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**Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General**

## Situation of human rights in Guatemala<sup>\*</sup>, <sup>\*\*</sup>

### Report of the United Nations High Commissioner for Human Rights

#### *Summary*

In his report, the United Nations High Commissioner for Human Rights describes the human rights situation and the activities of his office in Guatemala from 1 January to 31 December 2022. He highlights advances and persisting challenges in the promotion and protection of human rights, with a focus on issues related to equality and non-discrimination, inclusive and sustainable human development, justice, democratic space and the impact of the coronavirus disease (COVID-19) pandemic.

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\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.

\*\* The summary of the report is being circulated in all official languages. The report itself is contained in the annex and is being circulated in the language of submission and in English only.



## Annex

# Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Guatemala

## I. Introduction

1. The present report is submitted pursuant to the agreement between the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Government of Guatemala, signed in January 2005 and renewed in September 2022 for one year. The report covers the year 2022 and is based on information collected and analysed by OHCHR in Guatemala, as well as information provided by State institutions and other stakeholders at the request of OHCHR. The report also describes the main activities carried out by OHCHR.

2. OHCHR continued to monitor the human rights situation through, inter alia, continued engagement with authorities and civil society. OHCHR launched nine public information campaigns on women's rights, human rights standards applicable to the selection and appointment of the Attorney General and the Human Rights Advocate, civic space, the right to a fair trial, the right to adequate housing, and treaty bodies. OHCHR conducted 29 observation missions, created a mobile application to promote the role of human rights defenders, released a video on the protection of justice officials and produced 32 newsletters and other publications.<sup>1</sup>

3. OHCHR provided technical advice to 14 State institutions, including the Presidential Secretariat for Women, the Presidential Commission for Peace and Human Rights, the National Civil Police, the judiciary, Congress, the Constitutional Court, the Public Prosecution Service, the Ministry of Foreign Affairs, the Office of the Human Rights Advocate and the Counsel General's Office. OHCHR also conducted 57 workshops and organized five forums for State institutions. The topics covered included the Convention on the Rights of Persons with Disabilities, women's rights and gender-sensitive approaches, the rights of Indigenous Peoples, international standards on judicial independence, the prevention of torture, the protection of persons deprived of their liberty, the right to reparation, the role of the police and respect for and promotion and protection of human rights.

4. OHCHR organized a training programme for the Congressional Human Rights Commission on the application of international human rights standards. It also monitored the selection of the Attorney General, the Human Rights Advocate and High Court judges.

5. OHCHR documented 175 cases of alleged human rights violations and worked with victims, civil society organizations and State institutions to prevent potential violations.<sup>2</sup> It also worked in partnership with regional and international human rights protection mechanisms.

## II. Context

6. Guatemala has continued to face systemic and structural challenges, including in relation to inequality and discrimination, the judicial system and impunity, democratic space and the promotion and protection of human rights. The human development index for Guatemala is 0.627, a decrease of six points from 2015 to 2021, and the Gini coefficient is 48.3.<sup>3</sup>

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<sup>1</sup> See <https://issuu.com/oacnudhgt/docs>.

<sup>2</sup> See <https://www.ohchr.org/en/publications/policy-and-methodological-publications/manual-human-rights-monitoring-revised-edition>.

<sup>3</sup> See [https://hdr.undp.org/system/files/documents/global-report-document/hdr2021-22pdf\\_1.pdf](https://hdr.undp.org/system/files/documents/global-report-document/hdr2021-22pdf_1.pdf).

7. Indigenous Peoples (43.8 per cent of the population) and Afro-Guatemalans (0.2 per cent of the population)<sup>4</sup> continued to face multidimensional forms of discrimination and economic and social inequalities that affected the exercise of their rights. The National Human Development Report, entitled *Challenges and opportunities for Guatemala: towards an agenda for the future - The speed of change, a territorial view of human development 2002–2019*, shows that there is a 20 per cent gap between Indigenous and non-Indigenous persons in the three areas measured by the human development index, namely education, health and income, with the greatest inequality in education.<sup>5</sup> The Report also indicates that Guatemala has the highest gender inequality index in Latin America, at 0.479.

8. As at 1 December 2022, 7,024,531 individuals (55.4 per cent women and 44.6 per cent men) had received of full course of vaccination (two doses) against coronavirus disease (COVID-19), representing 40.4 per cent of the total population.<sup>6</sup> OHCHR continued to monitor the impacts of the pandemic on Indigenous Peoples and informal sector workers and has advised State entities to ensure that a human rights-based approach is applied to social protection measures.

