the Community Council of the Highlands – las Verapaces), who all recounted land-grabbing, violence, threats, intimidation, criminalisation and forced evictions. The delegation also held meetings with representatives of state authorities, the private sector, the diplomatic community and civil society concerning the defence of Indigenous rights at the domestic and international levels. Its findings and recommendations reflect this wider focus.
3. It was evident to the delegation that the troubles faced by the Indigenous communities and defenders it visited are symptomatic of wider, systematic issues affecting the enjoyment of Indigenous rights across Guatemala. The delegation's main findings are as follows:
 - a. There are systematic failures in the protection of Indigenous rights in Guatemala. Indigenous peoples suffer from historical and structural forms of inequality, poverty, unequal land distribution, racism, discrimination and violence, which have continued since the genocide they faced in the 1970s to 90s.
 - b. Crucially, Guatemala remains in violation of its international legal commitments relating to the rights of Indigenous peoples to collective ownership and enjoyment of their communal ancestral lands. It lacks a legal framework, cadastral system or allocation mechanism that recognises, identifies and applies the legitimate relationship and collective ownership rights of Indigenous peoples to their ancestral lands in accordance with their traditional land tenure systems. There is no domestic recognition of the customary right of Indigenous peoples to their communal land as a sui generis source of rights. Such rights are not considered in evaluations over land title, or in decisions to prosecute Indigenous peoples for 'usurpación' (trespass). There are no national or regional cadastral land surveys of a socio-historical, intercultural nature to allow for the fair resolution of land conflicts arising between Indigenous communities and the private sector. There is no appropriate agrarian dispute resolution mechanism. Indigenous communities do not enjoy access to justice or the rights to participation that should flow from their relationship to land.
 - c. Consequently, Indigenous communities continue to suffer from legal uncertainty of land tenure; the unlawful appropriation of land; widespread criminalisation; violence and forced evictions. Human rights defenders also suffer attacks, threats, intimidation and stigmatisation. As a result, the delegation observes that Indigenous people and their defenders are regularly suffering severe violations of multiple human rights, as detailed in section V. These human rights violations betray the same fault lines that the 1996 Peace Agreement sought to repair.
 - d. The private sector plays a central role in human rights violations. The ever-increasing appetite of domestic and multinational, extractive and agricultural (particularly palm oil producing) companies to exploit the natural environment for profit is a driving cause of land-grabbing and the depletion of natural ecosystems upon which Indigenous communities rely.
4. The delegation observed an absence of political will to implement the legal, regulatory and policy reforms required to address agrarian conflicts and give binding effect to Indigenous rights. Nonetheless, this report comes at a time of key political change for Guatemala, following Bernardo Arevalo's election as President in August 2023. The delegation hopes that the country's incoming presidential administration and the relevant branches of the state will have the political courage required to achieve profound systemic change and ensure that Guatemala is aligned with its international obligations.
5. The delegation has made a number of recommendations (see section VI), which it hopes will encourage the Guatemalan state and other stakeholders to make these changes, in consultation with Indigenous peoples. The recommendations include the following:



From left: Imelda Tuyul (CCDA), Martha Schmitz (Interpreter), Stephen Cragg KC (Doughty Street Chambers), Haydee Dijkstal (33 Bedford Row Chambers), Ben Leather (PBI UK), Margherita Cornaglia (Doughty Street Chambers), Ben Cooper KC (Doughty Street Chambers), and José Gualna a member of the Rio Cristalino community. In May 2023 Jose was jailed on charges of aggravated trespass.

- a. Recognise the intimate link between Indigenous peoples and their ancestral territories, and the need to enshrine communal rights of Indigenous peoples over their ancestral land and resources, so that they can effectively exercise their collective rights.
 - b. Conduct a nation-wide survey of Indigenous territories in good faith from a historical, regional, anthropological, ethnolinguistic and intercultural point of view, with the full participation of Indigenous communities and experts, to map out their ancestral lands.
 - c. Create an agrarian conflict-resolution mechanism to resolve land disputes, which: acts to prevent, negotiate and resolve conflicts and ensure access to intercultural justice; involves all relevant state institutions, and provides legal aid for Indigenous peoples to access it with the assistance of their own lawyers and experts. This should be prioritised over the use of the criminal justice system to prosecute allegations of trespass against Indigenous peoples.
 - d. Cease forced evictions of Indigenous peoples and ensure that all evictions are in line with international human rights standards.
 - e. Cease to issue licenses for activities that affect the communal ancestral lands of Indigenous peoples without their consultation and consent.
 - f. Ensure that the private sector, as part of its due diligence and contractual obligations, fully respects the rights of Indigenous peoples, in accordance with international norms, conventions and standards.
- 6.** Finally, the report recommends that the international community, as well as multi-national entities operating in or with supply chain links to Guatemala, do more to ensure the protection of Indigenous communities within the country. In particular, the report recommends that countries pass strong supply chain laws to counter the possibility of multi-national entities profiting from human rights abuses taking place abroad.

Introduction

7. From 27 to 31 March 2023, an independent fact-finding delegation of international human rights lawyers travelled to the Alta Verapaz department of Guatemala. The members of the delegation visited Guatemala due to their collective concern, arising from recent disturbing reports from organs of the United Nations, the Inter-American human rights systems and civil society, about the deteriorating human rights situation facing Indigenous communities and human rights defenders in the context of agrarian conflict.

8. The delegation was made up of seven human rights experts spanning seven different nationalities, who acted pro bono:

Ben Cooper KC, Barrister at *Doughty Street Chambers* (UK);

Camila Zapata Besso, Barrister at *Doughty Street Chambers* (UK and Colombia).

Daniel Cerqueira, Director of the Human Rights and Natural Resources Programme of the *Due Process of Law Foundation* (“DPLF”) (USA and Brazil);

Haydee Dijkstal, Barrister at *33 Bedford Row Chambers*, and Executive Committee member of the BHRC (USA and the Netherlands);

Margherita Cornaglia, Barrister at *Doughty Street Chambers* (UK and Italy);

Silvana Baldovino Beas, Director of the Biodiversity and Indigenous Peoples Programme of the Peruvian Society for Environmental Law (*Sociedad Peruana de Derecho Ambiental*, “SPDA” by its Spanish acronym) (Peru);

Stephen Cragg KC, Barrister at *Doughty Street Chambers*, and Chair of the Bar Human Rights Committee of England and Wales (“BHRC”) (UK);

9. The delegation met in Alta Verapaz and Guatemala City with Indigenous communities; Indigenous human rights defenders and lawyers; civil society organisations; representatives of the private sector; the diplomatic community, and state authorities responsible for land demarcation and titling, human rights policies, and public security, in order to understand the structural causes of rural violence and the constant struggle for territories. Meetings were held with the following stakeholders:

— Indigenous communities in Alta Verapaz:

- Nuevo Chintún community, Tukurú, Alta Verapaz.
- Lajeb Kej community, Tukurú, Alta Verapaz.
- Río Cristalino community, Cobán, Alta Verapaz.
- Members of the Choctun Basilá community, held in Cobán prison, Alta Verapaz.

— Organisations of Indigenous and campesino human rights defenders:

- The Verapaz Union of Campesino Organisations (*Unión Verapacense de Organizaciones Campesinas*, “UVOC” by its Spanish acronym).



Community members carry out a traditional Mayan ceremony in Nuevo Chintún.

- The Committee of Campesinos of the Altiplano (*Comité de Campesinos del Altiplano*, “CCDA” by its Spanish acronym).
- National civil society actors:
 - Jorge Santos, General Coordinator of the Unit for the Protection of Human Rights Defenders in Guatemala (*Unidad de Protección a Defensoras y Defensores de Derechos Humanos – Guatemala*, “UDEFEHUA” by its Spanish acronym).
 - Laura Hurtado Paz y Paz, Director of Action Aid in Guatemala.
 - Helmer Velásquez, Executive Director of the Coordination of NGOs and Cooperatives in Guatemala (*Coordinación de ONGs y Cooperativas*, “CONGCOOP” by its Spanish acronym).
 - Lourdes Gómez Willis, an Indigenous and Afro-descendant human rights defender, researcher and teacher from Cobán, Alta Verapaz.
 - The delegation also met with judges, who declined to be named in this report, for fear of reprisals.
- Lawyers working on land issues:
 - The Law Firm for Indigenous Peoples (*Bufete Jurídico para Pueblos Indígenas*, “BJPI” by its Spanish acronym).
 - The Law Firm for Human Rights (*Bufete de Derechos Humanos*).

- **State authorities:**
 - The office of the Presidential Commission for Peace and Human Rights (*Comisión Presidencial por la Paz y los Derechos Humanos*, “COPADEFH” by its Spanish acronym) in Alta Verapaz.
 - A representative of the human rights ombudsman (*Defensoría de derechos humanos*) in Cobán.
 - Feliciano Cruz Velásquez, chief of National Civil Police station number 51, in Cobán, Alta Verapaz.
 - The Land Fund (*Fondo de Tierras*, “FONTIERRAS” by its Spanish acronym), the Register for Cadastral Information (*Registro de Información Cadastral*, “RIC” by its Spanish acronym) and other state institutions in Guatemala city.
 - **Representatives of the USA, UK, Canadian, French, Swiss and Swedish embassies.**
 - **Representatives of the private sector: the Observatory of Property Rights (*Observatorio de los Derechos de Propiedad*); the Guatemala-UK Chamber of Commerce; the Guatemalan Agro Chamber (*Cámara del Agro Guatemala*, “CAMAGRO” by its Spanish acronym); and a law firm associate.**
 - **Representatives of the UN Office of the High Commissioner for Human Rights (“OHCHR”).**
- 10.** For the duration of the assignment, the delegation was able to rely on local logistical support from Peace Brigades International, and from Francisca Gómez Grijalva, a trusted Guatemalan Maya Q’eqchi’ consultant academic and social scientist, who functioned as an essential bridge between the delegates and the communities they visited. The delegation would like to express its gratitude to all the individuals and organisations who took the time to speak to, and who assisted, the delegation.
- 11.** The delegation observed systematic failures in the protection of Indigenous rights in Guatemala. Indigenous communities face a disregard for their communal territorial rights, unequal land distribution, racism, violence, and a clear lack of access to justice. There is a lack of legal clarity as regards how Indigenous people can defend their land rights within a fragmented and institutionally flawed system. Widespread criminalisation and forced evictions of Indigenous communities arise from complaints by private landowners. The situation betrays the same agrarian dilemmas that the peace agreement sought to repair.
- 12.** The delegation identified a pattern in which criminal charges for trespass, and eviction orders, are issued against Indigenous communities who are present on their ancestral lands. In certain cases, individual landowners and private companies pursuing judicial proceedings hold no clear evidence of their own alleged property rights to the disputed land, yet their claims result in the eviction of Indigenous communities, and their criminalisation.
- 13.** On the last day of its mission, the delegation issued a press release¹ and held a press conference which was reported on in the national² and international³ media. The delegation expressed urgent concerns regarding:
- The criminalisation of Indigenous communities and human rights defenders;
 - The eviction and displacement of Indigenous communities from their ancestral land and the lack of legal, institutional and practical recognition of their collective rights, including the right to decide about the use of their land and resources;
 - The failure of the state to prevent the use of unlawful force and violence against Indigenous families and rural communities, particularly during evictions;
 - Reprisals against communities who oppose extractive projects and unsustainable agricultural developments;
 - Supply chain due diligence conducted by multinational companies who do business with Guatemalan counterparts allegedly involved in human rights violations;

¹ Independent Delegation of International Lawyers to Guatemala, ‘[International legal experts call for urgent action to protect Indigenous peoples; express grave concern at impact of violent forced evictions in Guatemala](#)’ (31 March 2023).

² Prensa Comunitaria, ‘[Mission of experts views evictions and criminalisation in Alta Verapaz with concern](#)’ (31 March 2023).

³ *El País*, ‘[Indigenous land defenders in Guatemala are in the “first line of fire”](#)’ (31 March 2023).

- The drastic increase in poverty suffered by Indigenous communities, related to weakening food sovereignty and limited access to water and natural resources;
- Gendered and sexual violence, labour exploitation, violations to the right of the child and the right to education, and the lack of access to justice for Indigenous communities.

14. The delegation recommended:

- That the state prioritise non-punitive means of resolving agrarian disputes, respect Indigenous rights to ancestral land, and cease the criminalisation and violent evictions of Indigenous peoples, which deepen agrarian conflicts;
- An urgent need for the state to conduct a holistic review of its laws and practices in order to respect the collective rights of Indigenous peoples and particularly their territorial rights, thus safeguarding their cultural identity and preserving their traditional knowledge; and
- That the international community and businesses with investment in Guatemala be attentive to these issues.

15. This report builds on those observations. The delegation has been assisted by the wealth of literature on the history and current context of Indigenous peoples' struggle for land in Guatemala, including the report by Julian Burger, Monica Feria-Tinta and Claire McGregor titled 'Indigenous Peoples' rights and hydro-electric projects in Guatemala: The case of the Ch'orti' in Chiquimula' (June 2015),⁴ and the Peace Brigades International monograph authored by Jordi Quiles Sendra, titled 'We defend life! The Social Struggles in Alta Verapaz' (2020).⁵ Those texts, and other works by national, regional and international human rights organisations, have assisted the delegation in understanding the historical, sociological and domestic legal background to its own observations.

16. The report is intended to encourage the Guatemalan state and other stakeholders to meet their international human right obligations, and to assist Indigenous communities in identifying international legal norms that can support their access to ancestral land rights. The delegation's concerns and recommendations reflect those already made by the international community at the UN and inter-American level.



Many human rights defenders in Alta Verapaz receive protective accompaniment from Peace Brigades International due to the reprisals they face. Defenders across Guatemala are often attacked in an attempt to stifle their activism.

⁴ Independent report of Julian Burger, Monica Feria-Tinta and Claire McGregor, 'Indigenous Peoples' rights and hydro-electric projects in Guatemala: The case of the Ch'orti' in Chiquimula' (June 2015).

⁵ Peace Brigades International and Jordi Quiles Sendra, 'We defend life! The Social Struggles in Alta Verapaz' (2020).

Background and general observations

The Indigenous population of Guatemala

17. Almost half of the Guatemalan population is made up of Indigenous peoples (43.8 per cent), comprising predominately Maya, but also Xinka and Garifuna peoples. The Q'eqchi, Kaqchikel, K'iche' and Mam peoples make up 80 per cent of the Maya population.⁶

Constitutional protections for Indigenous peoples

18. The Constitution of 1985 recognises that “*Guatemala is formed by diverse ethnic groups among which are found the indigenous groups of Mayan descent. The State recognizes, respects, and promotes their forms of life, customs, traditions, forms of social organization, the use of the indigenous attire by men and women, [and their] languages and dialects.*”⁷ As regards the protection of Indigenous agricultural lands and cooperatives, the Constitution states that “[*t*]he lands of the cooperatives, indigenous communities or any other forms of communal or collective possession of agrarian ownership, as well as the family patrimony and the people’s housing, will enjoy special protection of the State, of preferential credit and technical assistance, which may guarantee their possession and development, in order to assure an improved quality of life to all of the inhabitants.” Importantly, it also recognises that “[*t*]he indigenous communities and others that hold lands that historically belong to them and which they have traditionally administered in special form, will maintain that system.”⁸ The state undertakes to “provide state lands to the indigenous communities who may need them for their development”,⁹ and to enshrine a specific law to regulate such matters.¹⁰
19. The Constitution also provides for the pre-eminence of international law: there is a general principle that human rights treaties approved and ratified by Guatemala have precedence over internal law.¹¹ The Constitutional Court of Guatemala has repeatedly ruled that international human rights standards form part of the constitutional corpus, including those relating to the rights of Indigenous peoples, and has recognised the collective right of Indigenous peoples to communal land, territories and resources.¹²
20. In line with the Constitution, the Guatemalan Municipal Code recognises “*the land management systems of indigenous peoples*”.¹³ It enshrines the right of Indigenous peoples to legal personality where they have inscribed themselves, their organisation, internal administration, values, procedures and traditional authorities in a municipal civil register.¹⁴ It also recognises that Indigenous peoples have their own way of relating to and organising with one another, according to their traditional values and inter-communal dynamics.¹⁵

⁶ UN Human Rights Council (“HRC”), ‘Report of the Special Rapporteur on the rights of Indigenous peoples [Victoria Tauli-Corpuz] on her visit to Guatemala’ (10 August 2018) UN Doc A/HRC/39/17/Add.3, §9; HRC, ‘Situation of human rights in Guatemala: Report of the United Nations High Commissioner for Human Rights’ (17 January 2020) UN Doc A/HRC/43/3/Add.1, §12.

⁷ Political Constitution of the Republic of Guatemala, Article 66.

⁸ *Ibid*, Article 67.

⁹ *Ibid*, Article 68.

¹⁰ *Ibid*, Article 70.

¹¹ *Ibid*, Article 46.

¹² Corte de Constitucionalidad, Sentencia del Expediente 199-1995 on the application of ILO Convention 169 (18 May 1995); see also Sentencia del Expediente 266-2012 (14 February 2013); Sentencia del Expediente 2781-2009 (21 January 2010); Sentencia del Expediente 4334-2009 (1 June 2010); Sentencia del Expediente 934-2010 (8 February 2011); Sentencia del Expediente 1101-2010 (4 May 2011); Sentencia del Expediente 219-2011 (2 June 2011); Sentencia del Expediente 266-2012 (14 February 2013); Sentencia del Expediente 628-2013 (24 June 2014); Sentencia del Expediente 2275-2014 (6 June 2016); Sentencia del Expediente 970-2016 (14 July 2016); Sentencia del Expediente 3353-2018 (11 June 2020), and Sentencia del Expediente 4408-2017 (16 June 2020).

¹³ Municipal Code of Guatemala (Congressional Decree 12-2002), Article 4.

¹⁴ *Ibid*, Article 20.

¹⁵ *Ibid*, Article 21.



