

## **Joint Report on the Situation of Human Rights Defenders in the Americas**

### **Questionnaire prepared by the Office of the UN High Commissioner for Human Rights and the Inter-American Commission on Human Rights**

May 2019

The Office of the UN High Commissioner for Human Rights (OHCHR) and the Inter-American Commission on Human Rights (IACHR) invite you to share information on the situation of human rights defenders in the Americas. The information gathered through this questionnaire will contribute to the joint OHCHR-IACHR report on the subject, which will be launched late in 2019.

This report will be publicly available on the [website of OHCHR](#) and on the website of the IACHR.

Your responses will be made public and attributed to you in the report, unless you indicate otherwise. Where possible please limit the response to each question to 500 words.

National Human Rights Institutions, civil society and human rights defenders are invited to send their responses in Word format by e-mail to [adesouza@ohchr.org](mailto:adesouza@ohchr.org) with an address where they can receive a reply to their submissions if necessary. For this purpose, a downloadable version of the questionnaire in English, French and Spanish is available on the OHCHR website.

The deadline for submitting the completed questionnaire is **10 June 2019**.

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Please provide your contact details in case we need to contact you regarding this questionnaire. (Note that this is optional).

- Name of the organisation/institution:
- Guatemala Human Rights Commission (GHRC-USA)
  
- Contact and e-mail:
- Annie Bird, Executive Director, [abird@ghrc-usa.org](mailto:abird@ghrc-usa.org)
- Jackie McVicar, [jackie@ghrc-usa.org](mailto:jackie@ghrc-usa.org)
  
- Country or sub-region (indicate the country or sub-region in which you work)

- Guatemalan, Honduras
- Can we attribute these responses to you or your organization publicly?
- Yes

### Questions:

- **Situation of human rights defenders:**

Corruption and impunity are at the forefront of creating insecurity for human rights defenders in Guatemala and Honduras. The International Service for Human Rights<sup>1</sup> writes, “The situation is only getting worse for human rights defenders in Honduras after the fraudulent elections of 26 November 2017,” when 38 people were reportedly killed in protests. The ISHR reports that serious violations against human rights rights defenders, “like targeted killings of social movement leaders fighting for the conservation of the environment, as well as of community leaders who organised protests,” in the context of the 2017 post-election crisis is concerning and that “there is a persecution of leaders and human rights defenders through criminalisation and detention.’ Peasant farmers and environmental defenders face increased risk for their work denouncing illegalities and irregularities that lead to operating licences being granted for extractive projects.

In Guatemala, indigenous communities and those defending their ancestral territories face increased risks for exercising their ancestral rights to land. A worrying trend in both countries shows that community leaders who accompany, and in some cases translate (i.e. indigenous language to Spanish) in an organizational capacity, defenders at risk and those denouncing violence and attacks against them, often become targets themselves of prosecution. This strategy attempts to silence and terrorize human rights defenders at a grassroots and an organizational level, making it impossible for others in the community to continue the legitimate work of defending their rights.

In January 2019, President Morales in Guatemala tried to unilaterally and illegally cancel the mandate of the UN-mandated International Commission Against Impunity (CICIG), in an effort to attack the rule of law and democratic institutionalism. That same month, Transparency International released a report showing that the Guatemalan government was perceived to be on the most corrupt countries in the Americas. On

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<sup>1</sup> International Service for Human Rights: Human rights defenders at risk in Honduras and Colombia.  
<https://www.ishr.ch/news/hrc37-human-rights-defenders-risk-honduras-and-colombia>

January 30, Human Rights Ombudsman Jordan Rodas noted in his 2018 report to Congress that “with more corruption, there are fewer human rights. ” Impunity coupled with corruption have left grassroots Indigenous organizations, peasant farmer communities and families without justice.

In Honduras and Guatemala, the consolidation of power and the ability to pass laws and approve reforms while remilitarizing the state have become a key priorities for congressional representatives. Human rights defenders and those courageous denouncing grave violations face mortal reprisals for speaking out against injustice.