9. Some members of Congress continued to promote bills that did not meet international human rights standards. A number of the bills are still under consideration, including No. 6099, on the Act on strengthening peace, (see para. 69), while others have been discussed at length, such as No. 5923, on the Act on salvaging pre-Hispanic heritage, and No. 6076, on the Act on strengthening the public security forces and the Guatemalan Army (see para. 19).<sup>7</sup> Bill No. 5272 (Decree No. 18–2022, Act on the Protection of Life and the Family) and bill No. 5601 (Decree No. 39–2022, Act on the Prevention of and Protection against Cybercrime) had been approved but were subsequently shelved following a Congressional decision to halt the procedure for their entry into force<sup>8</sup> owing to objections to their contents that were presented by various sectors.<sup>9</sup>

10. In May, the current Attorney General was re-elected for the 2022–2026 term. OHCHR noted that the election process did not fully comply with the Guidelines on the Role of Prosecutors, in particular those relating to the suitability and probity of candidates. In addition, OHCHR documented the filing of seemingly unsubstantiated criminal complaints against members of the nominating committee and instances of pressure being put on them during the process, particularly on the days of the final vote, due to alleged conflicts of interest and acting under undue influence.<sup>10</sup> A temporary injunction issued by the Constitutional Court also had an impact on the composition of the final list.<sup>11</sup> OHCHR has observed actions by the Public Prosecution Service that could hinder criminal investigations into corruption and undermine judicial independence (see paras. 60 and 62).<sup>12</sup>

11. In July, Congress elected the Human Rights Advocate for the period 2022–2027 from the shortlist of candidates presented by the Human Rights Commission, with 141 of the 152 deputies present voting in favour. The election process did not fully comply with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), particularly with regard to access to information, publicity and transparency; clarity in the election procedure and the application of technical and objective criteria in assessing applicants.

<sup>4</sup> See <https://guatemala.un.org/sites/default/files/2021-07/CCA%202021.pdf>.

<sup>5</sup> See <https://www.undp.org/es/guatemala/publications/informe-nacional-de-desarrollo-humano-desafios-y-oportunidades-para-guatemala-hacia-una-agenda-de-futuro-la-celeridad-del>.

<sup>6</sup> See <https://tablerocovid.mspas.gob.gt/tablerocovid/>.

<sup>7</sup> See communication GTM 5/2022. All communications mentioned in the present report are available at <https://spcommreports.ohchr.org/TMsearch/TMdocuments>.

<sup>8</sup> See [https://www.congreso.gob.gt/assets/uploads/info\\_legislativo/acuerdos/a7ccd-6-2022.pdf](https://www.congreso.gob.gt/assets/uploads/info_legislativo/acuerdos/a7ccd-6-2022.pdf).

<sup>9</sup> [A/HRC/37/3/Add.1](#), para. 50; [A/HRC/40/3/Add.1](#), paras. 80 and 83; and [A/HRC/43/3/Add.1](#), paras. 75 and 83.

<sup>10</sup> Complaints filed by the Fundación contra el Terrorismo on 18 January, 1 February, 28 March and 22 April against seven commissioners who voted against the inclusion of the current Attorney General in the final list sent to the President.

<sup>11</sup> File No. 2319-2022.

<sup>12</sup> [A/HRC/49/20](#), paras. 56 and 57.

12. Congress made no progress in the pending appointment of justices to the Supreme Court and the Appeals Court for the 2019–2024 term.<sup>13</sup>

13. In the area of transitional justice, significant progress was made in 5 of 11 active judicial cases of serious human rights violations committed during the internal armed conflict (see para. 65).

14. OHCHR recorded 156 cases of attacks on human rights defenders, including journalists and justice officials. An increase was observed in cases of criminalization of persons who have conducted journalistic investigations or led judicial cases against corruption and impunity, with the aim of preventing the legitimate exercise of their work and/or punishing them for it. The number of cases rose from 25 in 2021 to 47 in 2022. Until the end of his term in office, the former Human Rights Advocate continued to face campaigns to discredit him and attempts to hinder him in the fulfilment of his mandate. In addition, the former Deputy Advocate No. II continues to face criminal proceedings related to the exercise of her official duties.

15. For the purposes of its analysis, the OHCHR understands that “the criminalization of human rights defenders through the misuse of criminal law involves the manipulation of the State’s punitive power by State and non-State actors in order to hinder their advocacy work, thereby preventing the legitimate exercise of their right to defend human rights”.<sup>14</sup>

16. OHCHR documented 137 demonstrations throughout the country, mostly by Indigenous persons and their authorities, students and civil society organizations. The demonstrations supported the work of human rights defenders, including journalists and justice officials, who have been victims of criminalization, and rejected regressive bills, impunity, corruption, persecution of human rights defenders and the procedures followed in the elections of the Attorney General, the Human Rights Advocate and the Rector of the University of San Carlos.

17. At the time of preparation of the present report, some sections of the provisions of Decree No. 4-2020, which contains amendments to the Act on Development Non-Governmental Organizations and to the Civil Code concerning the oversight and dissolution of non-governmental organizations, remained provisionally suspended by the Constitutional Court. Nevertheless, the regulations that entered into force in 2021 began to be implemented, and OHCHR documented concerns related to re-registration requirements and several reports regarding the activities and finances of non-governmental organizations.<sup>15</sup>

18. The Indigenous authorities continued to strengthen their national coordination mechanisms to defend their lands and territories, fight impunity and corruption and monitor legal initiatives that directly affect Indigenous Peoples without consultation or free, prior and informed consent.

