



FREE
EXPRESSION
MATTERS



UNIVERSITY OF TORONTO
FACULTY OF LAW

INTERNATIONAL
HUMAN RIGHTS
PROGRAM

PEN International, PEN Guatemala PEN Canada and the International Human Rights Program at the University of Toronto Faculty of Law (IHRP)

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Submission on Guatemala

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I. INTRODUCTION

1. PEN International, PEN Canada, and the International Human Rights Program (IHRP) at the University of Toronto's Faculty of Law, welcome the opportunity to offer comments on the state of freedom of expression in Guatemala to the Office of the High Commissioner on Human Rights. The following submission is based on nine months of research, complemented by interviews with journalists and human rights defenders (HRDs) in Guatemala City in November 2016.

II. EXECUTIVE SUMMARY

2. In the period under review, Guatemala has made progress in fighting corruption, and there has been a reduction in the overall level of violence in the country.¹ Nevertheless, journalists and HRDs continue to operate within a climate of violence, fear and impunity. Individuals exercising freedom of expression are targeted in numerous ways, including false criminal accusations, defamation, intimidation, threats of violence, and physical attacks that often amount to assassination attempts and murder. The years under review were marked by periods of surges in violence against journalists and HRDs, increased numbers of assassinations, and the emergence of new tactics of stigmatization that disproportionately target women and Indigenous communities. Despite some progress, there are few indications that Guatemala's longstanding culture of

¹ Adriana Beltrán, "Guatemala: A Glimmer of Hope for Violence Reduction in the Region," *WOLA: Advocacy for Human Rights in the Americas* (9 January 2017), online: <www.wola.org/analysis/guatemala-glimmer-hope-violence-reduction-region/>.

impunity has fundamentally changed.

3. In the 2012 UPR, Guatemala accepted 5 recommendations – from Czech Republic,² Norway,³ the United States,⁴ and Iraq⁵ – to ensure the protection of its HRDs by adopting measures to reduce, prevent, and investigate violence against HRDs and bring perpetrators to justice. Guatemala also accepted Austria's recommendation to ensure a safe working environment for journalists and continue to take proactive measures against impunity.⁶ Finally, Guatemala accepted Norway's recommendation to “reform the legislation concerning access of Indigenous People to radio frequencies to promote, develop and diffuse their languages, traditions and other cultural expression and reform the law on radio communication in order to guarantee the proper and free functioning of local radios.”⁷
4. Guatemala failed to accept recommendations extended by Australia,⁸ Switzerland,⁹ and Spain,¹⁰ pertaining to the protection of HRDs through enacting

² **R.99.52:** “Adopt further measures to ensure that any act of threat or reprisal against human rights defenders is effectively investigated, prosecuted and punished” (Czech Republic), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

³ **R.99.53:** “Take steps to ensure a reduction in the attacks on anyone working to promote and protect human rights and to bring the perpetrators of such attacks to justice” (Norway), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁴ **R.99.66:** “Complete the transfer of capacity from the International Commission Against Impunity in Guatemala to Guatemalan institutions and protect those made most vulnerable to crimes because of impunity, including judges, witnesses, prosecutors, human and labour rights defenders, journalists, and trafficked persons (United States of America), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁵ **R.99.76:** “Seek to protect human rights defenders especially journalists and trade union members” (Iraq), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁶ **R.99.74:** “Ensure a safe working environment for journalists and continue to take proactive measures against impunity” (Austria), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁷ **R.99.78:** “Follow up its Constitutional Court decision that urges the legislative power to reform the legislation concerning access of indigenous people to radio frequencies to promote, develop and diffuse their languages, traditions and other cultural expression and reform the law on radio communication in order to guarantee the proper and free functioning of local radios” (Norway), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁸ **R.100.14:** “Ensure effective and independent investigations into all reports of extrajudicial executions and ensure that reports of killings, threats, attacks and acts of intimidation against human rights defenders and journalists are thoroughly and promptly investigated and those responsible brought to justice” (Australia), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁹ **R.100.15:** “Implement effective protective measures as well as immediate, independent and systematic investigations of abuses perpetrated against human rights defenders” (Switzerland), online:

further investigative and legislative measures.

5. PEN and IHRP welcome several positive developments since the last UPR, including the following:
 - a. In the 2012 UPR proceedings, Guatemala reported establishing special units within the Public Prosecution Service to address “crimes against human rights activists and defenders,” as well as “crimes against journalists.”¹¹ The primary objectives of the Program for the Protection of Journalists were envisioned to reduce risks that journalists face, prevent attacks, and administer justice to those who threaten and/or attack journalists.¹² Otto Perez Molina, Guatemala’s President at the time, reiterated this commitment in November 2013.¹³ In February 2014, the government installed a roundtable and a technical group to coordinate the Program for the Protection of Journalists, and in 2015, workshops were held to collaborate on the preliminary proposed mechanism for the Program.¹⁴ Despite these

<https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

¹⁰ **R.100.18:** “Adopt and implement necessary legislation for the protection of human rights defenders in Guatemala, while acknowledging the efforts made in this area, but requesting to continue implementing legislation in that respect” (Spain), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

¹¹ *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, Universal Periodic Review OR, 14th Sess, Universal Periodic Review Second Cycle - Guatemala, National Report, UN Doc A/HRC/WG.6/14/GTM/2, (2012) at para 27.

¹² Silvia Higuera, “Mecanismo de protección para periodistas en Guatemala: una promesa sin cumplir,” *Journalism in the Americas* (18 February 2016), online: <<https://knightcenter.utexas.edu/es/blog/00-16696-mecanismo-de-proteccion-para-periodistas-en-guatemala-una-promesa-sin-cumplir>>. See also, *Estado de Situacion de la Libertad de Expresion*, El Observatorio de los Periodistas and CERIGUA (2015), online: <https://cerigua.org/media/uploads/libertad_expresion/estado-de-situacion-de-la-libertad-de-expresion-2015.pdf>.

¹³ *Situation Of Human Rights in Guatemala: Diversity, Inequality and Exclusion*, Inter-American Commission on Human Rights, OR OEA/Ser.L/V/II.Doc. 43/15, (2015) at para 297, online: <www.oas.org/en/iachr/reports/pdfs/guatemala2016-en.pdf> [*Situation Of Human Rights in Guatemala*, IACHR 2015]. According to the same document, “[t]he Commitment was signed in the presence of the Vice President, the Minister of the Interior, the President of the Presidential Commission coordinating the Executive’s Policy on Human Rights (COPREDEH), along with representatives of the Ombudsperson’s Office and the Public Prosecution Service. Acting as witness of honor were the Resident Coordinator of the United Nations and the Representative of the United Nations Educational, Scientific and Cultural Organization (UNESCO).”

¹⁴ *Ibid*, at para 298 (citing Design of the Programa Protección a Periodista, Technical Group, “Notice of convocation”, online: <proteccionperiodistas.gob.gt/>). According to the same document, “[t]he workshops were convened by the Ministry of the Interior (MINGOB), the Presidential Commission coordinating the Executive’s Policy on Human Rights (COPREDEH), and the Public Prosecution Service (MP), with the backing of the Social Communication Secretariat of the office of the President of the Republic (SCSPR), the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the

initial advances, the government has not allocated a budget to allow the Program to operate.¹⁵ Furthermore, it is unclear whether the Program will effectively shield its intended beneficiaries. Local journalists and HRDs indicate that the government needs to do more to develop and modernize Guatemala's protection network, rather than rely on non-governmental organizations to lead the necessary reforms.¹⁶

- b. In the 2012 UPR, the Working Group on Enforced or Involuntary Disappearances welcomed the *2008 Act on Access to Public Information*.¹⁷ However, the *Act* failed to establish an independent administrative oversight body,¹⁸ and access to public information has been granted in a slow and inconsistent manner.¹⁹ There is also no formal mechanism for challenging denied requests, although some

United Nations Educational, Scientific and Cultural Organization (UNESCO)."

¹⁵ *Ibid*, at para 299. See also, "Señalan deficiencias en proceso de construcción del Programa de Protección a Periodistas," *CERIGUA* (9 October 2014), online: <<https://cerigua.org/article/senalan-deficiencias-en-proceso-de-construccion-de/>>.

¹⁶ Interview of Silvia Weber, Peace Brigades International (PBI), by IHRP and PEN Canada (9 November 2016) in Guatemala City [Silvia Weber interview]; Interview of Fernando Solís, *El Observador*, by IHRP and PEN Canada (11 November 2016) in Guatemala City [Fernando Solís interview]; Interview of Claudia Samayoa, UDEFEGUA, by IHRP and PEN Canada (12 November 2016) in Guatemala City [Claudia Samayoa interview]. According to Claudia Samayoa, On September 13th, 2016, the Guatemalan Government announced the creation of a new protection program for HRDs and journalists, without further details. The Government then approached UDEFEGUA to design and run the program. Samayoa agreed to provide logistical support, and on November 8th, 2016, she met with the Government to design the Program's objectives, actions and methodologies. However, Samayoa believes that for this Program to be effective, it must not be outsourced to civil society organizations, but run by the Government. She recommended that the Government hire a Political Program Operator and consult with at least 800 HRDs and journalists operating in Guatemala. Samayoa also recommended that the Government formally create the Program through legislation or decree, and commit a timeline and a budget that could be supported by the IAHTCR. Despite this, according to Samayoa, the Government is continuing to rely heavily on UDEFEGUA to do this work. See also, *Crutch to Catalyst? The International Commission Against Impunity in Guatemala*, International Crisis Group (29 January 2016) at i-ii, online: <https://d2071andvip0wj.cloudfront.net/56-crutch-to-catalyst-the-international-commission-against-impunity-in-guatemala_0.pdf>.

¹⁷ *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*, Universal Periodic Review OR, 14th Sess, Universal Periodic Review Second Cycle – Guatemala, Compilation of UN Information, UN Doc A/HRC/WG.6/14/GTM/2, (2012) at para 52 [Compilation of UN Information, 2012 Guatemala UPR]; *Act on Access to Public Information* (DECRETO 57-2008) El Congreso de la República de Guatemala [Congress of the Republic of Guatemala] Guatemala City, 22 October 2008 (Guatemala) online: <http://www.oas.org/juridico/pdfs/mesicic4_gtm_acceso.pdf>.

¹⁸ Claudia Samayoa interview, *supra* note 16. See also, Article 19, *Submission to the UN Universal Periodic Review of Guatemala* (11 April 2012) at para 5, online: <<https://www.article19.org/data/files/medialibrary/3035/12-04-12-UPR-guatemala.pdf>>.