Delegates interview women representatives of the Maya Q'eqchi' Río Cristalino community, Panzós, Alta Verapaz

The legacy of the internal armed conflict

21. The internal armed conflict that raged in Guatemala from 1960 to 1996 had an immeasurable human cost. It involved multiple, large-scale systematic violations of human rights including massacres, extrajudicial executions, forced disappearances, rapes, scorched earth operations, forced displacement, torture, illegal detention and kidnaps. It is estimated that as a result of the political violence during this period, 200,000 people were victims of arbitrary executions and forced disappearance, and over 1.5 million people were forcibly displaced. 83 per cent of the victims were Maya Indigenous peoples.¹⁶
22. According to the report of the Commission for Historical Clarification (“CEH” by its Spanish acronym), the reasons for the armed conflict were multifaceted, including structural inequality, the closure of political space, racism, the intensification of exclusionary and antidemocratic institutions, and the refusal to promote substantive reforms that could have reduced structural conflicts. In addition to causes particular to Guatemalan national history, the Cold War, prevailing anti-communist policies in the Latin American continent, and the Doctrine of National Security to fight against an ‘internal enemy’ played a fundamental role in the genesis, development and perpetuation of the conflict.¹⁷ The notion of an ‘internal enemy’ was extended to dramatically stigmatise rural Indigenous communities leaders, the peasant (*campesino*) population, trade union leaders and cooperatives, among others, as potential communists who were liable to extermination en masse.¹⁸
23. The state armed forces, and affiliated paramilitary armed groups, were responsible for 93 per cent of the human rights violations. 91 per cent of the total violations were committed from 1978 to 1984, during the dictatorships of General Romero Lucas García (1978-1982) and the de facto President Efraín Ríos Montt (1982-1983).¹⁹ The CEH identified many of the violations that occurred to have been part of a genocide against the Maya peoples.²⁰

¹⁶ Inter-American Commission on Human Rights (“IACHR”), ‘Situation of human rights in Guatemala: Diversity, Inequality and Exclusion’, OEA/Ser.L/V/II/Doc. 43/15 (31 December 2015), §40, citing the Report of the Commission for Historical Clarification, ‘Memory of Silence’, section V, ‘Conclusions and Recommendations’, p17-33.

¹⁷ IACHR, ‘Situation of human rights in Guatemala: Diversity, Inequality and Exclusion’ (2015), §§43-44, citing CEH, ‘Memory of Silence’, chapter 1, ‘Causes and origins of the internal armed conflict’, pp 80, 86 and 117-122; chapter 2, section XI, ‘Forced Disappearances’, p426, and volume V, ‘Conclusions and Recommendations’, p24.

¹⁸ *Ibid.*

¹⁹ CEH, ‘Memory of Silence’, volume V, ‘Conclusions and Recommendations’, pp33-34.

²⁰ CEH, ‘Memory of Silence’, volume V, ‘Conclusions and Recommendations’, pp38-41, cited by the Inter-American Court of Human Rights (“IACtHR”) in *Members of the Village of Chichupac and neighbouring communities of the Municipality of Rabinal v Guatemala*, Preliminary Objections, Merits, Reparations and Costs, IACtHR Series C No 328 (30 November 2016), §251.

The Peace Accords

24. The Peace Accords signed by the Guatemalan government in 1996 were a unique opportunity to mend the causes and consequences of the armed conflict, and to make the rights of Indigenous peoples as enshrined in the Constitution and in Guatemala's international human rights commitments effective. Nevertheless, 26 years later, Indigenous peoples in Guatemala continue to face many of the same structural challenges which were present at the time of the peace process.²¹ As noted by the former Special Rapporteur on the rights of Indigenous peoples, Victoria Tauli-Corpuz, on her visit to Guatemala, *"the justice and comprehensive redress that would lead to true national reconciliation have still not been achieved"*.²²
25. Adopted in 1995 in the context of the negotiations which gave way to the Peace Accords, and based on Article 66 of the Constitution, the Agreement on the Identity and Rights of Indigenous Peoples states an objective to *"create, widen and strengthen the structures, conditions, opportunities and participation of indigenous peoples, in complete respect for their identity and their exercise of their rights"*.²³ The Agreement recognises the role of the authorities of Indigenous communities, and the right of Indigenous peoples to decide on their own priorities regarding development processes, encouraging their participation in decision-making on all matters that affect or are of direct interest to them. It recognises the Maya, Garifuna and Xinka peoples as Indigenous,²⁴ and envisions the commitment of the Government to promote a constitutional reform to define and characterise the Guatemalan nation as one of national, multi-ethnic, pluricultural and multilingual unity.²⁵ It also establishes the government's commitment to promote a reform to the Municipal Code, which recognises the right of Indigenous communities to manage their internal affairs in accordance with their own regulatory systems.²⁶ To date, the constitutional and legal reforms necessary to guarantee those rights have not been effected.²⁷

Delegates meet with representatives of a range of national level authorities at the headquarters of the Presidential Commission for Peace and Human Rights ("COPADEH").



21 IACHR, 'North Central America and Nicaragua: Economic, social, cultural and environmental rights of indigenous and afro descendent tribal peoples', OEA/Ser.L/V/II.Doc. 52/53 (21 March 2023), §99.

22 Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §6.

23 Agreement on the Identity and Rights of Indigenous Peoples (adopted in Mexico, 31 March 1995), recital 9.

24 *Ibid*, section I, §4.

25 *Ibid*, section IV(A).

26 Agreement on the Identity and Rights of Indigenous Peoples, section IV(B).

27 A national referendum in respect of the proposed constitutional reform in 1999 failed to garner the necessary votes. See also Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §17.

Structural inequality

26. Structural ethno-racial discrimination and economic inequality go hand-in-hand in Guatemala.²⁸ Guatemala is one of the countries with the highest levels of inequality in Latin America, which is the most unequal region of the world as regards concentration of wealth.²⁹
27. According to official national figures, in 2014, 79 per cent of the Indigenous population was under the poverty line, compared to 47 per cent of the non-Indigenous population; 40 per cent of Indigenous peoples were in situations of extreme poverty, compared to 13 per cent of non-Indigenous persons.³⁰ Lack of access to basic services is most severe in the rural population, which is mostly Indigenous.³¹ Maternal mortality is the second highest in the region.³² More than half of Indigenous children suffer from chronic malnutrition.³³ Half of Indigenous children do not go to school, and Indigenous girls only receive two years of education on average. Public expenditure for Indigenous people is less than half of that for the rest of the population. The majority of the Indigenous population does not have access to primary health care.³⁴

Corruption, impunity and rule of law

28. The struggle for the rights of Indigenous peoples is marred by widespread corruption, violence and severe impediments to the rule of law in Guatemala. The International Commission Against Impunity (“CICIG” by its Spanish acronym), created in 2007 in an agreement between the United Nations and Guatemala, investigated and revealed networks of state and private-sector corruption. Its mandate expired on 3 September 2019, when then-President Jimmy Morales refused to extend it, after the CICIG accused him of illegal campaign financing. In its final report, the CICIG outlined in detail the reach of illegal political and economic networks in Guatemala, which include high-level politicians, public officials, members of the judiciary and military personnel who operate with impunity.³⁵
29. Since the CICIG ceased its activities, and during the presidency of Alejandro Giammattei, the political, social and economic power of illegal networks spanning the economic, military and political elites, and the consolidated alliance between state and private interests (the so-called “*pacto de corruptos*”), has strengthened, effectively dismantling the rule of law in the country. In its 2021 report, the Unit for the Protection of Human Rights Defenders in Guatemala (“UDEFEQUA” by its Spanish acronym) concludes that there has been a serious regression in democratic values in Guatemala, and an approach into a state of authoritarianism, due to six factors: (i) state capture of independent institutions; (ii) a weakening of the separation of powers; (iii) a weakening of public institutions; (iv) increased violence and repression of human rights defenders; (v) an increase in militarism in public policy, and (vi) an entrenchment of conservatism.³⁶
30. Transparency International’s Corruption Perceptions Index currently places Guatemala at 150th out of 180 countries (where the 1st is the least corrupt).³⁷ The US State Department has designated more than forty current or former judges, prosecutors, lawyers and individuals under section 353 of the United States Northern Triangle Enhanced Engagement Act for knowingly engaging in acts that undermine democratic processes or institutions, significant corruption, or obstructing investigations of corruption. A number of the designated individuals are current Supreme Court magistrates, prosecutors and judges, demonstrating the depth of the problem.³⁸
31. A recent report of various Latin American human rights organisations, including the Due Process of Law Foundation, notes as follows:

“One by one—like a stack of dominos, the institutions making up an already weakened justice system in Guatemala have fallen to the hands of this corrupt network. Guatemala’s highest courts, its Attorney

28 IACHR, ‘North Central America and Nicaragua: Economic, social, cultural and environmental rights of indigenous and afro descendent tribal peoples’ (2023), §127.

29 Oxfam and DFI Research Report, ‘The Commitment to Reducing Inequality Index 2022’ (October 2022), pp35 and 55.

30 Guatemalan National Institute of Statistics (“INE” by its Spanish acronym), ‘National Survey of Living Conditions 2014: Principal results’ (December 2015), pp4 and 9.

31 United Nations Development Programme, ‘National report on Human Development 2011–2012: Guatemala: a county of opportunity for young people?’ (18 February 2014), p35.

32 Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §89.

33 United Nations Children’s Fund (“UNICEF”), ‘Guatemala – being prepared and acting fast: a series of case studies on UNICEF’s role in the delivery of effective social protection responses to COVID-19’ (2021), p4.

34 Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §85–92.

35 CICIG, ‘Final Closing Report: the Legacy of Justice in Guatemala’ (August 2019).

36 UDEFEQUA, ‘Situation of persons, organisations and communities defending human rights in Guatemala, 2021’ (June 2022), pp5–7.

37 Transparency International, ‘Corruption Perceptions Index Report 2022’ (January 2023).

38 US Department of State, ‘Section 353 Corrupt and Undemocratic Actors Report 2021’ (June 2021); ‘Section 353 Corrupt and Undemocratic Actors Report 2022’ (July 2022); ‘Section 353 Corrupt and Undemocratic Actors Report 2023’ (July 2023).

General's Office (AG), and specialized prosecutors' offices—have been rigged by corrupt actors seeking to block honest judges and prosecutors from seeking reappointment or higher offices, and have instead stacked the justice system with judges and prosecutors willing to side with corrupt members of the private sector, government, and security forces at the expense of a majority Indigenous population. Corruption and human rights cases that were making progress in the courts have been stalled as the honest judges presiding over them have been removed, transferred to other courts, or driven into exile. Aided by private lawyers from the Foundation against Terrorism (FCT), Attorney General Consuelo Porras has led the ousting and criminalization of independent justice operators. Twenty-five judges and prosecutors, including the nation's lead anti-corruption prosecutor, have fled the country, and others remain jailed or were forced to resign. The Special Prosecutor's Office Against Impunity (FECI), created with the support of the CICIG in 2008, has been fully dismantled and co-opted. The result is that the current Guatemalan justice system fails to promote justice and address impunity and corruption. The very institutions that are supposed to ensure access to justice are no longer independent and are instead working to protect the interests of a small, corrupt minority and to silence voices from civil society organizations and independent media.”³⁹

Attacks against human rights defenders

32. The Indigenous human rights defenders the delegation met with reported threats, violence, espionage, stigmatisation and criminal accusations. Between 2020 and 2021, UDEFEGUA documented a total of 2,057 ‘aggressions’ against persons, organisations and communities who defend human rights, including justice figures, journalists, and Indigenous rights defenders.⁴⁰ UDEFEGUA's figures for 2022 show that aggressions in that year alone increased threefold from 2021, to 3,574.⁴¹
33. In 2022, Office of the United Nations High Commissioner for Human Rights (“OHCHR”) recorded 79 allegations of attacks against human rights defenders in Guatemala (52 men, 14 women, 13 Indigenous communities and human rights organisations). It noted an alarming increase in attacks involving the criminalisation of defenders (54.34 per cent compared to 2021), and that some attacks were attributed to private companies.⁴²
34. In its Universal Periodic Review of 2023 before the UN Human Rights Council, Guatemala ‘noted’ (meaning it rejected) 40 per cent of recommendations (80 out of 207), many of which related to issues on which UN experts have voiced serious concerns: judicial independence and attacks against justice officials; the protection of human rights defenders; shrinking civic space; the recent ‘choking’ NGO law which gives the government wide scope to control NGOs, monitor their funding and dissolve them if their activities might “alter the public order”;⁴³ and Indigenous peoples’ rights.⁴⁴

Land injustice: the root cause of Indigenous rights violations

35. The systemic lack of protection of Indigenous peoples’ rights to land, territories and natural resources in accordance with international human rights standards is a basic underlying cause of the problems affecting Indigenous peoples in Guatemala.⁴⁵ The context of the different forms of violence currently suffered by Indigenous peoples is characterised by the historic and continuing appropriation of Indigenous lands; continued uncertainty of land tenure; unfair and unequal distribution of land; its concentration in the hands of a small sector of society, and diverse forms of racism and discrimination.⁴⁶ Indigenous communities suffer from the absence of the rule of law and a lack of legal certainty. The ineffective protection of their lands, territories and natural resources are at the root of the majority of human rights issues they face, while limiting their enjoyment of their human, economic, social, cultural and environmental rights, and resulting in their multidimensional poverty.⁴⁷

39 Latin America Working Group Education Fund, Due Process of Law Foundation, Guatemala Human Rights Commission and Washington Office on Latin America, joint report: ‘When the Dominoes Fall: Co-optation of the Justice System in Guatemala’ (October 2022). See also Latin America Working Group Education Fund, Guatemala Human Rights Commission and Washington Office on Latin America, joint report: ‘Guatemala's Downward Spiral’ (October 2022).

40 UDEFEGUA, ‘Situation of persons, organisations and communities defending human rights in Guatemala, 2021’ (2022), p8.

41 UDEFEGUA, ‘Infographic on the situation of persons, organisations and communities defending human rights in Guatemala, 2022’.

42 HRC, ‘Situation of human rights in Guatemala: report of the United Nations High Commissioner for Human Rights’ (26 January 2023) UN Doc A/HRC/52/23, §72.

43 OHCHR, ‘Guatemala: UN and OAS experts sound alarm about ‘choking NGO law’ (1 July 2021).

44 International Service for Human Rights, ‘Guatemala at a critical juncture, urged to re-engage meaningfully with UN rights bodies’ (17 July 2023).

45 Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Guatemala (2018), §29; see also Severo Martínez Peláez, ‘La Patria del Criollo’ (Ediciones en Marcha, 1994), p143: “[t]he primary problem of Guatemalan society is the poor distribution of its principal source of wealth, land, which is concentrated in a few hands while the vast majority of the population who are dedicated to agriculture lack access, either because they have none at all or what they do have is too little and too poor.”

46 IACHR, ‘Situation of Human Rights in Guatemala 2017’ (31 December 2017) OEA/Ser.L/V/II.Doc. 208/17, §208.

47 IACHR, ‘North Central America and Nicaragua: Economic, social, cultural and environmental rights of indigenous and afro descendent tribal peoples’ (2023), §128.



Historical dispossession of Indigenous land

- 36.** During the colonial and early republican periods, there were real financial incentives to strategically grant communities communal property rights on large swathes of land, in order to concentrate, control and exploit the Indigenous population, thus sustaining the colonial structure.⁴⁸ The Spanish colonial model was based on the indentured slavery of Indigenous peoples on productive units of divided land (*encomiendas*) which were governed by Spanish *encomienderos*, and on the periodic distribution of Indigenous peoples amongst the *encomienderos* to exploit their indentured labour (*repartimiento*). The Liberal Reform at the end of the 19th century, led to a new, hegemonic modality of land ownership, the *latifundio-minifundio* system. That required the eradication of forms of property which hindered the development of private wealth, including the expropriation of communal ancestral Indigenous land. Land was provided by the state to, and accumulated in the hands of, a small number of private landowners (*finqueros*). Dispossessed Indigenous peoples were exploited by way of indentured labour (*colonato*) on the finquero's estates (*fincas*), or subjected to compulsory seasonal labour across different estates. The measures were cynically justified by reference to racist ideologies as to the natural 'idleness' of the Indigenous population.⁴⁹ As summarised by the Guatemalan novelist Mario Roberto Morales, "[t]he Liberal Revolution implied the fixation of [Guatemala] as an agro-exporter, the consolidation of a landowning class which owned the majority of the land, [and] the establishment of the National Army as a shock force for the Creoles against indigenous people, to force them to work in the plantations".⁵⁰
- 37.** The progressive agrarian reform promoted by President Jacobo Arbenz by way of Decree 900 in 1952, which sought to redistribute land more equitably to the campesino population and thus lift the Guatemalan economy from semi-feudalism into capitalism, was fiercely opposed by the landed oligarchy and by major landowners including the United Fruit Company. The latter lobbied the US Government to construe Arbenz' government as communist, leading to a CIA-backed coup d'état in 1954 which forced Arbenz to resign and resulted in the reversal of his reforms.⁵¹ Since then, the same property regime, and the constant interference of the armed forces in Guatemala's political, economic and social life, have persisted. From the heydays of the Cold War up until the early 1990s, the United States played a key role in Guatemala's undemocratic woes.⁵²

⁴⁸ Laura Hurtado Paz y Paz, 'The historic dispute over the lands of the Polochic Valley: a study on agricultural property' (Guatemala, June 2014), foreword (xiv-xv).

⁴⁹ Laura Hurtado Paz y Paz, 'The historic dispute over the lands of the Polochic Valley: a study on agricultural property' (Serviprensa, 2014), foreword (xv-xvi).

⁵⁰ Mario Roberto Morales, 'Brief Intercultural History of Guatemala', (Editorial Cultura, 2014), p87.

⁵¹ See, e.g. CEH, 'Memory of Silence', chapter 1, 'Causes and origins of the internal armed conflict', pp101-108.

⁵² See *The New York Times*, 'Clinton Offers His Apologies to Guatemala' (11 March 1999).