- **Defenders most at risk:**

Since 2016, territory and environmental defenders in Honduras and Guatemala have increasingly been at risk. Militarization and the presence of parallel armed groups in rural areas and indigenous communities, where illegal extractive projects are being implemented without meaningful consultation or free, prior and informed consent, are leading to more assassinations and criminalization of those who defend their land and resources. These are not isolated incidents but are part of an ongoing trend of systemic violence and targeted attacks against defenders and territorial leaders. Impunity for crimes committed against land defenders remains high, while the use of the criminal justice system to repress the legitimate defense of rights is increasing. The Honduran and Guatemalan justice system are increasingly using laws that were created to prosecute and sanction organized crimes structures in a spurious way, and, like UN Special Rapporteur for the Rights of Indigenous Peoples, Victoria Tauli-Corpuz found<sup>2</sup> during her mission to Guatemala in May 2018, private companies often act in collusion with local prosecutors and judges to advance extractive projects. Likewise, UN Special Rapporteur on the situation of Human Rights Defenders concluded<sup>3</sup> after his visit to Honduras in May, 2018 that, “Environmental and indigenous rights defenders are facing unprecedented risks challenging corruption and collusion between those acting for political gain and companies chasing profit.”

When human rights defenders assisting communities with competing land and resource rights are imprisoned, these companies benefit from false prosecution with weak evidence and uncorroborated witness testimonies. There is a widespread pattern of abuse of the judicial system and regional courts, which are deeply impacted by corruption associated with organized crime networks. Judges allow false charges against human rights and environmental defenders to advance, ordering arrests and

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<sup>2</sup> <http://unsr.vtaulicorpuz.org/site/index.php/en/news/notes/250-report-guatemala>

<sup>3</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23063&LangID=E>

pretrial detention without sufficient evidence to substantiate the charges. Ramon Cadena, Director of the Central America Regional Office of the Geneva-based International Commission of Jurists, has described the use of false prosecutions as a means to block human rights defender's legitimate defense of communities subject to abuses.

Arbitrary actions by justice officials demonstrate that this undue criminal prosecution results in arbitrary detention and is the result of the influence of economic power groups on the justice system. Land and indigenous rights defenders are repeatedly refused bail, leading to arbitrary detentions while they wait months or even years for their legal cases to wind their way through the justice system. The objective of this criminal prosecution is not the prosecution of a crime, but rather a way of preventing rural and indigenous communities from carrying out legitimate actions in defence of human rights, land and water.

- **Attacks or restrictions:**

Criminalization, malicious prosecution, unjust imprisonment and targeted attacks on those who have opposed the efforts of transnational and Guatemalan and Honduran corporate interests to construct hydroelectric dams, carry out open-pit mining, push forward agribusiness or other large-scale development projects, against the expressed wishes of rural farmers and Indigenous communities is not new. However, GHRC-USA, an organization with more than 35 years of experience monitoring the human rights situation in Guatemala on the ground, noted along with national and international NGOs and international organisms<sup>4</sup>, observed a notable spike in the frequency and brutality of the assassinations of Indigenous leaders since 2016. According to the Unit for the Protection of Human Rights Defenders in Guatemala (UDEFEUGA), in 2018, 391 attacks were reported against human rights defenders in Guatemala; 26 people were murdered and 147 were maliciously prosecuted (criminalized).<sup>5</sup> CIVICUS rates<sup>6</sup> the civicspace in Honduras as repressed, and in Guatemala, obstructed; they note that the "lack of investigations into crimes against human rights defenders has created a climate of impunity and increased risk in both countries."

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<sup>4</sup> Guatemala: Rise in attacks on human rights defenders is deeply concerning - say UN experts:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23435&LangID=E>

<sup>5</sup> World Organization Against Torture (OMCT) report on UDEFEUGA findings:

<http://www.omct.org/es/human-rights-defenders/urgent-interventions/guatemala/2019/04/d25329/>

<sup>6</sup> CIVICUS: Attacks against human rights defenders in Colombia, Guatemala and Honduras (May 2019):

<https://www.civicus.org/index.php/media-resources/news/united-nations/geneva/3803-attacks-against-human-rights-defenders-in-colombia-guatemala-and-honduras>

In their report on events in Honduras in 2018, Human Rights Watch writes, “Efforts to reform the institutions responsible for providing public security have made little progress. Marred by corruption and abuse, the judiciary and police remain largely ineffective. Impunity for crime and human rights abuses is the norm. Violent crime is rampant in Honduras. Despite a downward trend in recent years, the murder rate remains among the highest in the world. A crackdown on protests following the November 2017 national elections resulted in the death of at least 22 civilians and one police officer, and in more than 1,300 detentions. Journalists, environmental activists, and lesbian, gay, bisexual, and transgender (LGBT) individuals are vulnerable to violence<sup>7</sup>.”