¹⁹ Claudia Samayoa interview, *supra* note 16. See also, United States Department of State Bureau of Democracy, Human Rights and Labor, "Guatemala 2015 Human Rights Report" (2015) at 13, online: <<https://www.state.gov/documents/organization/253229.pdf>>.

petitioners have successfully appealed to the Office of the Human Rights Ombudsman for assistance.²⁰

- c. In April 2015, Guatemala renewed the mandate of the UN-sponsored International Commission Against Impunity in Guatemala (CICIG),²¹ which has made considerable headway in fighting corruption and impunity. There are indications that CICIG has empowered local prosecutors against the entrenched culture of impunity.²² For example, in January 2017, CICIG and the Guatemalan Public Ministry presented a request to hold a preliminary hearing (*antejuicio*)²³ of the Deputy of the Guatemalan Congress, Julio Antonio Juárez Ramírez, who was accused of ordering the killing of journalists Danilo López and Federico Salazar Gerónimo in March 2015.²⁴ It is not clear,

²⁰ *Ibid.*

²¹ “Mandato: Acuerdo de creación de la CICIG,” *Comisión Internacional contra la Impunidad en Guatemala*, online: <<http://www.cicig.org/index.php?page=mandato>>. CICIG’s mandate has been renewed until September 2017. In April 2016, then President Jimmy Morales requested further renewal of CICIG’s mandate until September 2019.

²² Claudia Samayoa interview, *supra* note 16; Interview of Marielos Monzón by IHRP and PEN Canada (10 November 2016) in Guatemala City [Marielos Monzón interview]. See also, Open Society Justice Foundation, *Against The Odds: CICIG in Guatemala* (March 2016) at 7, online:

<<https://www.opensocietyfoundations.org/sites/default/files/against-odds-cicig-guatemala-20160321.pdf>> [Open Society Justice Foundation, *Against The Odds*].

²³ Interview of Daniel Butler, International Commission of Jurists (ICJ), Central America Regional Office, Guatemala, by IHRP (6 February 2017) in Toronto via Skype [Daniel Butler interview]. According to Daniel Butler, “the law provides accused dignitaries or government officials a level of Congressional immunity that allows judges time to determine whether a crime is spurious or solely politically motivated. It is a preliminary administrative step prior to trial.” See also, *Ley en Materia de Antejuicio [Pre-Trial Law]* (DECRETO 57-2002) Artículo 17 (Procedimiento de antejuicio en el Congreso) [Pre-Trial Law Process at Congress] El Congreso de la República de Guatemala [Congress of the Republic of Guatemala] Guatemala City, 22 October 2002 (Guatemala), online: <sitios.usac.edu.gt/wp_pec/wp-content/uploads/2015/06/20.-Ley-Materia-Antejuicio-3.pdf>; *Transparency International Country Study Report: Guatemala 2007*, National Integrity Systems (2007) at 10, online: <transparency.org/content/download/28418/428855/.../Guatemala_NIS_2007_English.pdf>.

²⁴ Silvia Higuera, “Guatemalan Congressman accused of being mastermind of journalist’s murder in 2015,” *Journalism in the Americas* (1 February 2017), online: <<https://www.knightcenter.utexas.edu/blog/00-17966-guatemalan-congressman-accused-being-mastermind-journalists-murder-2015>>. See also, “Antejuicio Contra Diputado y Capturas en Caso Asesinato de Periodistas,” *CICIG* (26 January 2017), online: <www.cicig.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=776&cntnt01returnid=73>; “Satisfacen avances de dos periodistas asesinados,” *CERIGUA* (27 January 2017), online: <<https://cerigua.org/article/satisfacen-avances-en-caso-de-dos-periodistas-ases/>>. Police also arrested two other suspects for their alleged involvement in the murder. Henry Pocasangre and Jerson Ramos, “MP pide antejuicio contra diputado por muerte de periodistas,” *Prensa Libre* (26 January 2017), online: <www.prensalibre.com/guatemala/justicia/capturan-a-dos-hombres-por-muerte-de-periodistas>; “Antejuicio contra diputado y capturas en asesinato de periodista,” *El Periódico* (26 January 2017), online: <<http://elperiodico.com.gt/pais/2017/01/26/antejuicio-contra-diputado-y-capturas-en-asesinato-de-periodista/>>.

however, whether this progress can survive CICIG's eventual withdrawal.²⁵

6. Despite some positive steps by Guatemala's federal government since the last UPR, there has been little tangible improvement in institutional capacity and credibility in terms of safeguarding freedom of expression. A culture of impunity persists within every level of government in Guatemala.
7. This submission examines the following key freedom of expression issues:
 - a. Escalating use of violence against journalists and HRDs, targeting women and Indigenous persons in particular (para. 8);
 - b. Escalating use of marginalization and stigmatization tactics against journalists and HRDs, targeting women and Indigenous persons in particular (para. 12);
 - c. Laws and practices suppressing community radio operators in rural regions, with a particularly harmful impact on Indigenous Peoples (para. 31).

Recommendations are listed at the end (para. 42).

III. RELEVANT ISSUES

(A) Violence against journalists and Human Rights Defenders (HRDs)

8. The Guatemalan state accepted 4 recommendations to ensure the protection of HRDs and journalists in the 2012 UPR (Czech Republic,²⁶ Norway,²⁷ the United States,²⁸ and Iraq²⁹).

²⁵ Interview of Sandra Morán by IHRP and PEN Canada (10 November 2016) in Guatemala City [Sandra Morán interview]; Fernando Solís interview, *supra* note 16; Claudia Samayoa interview, *supra* note 16; Marielos Monzón interview, *supra* note 22; Interview of Silvia Weber, *supra* note 16. See also, Open Society Justice Foundation, *Against The Odds* at 7, *supra* note 22.

²⁶ **R.99.52:** "Adopt further measures to ensure that any act of threat or reprisal against human rights defenders is effectively investigated, prosecuted and punished" (Czech Republic), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

²⁷ **R.99.53:** "Take steps to ensure a reduction in the attacks on anyone working to promote and protect human rights and to bring the perpetrators of such attacks to justice" (Norway), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

²⁸ **R.99.66:** "Complete the transfer of capacity from the International Commission Against Impunity in Guatemala to Guatemalan institutions and protect those made most vulnerable to crimes because of

9. During the period under review, journalists and HRDs in Guatemala continued to work in a context of violence, intimidation and impunity.³⁰ Acts of aggression carried out against journalists and HRDs included “murder, threats, arbitrary arrests, following, and surveillance.”³¹ UDEFEGUA recorded 657 violent incidents against HRDs in 2013,³² 814 in 2014,³³ 493 in 2015,³⁴ and 223 in 2016.³⁵ According to the Guatemala Human Rights Commission, while the number of non-fatal attacks against HRDs fell to an eight-year low in 2016, the number of assassinations increased dramatically over the past several years: from seven in 2014, to 13 in 2015, and at least 16 in 2016.³⁶ Furthermore, the

impunity, including judges, witnesses, prosecutors, human and labour rights defenders, journalists, and trafficked persons (United States), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

²⁹ **R.99.76:** “Seek to protect human rights defenders especially journalists and trade union members” (Iraq). Online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/100/33/PDF/G1310033.pdf?OpenElement>>.

³⁰ *Situation Of Human Rights in Guatemala*, IACHR 2015, *supra* note 13, at para 281; “Agresiones contra Defensoras/as 2000-2016, Guatemala,” UDEFEGUA (accessed March 2017), online: <<http://udefegua.org>> [“Agresiones contra Defensoras” UDEFEGUA]; “Guatemala: Alert regarding the escalation of aggressions against human rights defenders,” *International Federation for Human Rights* (21 December 2016), online: <<http://www.fidh.org/en/issues/human-rights-defenders/guatemala-alert-regarding-the-escalation-of-aggressions-against-human#nh37-1>>. See also, “Soy Defensora, Soy Defensor-Promuevo Derechos Humanos: Informe sobre situación de Defensoras y Defensores de Derechos Humanos,” UDEFEGUA (2014), online: <www.udefegua.org/wp-content/uploads/2015/08/informe_final_2014.pdf> [“Soy Defensora,” UDEFEGUA 2014].

³¹ Inter-American Commission on Human Rights, *Situation Of Human Rights in Guatemala*, IACHR 2015, *supra* note 13, at para 192 (citing “Contribution of UDEFEGUA,” *Information on the situation of human rights in Guatemala* (September 2015) at 57). See also, *Guatemala – ‘Smaller than David’: The Struggle of Human Rights Defenders in Guatemala*, World Organization Against Terror, and International Federation for Human Rights, and UDEFEGUA (February 2015) at 2, online: <www.omct.org/files/2015/02/23002/v1.2_w_en_rprrtguatemala_obs15.pdf>; “Assassinations Increase in 2016,” *Guatemalan Human Rights Commission* (1 February 2017), online: <<https://ghrcusa.wordpress.com/>> [“Assassinations Increase in 2016,” GHRC 2017].

³² *Situation Of Human Rights in Guatemala*, IACHR 2015, *supra* note 13, para 193 (citing UDEFEGUA, “Acompañante”, *Informe parcial de la situación de defensores/as de derechos humanos a la segunda quincena de noviembre del 2014*). According to the same document, “[t]he attacks documented include: 7 murders, 12 threats, 201 cases of property damage, 22 lawsuits, 9 arbitrary arrests, 53 unlawful arrests, 47 acts of deformation, 20 attempted murders, 1 attempted abduction, 244 acts of intimidation, 26 instances of mistreatment and cruel and inhuman punishment, 143 cases of being followed, 4 robberies, and 7 acts of surveillance.” See also, “Soy Defensora,” UDEFEGUA 2014, *supra* note 30; Patricia Davis, former director of the Guatemala Human Rights Commission/USA, “Guatemala: Suppressing Dissent at Home and Abroad,” *Foreign Policy in Focus* (24 April 2014), online: <<http://fpif.org/guatemala-suppressing-dissent-home-abroad/>>.

³³ Soy Defensora,” UDEFEGUA 2014, *supra* note 30, at 7.

³⁴ “Agresiones contra Defensoras” UDEFEGUA, *supra* note 30.

³⁵ *Ibid.* See also, “Guatemala: Alert regarding the escalation of aggressions against human rights defenders,” *International Federation for Human Rights* (21 December 2016), online: <<http://www.fidh.org/en/issues/human-rights-defenders/guatemala-alert-regarding-the-escalation-of-aggressions-against-human#nh37-1>>.