- 38.** The violence of the internal armed conflict that followed further affected the access of Indigenous peoples to their ancestral land. The principal beneficiaries of the violence were landowners, latifundios and members of the military. It was directly linked to the interests of landowners in ridding their fincas of Indigenous peoples.⁵³ In 1982, the lands from which predominately Indigenous and campesino families had been forcibly displaced were declared by the state to be in a ‘state of abandon’ and provided to new occupants. The military misappropriated various municipal lands, and unregistered lands were registered in favour of third parties, despite having been historically occupied by Indigenous peoples.⁵⁴
- 39.** As noted above, the 1996 Peace Accords sought to mend the injustices. They had a land justice focus. The Agreement on the Identity and Rights of Indigenous Peoples recognises the rights of Indigenous peoples to both communal and collective land tenure in addition to individual ownership, possession and other private rights, and the use of natural resources for their benefit. The Agreement on Socioeconomic Aspects of the Agrarian Situation requires “a comprehensive strategy that facilitates the access of campesinos to land and other productive resources, that provides legal security and that favours the resolution of conflicts”.⁵⁵ However, there has been a high rate of non-compliance with commitments relating to lands and territories.⁵⁶
- 40.** Article 91 of the Law on the Registration of Cadastral Information of 2005 requires the Supreme Court of Justice to create agrarian tribunals, and for a draft law to be introduced within the shortest length of time possible to regulate the substance and procedure for their application, for which an appropriate budget should be allocated.⁵⁷ However, as noted by the Inter-American Commission on Human Rights (“IACHR”), there was and continues to be a lack of political will to comply with these commitments. Following a suit by the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (“CACIF” by its Spanish acronym) which challenged the constitutionality of the provisions, in 2006 the Supreme Court of Justice ordered that their effect be temporarily stayed.⁵⁸ A law on the regularisation of land tenure was presented in Congress in 2016, and the Public Ministry made a technical proposal to create an agricultural prosecutor in July 2018. These endeavours sought to make Article 67 of the Constitution, and Article 91 of the Law on the Registration of Cadastral Information effective. Neither was approved.⁵⁹
- 41.** Land distribution in Guatemala remains highly unequal. The agricultural census of 2003 identified that 92 per cent of small producers occupied 22 per cent of available land, whereas 78 per cent of the remaining land was controlled by a small group of large producers. Data from the state in its Policy on Access to Land via Subsidised Credits shows that in 2016, 80 per cent of land was concentrated in the hands of less than 20 per cent of the population.⁶⁰ Gender inequality compounds the problem: according to the latest available national statistics, 85 per cent of arable land is in the hands of men.⁶¹

Continued lack of legal certainty regarding Indigenous claims to communal ancestral land

- 42.** The principal obstacle to Indigenous peoples’ rights to land is the continued lack of legal certainty as regards the lands and territories that Indigenous peoples have historically occupied, and the near impossibility of Indigenous peoples accessing their ancestral lands by legal means. The exercise of tracing back, and teasing out, how property rights have historically changed hands and been consolidated into the hands of different private and corporate landowners, and how those property rights relate to the subsisting claims of Indigenous communities to their ancestral land, is very complex, not least because existing land surveys and property registries are not designed to answer those questions.
- 43.** Guatemala lacks a legal framework, cadastral system or allocation mechanism that recognises, identifies and applies the legitimate relationship and collective ownership rights of Indigenous peoples to their ancestral lands in accordance with their traditional land tenure systems.⁶² Juridical recognition of Indigenous communal land still often rests on documentary proof dating back to the Spanish Crown. As a result, third parties are able to gain title and registry to communal lands without regard to the

⁵³ See e.g. the Panzos Massacre, committed in 1978 by the army against Maya Q’eqchi’ communities in the Polochic Valley of Alta Verapaz.

⁵⁴ IACHR, ‘Situation of human rights in Guatemala: Diversity, inequality and exclusion’, paras 453–454

⁵⁵ Agreement on Socioeconomic Aspects of the Agrarian Situation (adopted in Mexico, 6 May 1996), recital 4.

⁵⁶ Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §17.

⁵⁷ Law on the Registration of Cadastral Information, Decree 41-2005, Article 91.

⁵⁸ Corte de Constitucionalidad, Sentencia del Expediente 2265-2006 (4 September 2006).

⁵⁹ IACHR, ‘North Central America and Nicaragua: Economic, social, cultural and environmental rights of indigenous and afro descendent tribal peoples’ (2023), §209.

⁶⁰ *Ibid.*, §210, citing Fondo de Tierras, ‘Policy on access to land via subsidised credits’ (8 August 2016), p4.

⁶¹ INE, ‘National Agricultural Survey’ (2008).

⁶² Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §29.

ancestral Indigenous rights attached to them.⁶³ The IACHR has noted that, while the Constitutional Court has upheld Indigenous communities' land rights in certain cases, there is no effective domestic mechanism for Indigenous peoples to request and obtain collective land rights, so those aspects of the Constitutional Court's judgements have not been implemented.⁶⁴

- 44.** The Cadastral Information Registry ("RIC" by its Spanish acronym) is the state institution responsible for establishing, maintaining and updating information on the location, dimensions and use of real estate, and linking it to the information on the registration of ownership and other rights over real estate in the General Property Registry ("RGP" by its Spanish acronym) and the General Archive of Central America ("AGCA" by its Spanish acronym). The Law on the Registration of Cadastral Information defines the term 'communal lands' as lands which are *"the property, under the possession or tenancy of indigenous communities or campesinos as collective entities, with or without legal personality"*,⁶⁵ and that communal lands *"include those which appear to be registered in the name of the State or municipalities, but which have been traditionally possessed or held under a communal regime."*⁶⁶ It also states that *"if during the process of the cadastral survey the communal property, possession or tenancy of lands is identified, the RIC will recognise and make an administrative declaration of communal land, issue the required certifications and, where appropriate, order that they be registered."*⁶⁷ The delegation was concerned to learn, however, that there are no national or regional cadastral land surveys of a socio-historical, intercultural nature, which are necessary to interpret the processes that private property ownership has followed and how that affects Indigenous claims to communal land, in order to make such claims effective under international human rights law.
- 45.** The proper functioning of the RGP and the RIC is crucial to ensuring legal certainty over property rights. However, according to a report by the Social and Economic Council of Guatemala in 2019, *"approximately 70% of the country's territory is immersed in a web of confusion regarding land title and superimposed limits of land"*. The effectiveness of the RGP is marred by problems such as *"the registration of real estate without the plans needed to establish its location, the double registration of real estate, the registration of properties with demarcation issues, the loss and destruction of registry documents, and even fraud and corruption."* As for the RIC, the areas where the cadastral process was finalised between 2005 and 2019 only *"represent 4.1% of the country's municipalities"*. The report estimates that it will take *"280 years"* for the cadastral process to be finalised in the rest of the country, which runs the risk that *"cadastral and legal analyses are being carried out in respect of property in regard to which the information from the ground is outdated and therefore no longer valid"*. It also recognises that the *"lack of clarity over land tenure results in multiple conflicts, which disturb social peace and generate a climate of instability"*.⁶⁸
- 46.** The Land Fund (*Fondo de Tierras*, "FONTIERRAS" by its Spanish acronym), which was created in response to the Peace Accords, is entrusted with fomenting access to land, in recognition of the fact that *"large sectors of the Guatemalan population, particularly indigenous peoples, are made up of campesinos without any, or any sufficient, land."*⁶⁹ Its Strategic Agenda for 2012 to 2025 is based on four principles: access to land for comprehensive and sustainable development; regularisation of the state's (unfinished) land adjudication processes; sustainable development of agrarian communities, and institutional support to respond to social aspirations and legal mandates.⁷⁰ FONTIERRAS informed the delegation that it facilitates access to the land market by way of subsidised credits, restructuring the debt of its land access programme, selling and renting land to communities. However, in 2018 FONTIERRAS informed the former Special Rapporteur on the rights of Indigenous peoples that it lacks the necessary budget to comply with its mandate of facilitating affordable access to land. Up until 2016, of the 800,000 landless families applying for land, only 13,162, of whom 10,719 were Maya, had received any.⁷¹ The delegation also heard from the community organisations it met with that the land offered by FONTIERRAS is often not suitable for subsistence farming, the very purpose for which it is needed.
- 47.** Nevertheless, there is no domestic recognition, at the legislative or institutional level, of the customary right of Indigenous peoples to their communal land as a *sui generis* source of rights, and such rights are not taken into account in evaluations over land title. Indigenous status is subsumed under the

⁶³ IACHR, 'North Central America and Nicaragua: Economic, social, cultural and environmental rights of indigenous and afro descendent tribal peoples' (2023), §205.

⁶⁴ *Ibid*, §224.

⁶⁵ Law on the Registration of Cadastral Information, Article 24(c).

⁶⁶ *Ibid*, Article 24(y).

⁶⁷ *Ibid*, Article 65.

⁶⁸ Social and Economic Council of Guatemala, 'Analysis of progress in the national cadastre: the case of the Cadastral Information Registry' (November 2019), pp3, 7 and 16.

⁶⁹ Law of the Land Fund, Decree 24-1999, second recital.

⁷⁰ FONTIERRAS, 'Strategic Agenda 2012-2025'.

⁷¹ Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §32.

recognition and registration of rights to private property. There is therefore no clear mechanism for the recognition of the historical occupation of communities who do not have formal title to land, or whose ancestral lands have been registered in the name of third parties, and such considerations do not form the basis of land adjudication processes.⁷²

48. During a meeting with state authorities, which was attended by FONTIERRAS and the RIC, FONTIERRAS informed the delegation that 78% of land in Guatemala is in an “irregular” situation, where those who live on the land do not have their rights to the land registered in the RIC. FONTIERRAS told the delegation that it has no jurisdiction over lands which are in an irregular situation. For Indigenous communities in living in such circumstances, FONTIERRAS must give the RIC the final say. The delegation observes that this creates a vicious circle in which the registered private owners of land are respected and prioritised, to the disregard of Indigenous collective and ancestral land rights, which are restricted and violated. There are no dispute resolution mechanisms, such as agrarian tribunals, which are capable of probing the conflicts further.
49. The delegation was particularly concerned to learn that there is no state institution which has, or is carrying out, a national survey of ancestral Indigenous land. FONTIERRAS was unable to tell the delegation whether there are any comprehensive registers of Indigenous communities at the municipal level, even though it assured the delegation that there has been recognition of some communities’ Indigenous status by certain municipalities. It explained that communities of the Sierra Santa Cruz in El Estor, Izabal, had achieved recognition by the RIC as having the customary right to their communal ancestral land. In addition, ‘Declarations of communal lands’, which would be made where the state determined that a municipally recognised Indigenous community had a special historical or cultural connection with particular land, had been made in several cases, all of which had been submitted to FONTIERRAS for adjudication. However, not all of the Indigenous communities that were subject of such declarations had rights to the land, some residing on land which was in an “irregular” situation, over which FONTIERRAS had no jurisdiction. FONTIERRAS told the delegation that in total, very few Indigenous communities in Guatemala had been granted land as a result of FONTIERRAS adjudication.

At a local market in Nuevo Chintún, the women of UVOC offer their own products.



72 IACHR, 'Situation of human rights in Guatemala: Diversity, Inequality and Exclusion' (2015), §462.

Agrarian conflicts

50. Legal and institutional shortcomings in recognising Indigenous rights to land are at the root of land conflict. There were 1,324 recorded cases of agrarian conflicts nationwide in 2014, affecting 1,387,938 people from 146,645 families and concerning 528,353.79 hectares of land.⁷³ Between 1997 and March 2020, the Secretary of Agrarian Matters received 9,674 agrarian conflict cases, and resolved 8,161.⁷⁴ The majority of those related to structural issues facing the most vulnerable, especially Indigenous peoples and campesinos.⁷⁵ The OHCHR reported that the majority of agrarian conflicts which were registered in 2017 had not been resolved in 2018.⁷⁶ In 2020, the year when it was shut down, the Secretary for Agrarian Matters was dealing with 1,486 cases of agrarian conflict.⁷⁷
51. In 2020, the state closed the Secretary for Agrarian Matters and the Secretary for Peace, on the basis that they had completed their mandates. The Presidential Commission for Peace and Human Rights (“COPADEH” by its Spanish acronym) was established in its place. The IACHR identified this as a regressive step in the implementation of the Peace Accords and the formalisation of land tenure.⁷⁸
52. FONTIERRAS informed the delegation that where land is found to be in an “irregular” situation, the only mediation now available is by way of the COPADEH, via its Directory for the Attention of Conflicts. COPADEH told the delegation that it has the function of assisting and coordinating strategies with other state institutions in order to facilitate dialogue in the context of agrarian conflicts. It hosts negotiation mechanisms in respect of such conflicts between private landowners and Indigenous communities, but it can only do so with the consent of both parties. Where negotiations do not take place or are unfruitful, the only way of adjudicating agrarian conflicts is through the criminal courts.
53. These negotiations mechanisms are marred by ineffectiveness and a well-founded distrust by the communities they are supposed to assist.⁷⁹ The OHCHR has noted that community participation in negotiation mechanisms allows Indigenous leaders to be identified, who are later criminalised.⁸⁰ The delegation was told by the lawyers and communities it met with that powerful actors withdrew from negotiations before their conclusion, at which point attacks and violence against communities increased.

Criminalisation and eviction of Indigenous peoples

54. Prosecutors entrusted with protecting private property rights have had their powers increased in a manner which has resulted in the escalated criminalisation of vulnerable communities. On 3 October 2021, the Public Ministry inaugurated the Prosecutor against the specific Crime of Trespass (*usurpación*).⁸¹ The move directly responded to the demands of the Observatory of Private Property Rights, an organisation created in March 2021 by the CACIF,⁸² which had, five months before, devised a strategy to halt and prevent the outcomes of the Constitutional Court’s developing jurisprudence on the collective land rights of Indigenous peoples.⁸³ On 12 April 2023, the Public Ministry further inaugurated the Office for Permanent Attention to the Prosecutor against the Crime of Trespass, to ensure that “*all persons can have immediate attention to their complaints of trespass*”.⁸⁴
55. Under the definition of the flagrant offence of aggravated trespass (*usurpación agravada*), the mere presence of members of Indigenous communities on disputed land is a crime.⁸⁵ Registered landowners can make complaints of trespass against Indigenous community members without having to exhaust administrative or civil routes for resolving a land dispute, and the only defence to a charge is documented title to land. The possibility of traditional ownership, or possession in good faith, even in cases where the

⁷³ Guatemalan Presidential Secretary for Agrarian Affairs, ‘Monitoring Report on Agrarian Policy and Conflict in Guatemala’, (September 2014), p13.

⁷⁴ Proyecto Tejiendo Paz, ‘Bulletin on conflict in Guatemala: Brief panorama of social and agrarian conflict (2019-2020)’ (June 2020 – Number 1), p8.

⁷⁵ IACHR, ‘North Central America and Nicaragua: Economic, social, cultural and environmental rights of indigenous and afro descendent tribal peoples’ (2023), §§211-212.

⁷⁶ HRC, ‘Activities of the Office of the United Nations High Commissioner for Human Rights in Guatemala: Report of the Office of the United Nations High Commissioner for Human Rights’ (28 January 2019) UN Doc A/HRC/40/3Add.1, §67.

⁷⁷ Proyecto Tejiendo Paz, ‘Bulletin on conflict in Guatemala: Brief panorama of social and agrarian conflict (2019-2020)’, p8, citing Secretary of Agrarian Affairs, ‘Bulletin No. 23’ (20 November 2019).

⁷⁸ IACHR, ‘North Central America and Nicaragua: Economic, social, cultural and environmental rights of indigenous and afro descendent tribal peoples’ (2023), §212.

⁷⁹ Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §30.

⁸⁰ HRC, ‘Activities of the OHCHR in Guatemala: Report of the Office of the United Nations High Commissioner for Human Rights’ (2019), §46.

⁸¹ Guatemalan Public Ministry, ‘Public Ministry inaugurates the Prosecutor against the Crime of Usurpación’ (3 October 2021).

⁸² Emisoras Unidas, ‘The Observatory of Private Property Rights is inaugurated’ (17 March 2021).

⁸³ Laura Hurtado Paz y Paz, ‘Reconfiguration of business and resistance strategies’ in Latinamerican Council of Social Sciences (“CLACSO” by its Spanish acronym), ‘Bulletin No. 12 of Fronteras Working Group: (Trans) Fronteriza: Territorial inequality and global agriculture in Central America and the Caribbean’ (December 2021), pp50-51, citing CACIF, ‘Executive report: tendency of jurisprudential criteria of the Constitutional Court on the Property and Rights of Indigenous Peoples’ (5 October 2020).

⁸⁴ Guatemalan Public Ministry, ‘Public Ministry inaugurates the Office for Permanent Attention to the Prosecutor against the Crime of Usurpación’ (12 April 2023).

⁸⁵ Decree 33-1996, modifying Articles 256 and 257 of the Guatemalan Penal Code.

possession goes back several generations, is not taken into account in prosecutorial decisions, affecting the right of Indigenous peoples to the presumption of innocence and due process, in circumstances where they themselves do not have legal certainty about their land rights.