- **Guarantees for the free exercise of the defense of human rights:**

Public prosecutors are increasingly initiating indictments against well known indigenous and human rights defenders, and judges are granting arrest warrants with no evidence to link the accused to the supposed crimes. According to the Unit for the Protection of Human Rights Defenders in Guatemala (UDEFEQUA), criminalization is expressed through the following phenomena:

- Defamation, stigmatization and hate speech
- Unsubstantiated judicial complaints (may be criminal, administrative or civil)
- Reforms to the law to criminalize specific actions or weaken criminal figures as was done with aggravated usurpation in 1997.

Emblematic cases highlight the clear prosecution of those identified solely on the basis of their prominent role in opposition to mining and agribusiness projects and for exercising ancestral rights to land. Aggravated land occupation and illegal detentions are charges that are often used to immobilized human rights defenders, though there is a worrying trend to use high impact charges, and especially those outlined in organized crime and terrorism laws, in attempt to stigmatize and arbitrarily detain defenders while they await trial - in some cases up to 2.5 years.

#### Highlights of Recent Emblematic Cases

##### Honduras:

In February 2018, charges against 12 environment and water defenders from Guapinol in the Bajo Aguan region of Honduras came as a response

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<sup>7</sup> Human Rights Watch World reports 2019:  
<https://www.hrw.org/world-report/2019/country-chapters/honduras>

to their legitimate efforts to defend the core zone of a protected area where an iron oxide mining concession had been illegally granted by the central government, and where the municipal government had granted illegal licenses for construction. The environmentalists, with their lawyers, had presented legal and administrative challenges that had been ignored. As is the pattern in Honduras, they were denied access to justice and then maliciously prosecuted. In this case, the organized crime law was applied and they were accused of criminal conspiracy, which in Honduras, prohibits the application of bail; and is a crime penalized by 20 to 30 years in prison. Public prosecutors presented false evidence that further defamed and put in risk the lives of the defenders facing charges. To date, the key leaders charged in this case have yet to be able to return to their homes due to the ongoing threats they and their families have received, even though a judge eventually dismissed the charges.

For over three years the family of Berta Caceres and COPINH, the Civic Council of Popular and Indigenous Organizations of Honduras, has asked that the group of people who came together to enact a sustained campaign of violence against indigenous communities in the Rio Blanco region in opposition to the Agua Zarca dam project, including the murder of Berta Caceres, be charged with criminal conspiracy/illicit association. Despite a tremendous amount of evidence, the Public Prosecutor's office has never been willing to present an indictment. In contrast, in the Guapinol case, prosecutors were allowed to present an indictment and a judge approved 32 arrest warrants without evidence (12 of those people faced a preliminary hearing where the charges were dismissed, yet the others are still facing the charges). Because criminal conspiracy charges do not allow for alternative measure to pretrial detention, meaning that the abusive use of this charge resulted in the arbitrary detention of human rights defenders over the course of a week. Without international observation and a strong response from the human rights movement in Honduras, this could have easily turned into 2.5 years in the lead up to a trial.

Just days before the land defenders from Guapinol were arrested, on February 24, indigenous Tolupan environmental defenders Samuel Matute and his son Juan Manuel Matute were killed in their community of Locomapa, Yoro. These were the latest of many killings of Locomapa indigenous territory defenders, the legacy of the corrupt management of a World Bank funded land titling program. There have been no arrests for these murders. The 12 Guapinol River defenders faced false charges on the third anniversary of the murder of Berta Caceres for the defense of Lenca indigenous communities' rights over the Gualcarque River. During the Guapinol water defenders' trial, the general coordinator of the Afro-indigenous Garifuna federation OFRANEH was cited to court. On the day of the exoneration of the Guapinol defenders, environmental defenders in



Azacualpa, Copan went to court in an attempt to save another mountaintop from mining exploitation taken through municipal corruption. Environmental and land rights are under assault in Honduras.