³⁶ “Assassinations Increase in 2016,” GHRC 2017, *supra* note 31. According to the same document,

Guatemala Human Rights Commission also reported that six journalists were assassinated in 2016,³⁷ and journalists continued to experience assault, intimidation, censorship, and cyber-attacks.³⁸ By September 2016, the Observatory of Journalists at the Center for Information Reports on Guatemala (*Centro de Reportes Informativos sobre Guatemala*– CERIGUA) had recorded 47 grievances from the press, and the Special Prosecutor for Crimes against Journalists (*Fiscalía Especial para Delitos en Contra de los Periodistas*) had received 76 complaints for the year.³⁹

10. HRDs are most commonly targeted when they work to defend “the rights of indigenous peoples, land rights and the environment, and the rights of victims of the internal armed conflict and trade union leaders.”⁴⁰ In fact, 90% of attacks in recent years were waged against HRDs who worked to advance Indigenous Peoples’ rights, as well as economic, social, and cultural and environmental rights.⁴¹ Attacks against journalists and HRDs have taken place across Guatemala, and particularly in the departments of Guatemala, Alta Verapaz, Izabal, and Suchitepéquez.⁴²

Guatemalan journalists that were killed in 2016 include: Mario Roberto Salazar Barahona, director of *Radio Estéreo Azúcar*; Winston Leonardo Túnchez Cano, broadcaster on *Radio La Jefa*; Diego Salomón Esteban Gaspar, leader of *Radio Sembrador*; Víctor Hugo Valdéz Cardona, director of *Chiquimula de Visión*; Álvaro Alfredo Aceituno López, director of *Radio Ilusión*; Hamilton Hernández, journalist for cable station *Punto Rojo*. Journalists’ families also suffer fatal violence: Aceituno’s daughter and Hernández’s wife were murdered in 2016.

³⁷ *Ibid.*

³⁸ *Ibid.*; Interview of Nelton Rivera and Quimy De León, *Prensa Comunitaria*, by IHRP and PEN Canada (11 November 2016) in Guatemala City [Nelton Rivera and Quimy De León interview]; Interview of Daniel Pascual Hernandez by IHRP and PEN Canada (12 November 2016) in Guatemala City [Daniel Pascual Hernandez interview].

³⁹ “Assassinations Increase in 2016,” *GHRC 2017*, *supra* note 31.

⁴⁰ *Situation Of Human Rights in Guatemala*, IACHR 2015, *supra* note 13, at para 193. HRDs who attempt to investigate and report on corruption, criminal activities or human rights abuses connected to large economic development projects, are also commonly attacked. According to the Guatemala Human Rights Commission, “[u]nion members, environmental defenders, and journalists have been the most heavily targeted groups” (“Assassinations Increase in 2016,” *GHRC 2017*, *supra* note 31).

⁴¹ *Situation Of Human Rights in Guatemala*, IACHR 2015, *supra* note 13, at para 194, (citing “Contribution of UDEFEGUA,” *Information on the situation of human rights in Guatemala* (September 2015) at 60). According to the same document, attacks on HRDs who advance civil and political rights represent 5% of attacks against HRDs.

⁴² “Two reporters gunned down in Mazatenango,” *Reporters Without Borders* (20 January 2016), online: <rsf.org/en/news/two-reporters-gunned-down-mazatenango>; “Guatemala 2015 Human Rights Report,” *United States Department of State Bureau of Democracy, Human Rights and Labor* (2015) at 8, online: <<https://www.state.gov/documents/organization/253229.pdf>>; *Situation Of Human Rights in Guatemala*, IACHR 2015, *supra* note 13, at para 282; Thomas Abbot, “Violence Against Journalists in Guatemala Spikes Again” *Council on Hemispheric Affairs* (4 September 2013), online: <<http://www.coha.org/violence-against-journalists-in-guatemala-spikes-again/>>; Roy Greenslade, “Guatemalan Journalist Shot to Death” *The Guardian* (12 March 2013), online: <<http://www.theguardian.com/media/greenslade/2015/mar/12/two-guatemalan-journalists-shot-dead-and-third-reporter-is-wounded>>; “Amnesty International Report 2015/16: The State of the World’s Human Rights,” *Amnesty International* POL 10/2552/2016 (26 February 2016) at 172.

11. In the 2012 UPR, Guatemala also accepted 11 recommendations to prevent and address violence against women (Switzerland,⁴³ Australia,⁴⁴ Czech Republic,⁴⁵ Philippines,⁴⁶ Romania,⁴⁷ Trinidad and Tobago,⁴⁸ Singapore,⁴⁹ Spain,⁵⁰ Sweden,⁵¹ Austria,⁵² Qatar,⁵³ Ireland,⁵⁴ and Bolivia⁵⁵). While Guatemala has

⁴³ **R.99.16:** “Implement policies and programmes preventing violence against women and children” (Switzerland), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁴⁴ **R.99.31:** “Thoroughly investigate and promptly prosecute cases of femicide and other acts of violence against women” (Australia), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁴⁵ **R.99.33:** “Devote adequate resources, in particular financial resources and personnel, to combating femicide and all forms of violence against women”; **R.99.41:** “Adopt concrete measures to ensure gender sensitive training of persons involved in investigation, prosecution and assisting victims of violence against women” (Czech Republic), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁴⁶ **R.99.35:** “Allocate necessary financial and human resources to these mechanisms and organizations (Ministry of Social Development; Presidential Commission for Combatting Femicide; Secretariat on Sexual Violence, Exploitation and Trafficking in Persons; and National Commission on Police Reforms) to ensure that their objectives are achieved” (Philippines), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁴⁷ **R.99.36:** “Provide necessary financial resources for the application of the law concerning femicide, as well as of the National Plan for the Prevention of Domestic Violence and Violence against Women” (Romania), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁴⁸ **R.99.37:** “Enhance the promotion and protection of women's rights, including addressing violence against women and femicide” (Trinidad and Tobago), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁴⁹ **R.99.38:** “Continue its efforts to enhance the protection of women against violence” (Singapore), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁵⁰ **R.99.39:** “Continue with the full implementation of the Law against Femicide and other forms of violence against women” (Spain), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁵¹ **R.99.40:** “Continue to strengthen its efforts to prevent sexual and gender-based violence by ensuring the provision of financial resources for the full implementation of the legal framework, including mandatory training with a gender perspective of all legal and law enforcement officials and health service personnel in order to ensure that they are able to respond effectively to all forms of violence against women” (Sweden), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁵² **R.99.44:** “Enhance legal protections for women, including by improving the investigation, prosecution and prevention of violence against women and fully implementing the National Action Plan for the Prevention and Eradication of Domestic Violence and Violence against Women” (Austria), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁵³ **R.99.47:** “Continue efforts to fight discrimination and violence against women as well as trafficking in persons” (Qatar), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁵⁴ **R.99.61:** “Provide sufficient resources for gender-sensitive training of law enforcement officers and of the judiciary to improve the investigation and prevention of violence against women” (Ireland), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

made some progress in reducing violence against women,⁵⁶ women HRDs and journalists continue to face severe gendered violence, including sexual assault and sexual harassment.⁵⁷ In fact, women constitute the majority of HRDs who are attacked.⁵⁸

(B) Marginalization and stigmatization of journalists and HRDs

12. In the 2012 UPR, Guatemala accepted Austria's recommendation to ensure a "safe working environment for journalists and continue to take proactive measures against impunity."⁵⁹ Guatemala also noted Australia's recommendation to "ensure effective and independent investigations into all reports of extrajudicial executions and ensure that reports of killings, threats, attacks and acts of intimidation against HRDs and journalists are thoroughly and promptly investigated and those responsible brought to justice."⁶⁰
13. During the period under review, authorities continued to abuse the criminal justice system in order to marginalize and stigmatize journalists and HRDs.⁶¹ In May 2013, a coalition of 80 individuals and civil society groups registered a formal complaint with the Human Rights Ombudsman, against an ongoing

[october_2012/ahrc228guatemalae.pdf](#)>.

⁵⁵ **R.99.104:** "Continue to move forward in the execution of projects aimed at protecting women, specifically indigenous women" (Bolivia), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁵⁶ In January 2017, the National Institute of Forensic Sciences (Instituto Nacional de Ciencias Forenses – INACIF) reported a drop of 3.5 percent in the violent deaths of women in 2016, compared to 2015 ("Gobierno guatemalteco refuerza atención a mujeres víctimas de violencia" *Agencia PL, Guatemala City* (13 January 2017), online: <<http://www.radiolaprimerisima.com/noticias/resumen/215814/gobierno-guatemalteco-refuerza-atencion-a-mujeres-victimas-de-violencia>>).

⁵⁷ Interview of Silvia Trujillo and Evelyn Blanck, *CIVITAS*, by IHRP and PEN Canada (10 November 2016) in Guatemala City [Silvia Trujillo and Evelyn Blanck interview]; Interview of Angela Fuentes, *UDEFEQUA/IM-Defensoras*, by IHRP and PEN Canada (12 November 2016) Guatemala City [Angela Fuentes interview]; Interview of Silvia Weber, *supra* note 16.

⁵⁸ *Situation Of Human Rights in Guatemala*, IACHR 2015, *supra* note 13, at para 193.

⁵⁹ **R.99.74:** "Ensure a safe working environment for journalists and continue to take proactive measures against impunity" (Austria), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁶⁰ **R.100.14:** "Ensure effective and independent investigations into all reports of extrajudicial executions and ensure that reports of killings, threats, attacks and acts of intimidation against human rights defenders and journalists are thoroughly and promptly investigated and those responsible brought to justice" (Australia), online: <https://www.upr-info.org/sites/default/files/document/guatemala/session_14_-_october_2012/ahrc228guatemalae.pdf>.