### III. Equality and non-discrimination

#### A. Indigenous Peoples and persons of African descent

19. The K’iche’ authorities of the 48 cantons of Totonicapán lobbied Congress over bill No. 6076, on the Act on strengthening the public security forces and the Guatemalan Army, which has been widely criticized, including by a group of Special Rapporteurs of the United Nations Human Rights Council,<sup>16</sup> for jeopardizing the exercise of the right to peaceful demonstration.<sup>17</sup> Subsequently, Congress decided to suspend discussion of the bill. In May, peaceful demonstrations by Indigenous Peoples prevented the third debate on bill No. 5923, on the Act on salvaging pre-Hispanic heritage, and its final adoption. Under its early warning

<sup>13</sup> A/HRC/46/74, paras. 10 and 67; and A/HRC/49/20, paras. 9 and 54.

<sup>14</sup> See <http://www.oas.org/es/cidh/informes/pdfs/criminalizacion2016.pdf> and [https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/ComentDeclDDH\\_WEB.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/ComentDeclDDH_WEB.pdf).

<sup>15</sup> A/HRC/46/74, para. 11; and A/HRC/49/20, para. 14.

<sup>16</sup> See communication GTM 5/2022.

<sup>17</sup> See [https://www.congreso.gob.gt/noticias\\_congreso/8912/2022/1#gsc.tab=0](https://www.congreso.gob.gt/noticias_congreso/8912/2022/1#gsc.tab=0).

and urgent action procedure, the Committee on the Elimination of Racial Discrimination sent a communication to the Government on 16 May 2022, in which it set out its concerns regarding the impact on the rights of Indigenous Peoples if the bill were to be approved.<sup>18</sup>

20. Despite some progress, OHCHR continued to document limitations on Indigenous authorities' exercise of their community functions. In August, the main Q'eqchi' Maya guides of Santa Elena Samanzana II were acquitted of the offence of causing serious injury by Cobán Criminal Trial Court No. 2 for Drug Trafficking and Environmental Offences (Alta Verapaz), following two years of criminal proceedings.<sup>19</sup> However, the guides still face other criminal charges relating to the titling process for their lands and territories. Through a temporary injunction granted by the Criminal Court of First Instance of Nebaj,<sup>20</sup> the authorities of the Ixil Indigenous mayor's office of Nebaj (Quiché) were able to have their property returned by the municipality and were able to remain in their office, in the municipal building, after the forced eviction carried out at their headquarters in September by order of the Judge of Municipal Affairs of Nebaj.

21. In the Q'eqchi' Maya region in Petén and Alta Verapaz, OHCHR observed trends of extreme religious intolerance and hatred against *aj q'ij* (spiritual guides) on account of their practice of Mayan spirituality. In May, in the village of Chichipaté in El Estor (Izabal), the Q'eqchi' Maya spiritual guide Adela Choc Cuz was accused of witchcraft, allegedly by members of the village's Community Development Committee. She and her family were physically assaulted, threatened with being burned alive, and forced to move. In the case of Domingo Choc Ché, a Q'eqchi' spiritual guide who was burned alive in 2020 following accusations of witchcraft, the conviction is not yet final.<sup>21</sup>

22. OHCHR welcomes reports from the Ministry of Energy and Mining and the Indigenous authorities of the Xinka people of Santa Rosa, Jutiapa and Jalapa that the first stage of the consultation ordered by the Constitutional Court regarding mining activity in El Escobal concluded in July.<sup>22</sup>

23. In February, the Ministry of Energy and Mining established a committee to follow up on the agreements reached<sup>23</sup> in a consultation process with the Q'eqchi' Maya people.<sup>24</sup> However, some Q'eqchi' Maya Indigenous authorities indicated that they had not been invited to the consultation and, in June, reported to the Inter-American Commission on Human Rights alleged violations of their collective rights, including consultation and free, prior and informed consent, as well as acts of criminalization against them.

24. In July, the Ministry of Energy and Mining began inviting participation in the consultation with the Indigenous Peoples of San Pedro Ayampuc and San José del Golfo, in compliance with the ruling of the Constitutional Court in connection with the Progreso VII Derivada mining project.<sup>25</sup> OHCHR remains available to provide technical assistance in this matter.

25. Representatives of Indigenous community radio stations advocated for joint meetings with the Presidential Commission for Peace and Human Rights, the Office of the Superintendent of Telecommunications, the Counsel General's Office, the Office of the Human Rights Advocate and Congress to identify ways to implement the reparation measures set out in the judgment of the Inter-American Court of Human Rights on the right of Indigenous Peoples to freedom of expression and access to community radio stations.<sup>26</sup>

26. The Office has observed that Indigenous women have increased the visibility of their contributions to the preservation of the cultural identity and ways of life of Indigenous

<sup>18</sup> See <https://www.ohchr.org/sites/default/files/2022-05/EWUAP-letter-GUATEMALA-16May22.pdf>.

<sup>19</sup> File No. 16004-2014-00149.

<sup>20</sup> *Amparo* appeal No. 14002-2022-00260, dated 2 September 2022.

<sup>21</sup> [A/HRC/46/74](#), para. 35; and [A/HRC/49/20](#), para. 18.

<sup>22</sup> See <https://mem.gob.gt/?s=Xinka&submit=Go>.

<sup>23</sup> See <https://mem.gob.gt/?s=fenix&submit=Go>.