- 56.** In some cases, companies or landowners play a fundamental role in ensuring that criminal proceedings take place. In 2018 the former Special Rapporteur on the rights of Indigenous peoples noted, with deep concern, that there were allegations of collusion by prosecutors and judges with companies and landowners at the local level.⁸⁶ When the delegation asked the state institutions it met with in Guatemala City about this, COPADEH responded that *“trespass is a crime under the law, so it is natural that private landowners and finqueros would use it to protect their interests”*.
- 57.** Allegations of trespass provide a legal basis for forced evictions of Indigenous peoples from their territories. The delegation heard from the communities and lawyers it met with that evictions of Indigenous people are carried out summarily, without prior consultation or adequate notice, and often with violence by members of the police, including the use of weapons and the destruction and burning of homes, crops and personal belongings, with no realistic prospect of access to justice or arrangements for the relocation or return of the communities.⁸⁷ The delegation notes in this regard that in 2017, the IACHR *“received extensive information on ... the risk faced by a significant number of peasant and indigenous communities of being evicted by the Guatemalan State in the course of the execution of judicial orders”* and noted that *“behind the execution of the evictions there are often interests of corporations and private companies that have various investment projects such as monocultures, mining, hydroelectric projects, oil, or tourism, among others”*.⁸⁸
- 58.** The delegation also heard from the communities and human rights defenders it met with that violent evictions have been carried out illegally by private actors in collusion with state authorities and illegal armed groups, in the absence of eviction orders issued by a judge. The IACHR has issued several precautionary measures concerning the illegal eviction of Indigenous peoples in Alta and Baja Verapaz, including in respect of: the Maya Q’eqchi communities of the Panzos municipality in 2011;⁸⁹ the Maya Q’eqchi Nueva Semuy Chacchilla community in 2018;⁹⁰ the Maya Q’eqchi La Cumbre Sa’kuxhá community in 2018;⁹¹ and the Maya Poqomchi’ Washington and Dos Fuentes communities in 2020.⁹²
- 59.** The OHCHR states that there were 27 forced evictions in 2017, and 5 in 2018, by which time 28 evictions orders remained in force. The communities who had been forcibly evicted in 2017 continued to live in extremely precarious conditions, especially in Alta Verapaz, Izabal and Petén. In 2019, the OCHR documented worrying sanitary situations, especially amongst children and pregnant women, a lack of access to food and an increase in malnutrition as a result of the destruction of means of subsistence caused by evictions. It noted that four precautionary measures issued by the IACHR in respect of communities who had suffered forced evictions and who required immediate humanitarian assistance had not been duly implemented, including those in respect of the Nueva Semuy Chacchilla and the La Cumbre Sa’kuxhá communities.⁹³ The OHCHR documented six forced evictions in 2021⁹⁴ and five in 2022, the latter affecting 250 families. It found that evictions did not comply with international human rights standards, which require prior notification, the proportional use of force, the non-destruction of homes and the relocation and adequate transferral of the persons affected, and that there was a lack of dialogue with the affected communities.⁹⁵ The delegation notes that whilst the number of evictions are broadly known, there are no official figures on the number of evicted families, communities or individuals, or the ethnic, gender or age make-up of those numbers.

⁸⁶ Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §54.

⁸⁷ See also IACHR, ‘Situation of Human Rights in Guatemala’ (31 December 2017) OEA/Ser.L/V/II.Doc. 208/17, §220; Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §47.

⁸⁸ IACHR, ‘Situation of Human Rights in Guatemala’ (31 December 2017), §12.

⁸⁹ IACHR, ‘Precautionary Measures: Q’eqchi Indigenous Communities of the Panzos Municipality, Guatemala’ (20 June 2011) MC 121/11.

⁹⁰ IACHR, ‘Precautionary Measures: Maya Q’eqchi community “Nueva Semuy Chacchilla”, Guatemala’ (10 February 2018) MC 872-17.

⁹¹ IACHR, ‘Precautionary Measures: Maya Q’eqchi community “La Cumbre Sa’kuxhá”, Guatemala’ (18 June 2018) MC 44-18.

⁹² IACHR, ‘Precautionary Measures: Indigenous Maya Poqomchi’ Families of the Washington and Dos Fuentes Communities, Guatemala’ (14 October 2020) MC 306-20.

⁹³ HRC, ‘Activities of the Office of the United Nations High Commissioner for Human Rights in Guatemala: Report of the Office of the United Nations High Commissioner for Human Rights’ (2019), §§68 and 69.

⁹⁴ HRC, ‘Situation of human rights in Guatemala: Report of the United Nations High Commissioner for Human Rights’ (22 March 2022) UN Doc A/HRC/49/20, §45.

⁹⁵ HRC, ‘Situation of human rights in Guatemala: Report of the United Nations High Commissioner for Human Rights’ (26 January 2023) UN Doc A/HRC/52/23, §50.

60. The Guatemalan state has informed the IACHR that it provided a police protocol in 2012 in respect of evictions. It also stated that in 2019 it approved guidelines for police use of force, effected workshops with members of the judiciary, the Public Ministry and the National Civil Police and held coordination meetings with governmental institutions to implement a strategy for the prevention of evictions and attention to the humanitarian crises caused by them. Results had included the agreement between the National Civil Police and the COPADEH for the latter to emit a technical opinion on human rights whenever the police are required to attend an eviction; and a proposed interinstitutional action protocol during and after the eviction. The state also mentioned training for military personnel who provide support to state security forces; interinstitutional action to attend to civil conflicts, and workshops for justice figures in respect of cultural justice. However, the state attorney for human rights (*Procuraduría de los Derechos Humanos*) informed the UN Committee on the Elimination of Racial Discrimination that there had been no legislation in respect of eviction prevention, nor was the state meeting the minimum elements necessary to guarantee the rights of communities subject to evictions.⁹⁶ The IACHR continued to receive information about the persistent risk of forced evictions involving an excessive use of force. It also noted that journalists continued to denounce the forced displacement of Indigenous communities for the expansion of extractive activities, and the corrupt agendas of the public institutions that take evictions forward.⁹⁷
61. The delegation met with a representative of the office of the human rights ombudsman in Cobán. At the outset of the meeting, he recognised the historical injustices that had led to current agrarian conflicts in Alta Verapaz. He also recognised that it was important that ethnological studies be carried out at the national and municipal level, in order to fairly determine Indigenous communities' ancestral claims to land. When asked about forced evictions, he explained that the ombudsman's involvement begins when it is notified by the judge ordering an eviction to attend the eviction in order to monitor human rights compliance. He stated that he had been present at most evictions, taking films and pictures, and producing written reports. If he considered that excessive force had been used by the police at an eviction, he would make a complaint to the relevant state authorities. He described one such case, where excessive force was used against women under arrest, and where an injured elderly person was imprisoned instead of getting healthcare. Criminal charges had been made as a result of the ombudsman's complaint, and the case was still being heard. He also stated that police presence at evictions had recently increased due to the violence inflicted by the individuals being evicted, which had resulted in one police officer being killed and others injured by gunshots. The delegation understood clearly from its meeting with the ombudsman's office that the agrarian conflict and forced evictions engender violence on both sides, as is evident from recent media reports.⁹⁸
62. However, the delegation was particularly concerned by the focus of the meetings it held in Alta Verapaz with the regional office of COPADEH and the National Civil Police in Cobán, in this regard. Most of their remarks to the delegation expressed sympathy with private property owners, whilst stigmatising Indigenous claims over the lands they inhabit as a security threat. They both denied that the state had violated the rights of Indigenous peoples in effecting evictions, even when the delegation put the findings of the OHCHR to them. They also emphasised injuries to police officers carrying out forced evictions. The police denied that they had ever been called to protect communities who were being evicted extrajudicially. COPADEH stated that violence was being "staged" by communities, who were "fooling" and "lying" to the international community about human rights violations, and who, unlike other landowners, had no real "need" for the land other than to house the children that they "keep having". The delegation's experience unfortunately chimed with the grave concerns of the former Special Rapporteur on the rights of Indigenous peoples that Indigenous communities' peaceful protests in the face of the massive escalation in the violation of their rights "seem to be considered by the State and the third parties involved to be examples of criminal activity that undermines public safety", and that the neglect of responsibilities by state institutions responsible for monitoring human rights "contrasts strongly with their diligence in submitting claims seeking eviction, thus leaving the persons affected in a desperately precarious and defenceless situation."⁹⁹

⁹⁶ IACHR, 'North Central America and Nicaragua: Economic, social, cultural and environmental rights of indigenous and afro descendent tribal peoples' (2023), §§220-221, citing Procurador de los Derechos Humanos, 'Report of the Procurador de los Derechos Humanos of Guatemala to the United Nations Committee on the Elimination of Racial Discrimination on the occasion of its examination of the country (session 98/2019) based on the list of themes in the combined reports 16^o and 17^o' (March 2019).

⁹⁷ IACHR, 'North Central America and Nicaragua: Economic, social, cultural and environmental rights of indigenous and afro descendent tribal peoples' (2023), §§218-219.

⁹⁸ See for example, in respect of violence against communities: Prensa Comunitaria, 'Executions, repression and criminalisation against campesinos of Samococh, Alta Verapaz' (21 April 2019); Prensa Libre, 'Violence in evictions are denounced' (19 August 2014); and in respect of violence against police officers: Republica, 'Police is killed during eviction in Tukurú, Alta Verapaz' (25 January 2023).

⁹⁹ Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §§44 and 50.

The department of Alta Verapaz, located in North-western Guatemala is rich in natural resources.



Lack of access to justice for Indigenous peoples

- 63.** The problems faced by Indigenous peoples who are subjected to criminalisation and eviction are compounded by a lack of access to justice and a lack of respect for the rule of law. The UN Committee on the Elimination of Racial Discrimination has noted that a “*lack of judicial independence, persistent racial discrimination in the justice system and the lack of cultural and linguistic relevance continue to prevent effective access to justice for indigenous peoples, especially women*”.¹⁰⁰ The delegation heard from the lawyers it met with that the justice system in Guatemala operates on two tiers. Accusations made by business actors are met quickly and efficiently by the justice system, whereas the converse is true for Indigenous communities, who face violent repercussions as a result of making their claims heard. That accords with the findings of the former Special Rapporteur on the rights of Indigenous peoples that court rulings disregard the rights of Indigenous peoples, Indigenous claims are not heard as promptly as those of other parties, and communities that submit claims are victims of criminal reprisals and violence.¹⁰¹
- 64.** The delegation also heard that the reach of lawyers specialising in Indigenous peoples’ rights is severely limited by a lack of financial means. The ability of Indigenous peoples to seek recognition of their land rights in the context of a debilitatingly complex cadastral system, which fails to observe intercultural requirements for access to justice, is further hampered by the fact that there is no legal aid whatsoever for non-criminal cases. Given the dire socioeconomic situation facing Indigenous peoples, many are unable to pay for legal representation. Whilst they may have access to public defenders from the Guatemalan Public Defence Office (*Instituto de la Defensa Pública Penal*) in the criminal courts, that service is overstretched, understaffed and suffers chronic material shortcomings. The delegation also heard from Indigenous human rights defenders that interpretation of Indigenous languages in criminal proceedings is often inaccurate. In its meeting with the delegation, representatives of the Office for the United Nations High Commissioner for Human Rights (“OHCHR”) expressed a concern that civil society organisations simply do not have the human resources to assist in the defence of the large number of human rights and Indigenous land defenders who are being criminalised.

¹⁰⁰ UN Committee on the Elimination of Racial Discrimination, ‘Concluding observations on the combined sixteenth and seventeenth periodic reports of Guatemala’ (27 May 2019) UN Doc CERD/C/GTM/CO/16-17, §37.

¹⁰¹ Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §34.

65. The overuse of the criminal jurisdiction to air agrarian disputes at the disposal of individual landowners and private companies asserting private property rights over lands inhabited by Indigenous communities, and the lack of access to justice for communities in that context, are at the heart of the current agrarian conflict. The delegation observes that whilst the criminal justice system has become a primary battle ground, the criminal courts, which are inherently punitive, are not an appropriate forum to ventilate complex land issues. This same conclusion was formed by the former Special Rapporteur on the rights of Indigenous peoples, who noted that *“the general tendency to resort to criminal prosecutions to deal with problems relating to rights to lands and natural resources places an impossible burden on the legal system that it cannot cope with, if it is to function properly”*.¹⁰²

The effect of extractive and agricultural industry on Indigenous peoples and their natural resources

66. The use of land by mining, energy and monocultural agricultural industries, including the palm oil industry, and the grave environmental effects those produce, such as deforestation and the diversion and contamination of water sources, have reduced further the amount of land and natural resources available for Indigenous peoples to subsist from.¹⁰³ The former Special Rapporteur on the rights of Indigenous peoples noted that areas in which foreign investment is most highly concentrated are also the areas with the worst human development indicators, indicating that Indigenous peoples do not benefit from such projects.¹⁰⁴ The effect of climate change is also a major concern, given that Guatemala was named one of the 20 countries at highest risk of climate change between the years 2000 and 2019.¹⁰⁵ Between 1990 and 2015, Guatemala lost 25 per cent of its forested areas, and more than half of its primary forests.¹⁰⁶
67. The delegation heard from civil society actors that the industries attached to land in Guatemala increase the appropriation of lands inhabited by Indigenous peoples. In addition to these pursuing criminalisation and evictions, they use land-grabbing methods such as the co-optation of community leaders; banks encouraging loans over the land of small-scale farmers for the purposes of monoculture plantations and then seizing the land; neighbouring lands being bought up to create pressure; restricting access to land and forcing sales by way of violence. The delegation also heard concerns that ‘land laundering’, meaning the repeat transference of ancestral Indigenous land between registered landowners and companies, makes it increasingly impossible for Indigenous peoples to trace violations of their land rights. The delegation heard persuasive evidence from a local supply chain analyst focusing on the opacity of palm oil supply chains, which prevent accountability.
68. The delegation observed, and the foreign embassies it met with agreed, that supply chain due diligence in Guatemala is a major concern for the international community, given that the country’s top exports are raw materials (bananas, coffee, palm oil and sugar) destined for the USA, Europe and other Latin American countries.¹⁰⁷ It is the fourth largest exporter of palm oil in the world,¹⁰⁸ much of which is sourced by major consumer brands. The former Special Rapporteur on the rights of Indigenous peoples highlighted that whilst the CACIF had signed up to an institutional policy of human rights and business in 2014, by 2018 none of the companies concerned had carried out human rights impact studies.¹⁰⁹ The delegation was however pleased to learn that the private sector representatives it met with were aware of a need for better human rights due diligence by Guatemalan businesses.
69. It is well documented that several Guatemalan entities involved in the extractive and agricultural sectors engage in extensive environmental damage and human rights violations against Indigenous communities. For instance, two of the largest domestic palm oil producers, NaturAceites and Grupo Hame, have been repeatedly accused of triggering the arrests and prosecutions of Indigenous peoples, as well as of polluting

¹⁰² Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §84.

¹⁰³ IACHR, ‘North Central America and Nicaragua: Economic, social, cultural and environmental rights of indigenous and afro descendent tribal peoples’ (2023), §203; Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §40; Colectivo Ecologista Madreselva, ‘Study on the human rights impacts of the cultivation of palm oil’ (2019).

¹⁰⁴ Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §36.

¹⁰⁵ IACHR and Special Rapporteur for Economic, Social, Cultural and Environmental Rights, ‘Fifth Annual report of the Office of the Special Rapporteur on Economic, Social, Cultural, and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR) 2021: “The imperative of putting the economy at the service of people and nature in the most unequal region of the planet”’ (26 May 2022) OEA/SER.L/V/II Doc. 64 rev. 1, §927, citing Germanwatch, ‘Global Climate Risk Index 2021’ (January 2021).

¹⁰⁶ IACHR, ‘North Central America and Nicaragua: Economic, social, cultural and environmental rights of indigenous and afro descendent tribal peoples’ (2023), §232.

¹⁰⁷ Observatory of Economic Complexity, ‘Country Profile: Guatemala 2021’.

¹⁰⁸ Observatory of Economic Complexity, ‘Palm Oil in Guatemala 2021’.

¹⁰⁹ Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §43.

precious ecosystems and waterways.¹¹⁰ As of October 2022, sixty formal complaints had been filed against NaturAceites since 2010, and it is unclear that any of those have been properly resolved.¹¹¹ Local news outlets regularly report on individual instances of evictions and violence against Indigenous communities where the private sector is implicated, evidencing their reporting with extensive photographic and video footage.¹¹² Relatedly, there is widespread concern that Guatemalan entities certified by the Roundtable on Sustainable Palm Oil (“RSPO”) are engaging in unsustainable practices and deforestation which the RSPO should guard against.¹¹³ It was evident to the delegation that local communities have completely lost trust in certification schemes such as the RSPO’s.

- 70.** The delegation was concerned by the involvement of multinational companies (“MNCs”) in this pattern of abuse. MNCs owe obligations to respect the rights of local communities and Indigenous peoples, and appear to have been on notice regarding the violations of Indigenous rights that systematically affect the sectors within which they operate in Guatemala. In November 2020 for example, several UN expert bodies warned the Guatemalan state that actions by various palm oil companies operating on its territory “*could amount to labour exploitation, human trafficking indicators and forced labour*.”¹¹⁴
- 71.** Despite this, MNCs have continued their sourcing of palm oil from Guatemala. A 2020 Action Aid report noted that “*six of the seven investigated Guatemalan mills linked to women’s rights abuses also appear on Unilever’s list of palm oil suppliers (Chiquibul, Palmas del Ixcán, Panacté, Procesadora Quirigua, Repsa and Yalcohe). One of the mills is a direct supplier (NaturAceites), while the other mills are linked to Unilever indirectly – that is, through intermediary suppliers.*”¹¹⁵ The report further accuses Unilever of failing to operate transparently in respect of concerns raised about NaturAceites.¹¹⁶ International environmental NGOs have also expressed widespread condemnation of the decision of Cargill, Nestlé, Unilever, Mondelēz, AAK, Oleofinos and Ferrero to resume their palm oil sourcing from the Reforestadora de Palma SA company in 2021, following two crude palm oil spills which led to an ecological disaster on the Pasión River in Petén in 2015.¹¹⁷
- 72.** The delegation considers that it is incumbent upon MNCs, particularly those which, like Unilever, portray themselves as champions of sustainability and justice, to take action to ensure that their economic and supply chain links to Guatemala are communicated transparently and that they do not harm people, communities and, particularly in the wake of the climate and ecological crisis, precious ecosystems.
- 73.** Overall, private interests, especially agricultural ones, appeared to the delegation to be a central cause of the land conflicts and violations of Indigenous rights that the delegation observed. Unless such interests are curbed and regulated, it is likely that this cycle of abuse will continue. To this extent, the delegation notes that efforts are underway to legislate on supply chain due diligence in the European Union and UK, amongst other jurisdictions. It is hoped that resultant laws will be sufficiently strong and impermeable to ensure that MNCs headquartered in those jurisdictions are held accountable for actions abroad.

¹¹⁰ See e.g. Mongabay, ‘Grupo HAME: eight complaints of environmental offences and more than a decade of impunity in Guatemala’ (9 November 2021); Action Aid, ‘Women’s rights violations in Dutch palm oil supply chains: the case of Guatemala’ (October 2020); Aljazeera, ‘Guatemala’s growing palm oil industry fuels Indigenous land fight’ (15 October 2021); Verité, ‘Labor and Human Rights Risk Analysis of the Guatemalan Palm Oil Sector’ (2016); Rainforest Rescue Petition, ‘Guatemala: Stop the palm oil industry’s violence against the Maya!’.