Guatemala:

Indigenous Maya Q'eqchi' land defender Abelino Chub was arrested in February 2017 and charged with aggravated land occupation, arson and criminal conspiracy, crimes that were allegedly committed on August 7, 2016. At the indictment, the Public Prosecutor's Office requested that the charges against Abelino be dropped due to lack of evidence, but a local judge, Anibal Arteaga, refused the petition. Judge Arteaga also refused to grant Abelino conditional release pending trial, resulting in his arbitrary detention for more than 26 months. Abelino's trial finally opened on April 22, 2019; in the following days, the prosecution failed to present sufficient evidence to prove a crime had been committed, much less to prove that Abelino was guilty of committing that crime. Due to lack of evidence, the public prosecutor asked for the arson and conspiracy charges to be dismissed. The private prosecutor asked for the arson charges to be dropped.

Expert reports presented relevant information about the historical context, ownership of the land in dispute, current day context, and state collusion in the malicious use of the criminal justice system to paralyze legitimate community organizing. With the use of expert witnesses, the defense showed that the indigenous Maya Q'eqchi' community of Plan Grande had lived for at least 175 years on the land in question, and therefor, it was impossible to say they were involved in "land occupation." Experts showed that companies had, over several years, appropriated large sections of the community for industrial agricultural production by outlining the irregular actions of state functionaries that led to indigenous land to be allocated, bought and sold by private interests. On Friday, April 26, the three judge panel found Abelino Chub Caal not guilty of all charges. In their verdict, they ordered the Public Prosecutor's Office to investigate the irregularities in the land titles. Abelino Chub's legal case took more than 2.5 years to resolve leaving his humble family in a precarious economic situation. Abelino was also held in a detention center more than 6 hours away from his home, making visits with his young family nearly impossible for the duration of his detention. The Agricultural Business Council (Camara de Agro) quickly responded to condemn the court's decision and both the public and private prosecution appealed the decision.

- **Access to justice and reparation:**

Environmental and indigenous rights defenders who are maliciously targeted by private corporations with the backing of state justice system often have little recourse for the harms they endure through the process of criminalization. In some cases, families of murdered indigenous and human rights defenders revictimized and some are even targeted as a result of their denouncing economic and state powers. In Guatemala, during the trial for the murder of indigenous Maya Q'eqchi land defender Adolfo Ich, the local judge, who was signalled out by the International Commission Against Impunity (CICIG) as forming part of structure of "judges of impunity", not only declared former head of security of the Guatemala Nickel Company (CGN), a multinational mining corporation operating in eastern Guatemala, innocent of the murder of Ich, who was seen attacking Ich in broad daylight,<sup>8</sup> she ordered that the murdered activists' widow, Angelica Choc, also a land and human rights defender, be investigated for allegedly bringing forward a false accusation.

In another related case, Maya Q'eqchi fisherman Carlos Maaz was murdered in May 2017 by state security forces during a peaceful protest against mine pollution in Lake Izabal, which is negatively impacting the livelihoods of the fishermen. To date, no one has been arrested for Mr. Maaz's murder though the state has moved forward with charges against three organized fishermen from the Artisan Fishermen's Union and two journalists reporting on the contamination. Charges against them were brought immediately after they publicly denounced the contamination. At the court proceedings, the Judge refused to allow observers and journalists into the public hearing. The actions of the judge were denounced to the corresponding prosecutor's office, but there has been no investigation to date.

In the highland department of El Quiche in Guatemala, indigenous Maya K'iche' land defender Aura Lolita Chavez has been the target of defamation campaigns, violence and threats and malicious charges being brought against her after she denounced illegal logging by companies with strong connections to the current governing party, including a presidential candidate who is a former elite military officer (Kaibil) who denies that there was genocide in Guatemala. Despite numerous complaints Lolita has filed, they have been archived with no apparent investigation or follow up while charges against her make it impossible for her to return to her home community for fear of being detained.