<sup>24</sup> Constitutional Court, file No. 697-2019, ruling of 18 June 2020.

<sup>25</sup> See [A/HRC/46/74](#).

<sup>26</sup> Case concerning *the Maya Kaqchikel Indigenous Peoples of Sumpango et al. v. Guatemala*, Judgment of 6 October 2021, Series C, No. 440.

Peoples through spirituality, language, arts, weaving, medicine, food, conservation of natural resources (water and forests) and management of the impact of climate change. This Indigenous ancestral knowledge continues to be acquired from observation and practical application on a daily basis, and the participation of Indigenous women as advocates and authorities has been key. However, Indigenous women who defend their rights face a number of risks, including violence and criminalization, as in the case of the K'iche' Maya women of Joyabaj.

27. OHCHR continued to support capacity-building for Indigenous midwives to promote their rights, as protected by the 2019 Constitutional Court ruling,<sup>27</sup> and the implementation of the 2021–2025 action plan of the national policy on midwives belonging to the four peoples of Guatemala. In March, Congress approved Decree No. 22-2022, declaring 19 May the National Day of the Guatemalan Midwife (Iyom and/or Rati't Ak'al). The legislation also provides for annual financial support for midwives in recognition of their work in promoting women's right to health, including sexual and reproductive health. The Ministry of Health and Social Welfare has made progress in providing this incentive to Indigenous midwives in certain departments, but it has not been fully implemented. The incentive, which was approved for the 2022 fiscal year, has not yet been entered in the Ministry's budget and is at risk of remaining unpaid in 2023.

28. OHCHR continued to provide technical assistance to the National Weavers' Movement and the Women's Association for the Development of Sacatepéquez to promote recognition of the collective intellectual property rights of Indigenous women's weavings. In September, members of the Congressional Indigenous Peoples' Commission and the National Weavers' Movement presented bill No. 6136, on the Act for the protection of collective intellectual property of the textiles and clothing of the Indigenous Peoples and communities of Guatemala.

29. In Puerto Barrios and Livingston (Izabal), OHCHR continued to monitor the human rights situation of Garifuna and Afro-Guatemalan women. OHCHR learned of various violations of their rights, including gender-based violence, obstacles in access to justice and challenges in the exercise of their economic, social and cultural rights. Garifuna and Afro-Guatemalan women's organizations highlighted the persistent discrimination, exclusion and invisibility they experience. They also highlighted the need for the State to implement actions with a gender perspective and cultural relevance, within the framework of the International Decade for People of African Descent (2015–2024).

30. In coordination with the Ministry of Education, and as part of the International Decade of Indigenous Languages (2022–2032), OHCHR provided technical assistance to the Constitutional Court with the updating and publication of a children's version of the Constitution in Spanish and with the translation and publication of the Constitution in the Pocomam language. It also carried out awareness-raising activities with the Pocomam Maya people of Palín (Escuintla) and Santa Cruz Chínautla (Guatemala).

31. OHCHR organized discussions with the Congressional Indigenous Peoples' Commission on international standards applicable to the rights of Indigenous Peoples in connection with freedom of expression, community radio and protection of collective intellectual property, as well as the scope of article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and the importance of recognizing competence to submit individual communications to the Committee on the Elimination of Racial Discrimination.

## **B. Women and girls**

32. Violence against women and girls remained among the most prevalent human rights violations. Between 1 January and 5 December, the Women's Observatory of the Public Prosecution Service recorded 48,644 victims of violence against women, including 502 femicides and violent deaths.<sup>28</sup> This represents an increase of 5 per cent in femicides and

<sup>27</sup> File No. 3362-2017.

<sup>28</sup> See <https://observatorio.mp.gob.gt/portal-estadistico/>.

violent deaths compared to the same period last year, and of almost 10 per cent compared to 2020. Between January and December, 65,501 pregnancies were reported in girls between 15 and 19 years of age and 2,187 in girls under 14 years of age.<sup>29</sup> Under articles 173 and 174 of the Guatemalan Criminal Code, sexual relations with minors under 14 years of age constitute the offence of rape.

33. The Public Prosecution Service implemented a comprehensive care model for women who are victims of violence. The allocation of public resources for the prevention of violence against women and the protection of victims continued to be insufficient given the magnitude of the issue. As in previous years, OHCHR received expressions of concern about the financial situation and sustainability of the work of the network of comprehensive support centres for women who are survivors of violence, owing to delays of up to one year in the release of funds.

34. Delays persist in the legal proceedings in the case concerning the Hogar Seguro Virgen de la Asunción children's home.<sup>30</sup> The start of the public oral arguments stage has continually been delayed and is scheduled for January 2023. All of the survivors have reached the age of majority, and Congress is now responsible for delivering the life annuity granted to them.<sup>31</sup>

35. OHCHR delivered a series of capacity-building workshops for officials from the Secretariat against Sexual Violence, Exploitation and Trafficking in Persons to help them apply a gender-sensitive and intersectional approach to their work, as well as workshops on women's rights for officials from the Presidential Secretariat for Women. The budget for the Presidential Secretariat for Women decreased between 2021 and 2022, which could have an impact on its operation and its activities in the area of women's human rights.<sup>32</sup>

### C. Migrants and asylum-seekers

36. OHCHR takes note of the progress made in the formulation of migration policy, as well as the consolidation of the Council for the Assistance and Protection of Migrants, under the leadership of the Guatemalan Institute for Migration.