⁶¹ *Criminalization of the Work of Human Rights Defenders*, Inter-American Commission on Human Rights (2015) OS OEA/Ser.L/V/II.Doc. 49/15, at para 45, online: <www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf> (citing Response from the Office of the Human Rights of Guatemala to the questionnaire for the preparation of the report on criminalization of human rights defenders through the misuse of the criminal law, October 2014). See also, Amnesty International, *Defending Human Rights in the Americas: Necessary, Legitimate and Dangerous* (2014) at 20.

campaign of “defamation, disinformation, threats and criminalization of human rights defenders.”⁶²

Defamation

14. In the 2012 UPR, multiple stakeholders reiterated concerns that defamation charges continued to be used inappropriately,⁶³ and the High Commissioner noted that authorities also attempt to discredit HRDs and criminalize their work.⁶⁴ From January to August 2016, defamation accounted for a third of the 119 aggressions carried out against journalists and HRDs.⁶⁵

15. The Guatemalan Criminal Code penalizes defamation, calumny and insults as “crimes against honour.”⁶⁶ According to local HRDs, in recent years, business and political leaders have increasingly used criminal defamation provisions to silence journalists, even those working within the mainstream media.⁶⁷ For example, Maya Kaqchiquel activist and journalist **Francisca Gómez Grijalva** said that, in June 2013, the cement company she had criticized in her *Prensa Libre* column sued her in order to silence her.⁶⁸ Since 2011, Gómez Grijalva had been reporting on the concerns and demands of the 12 Indigenous communities of San Juan Sacatepéquez, who opposed the construction of the cement company’s factory in their region.⁶⁹ After the Constitutional Court upheld a successful injunction in favour of Gómez Grijalva, the cement company was forced to drop the lawsuit in November 2015. Shortly thereafter, Gómez Grijalva

⁶² “Solicitamos protección ante difamación, amenazas e incitación a delinquir realizada a través de artículos, libelos, anónimos y declaraciones de organizaciones de extrema derecha” (May 2013), online: <www.albedrio.org/hm/otrosdocs/comunicados/DenunciaantePDH2013.pdf>; “Alerta: Aumento de agresiones contra defensores y defensoras de derechos humanos en Guatemala,” *Peace Brigades International* (27 May 2013), online: <www.pbi-guatemala.org/field-projects/pbi-guatemala/latest-news/news/?no_cache=1&tx_ttnews%5Btt_news%5D=3843&cHash=56eca3ce78234f827c0bce293021266d>.

⁶³ Compilation of UN Information, 2012 Guatemala UPR, *supra* note 17, at paras 61 and 63.

⁶⁴ *Ibid.*, at para 49.

⁶⁵ “El Acompañante, Situación de Defensoras y Defensores de Derechos Humanos en Guatemala: Enero-Agosto 2016,” *UDEFEQUA* (August 2016) at 2, online: <http://udefegua.org/wp-content/uploads/2015/08/bimensual_agosto.pdf>.

⁶⁶ “Critics Are Not Criminals: Comparative Study of Criminal Defamation Laws in the Americas,” *Committee to Protect Journalists* (March 2016), at 39, online: <https://www.cpj.org/reports/critics_are_not_criminals-english.pdf> [“Critics Are Not Criminals,” *CPJ* 2016]. See also *Código Penal de Guatemala*, Decreto No 17-73, 1973, Título II, De Los Delitos Contra el Honor [Crimes against Honor], Capítulo I, Artículos 159-166 (De la Calumnia, De la Injuria, y De la Difamación) [Calumny, Slander, and Defamation], online: <www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/GTM_codigo_penal.pdf>.

⁶⁷ Claudia Samayoa interview, *supra* note 16; Marielos Monzón interview, *supra* note 22; Sandra Morán interview, *supra* note 25; Interview of Silvia Weber, *supra* note 16; Interview of Miriam Pixtun Monroy, Maya Kaqchiquel activist and Faculty member of the University of San Carlos, by IHRP and PEN Canada (12 November 2016) in Guatemala City; Interview of Francisca Gómez Grijalva, Maya Kaqchiquel activist and journalist, by IHRP and PEN Canada (12 November 2016) in Guatemala City.

⁶⁸ Interview of Francisca Gómez Grijalva, activist and journalist, by IHRP and PEN Canada (12 November 2016) Guatemala City.

⁶⁹ *Ibid.*

said she was fired without cause from *Prensa Libre*.⁷⁰

Criminalization

16. Journalists and HRDs are not only frivolously accused of criminal defamation; they are themselves subjected to criminal defamation.⁷¹ In other words, in addition to silencing journalists by frivolously accusing them of criminal defamation, Guatemalan authorities stigmatize journalists by defaming them using frivolous yet grave criminal charges, such as theft, kidnapping, assault, murder, genocide, terrorism, and other crimes against humanity.⁷²

17. The case of **Jose Rubén Zamora Marroquín**,⁷³ president and editor of *El Periódico*, highlights such abuse of the criminal justice system. In July 2013, *El Periódico* reported on investigations into government corruption,⁷⁴ including fraud at the country's Social Security Institute.⁷⁵ In response, the head of the Guatemalan Social Security Institute, Juan de Dios Rodríguez, filed more than 30 criminal complaints against Marroquín and other *El Periódico* editors.⁷⁶

⁷⁰ *Ibid.*

⁷¹ Daniel Pascual Hernandez interview, *supra* note 38; Claudia Samayoa interview, *supra* note 16; Interview of Silvia Weber, *supra* note 16; Marielos Monzón interview, *supra* note 22.

⁷² Marielos Monzón interview, *supra* note 22; Sandra Morán interview, *supra* note 25. See also, Official Criminal Complaint (*Denuncia Nueva*), lodged against Marielos Monzón and Sandra Morán and over 50 others by Theodore Piocharski to the Attorney General of the Republic of Guatemala and the Public Ministry (13 December 2011), notarized by lawyer Moisés Eduardo Galindo Ruíz and stamped by The Public Ministry's Bureau of Continuing/Permanent Care (*Oficina de atención permanente*); Official Criminal Complaint (*Denuncia Nueva*), lodged against Marielos Monzón and Sandra Morán and 98 others by Marco Augusto Quilo Ortiz to the Attorney General of the Republic of Guatemala and the Public Ministry (9 April 2012), notarized by lawyer Moisés Eduardo Galindo Ruíz and stamped by The Public Ministry's Bureau of Continuing/Permanent Care (*Oficina de atención permanente*).

⁷³ "Critics Are Not Criminals," *CPJ* 2016, *supra* note 66, at 40. See also, Francisco Goldman, "From President to Prison: Otto Pérez Molina and a Day for Hope in Guatemala," *The New Yorker* (4 September 2015), online: <www.newyorker.com/news/news-desk/from-president-to-prison-otto-perez-molina-and-a-day-for-hope-in-guatemala>.

⁷⁴ *Ibid.* Marroquín had published articles that alleged ties between then President Pérez Molina, Vice President Roxana Baldetti, and other high-level government authorities, to corruption and organized crime.

⁷⁵ The Guatemalan Social Security Institute is a public and autonomous government institution designed to provide Guatemalans with a compulsory National Social Security System (Instituto Guatemalteco de Seguridad Social, online: <www.igssgt.org>). In Spring 2015, CICIG and the Public Prosecutor's office found extensive government corruption in connection with the Guatemalan Social Security Institute. President Otto Pérez Molina, Vice President Roxana Baldetti and Juan de Dios Rodríguez were among those implicated in the corruption, and were arrested for their alleged involvement. Sophie Beaudoin, "New Corruption Scandal Plunges Guatemala's Government Further Into Crisis," *International Justice Monitor* (26 May 2015), online: <www.ijmonitor.org/2015/05/new-corruption-scandal-plunge-guatemalas-government-further-into-crisis>; "Former Guatemalan Vice-President Detained over Corruption Scandal," *The Guardian* (21 August 2015), online: <www.theguardian.com/world/2015/aug/21/guatemala-former-vice-president-detained-customs-scandal>.

⁷⁶ *Ibid.* See also, *Guatemala: Freedom of the Press 2015*, Freedom House (2016), online: <<https://freedomhouse.org/report/freedom-press/2015/Guatemala>> [*Guatemala: Freedom of the Press*,

Rodríguez also urged “all the regulatory bodies” to take action against Marroquín via the courts or through taxation.⁷⁷ In November 2013, then President Otto Pérez Molina and Vice President Roxana Baldetti also sued Marroquín, accusing him of coercion, blackmail, extortion, violating the constitution, and insulting the President and Vice President of Guatemala.⁷⁸ The President claimed that, “*El Periódico* had damaged his and the country’s reputation.”⁷⁹ In December 2013, a judge issued a restraining order against Marroquín, prohibiting him from criticizing or physically approaching Baldetti and her family (this order was later overturned).⁸⁰ Marroquín was also ordered not to leave the country until his February 2014 court hearing.⁸¹ Although the criminal charges against Marroquín were withdrawn in January 2014, the civil charges remained open.⁸²

18. Journalists and HRDs also face frivolous terrorism-related charges. The Foundation Against Terrorism (Fundación Contra El Terrorismo – FCT) regularly defames political opponents as “terrorists,” and insinuates links between them and organized crime networks.⁸³ One analyst described the strategy as “counterinsurgency with a new face.”⁸⁴ While FCT’s allegations against HRDs fail to produce convictions, such strident ad hominem attacks and legal harassment have created a chill among journalists.⁸⁵

19. The FCT attains standing to criminally prosecute journalists and HRDs by obtaining private prosecutor [*querellante adhesivo*] status pursuant to Article 116 of the Guatemalan Criminal Process Code.⁸⁶ The private prosecutor status

Freedom House 2016].

⁷⁷ *Ibid.*

⁷⁸ Bertelsmann Stiftung, *BTI 2016 — Guatemala Country Report* (Gütersloh: Bertelsmann Stiftung, 2016) at 9, online: <www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Guatemala.pdf>; “Critics Are Not Criminals,” *CPJ* 2016, *supra* note 66, at 40. See also, Francisco Goldman, “From President to Prison: Otto Pérez Molina and a Day for Hope in Guatemala,” *The New Yorker* (4 September 2015), online: <<http://www.newyorker.com/news/news-desk/from-president-to-prison-otto-perez-molina-and-a-day-for-hope-in-guatemala>>.

⁷⁹ “Critics Are Not Criminals,” *CPJ* 2016, *supra* note 66, at 40 (March 2016).

⁸⁰ Open Society Justice Foundation, *Against The Odds*, *supra* note 22, at note 252 (citing Carlos Arrazola, “El hombre que le susurra al poder (y viceversa),” *Plaza Publica*, September 27, 2015). See also, *Guatemala: Freedom of the Press*, Freedom House 2016, *supra* note 76.

⁸¹ *Ibid.*

⁸² “Critics Are Not Criminals,” *CPJ* 2016, *supra* note 66, at 40.

⁸³ Interview of Silvia Weber, *supra* note 16; Fernando Solís interview, *supra* note 16; Daniel Pascual Hernández interview, *supra* note 38; Marielos Monzón interview, *supra* note 22; Claudia Samayoa interview, *supra* note 16; Sandra Morán interview, *supra* note 25. See also, Sophie Beaudoin, “Will Guatemala Protect Human Rights Advocates from Dubious Criminal Complaints?” *International Justice Monitor* (9 December 2015), online: <www.ijmonitor.org/2015/12/will-guatemala-protect-human-rights-advocates-from-dubious-criminal-complaints/>.