¹¹¹ Cf. Mongabay, ‘Naturaceites: the palm cultivating industry denounced for the death of fish, plagues of flies and projects without environmental studies in Guatemala’ (October 2022); Mongabay, ‘Following the impacts of palm oil alliance: Violated regulations and penalty proceedings’ (17 November 2022).

¹¹² See e.g. Prensa Comunitaria, ‘Horror and fire in Chinebal, the eviction in favour of palm oil producers in El Estor’ (19 November 2021); Prensa Comunitaria, ‘El Estor: First report of the Commission of Ancestral Authorities on the repression of the Chapin Abajo community’ (6 December 2022).

¹¹³ Calli P. VanderWilde, Joshua P. Newell, Dimitrios Gounaridis and Benjamin P. Goldstein, ‘Deforestation, certification, and transnational palm oil supply chains: Linking Guatemala to global consumer markets’, *Journal of Environmental Management*, Volume 334, Article 118505 (15 October 2023).

¹¹⁴ Mandates of the UN Special Rapporteur on trafficking in persons, especially women and children; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the rights of Indigenous peoples, and the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences, ‘Communication report to the state of Guatemala’ (9 November 2020) Ref: AL GTM 3/2020.

¹¹⁵ Action Aid, ‘Women’s rights violations in Dutch palm oil supply chains: the case of Guatemala’ (2020), p43.

¹¹⁶ *Ibid.* It notes at p54: “*In reaction to the findings, Unilever has shared that they have reached out to their direct suppliers NaturAceites to verify the allegations and ensure compliance with their policies. They have also reached out to other direct suppliers, such as Cargill, on the cases where there are indirect links with Unilever. Unilever indicates that they will take action after they have verified the information we provided in this report, stating that action could possibly include time-bound remediation, but that they are increasingly asking their suppliers to disengage from problematic sources to incentivize responsible business conduct. As a powerful company that has the reputation of being a leader in responsible business conduct and HRDD, Unilever has a responsibility to be more transparent about its actions to respect human rights and remediate human rights violations in its supply chains. Yet, none of the Guatemalan mills that supply Unilever directly and indirectly and are linked to violations in Guatemala, appear on Unilever’s latest Palm Oil Grievance Tracker. Unilever should ... address the issues raised in this report and use their leverage on other suppliers to uphold the same values, to provide remedies for the women and communities affected by the violations, and ensure that future adverse impacts are prevented.*”

¹¹⁷ Action Aid, ENCA, Forest Peoples Programme, Friends of the Earth US and Netherlands, Greenpeace, GJEP, Instituto Maira, Mayan White Water, Profundo, Protection International, Rainforest Action Network, Water Justice and Gender, ‘Joint NGO response: REPSA/HAME Group’s response to the “Open Letter to Multinationals Resuming Palm Oil Sourcing from REPSA in Sayaxché, Guatemala,” is misleading and fails to take responsibility for the environmental disaster and rights violations caused’ (January 2022).



Respect for the right to free, prior and informed consultation and consent

74. The UN Special Rapporteur and IACHR have noted with concern that energy, extractive and other projects are approved and developed without the prior consultation and consent of affected Indigenous peoples in Guatemala.¹¹⁸ Although Guatemala does not have a general law on free, prior and informed consultation and consent (FPICC), its Constitutional Court has affirmed that the state's duty to comply with its international obligations to consult with Indigenous peoples applies regardless of whether or not legal provisions, agencies or ad hoc procedures have been implemented for that purpose.¹¹⁹
75. Whilst there are current national mechanisms for public participation of communities in respect of development measures which affect them,¹²⁰ these do not meet international standards.¹²¹ Article 26 of the Law of Urban and Rural Development Councils states that *“while a law regulating the consultation of indigenous peoples is issued, consultations with the Maya, Xinka and Garífuna peoples on development measures which are promoted by the Executive branch and which directly affect these peoples may be done through their representatives in the development councils”*. Although this law seeks to make up for the absence of a regulation on the right to free, prior and informed consultation, it has been the subject of concern by international mechanisms for the protection of the rights of Indigenous peoples. Such is the case of the former Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, who in 2011 remarked that *“although various internal regulations refer to the consultation or participation of indigenous communities, these regulations do not necessarily respond to the minimum requirements established by*

¹¹⁸ IACHR, ‘North Central America and Nicaragua: Economic, social, cultural and environmental rights of indigenous and afro descendent tribal peoples’ (2023), §223; Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §§37-39.

¹¹⁹ Corte de Constitucionalidad, Sentencia del Expediente 411-2014 (12 January 2016); Sentencia de Expedientes Acumulados 90-2017, 91-2017 and 92-2017 (26 May 2017).

¹²⁰ E.g. Regulation on Environmental Evaluation, Control and Monitoring 2007; Law on Urban and Rural Development Councils (Decree 11-2002); Municipal Code; General Law of Decentralisation (Decree 14-2002).

¹²¹ IACHR, ‘Situation of human rights in Guatemala: Diversity, Inequality and Exclusion’ (2015), §§497-512; Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §§63-73. The deficiencies in the role played by Urban and Rural Development Councils (“Cocodes”, by their Spanish acronym) is well-documented and requires more detailed consideration than the IDIL has been able to give it in the present report, see in particular: Independent report of Julian Burger, Monica Feria-Tinta and Claire McGregor, ‘Indigenous Peoples’ rights and hydro-electric projects in Guatemala: The case of the Ch’orti’ in Chiquimulá’ (June 2015).

Delegates meeting with representatives of UVOC and Indigenous communities in Cobán, Alta Verapaz.



international instruments on the matter”,¹²² and who emphasised that “*there is ... in Guatemala no adequate legal and institutional framework to carry out the state’s duty to consult indigenous peoples*”.¹²³ In her 2018 report on her visit to Guatemala, former Special Rapporteur Victoria Tauli-Corpuz referred to this norm, pointing out that representatives of the Urban and Rural Development Councils are not necessarily “*indigenous peoples’ own traditional authorities*.”

- 76.** In any event, the delegation notes that the right to consultation is not an isolated right, but arises out of Indigenous peoples’ substantive rights, particularly their rights to self-determination, development and their associated rights over land, territory and natural resources. Where the state fails to recognise ancestral Indigenous land rights, the right to consultation which would otherwise attach to Indigenous land is null.

¹²² HRC, ‘Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya: Observations on the situation of the rights of the indigenous people of Guatemala with relation to the extraction projects, and other types of projects, in their traditional territories’ (7 June 2011) UN Doc A/HRC/18/35/Add.3, §20.

¹²³ *Ibid*, §21.

Case studies: issues faced by Indigenous communities in Alta Verapaz

- 77.** The majority of the population of the Alta Verapaz department is Indigenous. The most recent official figures put the Maya peoples at 92.95 per cent of its population, predominately from the Q'eqchi' (86.7 per cent) and Poqomchi' (11.4 per cent) ethnic groups.¹²⁴ Despite being rich in natural resources, Alta Verapaz has the highest rates of poverty (83.1 per cent), extreme poverty (53.6 per cent),¹²⁵ and acute malnutrition in the country. Its Polochic region had the second-highest number of agrarian conflicts registered by the Secretary for Agrarian Matters in 2020.¹²⁶
- 78.** The Indigenous peoples of Alta Verapaz have been subjected to continuous land dispossession dating back to the colonial period. During the liberal reform, the production of coffee and other extensive monocultures were promoted in the territory via the provision of land to European (particularly German) migrant families, and indigenous peoples were forced to work on their plantations. In the 20th century, the inclusion of Alta Verapaz in the Franja Transversal del Norte, a state infrastructure project geared towards the establishment of zones for agricultural development, restricted the land rights of its indigenous peoples further, and culminated in around 60 massacres in Alta Verapaz during the internal conflict.¹²⁷ Complainants requesting the eviction of Indigenous communities from their ancestral lands now include the descendants of European landowners.
- 79.** In more recent decades, the rights of Indigenous peoples in Alta Verapaz have been further undermined by its active energy and agricultural industries. In areas with a high number of hydroelectric power plants, communities have no electricity, and where a single water source is used for both monoculture crops and hydroelectric power plants, there is a serious impact on Indigenous communities' right to water.¹²⁸ Palm monocultures use up and contaminate natural water resources, which are communities' source of water, food and income. Palm oil production has led to large-scale deforestation, the fragmentation of habitats, water contamination, food insecurity, and reduced access to firewood and herbal medicines for Indigenous communities.
- 80.** Poverty, criminalisation and violence lead to the large-scale migration of Indigenous men and youth northwards, on the treacherous journey towards the US border, seeking a better life, though many never make it.¹²⁹ Whilst the delegation was in Guatemala, at least forty migrants tragically died in a fire at an immigration detention centre in Ciudad Juárez, Mexico. Nineteen of them were Guatemalan, and several were Indigenous. Byron Manuel López Xol, for example, was 25 years old and from Panzós in Alta Verapaz. He had decided to leave Guatemala in desperation after his family faced years of agrarian conflicts, threats, criminalisation and eviction attempts caused by the palm oil company NaturAceites.¹³⁰

¹²⁴ INE, 'Census of population and housing' (2018).

¹²⁵ INE, 'National Survey of Living Conditions 2014: Principal results' (December 2015), pp6 and 10.

¹²⁶ Proyecto Tejiendo Paz, 'Bulletin on conflict in Guatemala: Brief panorama of social and agrarian conflict (2019-2020)', p4.

¹²⁷ CEH, 'Memory of Silence', volume VIII, annex II, pp46-64.

¹²⁸ Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §36.

¹²⁹ See, e.g. *Guardian*, 'UN special rapporteur demands inquiry into death of Guatemalan girl held in US' (24 December 2018); Reuters, 'Teenage Guatemalan migrant dies in Texas while in U.S. custody' (1 May 2019); *Democracy Now*, 'Unaccompanied 15-Year-Old Migrant from Guatemala Dies in U.S. Custody' (14 July 2023); International Organization of Migration ("IOM"), 'Missing Migrants Project: Americas' (2023).

¹³⁰ Prensa Comunitaria, 'A fire causes the inhumane death of migrants in Ciudad Juárez, Mexico' (4 April 2023).

81. Indigenous women face less employment opportunities in the oil palm industry to men in their communities, less participation in decision-making related to land, an increased burden of domestic work and unpaid care, and the need to travel further to find food, water and meet the basic subsistence needs of their children, which are already dire. Moreover, palm oil plantation companies' outsourcing of lone male workers from external municipalities, and the proliferation of brothels close to where workers receive their pay, have been associated with increased sex trafficking of Indigenous women and girls.¹³¹
82. The grassroots Indigenous and campesino human rights defenders who met with the delegation fight for agrarian justice and access to land in this fraught context. Their members are accompanied by PBI Guatemala, which provides protection, advocacy support and recognition to human rights defenders under threat.

Organisations of Indigenous and campesino human rights defenders in Alta Verapaz

“ Why do they hate us so much, when all we are trying to do is give some hope and comfort to our communities? ”

UVOC

“ They can take everything material away from us, but they cannot extinguish our communal strength. ”

CCDA

83. The Union of Campesino Organisations of the Verapaces (“UVOC” by its Spanish acronym) includes several hundred Maya Q’eqchi’ and Poqomchi’ communities in Alta Verapaz. It is dedicated to demanding and promoting access to land. Founded in 1980, the UVOC’s members suffered intense violence during the internal armed conflict, but “kept fighting”. Its cooperative activities currently include rural development, campaigning for agrarian reform, promoting equality between men and women, youth programmes and organising activities. Its support for communities cuts across three axes: (i) legal advice and representation focused on resolving uncertainty about their lands or personal integrity in cases where they have suffered threats, attacks or criminalisation attempts by private agents and/or State institutions; (ii) support for and accompanying communities in mediation processes and assisting them in negotiations between the various actors involved in conflicts over land tenure; and (iii) training communities and their leaders in communications, policy, agricultural production techniques and sustainable agroecology.¹³²
84. UVOC informed the delegation that several of their Indigenous community members in the Verapaces region have been murdered and disappeared, including Carlos Enrique Coy of the Nueva Gloria community who was disappeared on 3 August 2020 on his way to work; Abelardo Quej Ixim of the Nueva Gloria community who was murdered on 6 December 2020, and Alberto Tec Caal who was murdered in the Las Brisas community by an armed group on 22 August 2021, after approaching the prosecutor’s office about Carlos Enrique Coy’s disappearance. There are more than 254 known eviction orders in place in respect of UVOC’s member communities, meaning that the communities live in a state of fear. Their lead organiser, Carlos Morales, has been subjected to numerous murder attempts. He expressed a concern to the IDIL that UVOC’s participation in dialogue meetings, including with the public prosecutor, had led to arrest warrants against individual members. UVOC’s requests to the state for assistance in the context of forced evictions had led to police and other security authorities, in addition to armed actors paid for by landowners, being called to the scene, who further stigmatised the evicted communities as “aggressors”.
85. UVOC expressed that the major and most urgent changes they seek are: (i) a moratorium on evictions until the state mechanisms entrusted with resolving agrarian conflicts are able to properly function; (ii) thorough state investigations of attacks and violence against Indigenous peoples, including as carried out by private security companies in the context of evictions; (iii) an investigation of the involvement of domestic and international business interests in human rights violations against Indigenous peoples; and (iv) the direction of more State resources to FONTIERRAS so that it is able to acquire more arable farmland for the use of Indigenous peoples and campesinos.

¹³¹ Action Aid, ‘Women’s rights violations in Dutch palm oil supply chains: the case of Guatemala’ (2020); see also Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §96.

¹³² Peace Brigades International and Jordi Quiles Sendra, ‘We defend life! The Social Struggles in Alta Verapaz’ (2020), p21.

86. The Community Council of the Highlands – las Verapaces (“CCDA” by its Spanish acronym) is an Indigenous and campesino organisation that accompanies 150 Q’eqchi and other communities in the Verapaces region, providing advocacy and supporting their negotiations with agrarian institutions.¹³³ In the delegation’s meeting with the CCDA, and with its leader Lesbia Artola, the delegation learned of the gender-focus of the CCDA’s work, and its efforts to promote the participation of women community members. Due to its work, its members have faced murder, threats, criminalisation and defamation. Five of its members were assassinated in 2016 and 2018: Daniel Choc Pop from the San Jaun Tres Ríos community; Samuel Chub from the Xyaal Kobé community; Gumercindo Butz from the Chiguoyo community; José Can Xol from the Choctún Basilá community; Mateo Chaman Pauu from the San Juan Tres Ríos community, and Ramón Choc Sacrab from the Ixloc San Pedrito community. The CCDA informed the delegation that there are more than 1,000 arrest warrants against its Indigenous leaders and community members, who live in fear of leaving their homes, and who are therefore prevented from organising together, creating a situation of segregation between communities. They also expressed a concern that their participation in state-led dialogue mechanisms has resulted in attacks against, and criminalisation of, their members.

87. On 16 April 2020, the Association of Fiqueros of Alta Verapaz issued a communique in respect of the CCDA, and Lesbia Artola in particular, in which it branded them “trespassers”, called for the state to “disarm and evict” them, and linked them with violent, criminal organisations. It stated that they “purport to be defenders of the rights of communities and the most vulnerable”, whilst “hiding behind foundations and NGOs which finance, direct and assist them”. The Observatory for the Protection of Human Rights Defenders (a joint programme of the World Organisation against Torture and the International Federation for Human Rights) denounced the criminalisation and stigmatisation of the legitimate work of the CCDA in defending Indigenous and campesino rights, and urged the Guatemalan state to take measures to protect them.¹³⁴ In its annual 2020 report, the IACHR took note of the communique and observed that:

*“the repetition of stigmatising declarations can contribute to the exacerbation of the climate of hostility and intolerance from different sectors of the population, which can result in an impact on the life and personal integrity of the [human rights] defender that is compounded by their vulnerability, given that public office holders or sectors of society can interpret them as instructions, incitements, authorisations or support to commit acts against their life, personal security or other rights”.*¹³⁵

88. The stigmatisations have continued. In September 2022, the Association for the Defence of Private Property (“ACDEPRO” by its Spanish acronym) repeatedly accused Indigenous peoples in Alta Verapaz of being trespassers on private property (“*usurpadores de propiedades privadas*”).¹³⁶ The stigmatisation was denounced by UVOC and the CCDA as an effort to continue the historical dispossession of its Indigenous communities.¹³⁷

Indigenous communities in Alta Verapaz facing criminalisation and forced evictions

89. The information in this section of the report was taken directly from the communities the delegation visited, and from the community organisations and lawyers who represent them. The delegation notes that whilst it was only able to visit four communities in the time it had available, the issues described by the communities are in line with the wider background of concerns shared by the international community, and are indicative of systemic failures in the protection of the rights of Indigenous peoples in Guatemala.

¹³³ *Ibid*, p28.

¹³⁴ Observatory for the Protection of Human Rights Defenders, ‘Urgent call GTM 001/0420/OBS 042, Criminalisation/Stigmatisation/Defamation, Guatemala’ (28 April 2020).

¹³⁵ IACHR, ‘Annual Report 2020, Chapter V: Follow-up on recommendations formulated by the IACHR in its country or thematic reports. Third follow-up report on recommendations formulated by the IACHR in its report on the Situation of Human Rights in Guatemala’ (9 January 2021), §178.

¹³⁶ Soy502, ‘Proprietors of fincas in Alta Verapaz urge the Government to act against usurpadores’ (22 September 2022).

¹³⁷ Prensa Comunitaria, ‘Historical eviction of the Q’eqchi’ population from Alta Verapaz is denounced’ (6 September 2022).

The Maya Q'eqchi' Nuevo Chintún community, Tukurú, Alta Verapaz

“The companies are the trespassers, not us. They are the ones forcibly displacing us from our land. The land we have been dispossessed from holds the cemetery where our grandparents and ancestors were buried. You can see the tomb stones which say when they were born and when they died.”