37. OHCHR learned that the State undertook operations to expel migrants who allegedly did not have permission to be on its territory. The operations were carried out by the Guatemalan Institute for Migration with support from the National Civil Police and the Guatemalan Army. A total of 1,694 migrants (1,174 men and 520 women) of various nationalities (32 per cent Venezuelan, 26 per cent Cuban and 26 per cent of other Central American nationalities) were reportedly transferred to the border with Honduras.<sup>33</sup> Based on the information available, OHCHR has learned that these non-voluntary and forced returns at border points and during non-working hours pose an additional risk to the safety of migrants.

### D. Persons with disabilities

38. OHCHR welcomes Ministerial Agreement No. 214-2022<sup>34</sup> establishing the mechanism for the implementation of the National Certification System for Persons with Disabilities.

39. As part of a joint programme with the United Nations Population Fund and the United Nations Development Programme, OHCHR provides technical assistance to the State for the

<sup>29</sup> See <https://osarguatemala.org/embarazos-y-registro-de-nacimientos-2022/>.

<sup>30</sup> [A/HRC/46/74](#), para. 40. See also [www.oacnudh.org.gt/images/CONTENIDOS/ARTICULOS/PUBLICACIONES/InformeHSVA.pdf](http://www.oacnudh.org.gt/images/CONTENIDOS/ARTICULOS/PUBLICACIONES/InformeHSVA.pdf).

<sup>31</sup> Decree No. 16-2018.

<sup>32</sup> See [CEDAW/C/GTM/10](#).

<sup>33</sup> Data provided by the Guatemalan Institute for Migration for the period from January to September 2022.

<sup>34</sup> See <https://www.mspas.gob.gt/acuerdos-ministeriales-2022/download/632-acuerdos-ministeriales-2022/3112-am-mspas-214-2022>.

creation of a registry of persons with disabilities, the establishment of an independent monitoring mechanism, the strategy for incorporating disaggregated data on disability and the certification process.

40. OHCHR conducted a diagnostic study on the exercise of legal capacity of persons with disabilities, in the light of international human rights instruments and using a gender perspective.<sup>35</sup> The study shows that, owing to the absence of a guarantee of their right to legal capacity, persons with disabilities face multiple violations of their human rights, including the rights to liberty, personal integrity and justice, economic rights and sexual and reproductive rights.

## **E. Sexual diversity and gender identity**

41. Urgent preventive and protective measures are required to tackle stigmatization, harassment, discrimination and rates of violence against lesbian, gay, bisexual, transgender and intersex (LGBTI) persons. In 2022, 27 violent deaths were recorded: 12 gay men, 7 transgender women, 3 lesbian women, 3 bisexual men, 1 transgender man and 1 bisexual woman.<sup>36</sup>

42. In September, several OHCHR country offices in the region, including Guatemala, and Red Sin Violencia LGTBI (LGBTI Violence-Free Network), organized the first regional forum on the theme of justice without impunity and prejudice for LGBTIQ+ persons, held in Honduras. The forum discussed hate crimes, institutional responses to them, and the elements that should be considered in regional and national protocols to address such crimes.

## **F. Young persons**

43. OHCHR observed that young persons continue to face challenges in the enjoyment of their rights, particularly in the areas of access to education, health, participation in public life and in decision-making that affects them, and employment. These challenges are multiplied for young persons facing other forms of discrimination, such as Indigenous young persons, lesbian, gay, bisexual, transgender and intersex young persons, and young women, whether or not they belong to the aforementioned groups.

44. OHCHR learned that the National Youth Policy 2021–2030 remained under review during 2022 and therefore is not yet being implemented.

45. OHCHR continued to provide technical assistance to State institutions and civil society organizations to uphold the human rights of young persons. In partnership with the National Youth Council and the United Nations Population Fund, a tool was launched to promote the human rights of young persons. The objective is to facilitate the formulation of programmes and policies that promote the rights of young persons.

46. Workshops were held in coordination with the Network of Young Human Rights Defenders to strengthen their capacities in promoting and protecting human rights in civic spaces. Online safety issues and the rights of Indigenous Peoples were also covered. A youth festival and a meeting of young women defenders were also held. OHCHR launched the Spanish version of the First Global Report on Protecting Young People in Civic Space.<sup>37</sup>

<sup>35</sup> United Nations Partnership on the Rights of Persons with Disabilities, Situation analysis of the rights of persons with disabilities in Guatemala 2021 (Guatemala City, October 2021), available at [https://guatemala.un.org/sites/default/files/2021-12/An%C3%A1lisis%20de%20la%20Situaci%C3%B3n%20de%20los%20Derechos%20de%20las%20Personas%20con%20Discapacidad%20en%20Guatemala\\_2021%20-%20UNPRPD%20FINAL.pdf](https://guatemala.un.org/sites/default/files/2021-12/An%C3%A1lisis%20de%20la%20Situaci%C3%B3n%20de%20los%20Derechos%20de%20las%20Personas%20con%20Discapacidad%20en%20Guatemala_2021%20-%20UNPRPD%20FINAL.pdf).