⁸⁴ Fernando Solís interview, *supra* note 16.

⁸⁵ Marielos Monzón interview, *supra* note 22; Fernando Solís interview, *supra* note 16; Claudia Samayoa interview, *supra* note 16; Sandra Morán interview, *supra* note 25; Daniel Pascual Hernández interview, *supra* note 38.

⁸⁶ Daniel Butler interview, *supra* note 23. See also *Código Procesal Penal [Criminal Process Code]* Artículo 116 (Querellante adhesivo) [Private Prosecutor], online:

allows victims of a crime to participate in the prosecution process – as private individuals or their representatives (including civil society organizations, such as FCT)⁸⁷ – by initiating a criminal prosecution or intervening in one already initiated by the Public Prosecutor’s Office.⁸⁸ Private prosecutors may also intervene in criminal prosecutions pursued by the Human Rights Prosecutor’s Office [*Fiscalía de Derechos Humanos*], which is a division within the Public Prosecutor’s Office.⁸⁹ The statute does not require private prosecutors to prove an interest in the offence, but private prosecutors have the right to question witnesses and access all evidence.⁹⁰ In this way, the Human Rights Prosecutor’s Office, initially designed to protect HRDs and journalists, has become a mechanism by which HRDs and journalists are spuriously prosecuted.⁹¹

20. Private prosecutors are not deterred from bringing false allegations because spurious litigation only carries a minimal fine.⁹² Furthermore, the falsely accused person cannot get costs awarded against the private prosecutor, and must pay his or her own costs.⁹³ The only real redress is for the falsely accused person to sue the judge or lawyer for breaching their Code of Ethics, or to take the complaint to the IACHR.⁹⁴ Both options are time and resource intensive, with the burden lying entirely on the falsely accused person.⁹⁵ The International Commission of Jurists (ICJ) has taken action against lawyers who practice such spurious litigation, with the aim of suspending them for breaching the Code of

http://www.cicad.oas.org/fortalecimiento_institucional/legislations/PDF/GT/decreto_congresional_51-92_codigo_procesal_penal.pdf>. “En los delitos de acción pública, el agraviado con capacidad civil o su representante o guardador en caso de incapacidad podrán provocar la persecución penal o adherirse a la ya iniciada por el Ministerio Público. El mismo derecho podrá ser ejercido por cualquier ciudadano o asociación de ciudadanos, contra funcionarios o empleados públicos que hubieren violado directamente derechos humanos, en ejercicio de su función o con ocasión de ella, o cuando se trate de delitos cometidos por funcionarios públicos que abusen de su cargo. Los órganos del Estado solamente podrán querrellarse por medio del Ministerio Público. Se exceptúan las entidades autónomas con personalidad jurídica.”

⁸⁷ Daniel Butler interview, *supra* note 23. The private prosecutor status is limited to public cases [*delitos de acciones públicas*], but this is a very low threshold. FCT is a legally recognized organization that represents private sector interests, supported by former-military power structures. FCT’s President Mendez Ruiz often obtains private prosecutor status on behalf of the organization, as a representative of civil society as a whole.

⁸⁸ Daniel Butler interview, *supra* note 23. See also, *Código Procesal Penal [Criminal Process Code]* Artículo 116 (Querellante adhesivo) [Private Prosecutor], online: http://www.cicad.oas.org/fortalecimiento_institucional/legislations/PDF/GT/decreto_congresional_51-92_codigo_procesal_penal.pdf>.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ Interview of Silvia Weber, *supra* note 16; Marielos Monzón interview, *supra* note 22; Fernando Solís interview, *supra* note 16; Daniel Pascual Hernandez interview, *supra* note 38; Claudia Samayoa interview, *supra* note 16; Daniel Butler interview, *supra* note 23.

⁹² Daniel Butler interview, *supra* note 23.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ *Ibid.*

Ethics.⁹⁶

21. The legal proceedings against journalist **Marielos Monzón** exemplify this abuse of the criminal justice system. Theodore Plochanski, a former military official, lodged the first criminal complaint against Monzón (and over 50 other defendants, including Congresswoman **Sandra Morán**) at the Public Ministry in December 2011.⁹⁷ The criminal complaint accused Monzón of having committed terrorism and crimes against humanity, including kidnapping, torture, and murder, contrary to Articles 391 and 378 of the Guatemalan Criminal Code.⁹⁸ In August 2012, the Office for the Prosecution of Human Rights of the Public Ministry formally dismissed the case on the grounds that the allegations were inadmissible and unfounded.⁹⁹
22. Marco Augusto Quilo Ortiz, a representative of the FCT, brought the second criminal complaint against Monzón (and 99 other defendants, including Congresswoman Sandra Morán) in April 2012.¹⁰⁰ The complaint alleged that Monzón had committed terrorism, forcible disappearances, torture and genocide.¹⁰¹ The Office for the Prosecution of Human Rights of the Public Ministry dismissed the complaint against Monzón in November 2013.¹⁰² The case was dismissed because the allegations were found to be inadmissible and unfounded.¹⁰³
23. In January 2013, President and Coordinator of the Campesino Unity Committee, **Daniel Pascual Hernandez**, claimed that FCT head Ricardo Mendez Ruiz made false allegations in nationally syndicated newspaper columns that incited attacks against HRDs and Indigenous People.¹⁰⁴ In response, Ruiz claimed that

⁹⁶ *Ibid.* As of February 6, 2016, the ICJ had one ongoing case in Guatemala's Constitutional Court.

⁹⁷ Official Criminal Complaint (*Denuncia Nueva*), lodged against Marielos Monzón and Sandra Morán and 50 others by Theodore Plochanski to the Attorney General of the Republic of Guatemala and the Public Ministry (13 December 2011), notarized by lawyer Moisés Eduardo Galindo Ruíz and stamped by The Public Ministry's Bureau of Continuing/Permanent Care (*Oficina de atención permanente*)

⁹⁸ *Ibid.*

⁹⁹ Dismissal of the first criminal complaint by the Public Ministry (*Desestimación MP primera denuncia*), against Marielos Monzón by the Office for the Prosecution of Human Rights of the Public Ministry (6 August 2012), stamped by The Public Ministry's Bureau of Human Rights (*Derechos Humanos*). The criminal complaint accused Monzón (born in February 1971) of committing crimes against humanity and terrorism offences between 1965 and 1980.

¹⁰⁰ Official Criminal Complaint (*Denuncia Nueva*), lodged against Marielos Monzón and Sandra Morán and 98 others by Marco Augusto Quilo Ortiz to the Attorney General of the Republic of Guatemala and the Public Ministry (9 April 2012), notarized by lawyer Moisés Eduardo Galindo Ruíz and stamped by The Public Ministry's Bureau of Continuing/Permanent Care (*Oficina de atención permanente*).

¹⁰¹ *Ibid.*

¹⁰² Dismissal of the second criminal complaint by the Public Ministry (*Desestimación MP segunda denuncia*), against Marielos Monzón by the Office for the Prosecution of Human Rights of the Public Ministry (13 November 2013), stamped by The Public Ministry's Bureau of Human Rights (*Humanos Derechos*).

¹⁰³ *Ibid.*

¹⁰⁴ Daniel Pascual Hernandez interview, *supra* note 38. See also, Jeff Abbott, "A War by Other Means: Attacks on Free Speech Threaten Social and Indigenous Movements in Guatemala" *Upside Down World*

Hernandez's statements amounted to defamation, and brought legal proceedings against him.¹⁰⁵ In August 2013, the Guatemalan Human Rights Ombudsman found that Ruiz's allegations were false, and that Ruiz's disseminated materials constituted attacks against human rights activists and their fundamental freedoms, such as "life, dignity, personal integrity, security, equality, and freedom of association and action."¹⁰⁶ The Ombudsman concluded that, "the intention [of Ruiz's disseminated materials] was to delegitimize and discredit the defence of human rights, and place whistleblowers at high risk."¹⁰⁷ The ruling against Ruiz was effectively symbolic, however, and did not entail legal sanctions.¹⁰⁸ In February 2016, Voices of Iximulew, a network of Indigenous community media outlets, alleged that Ruiz continues to regularly file complaints against HRDs in order to silence them.¹⁰⁹

Demonstrations and Protests

24. In the 2012 UPR, Guatemala accepted the recommendation to "[e]ducate the national security forces to effectively uphold law and order particularly when policing demonstrations and large crowds by reviewing and enhancing security training programmes on crowd control techniques and implementing non-

(16 May 2016), online: <<http://upsidedownworld.org/archives/guatemala/a-war-by-other-means-attacks-on-free-speech-threaten-social-and-indigenous-movements-in-guatemala/>>; "Protecting Freedom of Expression in Guatemala: The Case of Daniel Pascual" *Cultural Survival* (22 July 2014), online: <www.culturalsurvival.org/news/protecting-freedom-expression-guatemala-case-daniel-pascual>.

¹⁰⁵ "Guatemalan Activists Say Freedom of Expression Under Threat", *teleSUR* (25 February 2016), online: <<http://www.telesurtv.net/english/news/Guatemalan-Activists-Say-Freedom-of-Expression-Under-Threat-20160225-0004.html>>. Hernandez was physically attacked Jan. 25, 2013, by men who claimed that his political work was the cause of social tensions in the region. Following the incident, Hernandez said the attack was prompted by columns written by Ricardo Mendez Ruiz, a former military officer and the head of the Foundation Against Terrorism, in a local newspaper. Ruiz claimed that the accusation amounted to slander and began legal proceedings against Hernandez. See also, Vía Campesina "Guatemala: Derecho a la libre emisión del pensamiento y libertad de expresión un derecho universal" at "Noticias de las regiones" (8 July 2014), online: <<https://viacampesina.org/es/index.php/noticias-de-las-regiones-mainmenu-29/2203-guatemala-derecho-a-la-libre-emision-del-pensamiento-y-libertad-de-expresion-un-derecho-universal>>; Centro de Medios Independientes, "Videorreportaje: Daniel Pascual vs. Ricardo Méndez Ruiz, el derecho a la libre expresión" (11 July 2014), online: <<https://cmiguate.org/videorreportaje-daniel-pascual-vs-ricardo-mendez-ruiz-el-derecho-a-la-libre-expresion/>>.