NUEVO CHINTÚN COMMUNITY MEMBER

90. The IDIL met with members of the Nuevo Chintún community in a neutral space, away from the community's land, because the community members feared reprisals if international observers were seen to be visiting them. Fourteen women, nine men and four children from the community were in attendance. The meeting was assisted by a Maya Q'eqchi' interpreter.
91. The community members explained that they are currently made up of 36 families. They used to number almost 200 families, however their numbers have dwindled following land-grabbing, violence and forced eviction, which have led many families to flee the area.
92. The community's land, which is situated near the Polochic River, is central to their way of life and knowledge systems. It holds their ceremonial grounds and ancestral burial grounds. They use their land for subsistence farming, planting rice, chile, coffee, beans, plantain and bananas. Their name, Chintún, comes from the Q'eqchi' name for corn, in honour of the small corn tortilla that is traditionally made by the community's women. The community has recognition status at the municipal level.
93. The community are aware of treaties dating back to the colonial period which demonstrate that their lands are in their name. A portion of their land is the subject of a dispute with the Santa Teresa hydroelectric company and other companies in the area. Community elders historically reached an agreement with the Santa Teresa company to grant the company access to some of their land, in exchange for benefits which were attractive to the community, including work opportunities. The land in question includes the community's ancestral cemetery and ceremonial grounds, which is of high cultural significance to them as Indigenous peoples. However, the company has failed to meet its promises to the community. The men of the community have not been offered work by the company, and have instead been pushed by poverty into itinerant work on coffee and sugar plantations in other parts of the country and abroad, which has led to fragmentation of the community's families, and a lack of access to education for the children who accompany their fathers. The company's encroachment on the land has also led to constant violence. It has surrounded the land with guards from a private security company, who prevent the community from accessing the land for ceremonial purposes, or to bury their dead. The women of the community have been subjected to sexual violence by the guards when they try to enter the land to search for firewood. The community has also heard shooting outside their homes, received threats that their homes will be burned and their children kidnapped, and has heard drones flying above them. Their complaints to a prosecutor about the violence have not been followed up.
94. On 5 August 2020, several individuals occupied the land in order to protest the company's failed promises, holding up signs which read *"this is not an invasion; we are getting our land back"*, and planting crops and trees. The Shintún Agro-industrial company, which is associated with the Santa Teresa company and which holds itself out to be the owner of the land, presented a criminal complaint of aggravated trespass (*'usurpación agravada'*) against community members. As a result, their forced eviction from the land was ordered by a judge, and community members were arrested.
95. David Alejandro Maxena Caal, a youth representative from the community, was one of the arrested community members. From the date of his arrest, on 14 February 2022, he was subjected to nine months of pre-trial detention at Cobán prison. He described the conditions of his arrest and pre-trial detention in detail to the delegation. He said that he was not shown an arrest warrant when he was detained. Upon his entry into the prison, prison guards made him pay a *'talacha'* tax of 15,000 Quetzales, which the guards said would protect him from the guards themselves, and other inmates. Mr Maxena Caal told the delegation that he has avoided making a police complaint about the *'talacha'* tax, because he fears that his family would be at risk of reprisals if he were to do so.
96. Mr Maxena Caal explained that on his third day in prison, during which he had not misbehaved and had not been reprimanded or warned by the prison authorities, he was moved into a punishment cell (*'bartolina'*) in the prison. He was not given a reason for the move. He was told at the time by prison guards that the move was ordered by the Public Ministry, but he later found out that it had been ordered at the behest of a representative of the Shintún Agro-industrial company. He spent three months in the punishment cell, which was of approximately 3 metres by 1.7 metres, where five to nine other inmates



From left: Camila Zapata Besso (Doughty Street Chambers), Imelda Tuyul (CCDA), Lesbia Artola (CCDA), Silvana Baldovino Beas (SPDA).

were also held at any time (providing each inmate with around 0.85 to 0.51 square metres of space). He became ill whilst in the punishment cell. He and the other inmates would sleep very close to one another, with some sleeping lying down and others sleeping sitting up. The cell had access to a small balcony, which could fit two inmates standing up at most, and which the inmates could use at any time of day. The cell only had an electric light which inmates could turn off at night, but no sunlight, meaning that it would get very cold at night. Inmates were given food and water twice a day, and if they needed water at any other time, they would have to buy it from other inmates through the bars to the balcony. The inmates were allowed fifteen minutes of access to a small patio in the prison every day at 6.15am, where they would be allowed to wash themselves with buckets. They were allowed to use the toilet only twice a day, once in the morning (at 6.15am) and once in the evening (5.45pm). No other activities were available to the inmates. After he was removed from the punishment cell, Mr Maxena Caal spent the remaining six months of his detention in the normal area of the prison, where his cell space was roughly the same as in the punishment cell, but where he was allowed free access to the outside area of the prison and to its large toilet and wash facilities until the evening, and where activities were available. He described his experiences in prison as having left him traumatised and “nervous”. The delegation notes that the detention conditions described by Mr Maxena Caal, particularly in the punishment cell, strongly appear to have violated international minimum standards on prison conditions.¹³⁸

97. On 18 October 2022, after nine months of pre-trial detention, including in inhumane conditions, Mr Maxena Caal was acquitted of aggravated trespass at trial. The delegation was given access to the trial judgment. It reveals that the Shintún Agro-industrial company had demonstrated at trial, with reference to the General Property Register, that a piece of land was registered under its name on 5 November 2021, which it alleged to have been the site of the alleged trespass. However, the trial judge identified a lack of certainty in the property register as regards the location and physical limits of that piece of land in relation to several other pieces of land which had been registered under other names in the same place, and held that the proper forum for the resolution of that dispute was civil, not criminal. The prosecution

¹³⁸ Guidelines from the International Committee of the Red Cross require 3.4 square metres of space per person in a shared cell, and in *Muršić v Croatia* (2017) 65 EHRR 1 the European Court of Human Rights determined that “a strong presumption of a violation of Article 3 [the prohibition of torture, inhuman and degrading treatment] arises when the personal space available to a detainee falls below 3. sq. m. in multi-occupancy accommodation” (§124). See also Inter-American Court of Human Rights (“IACtHR”), *Montero-Aranguren et al (Detention Center of Catia) v Venezuela*, Preliminary objections, Merits, Reparations and Costs, IACtHR Series C No 150 (5 July 2006), §90.

had failed to prove that the company's land had been trespassed on at all. The prosecution had also failed to prove that Mr Maxena Caal was present during the alleged trespass. Mr Maxena Caal was therefore held to be 'not guilty', and an order was made for his immediate release.

98. The Shintún Agro-industrial company subsequently lodged an appeal against the first instance judgment, and a retrial has since been ordered. The community is concerned that the re-trial will be tainted by corruption. They are also concerned that they lack the funding necessary to access the land archives, or to commission expert investigations, which would conclusively prove their rights over the land on which the alleged trespass occurred.
99. Notwithstanding Mr Maxena Caal's exoneration, the community was forcibly evicted from the land on 29 November 2022. During the forced eviction, members of the community were shot at, and tear gas was thrown at them. Their ceremonial centre, where the community would make offerings, was destroyed. The companies have since put in place armed guards on the land, to prevent the community from accessing it at all. When the delegation visited the highway which bordered the land, it observed various coloured graves on the land, topped with gravestones. Immediately to the right of the graves was a small wooden hut with a watch hole, where the delegation could see a guard watching them.
100. The delegation has since been informed that on 19 July 2023, UVOC presented a written request to the RIC, copying in FONTIERRAS and COPADEH. The request stated that a professional land surveyor had been contracted by the community to conduct an investigation as to the registration, cadastral status, space and history of the land claimed by the community. Like the criminal trial court of first instance, the surveyor had concluded that there was nothing to show that the land claimed by the community belonged solely or at all to the land registered under the complainant company's name. UVOC therefore requested that the authorities urgently review the situation, because the evidence showed that the community had been unlawfully evicted from their land.

The Maya Q'eqchi' Lajeb Kej community, Tukurú, Alta Verapaz

“We do not have anywhere else to live. We have nowhere else to plant and farm our crops. We want dignified property for our children. That is our constant worry.”

LAJEB KEJ COMMUNITY MEMBER

101. The delegation's visit to the Lajeb Kej community took place on their ancestral land, which is on an area of land known as "Finca A". The community is made up of around 186 members, of whom 44 are women, 43 are men, and 99 are children. Most of the community leaders who the delegation met with were women. The delegation spoke to them via a Maya Q'eqchi' interpreter. The delegation observed that the community, who included a large number of children and pregnant women, were living in a situation of extreme poverty. Many of them are illiterate.
102. The community members told the delegation that they rely on their ancestral land for subsistence farming, and a small spring on the land for fresh water. The community's land has direct access to the Polochic river, which flows through the land. However, the river has been contaminated by nearby hydroelectric facilities and monoculture plantations, which has minimised if not extinguished the community's ability to use the river's waters. Community members described that the Santa Teresa hydroelectric plant, which is upstream, regularly opens its dams without warning, causing water to come rushing into the river at high speed, and making it very dangerous for the community members to use it. The community has also lost access to their local burial ground, which they shared with the Nuevo Chintún community.
103. The community members informed the delegation that there is currently no clear title over the land, which is of around 34 hectares in total. Historically, their grandparents had lived on the land, and had been told by landowners that the land belonged to them, but were given no land ownership documents, and the land registry had never been updated to reflect their rights. The community had taken possession of the land around three years ago, in order to exercise their land rights. The land where they had previously lived, which was close by, was not arable. They were awaiting municipal recognition of their community as Indigenous, and were seeking to have their land rights regularised by FONTIERRAS.
104. The delegation was able to peruse the community's correspondence with FONTIERRAS in this regard, and FONTIERRAS' analysis of the rights and registration over Finca A, dated November 2021. FONTIERRAS has recognised that the portion of Finca A which the community claims to be theirs, which makes up around 55% of the total land, may be vacant (or "wasteland", translated as "*terreno baldío*" in Spanish). It had commissioned further investigations, including in the Archive of Central America and the RIC, "to



Houses in the Maya Q'eqchi' Nuevo Chintún community, Tucurú, Alta Verapaz.

conclude whether the area possessed by the Lajeb Kej community is a wasteland or a state, municipal or private area”.

- 105.** The community informed the delegation that the RIC’s investigations concluded that the land possessed by the community is vacant land, meaning that it does not have an owner. However, the community’s land is disputed by a neighbouring landowner, who owns the approximate remaining 45% of Finca A. She registered herself as the owner of the whole of Finca A, and her registration has since been reflected in the RIC, in what the community says was an administrative error. The effect of the error is serious: it means that the landowner is legally recognised as the owner of the community’s portion of Finca A, which is in fact vacant, as well as her own portion of the land.
- 106.** The community has been subjected to several judicial and extrajudicial forced eviction attempts and extreme violence as a result of this legal uncertainty. Community members told the delegation that in April 2021, shots were fired and tear gas was thrown at them. In May 2021, community members were shot at while they were farming on the land, and they later heard shots being fired “*all night*” outside their homes. The delegation was shown documentation which demonstrated that the community had made complaints to a prosecutor about the violence, but the prosecutor’s investigations had all been discontinued.
- 107.** On 11 October 2021 a judicial order, which the delegation has seen, was made for the forced eviction of the community from the land. On 12 October 2021, arrest warrants were issued against eight community members for aggravated trespass. The delegation has had sight of the arrest warrants, which all name the *finquera* (the purported ‘landowner’) as the complainant. Another judicial eviction order was made on 13 January 2022.

Delegates meet with community members in Nuevo Chintún, Tukurú, Alta Verapaz.



- 108.** On 7 April 2022, around 25 armed men entered the community's land very early in the morning and shot at community members and their homes, leaving two community members with injuries. Five police officers stood at the entrance to the community's land during the attack, but did not intervene, despite women community members begging them for help. The community also suffered destruction of their homes and possessions in the attack. Following the attack, the community made a complaint to the prosecutor for crimes against activists and human rights defenders. The delegation was able to see the written complaint to the prosecutor, drafted by the community's lawyer. The lawyer had visited the community immediately after the attack, verified the injuries caused, and interviewed several community members. He noted that:
- "the magnitude of the injuries suffered by the communities is high, given that... people in the community have been wounded, there is material damage to their homes, and in addition they have suffered psychological damage, as the sound of shooting frightened and caused panic to the population, especially to the children, women and elders of the community, and its pregnant women."*
- 109.** The lawyer had attached several photographs of the community's injuries, the destruction caused, and bullet cartridges on the grounds of the land, to the complaint. During the delegation's meeting with the community, one of the community members, who could be seen with a bullet injury to his thigh in the photographs, showed the delegation the scar hole it had left on his thigh. The prosecutor's office had followed up on the complaint in April and May 2022, and had sought a forensic examination of the wounds caused. However, the community members had since heard nothing.
- 110.** Following its visit to the community, in May 2023, the delegation received news that a forced eviction had been planned by state authorities to take place imminently. The delegation wrote an urgent letter to the authorities, expressing its concerns about the planned eviction, and the human rights violations it may entail.¹³⁹ The eviction order was eventually suspended, following an injunction application filed

¹³⁹ Prensa Comunitaria, 'International lawyers express concern about possible eviction in Tukurú' (23 May 2023).

by the community's lawyers, which was assisted by the delegation's intervention. The delegation has also seen a written request from the community to the RIC, dated 17 July 2023, copying in FONTIERRAS and COPADEH, asking that the RIC correct its "colossal" administrative error, so that the community can continue their process of regularising the land with FONTIERRAS.

“ We are defending the land that belonged to our fathers. ”

**MARCELINO XOL CUCUL OF THE MAYA Q'EQCHI' CHOCTUN BASILÁ COMMUNITY,
HELD IN COBÁN PRISON, ALTA VERAPAZ**

- 111.** The Choctun Basilá community is in a long-standing dispute with the Chilté cooperative, over a piece of farmland called '1684'. The Chilté cooperative is part of the Federation of Cooperatives of the Verapaces ("FEDECOVERA" by its Spanish acronym), an association of finqueros who work in the wood and coffee business in Alta Verapaz. The former Special Rapporteur on the rights of Indigenous peoples recognised that the dispute has "arisen out of the shortcomings of the system itself", namely "overlapping land registers".¹⁴⁰ The CCDA informed the delegation that in May 2018, the community was attacked by an armed group, who murdered a community leader, José Can Xol.
- 112.** Jorge Coc Coc and Marcelino Xol Cucul are Indigenous authority figures in the community. They are currently serving sentences for the murder of a member of the Chilté cooperative, Leonardo Coc Ical, and the attempted murder of two other members. Mr Coc Coc says that on the day of the attack he was taking care of his sick father in Las Pacayas, which is around 40 minutes from the scene of the crime. Mr Xol Cucul states that he was teaching at the Chisec community school, where he was a Principal, several hours away.
- 113.** Their cases exemplify the problem of leaders and representatives of communities being criminalised by public and private actors after participating in roundtables for dialogue. The background to their cases is set out in the 'We Defend Life!' report:
- "Although Choctún Basilá has documents proving the communal ownership of this property since 1996, the cooperative has monopolized much of the land and has sold it to large landowners for the cultivation of mono-cultures such as African palm and bananas. [The community] have denounced members of the cooperative, as well as people from other communities who have been hired by them, for carrying out almost daily intimidation over the course of years including constant shootings, the destruction of crops in the community and attacks (the two attackers who killed José Can Xol worked for this cooperative). Following ... round-tables for dialogue in July 2017, the cooperative denounced the community for a death in 2015, accusing 16 people of manslaughter... Riveiro and Coc Saquil [of the community] were released after spending almost a year in prison (September 2017 – August 2018), due to insufficient and inconsistent evidence presented by the MP and the Chilté cooperative as a co-complainant. More than a year later, however, on October 30, 2019, Judge Luis Paniagua sentenced Jorge Coc Coc and Marcelino Xol Cucul to 35 years in prison for the crimes of homicide and attempted murder, following a trial in which his defense faced multiple obstacles. The trial, according to UDEFEGUA, "constitutes a clear example of criminalization" of... human rights defenders."¹⁴¹*
- 114.** The delegation met with the lawyers who represent Mr Coc Coc and Mr Xol Cucul, the Law Firm For Indigenous Peoples ("BJPI" by its Spanish acronym). BJPI maintains that there were several irregularities in the criminal process: before being taken to the police station, Mr Xol Cucul was arrested by non-state actors and beaten; at trial, prosecution eyewitnesses, who were found to be credible, corroborated that Mr Coc Coc and Mr Xol Cucul had not been seen at the scene of the crime, or that they had not fired the bullets; no ballistic expert was used at trial, and the forensic expert concluded that the injury upon which the attempted murder charge was based may not have been caused by a bullet.
- 115.** The BJPI subsequently filed an extraordinary appeal to the Cassation Chamber of the Guatemalan Supreme Court, but the appeal was held to be inadmissible in November 2022. The same month, BJPI lodged a complaint before the IACHR, and an 'amparo' protective action before the Guatemalan Constitutional Court. They are seeking a retrial.
- 116.** With the assistance of the CCDA, the delegation was able to meet with Mr Coc Coc and Mr Xol Cucul at Cobán prison. The meeting took place through a gate in a room surrounded by other prisoners, meaning that it was not private, and the delegation was conscious that other prisoners could hear what was being

¹⁴⁰ Report of the Special Rapporteur on the rights of Indigenous peoples on her visit to Guatemala (2018), §33.

¹⁴¹ Peace Brigades International and Jordi Quiles Sendra, 'We defend life! The Social Struggles in Alta Verapaz' (2020), pp29-30.

said. As it was also a family visit day, there were several other individuals present around the delegation, including Mr Xol Cucul's family members, and a live band could be heard playing music. Mr Coc Coc and Mr Xol Cucul told the delegation that they had both been made to pay a 'talacha' tax upon entry into the prison. Mr Coc Coc described the cell he slept in as overcrowded, and said that he had initially slept on the floor, but had since been able to buy a bed.

The Maya Q'eqchi' Río Cristalino community, Panzós, Alta Verapaz

“The arrest warrants against us have made us prisoners in our own lands.”