<sup>36</sup> Data provided by the national human rights monitoring body responsible for cases of violence related to sexual orientation or gender identity, part of Asociación Lambda.

<sup>37</sup> See <https://m.facebook.com/OACNUDHGuatemala/videos/presentaci3n-del-primer-reporte-global-sobre-participaci3n-de-la-juventud-en-el-1348225568920793/>.



## IV. Inclusive and sustainable human development<sup>38</sup>

### A. Social protection

47. At 9.5 per cent of the gross domestic product, the proportion of resources that the State allocates to social programmes continues to be lower than the Central American average of 11 per cent.<sup>39</sup>

48. From January to September, 6,513,696 persons and 7,611 families have benefited from the following initiatives run by the Ministry of Social Development: community kitchens, the Craftspersons Scholarship Programme, the Safe Families initiative, social subsidies and the Life Programme. Of the total number, 98 per cent have benefited from the community kitchens programme.

49. OHCHR developed training for staff members from the Ministry of Social Development (19 women and 22 men) to build capacity in applying a human rights-based approach to social protection.

### B. Access to lands, territories and natural resources

50. Agrarian conflicts continued to recur. OHCHR documented five cases of forced evictions, affecting 250 families. The evictions did not comply with international human rights standards, which require prior notification, the proportional use of force, the non-destruction of homes and the relocation and adequate transferral of the persons affected. There has been a lack of dialogue with the affected communities, as in the case of the community of Chicoyou (Alta Verapaz).

51. OHCHR observed that one of the main problems faced by Indigenous Peoples, campesinos and poor communities is a lack of access to clean water to enable them to meet their daily needs and stay healthy.

52. OHCHR continued to provide technical assistance to public institutions regarding international human rights standards on access to land, territories, evictions and the right to a healthy environment for Indigenous Peoples and campesinos.<sup>40</sup>

### C. Business and human rights

53. OHCHR welcomes the consultation process, involving 12 civil society organizations, conducted by the Presidential Commission for Peace and Human Rights to design the baseline of the National Action Plan on Business and Human Rights.

54. In March, Invest, an arm of the Inter-American Development Bank, published the Management Action Plan to address the Compliance Review Report issued by the Independent Consultation and Investigation Mechanism on the Generadora San Mateo S. A. and Generadora San Andrés S. A. projects and announced that it would no longer provide funding to the power plants.<sup>41</sup> The Mechanism's report arose out of a request made by the Plurinational Indigenous Government of the Q'anjob'al, Popti, Chuj, Akateko and Mestizo Peoples because of the environmental, social, security and gender-related effects that have been felt by the inhabitants of the affected areas.<sup>42</sup> OHCHR will continue to monitor the human rights situation and provide technical assistance to the parties involved.

55. In partnership with Global Compact and Centrarse, OHCHR continued to deliver training for companies and other civil society actors on the Guiding Principles on Business

<sup>38</sup> In this regard, see [E/C.12/GTM/CO/4](#).

<sup>39</sup> Economic Commission for Latin America and the Caribbean, *Social Panorama of Latin America 2021* (Santiago), 2021.

<sup>40</sup> Presidential Commission for Peace and Human Rights, National Civil Police and Land Registry.

<sup>41</sup> See <https://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=EZSHARE-1567711961-1924>.

<sup>42</sup> *Ibid.*

and Human Rights.<sup>43</sup> OHCHR also welcomes the initiative of the Guatemalan Exporters' Association to raise awareness of due diligence concepts among its members.

## V. Justice and the fight against impunity

### A. Access to justice and the fight against impunity

56. OHCHR documented the persistence of gender, racial and socioeconomic stereotypes and geographic, cultural and linguistic barriers in the justice system. Information was received on discriminatory treatment of Indigenous persons, including lawyers, from the outset of their contact with the system. Indigenous women face intersecting forms of discrimination. There continued to be an insufficient number of interpreters, even in departments with a majority Indigenous population, such as Alta Verapaz and Baja Verapaz.

57. OHCHR observed violations of the right to a fair trial arising from structural challenges and poor judicial practices. There were documented instances of closed hearings, with COVID-19 used as justification despite the fact that capacity limits were lifted nationwide in April.<sup>44</sup> In addition, in proceedings against human rights defenders, including justice officials and journalists, discretionary use has been made of confidentiality rules, which limit access to information. Undue delays in first statement hearings continued to be documented, resulting in individuals being detained for prolonged periods without a formal pretrial detention order. Violations of judicial independence were also documented (see paras. 59 et seq.).