¹⁰⁶ Daniel Butler, "En Defensa de Daniel Pascual y de la Libertad de Expresion," *Plaza Pública* (27 February 2016), online: <https://www.plazapublica.com.gt/content/en-defensa-de-daniel-pascual-y-de-la-libertad-de-expresion>; Nelton Rivera, "Ricardo Mendez Ruiz responsable de violación de los derechos humanos," *Prensa Comunitaria* (27 August 2013), online: <<https://comunitariapress.wordpress.com/2013/08/27/ricardo-mendez-ruiz-responsable-de-violacion-de-los-derechos-humanos/>>.

¹⁰⁷ *Ibid.*

¹⁰⁸ Daniel Pascual Hernandez interview, *supra* note 38.

¹⁰⁹ "Guatemalan Activists Say Freedom of Expression Under Threat", *teleSUR* (25 February 2016), online: <<http://www.telesurtv.net/english/news/Guatemalan-Activists-Say-Freedom-of-Expression-Under-Threat-20160225-0004.html>>.

aggressive strategies” (United Kingdom).¹¹⁰

25. In the period under review, both state and non-state actors have used the legal system to stigmatize social protests by falsely claiming that protesters have committed criminal offences.¹¹¹ In February 2014, Congress approved the *Free Movement on Roads without Obstruction Law (La Ley para la Circulación por Carreteras Libres de Cualquier Tipo de Obstáculos)*, which prohibits the creation of unauthorized mounds (*túmulos*), fences or gates on roads and highways. Civil society groups have voiced concern that the law has been used to criminalise social protest: A law intended to prevent obstruction of free transit has instead been used to delegitimize protests.¹¹² The Observatory for the Protection of Human Rights Defenders noted that the law limits the right of demonstration and peaceful assembly, enshrined in Article 33 of the Guatemalan Constitution.¹¹³
26. Similar strategies have been used to hamper the work of other HRDs, particularly Indigenous community leaders who oppose large-scale development projects. According to UDEFEGUA, there has been "a disproportionate increase in judicial complaints brought against human rights defenders," and the majority of complaints were followed by unlawful detentions.¹¹⁴ For example, leaders from 12 Kaqchikel Maya communities in San Juan Sacatepéquez, who were in opposition of a mining project, were subject to 86 criminal law suits.¹¹⁵

¹¹⁰ R.99.79: ‘Educate the national security forces to effectively uphold law and order particularly when policing demonstrations and large crowds by reviewing and enhancing security training programmes on crowd control techniques and implementing non-aggressive strategies (United Kingdom).’ Online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/100/33/PDF/G1310033.pdf?OpenElement>>

¹¹¹ Sandra Morán interview, *supra* note 25; Marielos Monzón interview, *supra* note 22; Daniel Pascual Hernandez interview, *supra* note 38. See also, Jeff Abbott, “A Labyrinth of Injustice in Guatemala: Indigenous Activists Struggle Against Dispossession of Land and Rights,” *Upside Down World* (30 January 2016), online: <<http://upsidedownworld.org/archives/guatemala/a-labyrinth-of-injustice-in-guatemala-indigenous-activists-struggle-against-dispossession-of-land-and-rights/>>.

¹¹² Álex F. Rojas and Manuel Hernández, “Ley Prohíbe bloqueo de las carreteras,” *Prensa Libre* (20 February 2014), online: <http://www.prensalibre.com/noticias/politica/Aprueban-multas-tapar-rutas_0_1088291198.html>; Unidad de Protección a Defensoras y Defensores de Derechos Humanos-Guatemala (UDEFEGUA), *Exprésate con otro rollo* (2016) at p 24, online: <udedefegua.org/wp-content/uploads/2015/08/informe_semestral_2016.pdf>; World Organization Against Terror (OMCT), International Federation for Human Rights and UDEFEGUA, *Guatemala- “Smaller than David”: the fight of human rights defenders in Guatemala* (February 2015) at 12, online: <www.omct.org/files/2015/02/23002/v1.2_w_en_rprrtguatemala_obs15.pdf>.

¹¹³ World Organization Against Terror (OMCT) and International Federation for Human Rights, in partnership with UDEFEGUA, *Guatemala- “Smaller than David”: the fight of human rights defenders in Guatemala* (February 2015) 11, online: <www.omct.org/files/2015/02/23002/v1.2_w_en_rprrtguatemala_obs15.pdf>; *Constitution of the Republic of Guatemala* (1985, 1993) Article 33-35, online: <www.constituteproject.org/constitution/Guatemala_1993.pdf>.

¹¹⁴ *Situation Of Human Rights in Guatemala*, IACHR 2015, *supra* note 13, at para 197 (citing “El Silencio es historia: Informe sobre situación de Defensoras y Defensores de Derechos Humanos Enero a Diciembre de 2013,” UDEFEGUA at 11, online: <http://udedefegua.org/wp-content/uploads/2015/08/informe_final_2013.pdf>).

¹¹⁵ *Ibid.*

27. The cases of prominent Indigenous community leaders **Saúl Méndez** and **Rogelio Velásquez** exemplify this abuse of the criminal justice system. Since 2010, Méndez and Velásquez had led resistance efforts against hydroelectric projects imposed in their communities of northern Huehuetenango by transnational corporations.¹¹⁶ The two community leaders were detained in 2013, and remained incarcerated for three years on the basis of false accusations of femicide, kidnapping and murder.¹¹⁷ Although Méndez and Velásquez were released in January 2016 after they were acquitted of all charges, six other prominent HRDs from the region continued to face prosecution for their resistance efforts.¹¹⁸

Female HRDs and journalists

28. HRDs who focus on the environment, Indigenous rights and land rights are particularly susceptible to criminalization and stigmatization.¹¹⁹ Within this group, female HRDs are most vulnerable,¹²⁰ and often at the forefront of these movements.¹²¹

29. In addition to facing threats from state and private actors, many women also face criticism within the political arena from conservative groups who consider journalism and human rights advocacy to be a male preserve.¹²² Marginalization affects the protection measures available to female HRDs. When female HRDs face threats, defamation, or physical and sexual violence, they do not have access to the social networks and protective mechanisms available to their male counterparts.¹²³ Facing greater levels of risk, female journalists and HRDs are more likely to self-censor.¹²⁴

¹¹⁶ Jeff Abbott, "A Labyrinth of Injustice in Guatemala: Indigenous Activists Struggle Against Dispossession of Land and Rights," *Upside Down World* (30 January 2016), online:

<<http://upside-downworld.org/archives/guatemala/a-labyrinth-of-injustice-in-guatemala-indigenous-activists-struggle-against-dispossession-of-land-and-rights/>>; Jeff Abbott, "Social Movement Leaders Cleared of False Femicide Charges in Guatemala," *Upside Down World* (11 November 2015), online: <<http://upside-downworld.org/archives/guatemala/social-movement-leaders-cleared-of-false-femicide-charges-in-guatemala/>>.

¹¹⁷ *Ibid.* Despite these accusations, Méndez and Velásquez were not officially charged until 2015.

¹¹⁸ *Ibid.*

¹¹⁹ Angela Fuentes interview, *supra* note 57. See also, *Situation Of Human Rights in Guatemala*, IACHR 2015, *supra* note 13, at paras 193-195.

¹²⁰ Interview of Axela Romero, IM Defensoras, by IHRP and PEN Canada (25 October 2016) via Skype from Toronto; Angela Fuentes interview, *supra* note 57.

¹²¹ Angela Fuentes interview, *supra* note 57.

¹²² Interview of Axela Romero, IM Defensoras, by IHRP and PEN Canada (25 October 2016) via Skype from Toronto.

¹²³ Angela Fuentes interview, *supra* note 57; Silvia Trujillo and Evelyn Blanck interview, *supra* note 57; Marielos Monzón interview, *supra* note 22; Interview of Axela Romero, IM Defensoras, by IHRP and PEN Canada (25 October 2016) via Skype from Toronto; Fernando Solis interview, *supra* note 16; Interview of Silvia Weber, *supra* note 16.

¹²⁴ Nelton Rivera and Quimy De León interview, *supra* note 38; Interview of Don Lorenzo, *Radio Jolom Konob*, by IHRP and PEN Canada (11 November 2016) in Guatemala City [Don Lorenzo interview]; Silvia

30. Female journalists who face sexual violence are also unlikely to file a complaint for fear of social stigmatization or job loss.¹²⁵ Those who do file complaints are unlikely to see justice: between 2013 and 2015, five female journalists reported sexual harassment to the Unit of Crimes against Journalists, but none of the alleged perpetrators were charged with sexual violence.¹²⁶ The cases of TV reporters **Bertha Michelle Mendoza Muñoz** and **Yensi López**, exemplify this effect of stigmatization.¹²⁷ On June 2015, Rodolfo Jimenez, an agent of the Secretariat of Administrative and Security Matters, sexually assaulted the two journalists while they were covering a high profile case.¹²⁸ Muñoz filed a complaint of sexual harassment with the Public Ministry, but the Prosecutor's Office only charged Jimenez with the crime of coercion.¹²⁹

(C) Community radio & concentrated media ownership

31. In the 2012 UPR, Guatemala accepted the recommendation to “[f]ollow up its Constitutional Court decision that urges the legislative power to reform the legislation concerning access of Indigenous People to radio frequencies to promote, develop and diffuse their languages, traditions and other cultural expression and reform the law on radio communication in order to guarantee the proper and free functioning of local radios” (Norway).¹³⁰ Indigenous Peoples’ access to media is a long-standing issue that has been repeatedly addressed by numerous domestic and international human rights organizations over the past two decades.¹³¹

32. Community radio is a vital medium of communication for Indigenous Peoples in

Trujillo and Evelyn Blanck interview, *supra* note 57; Angela Fuentes interview, *supra* note 57.

¹²⁵ Silvia Trujillo and Evelyn Blanck interview, *supra* note 57; Angela Fuentes interview, *supra* note 57.

¹²⁶ Ligia Flores, “Sexual Harassment Inhibits Journalists Rights,” *Sala Redacción* (6 August 2015), online: <<http://saladeredaccion.com/acoso-sexual-inhibe-derechos-de-las-periodistas/>>.

¹²⁷ Interview (transcript) of Bertha Michelle Mendoza Muñoz by Angela Fuentes (June 2015) in Guatemala; Angela Fuentes interview, *supra* note 57. See also, “Así reaccionó Michelle Mendoza al ser acosada por seguridad de Baldetti,” *PubliNews* (23 June 2015), online:

<<https://www.publinews.gt/gt/guatemala/2015/06/23/video-asi-reacciono-michelle-mendoza-acosada-seguridad-baldetti.html>>; Ligia Flores, “Sexual Harassment Inhibits Journalists Rights,” *Sala Redacción*, (6 August 2015), online: <<http://saladeredaccion.com/acoso-sexual-inhibe-derechos-de-las-periodistas/>>.