RÍO CRISTALINO COMMUNITY MEMBER

- 117.** The delegation's visit to the Río Cristalino community took place on their ancestral land. It was assisted by a Maya Q'eqchi' interpreter. The community is made up of around 70 families. Their land holds their subsistence crops of cardamom, corn, beans, cocoa and cinnamon; their homes and the community's cemetery, where their grandparents are buried.
- 118.** The community members told the delegation that they have been trying to regularise their rights to the land for several years. Their ancestors were indentured labourers for the German ancestors of a landowner nearby, who now claimed the community's land as her own. As a result of the land dispute, the community members had been subjected to several forced evictions involving violence and the destruction of their homes and crops. They had been forced to go into hiding in the mountains with their children as a result of the evictions, sometimes going for several days without any food. They had since returned to the land.
- 119.** Arrest warrants for aggravated trespass have been issued against over 60 men and women in the community. One member of the community is currently serving a prison sentence for the crime. The community members explained that the arrest warrants are effectively confining them to their land and are having a seriously detrimental effect on their health and wellbeing. They feel afraid to leave their homes to buy food or medicine or to take their children to school, for fear of being apprehended and arrested by the authorities. They have avoided going to hospital and are relying almost solely on their own traditional medicinal practices and midwives for healthcare. They described a particular incident when a young child in the community was seriously injured in a farming accident, and was rushed to hospital by her parents, both of whom had arrest warrants against them. After identifying himself at the hospital, and while he was buying medical bandages and supplies for his child's blood transfusion, the child's father was arrested. The rest of the family had since fled the area. Several community members expressed their worries to the delegation about the safety of their children if the arrest warrants against them were carried out.

v.

Relevant law

120. Based on its fact-finding, the delegation concludes that the following international human rights standards are being systematically breached in Guatemala:

The communal right of Indigenous peoples to their ancestral land and its resources

121. Article 14 of ILO Convention 169¹⁴² provides that:

“1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.

2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.

3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.”

122. Article 15(1) provides that “[t]he rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources”.

123. International human rights law recognises the special relationship that Indigenous peoples have with their land and resources, and the consequent connection of their land and resources to their right to culture and cultural identity.¹⁴³ Article 27 of the International Covenant on Civil and Political Rights (“ICCPR”)¹⁴⁴ (the right for minority groups to enjoy their own culture) has been consistently interpreted as applying to the relationship between Indigenous peoples, their lands, natural resources and traditional subsistence activities,¹⁴⁵ as has Article 15 of the International Covenant on Economic, Social and Cultural Rights¹⁴⁶ (the right of everyone to take part in cultural life). As the UN Committee on Economic, Social and Cultural Rights (“CESCR”) explains:

*“The strong communal dimension of indigenous peoples’ cultural life is indispensable to their existence, well-being and full development, and includes the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous peoples’ cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected, in order to prevent the degradation of their particular way of life, including their means of subsistence, the loss of their natural resources and, ultimately, their cultural identity.”*¹⁴⁷

124. In its recent General Comment No. 26 (2022) on Land and Economic, Social and Cultural Rights, the CESCR states as follows:

¹⁴² ILO Convention 169, ratified by Guatemala on 5 June 1996.

¹⁴³ See, further, Articles 2, 3, 4, 5 and 23 of ILO Convention 169.

¹⁴⁴ ICCPR, ratified by Guatemala on 5 May 1992.

¹⁴⁵ See e.g. *Lubicon Lake Band v Canada, Ominayak (on behalf of Lubicon Lake Band) v Canada*, Merits, Communication No 167/1984, UN Doc CCPR/C/38/D/167/1984 (26 March 1990), §32.2; *Ivan Kitok v Sweden*, Communication No. 197/1985, U.N. Doc. CCPR/C/33/D/197/1985 (27 July 1988), §9.2; *Länsman et al v Finland*, UN Doc CCPR/C/52/D/511/1992 (8 November 1994); *Apirana Mahuika et al v New Zealand*, Views, Comm No 547/1993, UN Doc CCPR/C/70/D/547/1993 (27 October 2000), §9.3; *Angela Poma Poma v Peru*, Views, Comm No 1457/2006, UN Doc CCPR/C/95/D/1457/2006 (27 March 2009), §7.3.

¹⁴⁶ ICESCR, ratified by Guatemala on 19 May 1988.

¹⁴⁷ CESCR, ‘General Comment No. 21: Right of everyone to take part in cultural life (art. 15, para. 1(a), of the ICESCR)’ (21 December 2009) UN Doc E/C12/GC/21, §36. The UN Committee for Civil and Political Rights (“CCPR”) takes the same approach in CCPR, ‘General Comment No. 23: Article 27 (Rights of Minorities)’ (8 April 1994) UN Doc CCPR/C/21/Rev1/Add.5, §7. General comments are adopted by the treaty bodies based on their monitoring experience. They offer expert guidance to states on their obligations arising under the treaties. The Inter-American Court of Human Rights (“IACtHR”) has referred to the considerable weight it attaches to General Comments in interpreting corresponding international legal norms in a number of judgements, see e.g. *Muelle Flores v Peru*, Preliminary Objections, Merits, Reparations and Costs, IACtHR Series C No 375 (6 March 2019), §184; *Poblete Vilches and others v Chile*, Merits, Reparations and Costs, IACtHR Series C No 349 (8 March 2018), §115, §118 and §120, as has the International Court of Justice in the *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of Congo)* Case 103 (Judgment) ICJ 428 (ICJ 2010), §66.

*“Indigenous Peoples have the right to have their lands demarcated, and relocation should be allowed only under narrowly defined circumstances and with the prior, free and informed consent of the groups concerned. Laws and policies should protect Indigenous Peoples from the risk of State encroachment on their land, for instance ... for large-scale investments in agricultural production. ... If disputes over land arise between Indigenous Peoples or peasants, States shall provide mechanisms for the adequate settlement of those disputes, making every effort to satisfy the right to land of both groups. Both groups depend to a large extent on access to communal lands or to collective ownership. Respect for Indigenous Peoples’ self-determination and their customary land tenure system necessitates recognition of their collective ownership of lands, territories and resources.”*¹⁴⁸

- 125.** The Inter-American Court of Human Rights (“IACtHR”) has held that the right to property under Article 21 of the American Convention on Human Rights¹⁴⁹ extends to the communal ownership of land by Indigenous peoples that is, from their cultural perspective, part of their tenure system.¹⁵⁰ This includes the broad natural resources with which Indigenous peoples have a close relationship as the essential basis of their physical and cultural survival, traditional way of life, distinct cultural identity, social structure, economic system, customs, spiritual beliefs and traditions and the transmission of these to future generations.¹⁵¹ In *Saramaka People v Suriname*, the IACtHR elaborated on the relationship between Article 21 and the protection of Indigenous peoples’ land and resources as follows:

*“members of tribal and indigenous communities have the right to own the natural resources they have traditionally used within their territory for the same reasons that they have a right to own the land they have traditionally used and occupied for centuries. Without them, the very physical and cultural survival of such peoples is at stake. ... This connectedness between the territory and the natural resources necessary for their physical and cultural survival is precisely what needs to be protected under Article 21 of the Convention”*¹⁵²

- 126.** The right of Indigenous peoples to their communal land and natural resources is inexorably connected to their rights to food,¹⁵³ water,¹⁵⁴ health,¹⁵⁵ and a healthy environment.¹⁵⁶ In *Yakye Axa Community v Paraguay* the IACtHR ruled that the State had failed to take the necessary measures to ensure that the Indigenous community had decent living conditions.¹⁵⁷ In particular, the IACtHR noted that “[d]isplacement of the members of the Community from [their ancestral] lands has caused special and grave difficulties to obtain food, primarily because the area where their temporary settlement is located does not have appropriate conditions for cultivation or to practice their traditional subsistence activities, such as hunting, fishing, and gathering.” The IACtHR found that this impacted the rights to health, food and access to clean water, amongst others.¹⁵⁸

- 127.** In *Advisory Opinion OC-23/17 on the Environment and Human Rights (“Advisory Opinion OC-23/17”)* the IACtHR summarised its jurisprudence on the issue of Indigenous territorial rights and environmental protection from contamination and pollution as follows:

“the Court has determined that, because indigenous and tribal peoples are in a situation of special vulnerability, States must take positive measures to ensure that the members of these peoples have access to a dignified life – which includes the protection of their close relationship with the land – and

¹⁴⁸ CESCR, ‘General Comment No. 26 (2022) on land and economic, social and cultural rights’ (24 January 2023) UN Doc E/C.12/GC/26, §§16 and 19.

¹⁴⁹ American Convention on Human Rights, ratified by Guatemala on 27 April 1978.

¹⁵⁰ *Mayagna (Sumo) Awas Tingni Community v Nicaragua*, Merits, Reparations and Costs, IACtHR Series C No 79 (31 August 2001).

¹⁵¹ *Yakye Axa Indigenous Community v Paraguay*, Merits, Reparations and Costs, IACtHR Series C No 125 (17 June 2005), §§135 and §137. See also *Kichwa Indigenous People of Sarayaku v Ecuador*, Merits and Reparations, IACtHR Series C No 245 (27 June 2012), §145; *Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members v Panama*, Preliminary Objections, Merits, Reparations and Costs, IACtHR Series C No 284 (14 October 2014), §§111-112; *Garifuna Community of Punta Piedra and its members v Honduras*, Preliminary Objections, Merits, Reparations and Costs, IACtHR Series C No 304 (8 October 2015), §§165; *Triunfo de la Cruz Garifuna Community and its members v Honduras*, Merits, Reparations and Costs, IACtHR Series C No 324 (8 October 2015), §100; *Kaliña and Lokono Peoples v Suriname*, Merits, Reparations and Costs, IACtHR Series C No 309 (25 November 2015), §129, and *Xucuru Indigenous People and its members v Brazil*, Preliminary Objections, Merits, Reparations and Costs, IACtHR Series C No 346 (5 February 2018), §115.

¹⁵² *Saramaka People v Suriname*, Preliminary Objections, Merits, Reparations and Costs, IACtHR Series C No 172 (28 November 2007) §§121-122.

¹⁵³ Article 11 of the ICESCR (right to an adequate standard of living, including adequate food); Article 34(j) of the Charter of the Organization of American States, ratified by Guatemala on 6 April 1955, and Article 12 (right to food) of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), ratified by Guatemala on 5 October 2007. See also OHCHR, ‘The Right to Adequate Food, Fact Sheet No. 34’ (April 2010), pp13, 18-19 and 25.

¹⁵⁴ Article 11 of the ICESCR; Article 14(2)(h) of the Convention on the Elimination of All Forms of Discrimination against Women, ratified by Guatemala on 12 August 1982, and Article 24(2) of the UN Convention on the Rights of the Child, ratified by Guatemala on 6 June 1990. See also *Indigenous Communities of the Lhaka Honhat Association (Our Land) v Argentina*, Merits, Reparations and Costs, IACtHR Series C No (6 February 2020), §222, in respect of the right to water as flowing from Article 26 of the American Convention on Human Rights (right to progressive development), and CESCR, ‘General Comment No. 15: The Right to Water’ (20 January 2003) UN Doc E/C.12/2002/11, §7.

¹⁵⁵ Article 12 of the ICESCR and Article 10 of the Protocol of San Salvador. See also *Lhaka Honhat v Argentina*, §222, in respect of the right to health being derived from Article 26 of the American Convention on Human Rights, and CESCR, ‘General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)’ (11 August 2000) UN Doc E/C.12/2000/4, §27.

¹⁵⁶ Article 11 of the Protocol of San Salvador and Article 26 of the American Convention on Human Rights; see *The Environment and Human Rights (State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity – Interpretation and Scope of Articles 4(1) and 5(1) of the American Convention on Human Rights)*, *Advisory Opinion OC23/17*, IACtHR Series A No 23 (15 November 2017) (“*Advisory Opinion OC-23/17*”), §57.

¹⁵⁷ *Yakye Axa Indigenous Community v Paraguay*, §176.

¹⁵⁸ *Yakye Axa Indigenous Community v Paraguay*, §164.



Delegates share a traditional community meal in the Maya Q'eqchi' Rio Cristalino community, Panzós, Alta Verapaz.

to their life project, in both its individual and collective dimension. The Court has also emphasized that the lack of access to the corresponding territories and natural resources may expose indigenous communities to precarious and subhuman living conditions and increased vulnerability to disease and epidemics, and subject them to situations of extreme neglect that may result in various violations of their human rights in addition to causing them suffering and undermining the preservation of their way of life, customs and language.”¹⁵⁹

128.

In *Xucuru Indigenous People and its Members v Brazil* the IACtHR made clear that Indigenous peoples’ use of their land is “not a privilege that can be taken away by the State or eclipsed by rights to property of third parties; rather it is a right of members of indigenous and tribal peoples to obtain the titling of their territory in order to ensure the permanent use and enjoyment of this land”.¹⁶⁰ In doing so it reiterated the following principles from its case law in respect of the communal ownership of Indigenous lands:

- (i) the traditional possession of Indigenous peoples over their lands has the same effects as the title of full ownership granted by the State;
- (ii) traditional possession grants the Indigenous peoples the right to require official recognition of ownership and its registration;
- (iii) members of Indigenous peoples who, for reasons beyond their control, have left or lost possession of their traditional lands maintain the right to ownership of such lands, even without legal title, except when those lands have been legitimately transferred to third parties in good faith;
- (iv) the State must delimit, demarcate and grant collective title to the lands of the members of the Indigenous communities;

¹⁵⁹ *Advisory Opinion OC-23/17*, §48.

¹⁶⁰ *Xucuru Indigenous People and its members v Brazil*, §117.

- (v) members of Indigenous peoples who, involuntarily, have lost the possession of their lands, and these have been transferred legitimately to third parties in good faith, have the right to recover them or to obtain other land of the same area and quality;
- (vi) the State must ensure the effective ownership of the Indigenous peoples and refrain from taking actions that could result in agents of the State itself, or third parties acting with its acquiescence or tolerance, adversely affecting the existence, value, use or enjoyment of their territory;
- (vii) the State must ensure the right of the Indigenous peoples to control effectively and be owners of their territory without any type of external interference by third parties;
- (viii) the State must ensure the right of the Indigenous peoples to the control and use of their territory and natural resources.¹⁶¹

129. The principle of legal certainty in relation to the right of Indigenous people to the collective ownership of their ancestral lands flows from Article 1(1) (respect for rights without discrimination), Article 8 (the right to a fair trial) and Article 25 (the right to judicial protection) of the American Convention on Human Rights. In this regard, the IACtHR in *Xucuru Indigenous People v Brazil* recognised “*the administrative processes of delimitation, demarcation, titling and freeing indigenous territories of encumbrances, in addition to effective mechanisms through which it is possible to implement those procedures, ensure legal certainty and are required for the protection of this right*”. When “*there are conflicts of interests in relation to indigenous claims, or when the right to indigenous collective property and the private property of an individual enter into real or apparent conflict, it is necessary to assess on a case-by-case basis the legality, necessity, proportionality and achievement of a legitimate goal in a democratic society*”.

130. In doing so, the special relationship that Indigenous people have with their lands must be taken into account, and restrictions on the right of Indigenous peoples to their traditional lands should not entail the denial of their survival as a people: “*[f]reeing the territory of encumbrances entails not only evicting bona fide third parties or those who illegally occupy the demarcated and titled territories, but also ensuring their peaceful possession and that the titled property has no hidden defects; that is, it is free of obligations or liens that benefit third parties*”. However, there is “*a distinction between the weighing of rights that is sometimes necessary during a process of recognition, demarcation and titling of the territorial rights of the interested peoples and the process of freeing the territory of encumbrances. The latter will usually require that the collective property rights have already been defined*.”¹⁶²

131. Indigenous peoples’ prompt and effective recourse to a competent judge or court for protection against acts that violate their fundamental rights “*constitutes one of the basic pillars, not only of the American Convention, but of the rule of law itself in a democratic society in the sense of the Convention*.” It is essential that the state provides effective protection that “*takes into account their inherent particularities, their economic and social characteristics and situation of special vulnerability, and also their customary law, values, practices and customs*”.¹⁶³

Standards on the forced eviction of Indigenous peoples

132. The obligation of States to refrain from, and protect against, forced evictions of Indigenous peoples from land arises from Article 16 of ILO Convention 169, as well as several international legal instruments that protect rights which are susceptible to being violated in the process of forced evictions,¹⁶⁴ including Article 11 of the ICESCR (the right to an adequate standard of living); Article 27 of the Convention on the Rights of the Child (children reaching full potential), and the non-discrimination provisions found in both Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women and Article 5(e) of the International Convention on the Elimination of All Forms of Racial Discrimination.¹⁶⁵

133. As regards the forced removal of Indigenous peoples in particular, Article 16 of ILO Convention 169 states as follows:

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*, §§124-125.

¹⁶³ *Ibid.*, §131.

¹⁶⁴ See HRC, ‘Basic principles and guidelines on development-based evictions and displacement, Annex 1 of the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living’ (5 February 2007) UN Doc A/HRC/4/18, §§1-2.

¹⁶⁵ International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Guatemala on 18 January 1983.

1. *Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.*
2. *Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, ... which provide the opportunity for effective representation of the peoples concerned.*
3. *Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.*
4. *When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.*
5. *Persons thus relocated shall be fully compensated for any resulting loss or injury.”*

134. In its General Comment No. 7 on forced evictions in the context of the right to adequate housing (Article 11(1) of the ICESCR), the CESCR defines forced evictions as *“the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”*. It recognises that *“[w]omen, children, youth, older persons, indigenous people... all suffer disproportionately from the practice of forced eviction.”*¹⁶⁶

135. The CESCR insists that States parties:

*“shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force. Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected.”*¹⁶⁷

136. The procedural protections specifically cited by the CESCR to be applied in those forced evictions which are considered justified include:

*“(a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies, and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the court.”*¹⁶⁸

137. These procedural protections are built upon in the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement.¹⁶⁹ In July 2018, the IACHR and the UN Special Rapporteurs on Adequate Housing and on the Human Rights of Internally Displaced Persons urged the Guatemalan state to comply with the obligations enshrined in the guiding principles, by:

*“(i) preventing displacement; (ii) providing protection and assistance during displacement; (iii) providing and facilitating humanitarian assistance; and (iv) facilitating return, reintegration, relocation and rehabilitation or fair compensation, in safe conditions. In specific cases of displacement that stem from forced evictions, the solution must immediately follow the eviction and, if it involves different land, that land must be of the same quality or better.”*¹⁷⁰

¹⁶⁶ CESCR, ‘General Comment No. 7, The right to adequate housing (Art. 11.1): forced evictions’ (20 May 1997) UN Doc E/1998/22, §§3 and 10.