58. OHCHR supported capacity-building for State authorities on the rights of persons with disabilities, persons deprived of liberty and women's right to a life free of violence, in coordination with the Constitutional Court, the School of Judicial Studies and the Training Unit of the Public Prosecution Service. With technical assistance from OHCHR, the Constitutional Court published a thematic compilation of rulings on judicial independence.<sup>45</sup>

### B. Judicial independence

59. In February, the Judicial Service Act, Decree No. 7-2022, was amended to reassign to the Supreme Court governance of the judicial service and of the functions of the Judicial Service Council and its auxiliary bodies. For example, the Council's powers to approve the policies and training programmes of the School of Judicial Studies were transferred to the Supreme Court. The administrative functions of the Supreme Court must be carried out by an independent and impartial body.<sup>46</sup>

60. OHCHR documented with great concern an alarming increase of 71.43 per cent, compared to 2021,<sup>47</sup> in the number of justice officials (19 women and 17 men) who were the target of attacks related to their role in cases of corruption and serious human rights violations. In addition, six defence lawyers (three women and three men) were targeted. In March, the High-Risk Crime Court Judge Erika Aifán resigned from her position and left the country after multiple criminal complaints were filed against her and preliminary proceedings were launched. OHCHR also documented with concern violations of the rights to liberty and to a fair trial in connection with the detentions of five former officials, Aliss Morán, Paola Escobar, Siomara Sosa, Samari Gómez and Virginia Laparra, a former official of the Office of the Special Prosecutor against Impunity, William Racanac, and a defence lawyer, Leily

<sup>43</sup> See [https://centrarse.org/?gclid=EAIaIQobChMIkuLV6PPZ-wIVztmGCh0GiwL7EAAYASAAEgK5F\\_D\\_BwE](https://centrarse.org/?gclid=EAIaIQobChMIkuLV6PPZ-wIVztmGCh0GiwL7EAAYASAAEgK5F_D_BwE).

<sup>44</sup> See <https://prensa.gob.gt/node/8964/printable/print>.

<sup>45</sup> See [https://issuu.com/oacnudhgt/docs/compilaci\\_n\\_de\\_sentencias\\_independencia\\_judicial\\_b](https://issuu.com/oacnudhgt/docs/compilaci_n_de_sentencias_independencia_judicial_b).

<sup>46</sup> [CCPR/C/GTM/CO/4](#), para. 31.

<sup>47</sup> [A/HRC/49/20](#), para. 56.

Santizo. OHCHR recalls that international standards establish, among other things, that pretrial detention should be applied only on an exceptional basis.<sup>48</sup>

61. In the above-mentioned cases, OHCHR documented undue delays in the proceedings, affecting seven individuals, and restrictions on publicity, affecting six individuals, and received information on restrictions on the ability to mount an effective defence as a consequence of the confidentiality rules applied, affecting two individuals. As part of these cases, Virginia Laparra, the former Chief Prosecutor of the Office of the Special Prosecutor against Impunity in Quetzaltenango was convicted in December<sup>49</sup> of the offence of abuse of authority. She was sentenced to four years' imprisonment, commutable, and was barred from holding public office for four years. Samari Gómez, the former Assistant Prosecutor of the Office of the Special Prosecutor against Impunity, was indicted and is in pretrial detention.

62. The Public Prosecution Service continued to dismiss prosecutors without disciplinary or judicial proceedings, including two prosecutors who had been in charge of important corruption or transitional justice cases (see para. 67). OHCHR documented online defamation and slander campaigns against justice officials. OHCHR also documented criminal complaints that appear to be unsubstantiated, filed by persons investigated in connection with or linked to landmark corruption cases. A statement issued by the Public Prosecution Service<sup>50</sup> in May mentioned the "magnitude" of criminal cases against five exiled former justice officials and listed the offences of which they are accused, without specifying which offence corresponded to which official, which could affect their right to the presumption of innocence. Two of the aforementioned individuals have been granted precautionary measures by the Inter-American Commission on Human Rights.<sup>51</sup> These events, taken together, appear to give rise to a climate of hostility and harassment against these officials.

63. These events have had a profound psychosocial, personal and work-related impact on the persons affected and have had a chilling effect on other justice officials. However, no information has been received on any measures adopted, other than physical security measures, by the State institutions responsible for strengthening the comprehensive protection of justice personnel.

64. OHCHR, the United Nations Development Programme and the United Nations Office on Drugs and Crime began a project to strengthen the capacity of the judiciary to ensure an independent justice system.

### C. Transitional justice

65. OHCHR welcomes the progress made, including the convictions in the Sexual Violence against Achí Women<sup>52</sup> and Tactic cases. In addition, a trial was ordered against nine former intelligence officers in the Diario Militar case and one former military officer in the Las Dos Erres case. Nine former military commissioners were indicted in the Rancho Bejuco case and one person was indicted in the Diario Militar case.

66. OHCHR noted with concern that attacks on the judicial officials in charge of these cases persisted. OHCHR documented new instances of intimidation against the High-Risk Crime Court Judge Miguel Ángel Gálvez.<sup>53</sup> In June, the Supreme Court accepted preliminary proceedings against him, following the opening of the trial in the Diario Militar case. Judge Gálvez reported violations of due process in the preliminary proceedings, resigned from his position and left the country in November. In addition, preliminary proceedings were

<sup>48</sup> International Covenant on Civil and Political Rights, art. 9, para. 3; and Human Rights Committee, general comment No. 35 (2014), para. 38.

<sup>49</sup> Criminal Code, art. 418.

<sup>50</sup> See <https://twitter.com/MPguatemala/status/1522253706263248896>.