¹²⁸ Interview (transcript) of Bertha Michelle Mendoza Muñoz by Angela Fuentes (June 2015) in Guatemala; Angela Fuentes interview, *supra* note 57.

¹²⁹ Interview (transcript) of Bertha Michelle Mendoza Muñoz by Angela Fuentes (June 2015) in Guatemala; Angela Fuentes interview, *supra* note 57.

¹³⁰ **R.99.78**: “Follow up its Constitutional Court decision that urges the legislative power to reform the legislation concerning access of indigenous people to radio frequencies to promote, develop and diffuse their languages, traditions and other cultural expression and reform the law on radio communication in order to guarantee the proper and free functioning of local radios” (Norway), online: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/100/33/PDF/G1310033.pdf?OpenElement>>.

¹³¹ *Situation Of Human Rights in Guatemala*, IACHR 2015, *supra* note 13, at para 303. The Inter-American Commission on Human Rights and its Special Rapporteur for Freedom of Expression have addressed this issue in every Annual Report since 2000.

Guatemala: it allows rural communities to maintain their cultures, languages, and traditions, and to increase their level of civic and political participation.¹³² Community radio stations reach the poorest and most remote regions of Guatemala, and provide primary school education as well as an active and participatory mode of communication.¹³³ Indigenous Peoples' right to access media is provided in Guatemala's Peace Accords,¹³⁴ Guatemala's Constitution,¹³⁵ the Agreement on the Identity and Rights of Indigenous Peoples,¹³⁶ as well as several international human rights conventions ratified by Guatemala.¹³⁷

33. Despite Guatemala's acceptance of the above recommendation, and the various legal instruments that safeguard this essential right to access media, community radio stations continue to face considerable obstacles.¹³⁸

34. Discriminatory legislation has forced community radio stations to operate within a legal grey area.¹³⁹ Guatemala's *General Telecommunications Law (1996) (El Decreto 34 - Ley General de Telecomunicaciones, 1996)*, amended by *Decree*

¹³² Cultural Survival, "ICERD Shadow Report Submission: Indigenous Rights Violations in Guatemala," *Submission to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* (10 April 2015) at 1, online: <www.culturalsurvival.org/sites/default/files/cerdguatemalafinal_0.pdf> ["ICERD Shadow Report Submission," Cultural Survival 2015].

¹³³ *Ibid.*

¹³⁴ *Acuerdos de Paz (Peace Accords)*, Government of the Republic of Guatemala, Guatemalan National Revolutionary Unity, and the United Nations (29 December 1996), online: <<http://www.sepaz.gob.gt/images/Descargas/Acuerdos-de-Paz.pdf>>.

¹³⁵ *Constitution of the Republic of Guatemala* (1985, 1993) *Article 35* ["Freedom of Expression of Thought"] and *Article 66* ["Protection of Ethnic Groups"], online: <www.constituteproject.org/constitution/Guatemala_1993.pdf>; *Ley de Emisión del Pensamiento, Decreto 9* ["The Freedom of Thought Act, Decree 9"] (1965), online: <www.congreso.gob.gt/manager/images/4720C806-83C7-604B-1FF6-8DF6AA3AE8B3.pdf>.

¹³⁶ *Agreement on the Identity and Rights of Indigenous Peoples*, United Nations General Assembly, General Assembly Forty-ninth Session A/49/882 (31 March 1995), online: <http://peacemaker.un.org/sites/peacemaker.un.org/files/GT_950331_AgreementIdentityAndRightsOfIndigenousPeoples.pdf>. Chapter III, Section (H)(2)(b) provides that the Guatemalan State should "[p]romote before the Congress of the Republic the necessary reforms in the present Law on Radio-broadcasting with the objective of facilitating frequencies for indigenous projects and of assuring the importance of the principle of non-discrimination in the use of the communications media. Also promote the abolition of any provision within the legal framework that obstructs the right of the indigenous people to use the communications media for the development of their identity."

¹³⁷ *United Nations Declaration on the Rights of Indigenous Peoples (Article 16)* (13 September 2007), online: <http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf>; "Country Profiles: Guatemala" International Labor Organization (Normlex Information System on International Labour Standards), online: <www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:102667>.

¹³⁸ Interview of FGER (Federación Guatemalteca de Escuelas Radiofónicas) by IHRP and PEN Canada (9 November 2016) in Guatemala City [FGER interview]; Nelton Rivera and Quimy De León interview, *supra* note 38; Don Lorenzo interview, *supra* note 124.

¹³⁹ Tania Lara, "New Telecommunications Law Takes Effect in Guatemala Restricting Community Radio," *Journalism in the Americas* (7 December 2012), online: <knightcenter.utexas.edu/blog/00-12308-new-telecommunications-law-takes-effect-guatemala-restricting-community-radio>; "Media Reform in Guatemala," Cultural Survival (18 March 2016), online: <www.culturalsurvival.org/news/media-reform-guatemala>.

Thirty-Four on 30 November 2012, provides inadequate guidance on the legal space in which community radio stations can operate.¹⁴⁰ According to Article 62 of the *General Telecommunications Law*, radio frequencies are awarded through a public auction.¹⁴¹ This is the only method for obtaining access to frequencies.¹⁴² The Superintendent of Telecommunications, which is the government agency charged with administering the assignment of frequencies, awards the frequencies to the organization that offers the highest bid at the public auction.¹⁴³ There is no independent media regulation or licensing body.¹⁴⁴ In effect, the *General Telecommunications Law* restricts radio frequencies to commercial and government broadcasters because community stations lack the financial wherewithal to compete against their bids.¹⁴⁵

35. Given that the *General Telecommunications Law* makes no provision for community radio or other forms of non-profit radio, non-auction-winning stations are forced to operate without a licence.¹⁴⁶ Consequently, many community radio stations face frequent harassment from authorities, and are at a constant risk of closure.¹⁴⁷ During the period under review, the authorities have shuttered at least ten community radio stations for operating without appropriate licences.¹⁴⁸ These include, **Snuq’ Jolom Konob’**,¹⁴⁹ **Estéreo Luz**,¹⁵⁰ **La Voz de Sonora**,¹⁵¹ **La**

¹⁴⁰ Decreto Número 94-96, *Ley General de Telecomunicaciones*, Organismo Legislativo, Congreso de la República de Guatemala [Guatemalan Congress, Legislature], Guatemala City, 18 November 1996 (Guatemala), online:

<[www.palermo.edu/cele/pdf/Regulaciones/GuatemalaLeDTelecomunicaciones\(1996\).pdf](http://www.palermo.edu/cele/pdf/Regulaciones/GuatemalaLeDTelecomunicaciones(1996).pdf)>; Decreto Número 34-2012, *Reformas a Ley General de Telecomunicaciones*, Congreso de la República de Guatemala (30 November 2012), online: <<http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20leyes/2012/pdfs/decretos/D34-2012.pdf>>.

¹⁴¹ Mark Camp, “Media Reform in Guatemala,” in *Strategies for Media Reform: International Perspectives*, Des Freedman, Jonathan Obar, Cheryl Martens & Robert W McChesney, eds (USA: Fordham University Press: 2016) at 319, online: <www.culturalsurvival.org/news/media-reform-guatemala>; “ICERD Shadow Report Submission,” Cultural Survival 2015, *supra* note 132, at 2.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*; *Guatemala: Freedom of the Press*, Freedom House 2016, *supra* note 76.

¹⁴⁴ *Ibid.*

¹⁴⁵ “ICERD Shadow Report Submission,” Cultural Survival 2015, *supra* note 132, at 2.

¹⁴⁶ Teresa Mioli and Siliva Higuera, “Bill to recognize community media up for debate in Guatemala, again,” *Journalism in the Americas* (17 March 2016), online: <<https://knightcenter.utexas.edu/blog/00-16807-bill-recognize-community-media-debate-guatemala-again>>.

¹⁴⁷ Interview of Radio Ixchel (Anselmo Xunic, César Gomez, Angelica Cuber, and Elsa Amanda Chiquito Rucal) by IHRP and PEN Canada (9 November 2016) in Guatemala City [Radio Ixchel Interview]; Claudia Samayoa interview, *supra* note 16; FGER interview, *supra* note 138; Nelton Rivera and Quimy De León interview, *supra* note 38; Don Lorenzo interview, *supra* note 124. See also, *Guatemala: Freedom of the Press*, Freedom House 2016, *supra* note 76; *Situation Of Human Rights in Guatemala*, IACHR 2015, *supra* note 13, at paras 301-306; Juan Gasparini, “La ONU denuncia la criminalización de radios comunitarias indígenas en Guatemala,” *Panorama* (15 May 2015), online: <<http://panorama.ridh.org/la-onu-denuncia-la-criminalizacion-de-radios-comunitarias-indigenas-en-guatemala/>>.

¹⁴⁸ FGER interview, *supra* note 138; Interview of Walter Cuc (Federación Guatemalteca de Escuelas Radiofónicas) by IHRP and PEN Canada (9 November 2016) in Guatemala City.

¹⁴⁹ Nelton Rivera and Quimy De León interview, *supra* note 38; FGER interview, *supra* note 138. See also,

radio San José,¹⁵² Uqul Tinamit,¹⁵³ and Jun Toj.¹⁵⁴

36. The Association of Radio Broadcasting of Guatemala has stated that it is “not against radio for use by the communities,”¹⁵⁵ but that it opposes “radios operating without authorization from the Superintendent of Telecommunications.”¹⁵⁶ The proposed *Community Broadcasting Act* (Ley de Medios de Comunicación Comunitaria en Guatemala) was introduced as part of Bill 4087 in 2009 to the Guatemalan Congress in an effort to legalize and regulate community and nonprofit radio, and to ensure communities’ access to airwaves.¹⁵⁷ Despite considerable pressure from the Central American Network of Indigenous Community Radio,¹⁵⁸ however, it remains unclear when or whether the Bill will be passed in Congress.¹⁵⁹
37. Community radio operators are also often frivolously charged with a variety of criminal infractions ranging from drug trafficking to theft.¹⁶⁰ For example, in 2006, **Anselmo Xunic**, the founder of Radio Ixchel, was charged with “stealing radio frequencies” under Article 249¹⁶¹ of the Guatemalan Criminal Code, which

Situation Of Human Rights in Guatemala, IACHR 2015, *supra* note 13, at para 305.