In Honduras, the family of slain indigenous rights activist Berta Caceres was expelled from the 2018 trial against 8 men accused of Ms. Caceres' murder. The Tribunal unilaterally expelled the victims from the legal

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<sup>8</sup> Choc Versus Hudbay Minerals [www.chocversushudbay.com](http://www.chocversushudbay.com)



process and as a result, they were unable to be represented as private accusation, a guarantee in Honduran law.<sup>9</sup>

- **Preventive and reactive actions concerning attacks against human rights defenders:**

In 2015, the Honduran congress implemented the National Law of Protection of Human Rights Defenders, Journalists and Social Communicators, and Justice Operators and created the National Protection Mechanism. These steps were taken in response to the high levels of attacks against defenders. In June 2019, the Committee for Freedom of Expression (C-Libre) published an evaluation of the work of the mechanism and its abilities to reduce the risks and vulnerabilities that defenders face. The evaluation found that in three years, the Mechanism has not served its purpose in large part because there hasn't been the creation of guidelines to ensure its effective implementation, in addition to the lack of importance that state institutions pertaining to the Technical Council have given the mechanism, effectively making it useless by not regularly participating in meetings, and not giving follow up to its mandate. The National Protection Mechanism has led to greater risks for human rights defenders who are put in a false category of protection.

Concerning in both Honduras and Guatemala is the rejection of crucial testimonies, by both key witnesses and experts, in trials related to criminalization and murder of human rights defenders. In the first trial for the murder of Berta Caceres in 2018, the tribunal refused to admit evidence by experts on the socio-historical context of the violence that indigenous Lenca communities in opposition to the proposed Agua Zarca hydroelectric dam have faced. The court also refused to call the Police Sub-Commissioner assigned to ensure Berta's physical safety to the stand. In the case of Eduardo Bin, an indigenous Maya Q'eqchi' fisherman who was criminalized just a day after he publicly denounced contamination of Lake Izabal by the CGN mining company, the judge refused to have an expert witness speak about the legitimate roles of human rights defenders and the impacts of criminalization on indigenous communities. Trials without key information fail to paint a full picture of the risks that defenders face and make integral justice impossible. In some cases, without this evidence, further investigations are impeded, resulting in ongoing risks for affected communities.

Supporting documents:

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<sup>9</sup> International Federation of Human Rights:  
<https://www.fidh.org/es/region/americas/honduras/honduras-graves-irregularidades-obstaculizan-verdad-y-justicia-en>

- Aerta de El Observatorio para la Protección de los Defensores de Derechos Humanos, programa conjunto de Organización Mundial Contra la Tortura (OMCT) y de la FIDH:  
<http://www.omct.org/es/human-rights-defenders/urgent-interventions/honduras/2019/03/d25266/>
- Amnesty International: Honduras - Authorities should guarantee due process for defenders:  
<https://www.amnesty.org/download/Documents/AMR3799292019SPANISH.PDF>
- EuroLat:  
<https://eulatnetwork.org/es/actualidad/carta-abierta-a-la-union-europea-ue-ante-la-detencion-de-personas-defensoras-del-rio-guapinol-en-honduras/>
- UDEFEGUA: Analysis de criminalización en Guatemala 2012-2017:  
<http://udefegua.org/wp-content/uploads/2017/12/Informe-Criminalizacio%CC%81n-Guatemala-2012-2017-FINAL3.pdf>
- Guatemala Human Rights Commission: Observations of Abelino Chub trial:  
<http://www.ghrc-usa.org/wp-content/uploads/2019/05/GHRC-Report-on-Abelino-Chub-case-MAY-1-2019-FINAL.pdf>
- Guatemalan Human Rights Commission: 2018 Emergency Delegation Report:  
<http://www.ghrc-usa.org/wp-content/uploads/2019/05/2018-GHRC-Emergency-Delegation-Report.pdf>
- Honduras: más de 100 organizaciones nacionales e internacionales condenamos la criminalización y detención de personas defensoras del río Guapinol, Tocoa:  
<http://www.uca.edu.sv/idhuca/wp-content/uploads/2019-02-27-Guapinol-vf.pdf>
- End of Mission Statement by Michel Forst, United Nations Special Rapporteur on the situation of human rights defenders on his visit to Honduras May 2018:  
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23063&LangID=E>
- Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Guatemala:  
<http://unsr.vtaulicorpuz.org/site/images/docs/country/2018-guatemala-a-a-hrc-39-17-add3-en.pdf>