¹⁶⁷ *Ibid.*, §13.

¹⁶⁸ *Ibid.*, §15.

¹⁶⁹ HRC, ‘Basic principles and guidelines on development-based evictions and displacement’ (2007).

¹⁷⁰ IACHR, ‘IACHR, UN Experts Express Concern over Forced Evictions and Internal Displacement in Guatemala’ (20 July 2018).

138. The experts further stressed that where an eviction is justified, the state is under an obligation to:

*“protect the dignity, the life and the safety of evicted persons, ensuring at the very least their access to a diet that is both nutritionally and culturally adequate, safe drinking water and sanitation, adequate shelter and clothing, access to medical services, means of subsistence, education and access to justice, as well as ensuring access for humanitarian assistance and independent monitoring. Further, safe access must be granted to the common resources on which they used to depend, including the chance to collect their property, utensils, crops and harvests.”*¹⁷¹

The right to free, prior informed consultation and consent

139. Articles 6 and 7 of ILO Convention 169 establish the duty on states to consult in good faith with indigenous peoples, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly, to seek their agreement or consent, including in respect of development processes over their lands. Article 7(3) states that “[g]overnments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.” Article 7(4) states that “[g]overnments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.”

140. In *Saramaka People v Suriname* the IACTHR set out the following three safeguards which States must abide by in order to preserve, protect and guarantee the special relationship that indigenous peoples have with their territory, which in turn ensures their survival as a tribal people:

*“First, the State must ensure the effective participation of the members of the Saramaka people, in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan within the community’s territory. Second, the State must guarantee that the Saramakas will receive a reasonable benefit from any such plan within their territory. Thirdly, the State must ensure that no concession will be issued within Saramaka territory unless and until independent and technically capable entities, with the State’s supervision, perform a prior environmental and social impact assessment.”*¹⁷²

141. The right of indigenous peoples to free, prior and informed consent is grounded in the fundamental rights to self-determination guaranteed by common Article 1 of the ICCPR and ICESCR,¹⁷³ Article 15 of the ICESCR,¹⁷⁴ Article 27 of the ICCPR,¹⁷⁵ and the right to freedom from racial discrimination protected under Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination.¹⁷⁶

142. Under the UNDRIP, serious infringements on the rights of indigenous peoples require their free, prior and informed consent before they can be undertaken. These serious infringements are (a) the forcible removal or relocation of indigenous peoples from their lands or territories (Article 10 of UNDRIP); (b) the taking of their cultural, intellectual, religious and spiritual property (Article 11(2)); (c) the confiscation, taking, occupation, use or damage of the lands, territories and resources which they have traditionally owned or otherwise occupied or used (Article 28(1)); (d) and the storage or disposal of hazardous materials in their lands or territories (Article 29(2)).

143. In *Saramaka People v Suriname*, the IACTHR stated that where large-scale developments or investment projects will have a “major impact” within a territory, the State has a duty not only to consult with the indigenous peoples, but also to “obtain their free, prior and informed consent, according to their

¹⁷¹ *Ibid.*

¹⁷² *Saramaka People v Suriname*, §129. See also *Kichwa Indigenous People of Sarayaku v Ecuador*, §186 and *Kaliña and Lokono Peoples v Suriname*, §201.

¹⁷³ The CESCR has repeatedly cited Article 1 of the ICESCR in urging States to respect the principle of free, prior and informed consent. See its ‘Concluding observations on the fifth periodic report of Australia’, UN Doc E/C.12/AUS/CO/5 (11 July 2017), §15(d) and §16(e), and its ‘Concluding observations on the fourth periodic report of Paraguay’, UN Doc E/C.12/PRY/CO/4 (20 March 2015), §6 and §6(a).

¹⁷⁴ CESCR General Comment No. 21, §§36- 37 and §55(e).

¹⁷⁵ *Poma Poma v Peru*, §7.5-7.7.

¹⁷⁶ See the Committee on the Elimination of All Forms of Racial Discrimination, ‘Consideration of Reports submitted by States Parties under Article 9 of the Convention, Concluding Observations on Ecuador’ (Sixty second session, 2003), U.N. Doc. CERD/C/62/CO/2, June 2, 2003, §16, which states that “[g]s to the exploitation of the subsoil resources of the traditional lands of indigenous communities, [...] merely consulting these communities prior to exploiting the resources falls short of meeting the requirements set out in the Committee’s general recommendation XXIII on the rights of indigenous peoples, and recommends “that the prior informed consent of these communities be sought”. See also the Expert Mechanism Study on Free, prior and informed consent, §3, which states that “[f]ree, prior and informed consent is a human rights norm grounded in the fundamental rights to self-determination and to be free from racial discrimination”.



customs and traditions".¹⁷⁷ In relation to logging concessions granted within Saramaka territory, the IACtHR reiterated that the question for the State was not "whether to consult with the Saramaka people, but whether the State must also obtain their consent".¹⁷⁸

Standards on the criminalisation of Indigenous peoples; due process and fair trial rights

- 144.** The responsibility of states to protect the rights to life, liberty, security and personal integrity of Indigenous persons is enshrined in Article 3 of the Universal Declaration of Human Rights; Articles 6 (1), 7, 9 and 10 of the ICCPR; Articles 4, 5, 7 and 8 of the American Convention on Human Rights, and Article 7 of the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP").¹⁷⁹
- 145.** Article 9(1) of the ICCPR sets out that that "no one shall be subjected to arbitrary arrest or detention" and "[n]o one shall be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law". Article 9(2) and (3) state that "[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for their arrest", "shall be brought promptly before a judge ... and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting

¹⁷⁷ *Saramaka People v Suriname*, §134.

¹⁷⁸ *Saramaka People v Suriname*, §147.

¹⁷⁹ UNDRIP, adopted by the UN General Assembly by way of UNGA Res 61/295 (13 September 2007), with a majority of 144 states in favour. The UNDRIP does not contain obligations which are enforceable against States, but it is important because it provides a contextualised elaboration of binding human rights obligations "as they relate to the specific historical, cultural and social circumstances of indigenous peoples," as was recognised by former Special Rapporteur on the rights of indigenous peoples James Anaya. See HRC, "Report by Special Rapporteur James Anaya on the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development" (11 August 2008) UN Doc A/HRC/9/9.

Fertile hills, characteristic of the terrain in the Alta Verapaz region



trial shall be detained in custody”.¹⁸⁰ Article 7 states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.¹⁸¹ Article 10(1) states that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”¹⁸²

146. The right to due process and a fair trial enshrined in article 14 of the ICCPR stipulates that “[a]ll persons shall be equal before the courts”, “shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal” and “shall have the right to be presumed innocent until proved guilty”. Everyone has the right to be tried “without undue delay”, to free legal counsel and “free assistance of an interpreter if they cannot understand the language used in court”.¹⁸³ Article 13 of the UNDRIP requires that “[s]tates shall take effective measures to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.”

147. Furthermore, Article 10 of ILO Convention 169 states that “[i]n imposing penalties laid down by general law on members of [indigenous] peoples account shall be taken of their economic, social and cultural characteristics” and that “[p]reference shall be given to methods of punishment other than confinement in prison.”

¹⁸⁰ See also Article 7 of the American Convention on Human Rights (right to personal liberty).

¹⁸¹ See also Article 5 of the American Convention on Human Rights (right to humane treatment).

¹⁸² *Ibid.*

¹⁸³ See also Article 8 of the American Convention on Human Rights (right to a fair trial).

The protection of human rights defenders

148. The duties owed by states to human rights defenders are set out in the UN Declaration on Human Rights Defenders,¹⁸⁴ and in the UN Basic Principles on the Role of Lawyers.¹⁸⁵
149. In *Escaleras Mejía et al v Honduras*, the IACtHR recognised the important role fulfilled by human rights defenders in reporting human rights violations and held that measures taken against them by the state or non-state actors for fulfilling that role have negative implications for democracy and the rule of law:
- “[...] the right to defend human rights and the concomitant duty on states to protect it are related to the enjoyment of various rights contained in the American Declaration on the Rights and Duties of Man and the American Convention, such as the rights to life, personal integrity, freedom of expression, freedom of association, judicial safeguards and the protection of the law. ... it is only when human rights defenders can rely on an appropriate protection of their rights that they can freely seek the protection of the rights of others. In this way, an act of reprisal against a human rights defender due to their activities as such can entail the violation of several rights which are expressly recognised in the interamerican instruments. ... the work of human rights defenders ... is considered as “fundamental to the strengthening of democracy and the Rule of Law.”*¹⁸⁶
150. In *Valle Jaramillo and others v Colombia* the IACtHR also recognised that *“the monitoring, denunciation, and educational activities undertaken by human rights defenders make an essential contribution to respect for human rights, because they act as guarantors against impunity.”*¹⁸⁷
151. In the *Case of Human Rights Defender et al v Guatemala*, the IACtHR articulated the attendant obligation on states to protect the rights of human rights defenders as follows:
- “States should provide the necessary means for persons who are defenders of human rights or who perform a public function, so that when they encounter threats or situations of risk or report human rights violations, they can freely carry out their activities; protect them when they receive threats so as to prevent attacks on their lives and integrity; create conditions to eradicate violations by State agents or private individuals; refrain from hindering their work, and thoroughly and effectively investigating violations committed against them, combating impunity.”*¹⁸⁸

Corporate responsibility to protect human rights

152. Businesses and corporations also have obligations to Indigenous peoples which are enforced through states' due diligence obligations. The UN Guiding Principles on Business and Human Rights¹⁸⁹ rest on three essential pillars: (i) the duty of states to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication, (ii) the corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved, and (iii) the need for greater access by victims to effective remedies.
153. Principle 17 of the Guiding Principles provides that businesses should proceed with due diligence *“in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts”*. Human rights due diligence *“(a) should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships, (b) will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations, and (c) should be ongoing, recognizing that the human rights risks may change over time as the business enterprise’s operations and operating context evolve.”*

¹⁸⁴ UN Declaration on Human Rights Defenders, adopted by UNGA Res 53/144 (8 March 1999).

¹⁸⁵ UN Basic Principles on the Role of Lawyers, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (7 September 1990).

¹⁸⁶ *Escaleras Mejía et al v Honduras*, Judgment, IACtHR Series C No 361 (26 September 2018), §§61-62 (unofficial translation). See also *Valle Jaramillo and others v Colombia*, Merits, Reparations and Costs, IACtHR Series C No 192 (27 November 2008).

¹⁸⁷ *Valle Jaramillo and others v Colombia*, §88.

¹⁸⁸ *Case of Human Rights Defender et al v Guatemala*, Preliminary Objections, Merits, Reparations and Costs, IACtHR Series C No 283 (28 August 2014), §142. See also *Valle Jaramillo and others v Colombia*; *Gudiel Alvarez et al. (“Diario Militar”) v Guatemala*, Merits, Reparations and Costs, IACtHR Series C No 253 (20 November 2012); *García y Family Members v Guatemala*, Merits, Reparations and Costs, IACtHR Series C No 258 (29 November 2012).

¹⁸⁹ HRC, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework: Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie’ (21 March 2011) UN Doc A/HRC/17/31.

- 154.** Principle 18 states that *“in order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should (a) draw on internal and/or independent external human rights expertise, and (b) involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.”*
- 155.** In its General Comment 24 (2017) on state obligations under the ICESCR in the context of business activities, the CESCR reiterated that States should ensure that the impacts of business activities on Indigenous peoples and specifically their rights to land, resources, territories, cultural heritage, traditional knowledge and culture are incorporated into human rights impact assessments. *“In exercising due diligence, businesses should consult and cooperate in good faith with the indigenous peoples concerned through indigenous peoples’ own representative institutions in order to obtain their free, prior and informed consent before the commencement of activities”*.¹⁹⁰

¹⁹⁰ CESCR, 'General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities' (10 August 2017) UN Doc E/C12/GC/24, ¶17-18.

Conclusion: systematic failures in the protection of Indigenous rights

- 156.** In its Universal Periodic Review before the UN Human Rights Council in 2023, Guatemala rejected ('noted') the following recommendations regarding Indigenous rights:
- a. to work in collaboration with civil society organizations and human rights defenders to create a national action plan on the implementation and protection of the rights of Indigenous Peoples (made by the Dominican Republic);
 - b. to recognize Indigenous Peoples' rights to lands, territories and natural resources (made by Iran);
 - c. to reform the legal framework for the full recognition of the rights of Indigenous Peoples, especially their right to access and manage their territories of origin and natural resources, and to participate in decision-making on matters that concern them (made by Venezuela);
 - d. to guarantee the right to free, prior and informed consent of Indigenous Peoples in relation to policies, projects and legislation that may affect them, in accordance with human rights standards (made by Denmark);
 - e. to design and implement legally binding criteria to guarantee the right to free, prior and informed consent for initiatives affecting Indigenous Peoples (made by Finland);
 - f. to enhance efforts to protect Indigenous Peoples against forced evictions from their territories (made by South Africa);
 - g. to ensure access to justice and to prompt and effective judicial remedies for Indigenous Peoples, especially those who are forcibly displaced or evicted (made by Iran).¹⁹¹
- 157.** However, in the view of the delegation, all of those recommendations were well-placed. The delegation observes that appropriate measures have not yet been taken to resolve the root causes underlying the agrarian conflict in Guatemala. There is still a need for the special ancestral link between Indigenous peoples and territory to be recognised as the starting point for their land-related rights. Structural changes, including systems designed to recognise and protect the communal rights of Indigenous peoples to their ancestral land, the procedural rights to consultation which flow from those rights, and non-penal mechanisms for the resolution of disputes about land tenure in good faith, are urgently needed in order to cease the systematic violation of Indigenous peoples' rights, and to respect their human dignity.



¹⁹¹ HRC, 'Report of the Working Group on the Universal Periodic Review – Guatemala: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review' (25 April 2023) UN Doc A/HRC/53/9/Add.1; see also Universal Periodic Review of Guatemala (4th Cycle-42nd session), 'Thematic list of recommendations: position of the State under review' (January 2023).

Final recommendations of the delegation

- 158.** With all of the above in mind, the delegation makes the following recommendations to Guatemalan state authorities, which should be developed jointly in consultation with Indigenous peoples:
- a. Recognise the intimate link between Indigenous peoples and their ancestral lands, territories and resources, and the need to enshrine their communal land rights, so that they can effectively exercise their collective rights to land ownership and tenure.
 - b. Conduct a nationwide survey of Indigenous territories from a historical, regional, anthropological, ethnolinguistic and multicultural point of view, in good faith, with the full participation of Indigenous communities and experts, to map out ancestral lands.
 - c. Create an agrarian conflict-resolution mechanism to be prioritised over the use of the criminal justice system to resolve land disputes, which: acts to prevent, negotiate and resolve conflicts and ensure access to intercultural justice; involves all relevant state institutions, and provides legal aid for Indigenous peoples to access that mechanism with the assistance of their own lawyers and experts.
 - d. Develop remedial mechanisms for Indigenous peoples whose ancestral land rights have been violated; who have been forcibly displaced, or whose land has been damaged by development projects, including restitution of their lands, compensation and other forms of comprehensive reparation.
 - e. Provide resources to FONTIERRAS so that vacant land is returned to Indigenous communities at no cost, and to increase the amount of arable farmland that is available for Indigenous communities to buy.
 - f. Monitor and punish fraudulent land transactions and curb land grabbing.

Delegates present their initial findings in a press conference.



- g. Cease to issue licenses for activities that affect Indigenous peoples without their consultation and consent.
- h. Modify the definition of the crime of trespass in order to guarantee the rights of Indigenous peoples to the presumption of innocence and collective ancestral land.
- i. Cease the use of criminal law to stifle peaceful Indigenous resistance.
- j. Prioritise methods of punishment for Indigenous peoples that do not involve their detention in prison, and ensure their access to justice and due process, taking account of their intercultural needs.
- k. Cease forced evictions until it can be ensured that all evictions are in line with international human rights standards.
- l. Strengthen protection mechanisms and assistance programmes for Indigenous human rights defenders who are at risk, adapted to their specific needs and ways of life.
- m. Create special protocols for the care of women and children who are victims of agrarian conflict and/or human rights violations by agricultural and extractive industries.
- n. Strengthen mechanisms for monitoring the labour rights of agricultural workers, particularly those involved in the palm oil industry.
- o. Draw up and implement environmental legislation that will respect the rights of Indigenous peoples over their lands, territories and natural resources, including as regards action against climate change.
- p. Ensure that the private sector, as part of its due diligence and contractual obligations, fully respects the rights of Indigenous peoples, in accordance with international norms, conventions and standards.
- q. Continue to develop a National Action Plan on Business and Human Rights, which should contain specific items regarding Indigenous peoples and territories.

159. The delegation also recommends that the UK and European Union ensure that their own supply chain laws are strong enough and require sufficient transparency to counter the possibility of MNCs profiting from human rights abuses.



The flag of Guatemala flies over the Plaza de la Constitución in Guatemala City. The country's new President will take office in January 2024.

Rigostar



From left: Ben Leather (PBI UK), Camila Zapata Besso (Doughty Street Chambers), Ben Cooper KC (Doughty Street Chambers), Margherita Cornaglia (Doughty Street Chambers), Stephen Cragg KC (Doughty Street Chambers), Silvana Baldovino Beas (SPDA), Haydee Dijkstal (33 Bedford Row Chambers), Daniel Cerqueira (DPLF).

The independent delegation of international lawyers which travelled to Guatemala and drafted this report in 2023 is made up of Stephen Cragg KC, Ben Cooper KC, Silvana Baldovino Beas, Daniel Cerqueira, Haydee Dijkstal, Camila Zapata Besso and Margherita Cornaglia. This report contains their shared opinions and conclusions and was drafted independently of any institution. You can contact the delegation at IDILGuate2023@protonmail.me

This report was designed by Tom Lynton and has been translated into Spanish by Martha Schmitz.

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“We are not trespassers: this is our land”

Agrarian conflict and Indigenous peoples' rights in Alta Verapaz

A report by the Independent Delegation of International Lawyers to Guatemala

September 2023