¹⁵⁰ *Guatemala: Freedom of the Press*, Freedom House 2016, *supra* note 76; *Situation Of Human Rights in Guatemala*, IACHR 2015, *supra* note 13, at para 302.

¹⁵¹ *Ibid*; “Guatemalan police close two community radio stations,” *Reporters without Borders* (26 June 2014), online: <<https://rsf.org/en/news/guatemalan-police-close-two-community-radio-stations>>.

¹⁵² “Reportan incidentes en cierre de ‘radio pirata,’” *Emisoras Unidas* (27 February 2014) online: <<https://emisorasunidas.com/noticias/nacionales/reportan-incidentes-cierre-radio-pirata/>>.

¹⁵³ “Guatemala: Community Reacts to the Closing of Radio Uqul Tinamit,” *Cultural Survival* (21 May 2012), online: <<https://www.culturalsurvival.org/news/guatemala-community-reacts-closing-radio-uqul-tinamit>>.

¹⁵⁴ “Guatemala: Relator de la ONU pide suspender acciones penales en contra de radios comunitarias,” *CERIGUA* (24 May 2012), online: <<https://cerigua.org/article/guatemala-relator-de-la-onu-pide-suspender-accione/>>.

¹⁵⁵ Teresa Mioli and Siliva Higuera, “Bill to recognize community media up for debate in Guatemala, again,” *Journalism in the Americas* (17 March 2016), online: <<https://knightcenter.utexas.edu/blog/00-16807-bill-recognize-community-media-debate-guatemala-again>>.

¹⁵⁶ *Ibid*.

¹⁵⁷ *Ibid*; Wilfredo González Gaitán, “Community Media Law in Guatemala”, *Observacom* (May 2014), online: <<http://www.observacom.org/demos-voice-summary-of-initiative-4087-community-media-law-in-guatemala/>>.

¹⁵⁸ Teresa Mioli and Siliva Higuera, “Bill to recognize community media up for debate in Guatemala, again,” *Journalism in the Americas* (17 March 2016), online: <<https://knightcenter.utexas.edu/blog/00-16807-bill-recognize-community-media-debate-guatemala-again>>. The Central American Network of Indigenous Community Radio sent a letter to Congress, asking the government to “quickly approve Bill 4087 and thus secure the right to freedom of expression and the right to community belonging to indigenous peoples in Guatemala.”

¹⁵⁹ Sandra Morán interview, *supra* note 25.

¹⁶⁰ Radio Ixchel Interview, *supra* note 147.

¹⁶¹ *Código Penal de Guatemala*, Decreto No 17-73, 1973, Título VI, Capítulo I, Del Hurto, Artículo 249 (Hurto de Fluidos), online: <www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/GTM_codigo_penal.pdf>. “Quien, ilícitamente, sustrajere energía eléctrica, agua, gas, fuerza de una instalación o cualquier otro fluido ajeno, será sancionado con multas de doscientos a tres mil quetzals.”

pertains to “stealing or misappropriating fluids.”¹⁶² The case was eventually dismissed for lack of evidence, but authorities continue to bring forward similar charges against community radio operators.¹⁶³ In February 2015, authorities raided **Radio Swan**, arrested and charged Oscar Mejia with “stealing radio frequencies” under Article 249.¹⁶⁴ Mejia had begun volunteering at the radio station only three days prior to the raid.¹⁶⁵ He was detained for eight days, and in September 2015 he was found guilty and sentenced to one year in prison.¹⁶⁶ However, because Mejia had no criminal record, his sentence was revoked, and instead his political and civil rights were curtailed for two years.¹⁶⁷ According to Anselmo Xunic, who also acts as legal representative for Asociación Sobrevivencia Cultural and MCR (Movimiento de Radios Comunitarios de Guatemala/ Guatemalan Movement for Community Radios), radio operators are usually charged with more serious offences, such as aggression, inciting violence, or obstructing justice.¹⁶⁸

38. Criminalization of community radios has led to widespread self-censorship among journalists and HRDs in rural regions.¹⁶⁹ The resulting chill has meant that rural communities have been “systematically invisibilized” within the Guatemalan media.¹⁷⁰

39. In addition to facing frivolous criminalization, journalists and HRDs are routinely suppressed through violence and intimidation.¹⁷¹ Government raids often result in journalistic equipment being vandalized, destroyed, or confiscated.¹⁷² For example, **Snuq’ Jolom Konob’**,¹⁷³ **Radio Ixmukane**,¹⁷⁴ **Estéreo Luz**,¹⁷⁵ and **La**

¹⁶² *Ibid*; Radio Ixchel Interview, *supra* note 147.

¹⁶³ Radio Ixchel Interview, *supra* note 147.

¹⁶⁴ *Ibid*. See also, “Woman and youth fight for freedom of expression in Guatemala,” *Cultural Survival* (15 March 2015), online: <<https://www.culturalsurvival.org/news/women-and-youth-fight-freedom-expression-guatemala>>.

¹⁶⁵ *Ibid*.

¹⁶⁶ *Ibid*.

¹⁶⁷ *Ibid*. As of November 2016, Mejia’s appeal was still underway. Given that Mejia’s civil and political rights were curtailed means that he cannot vote or run for office, including for non-profit organizations.

¹⁶⁸ *Ibid*.

¹⁶⁹ *Ibid*; Nelton Rivera and Quimy De León interview, *supra* note 38; FGER interview, *supra* note 138.

¹⁷⁰ *Ibid*; Fernando Solis interview, *supra* note 16.

¹⁷¹ *Ibid*; Sandra Morán interview, *supra* note 25; Fernando Solis interview, *supra* note 16; Claudia Samayoa interview, *supra* note 16; Silvia Trujillo and Evelyn Blanck interview, *supra* note 57. See also, *Situation Of Human Rights in Guatemala*, IACHR 2015, *supra* note 13, at para 301-306.

¹⁷² *Ibid*.

¹⁷³ Nelton Rivera and Quimy De León interview, *supra* note 38; Don Lorenzo interview, *supra* note 124; *Situation Of Human Rights in Guatemala*, IACHR 2015, *supra* note 13, at para 305.

¹⁷⁴ “Woman and youth fight for freedom of expression in Guatemala,” *Cultural Survival* (15 March 2015), online: <<https://www.culturalsurvival.org/news/women-and-youth-fight-freedom-expression-guatemala>>.

¹⁷⁵ *Guatemala: Freedom of the Press*, Freedom House 2016, *supra* note 76; *Situation Of Human Rights in Guatemala*, IACHR 2015, *supra* note 13, at para 302; “Guatemalan police close two community radio stations,” *Reporters without Borders* (26 June 2014), online: <<https://rsf.org/en/news/guatemalan-police-close-two-community-radio-stations>>.

Voz de Sonora,¹⁷⁶ experienced such violent raids during the period under review.

40. Where community radios continue to operate, systemic hurdles hamper their efforts to spread their messaging and advocacy. Cable signals intended for community audiences are frequently blocked,¹⁷⁷ and local newspapers often redact information that might provoke the authorities.¹⁷⁸ The mainstream media, sympathetic to corporate interests, often promote multinational projects without airing the reservations or criticisms of the communities affected by these projects.¹⁷⁹ The auction system has enabled a monopolisation of the airwaves, to such an extent that three corporations control the majority of the officially purchased radio frequencies: Radio Sonora, Emisoras Unidas, and Grupo Alius.¹⁸⁰ Radio stations that win frequencies through a public auction are legally prohibited from broadcasting transmissions “offensive to civic values and the national symbols,” and “programs contrary to morals and good etiquette.”¹⁸¹
41. Community radio journalists’ freedom of expression is severely stifled by the combination of discriminatory laws, frivolous criminalization of journalists and HRDs, violence and intimidation by authorities, and the systemic concentration of media ownership that ultimately leads to widespread censorship.

IV. RECOMMENDATIONS

42. In light of these concerns, the coalition makes the following recommendations to the government of Guatemala:
 - a. **Prevent violence against HRDs and journalists**, including killings, physical assaults, harassment, threats, and intimidation, by:
 - Publicly acknowledging the importance of their work and condemning attacks on them at all levels of the state;
 - Adopting effective measures to prevent and protect human rights defenders from violence and to ensure the prompt, thorough and effective investigation and appropriate punishment of such acts;
 - Strengthening the protection measures for HRDs and journalists, especially women and Indigenous People.
 - b. **Combat impunity for attacks against HRDs and journalists**, by ensuring:
 - Prompt, thorough and impartial investigations;

¹⁷⁶ *Ibid.*

¹⁷⁷ Interview of Ileana Alamilla, Director of CERIGUA in Guatemala, by IHRP (12 October 2016) via Skype in Toronto.

¹⁷⁸ Fernando Solis interview, *supra* note 16; Interview of Silvia Weber, *supra* note 16; Marielos Monzón interview, *supra* note 22; Nelton Rivera and Quimy De León interview, *supra* note 38; Claudia Samayoa interview, *supra* note 16.

¹⁷⁹ *Ibid.*

¹⁸⁰ Patricia Schwartz, “Radios comunitarias,” *Entremundos* (accessed March 2017), online: <<http://www.entremundos.org/revista/pagetwo-en/community-radios/?lang=en>>.

¹⁸¹ *Guatemala: Freedom of the Press*, Freedom House 2016, *supra* note 76.

- Investigators consider the work of the journalist or HRD as a possible motive for attacks on them, and prioritise cases where the involvement of state or law enforcement officials is alleged;
 - Police officials, judiciary, and prosecutors responsible for investigating crimes against this group receive adequate training, especially in human rights;
 - All necessary steps are taken to facilitate the transfer of capacity from CICIG to Guatemalan institutions.
- c. **Ensure Indigenous Peoples have adequate and meaningful access to media, especially through community radios, by:**
- Acting on the 2012 Constitutional Court decision concerning reforms to the legislation on Indigenous communities' access to radio frequencies;
 - Amending the General Telecommunications Law to enable community radio to operate within an established legal framework.
- d. **Ensure that female HRDs and journalists have adequate support and protection for their work, by:**
- Increasing financial and administrative support to institutions that promote and protect the rights of journalists and HRDs;
 - Ensuring that new protection measures are developed in close collaboration with civil society, implemented in a timely manner, and that they address specific challenges faced by women and indigenous reporters and HRDs, in order to prevent either group being further marginalized.
- e. **Prevent the further stigmatization and criminalization of journalists, HRDs and civil society through legal reforms that discourage frivolous lawsuits and defamatory claims that seek to intimidate them or to otherwise ensure their silence.**