<sup>51</sup> Inter-American Commission on Human Rights, Resolution 55/2019, precautionary measure No. 682-18, 23 October 2019, available at <https://www.oas.org/es/cidh/decisiones/pdf/2019/55-19MC682-18-GU.pdf>; and Resolution 40/2016, precautionary measure No. 497-16, 22 July 2017, available at <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC497-16-ES.pdf>.

<sup>52</sup> OHCHR Guatemala, UN Special Representative Pramila Patten Welcomes Landmark Sexual Violence Verdict in Guatemala, press release, 26 January 2022.

<sup>53</sup> [A/HRC/49/20](#), para. 59.

launched against the High-Risk Crime Court Judge Pablo Xitumul and he was suspended from his duties in March.

67. In the CREOMPAZ case, rapporteurs from the National Preventive Mechanism<sup>54</sup> filed criminal charges against former Attorney General Claudia Paz y Paz and the prosecutor in charge of that and other investigations into transitional justice cases.<sup>55</sup> In June, OHCHR observed the removal, without disciplinary proceedings, of a prosecutor who until October 2021 had led the Office of the Special Prosecutor for Human Rights. Criminal reports were filed against, *inter alia*, members of the Mutual Support Group and plaintiffs in the Edgar Fernando García, Diario Militar and Tactic cases.

68. With regard to the right of victims and their representatives to participate in the judicial process, OHCHR observed that in the Sexual Violence against Achí Women case, High-Risk Crime Appeals Court No. 2 did not allow a public oral hearing for the victims' representatives,<sup>56</sup> and that in the Ixil Genocide case, the Judge of High-Risk Crime Court C did not allow the victims' representatives to participate in the hearing on the presentation of evidence. OHCHR also observed undue delays in the Rancho Bejuco case.

69. Some members of Congress continued to promote bills that are incompatible with international human rights law insofar as they seek to extinguish the criminal liability of persons accused or convicted of committing international crimes during the internal armed conflict, such as bill No. 6099, on the Act on strengthening peace, which is currently being considered for approval.<sup>57</sup>

70. The National Reparations Programme remains unable to undertake victim reparation projects owing to the absence of regulations enabling it to operate. There are approximately 57,000 pending reparation files. They have been allocated a space that does not meet conservation standards and does not have suitable access, hindering their subsequent processing.<sup>58</sup> The closure of all of the Programme's regional headquarters as of 2020 continues to be a barrier to access to reparation for victims and has led to increased uncertainty surrounding the process and costs of relocation. OHCHR provided technical assistance to the National Reparations Programme on international human rights standards for comprehensive reparations.

71. OHCHR organized workshops and campaigns with young persons and civil society organizations to highlight the importance and encourage the use of archives in the exercise of victims' right to memory. Workshops on human rights and gender were also delivered for prosecutors investigating transitional justice cases.

## VI. Democratic space

### A. Right to promote and protect human rights

72. OHCHR recorded 79 allegations of attacks against human rights defenders (52 men and 14 women) and 13 Indigenous communities and human rights organizations.<sup>59</sup> Of the cases known to OHCHR, those involving criminalization increased by 54.34 per cent compared to 2021, which is an alarming increase. In some cases, attacks were attributed to private companies. OHCHR recorded the murders of four human rights defenders, three of them from the Campesino Development Committee, and one journalist, all of which were allegedly linked to the victims' human rights work.

<sup>54</sup> See communication GTM 4/2022.

<sup>55</sup> Against Claudia Paz y Paz for the offences of abuse of authority and abuse of powers; and against the prosecutor for the offences of abuse of authority, torture and making a false report.

<sup>56</sup> Code of Criminal Procedure, art. 427.

<sup>57</sup> See communication GTM 7/2022.

<sup>58</sup> See [A/HRC/12/19](#).

<sup>59</sup> The data on justice officials are presented in part V of the present report, and the data on journalists are contained in section B of part VI.

73. The Office of the Human Rights Advocate reported 131 cases of attacks on human rights defenders and organizations, of which 52 were against journalists.<sup>60</sup>
74. The Public Prosecution Service reported having received 226 complaints of offences committed against human rights defenders, of which 75 relate to activists and 151 to journalists.<sup>61</sup> The Public Prosecution Service informed OHCHR that arrest warrants have been issued in four cases.
75. Between January and December, the Human Rights Defenders Protection Unit of Guatemala<sup>62</sup> registered 2,265 attacks: 2,143 against human rights defenders (697 women and 1,446 men) and 122 against groups.
76. OHCHR noted that many of the attacks against human rights defenders occurred online. Some of these attacks resulted in criminal prosecutions without due process guarantees. Human rights defenders have expressed their fears regarding such attacks, which can lead to the loss of their civil rights or their forced departure from the country.
77. OHCHR recorded with concern 61 cases of criminalization of human rights defenders, including journalists, to prevent the legitimate exercise of their work or punish them for it. In some cases, criminal proceedings have been brought by private companies, mainly palm, hydroelectric and mining companies, against Indigenous authorities.
78. The cases against human rights defenders Nanci Sinto and Dulce Archila<sup>63</sup> were dismissed because the facts did not fit the offence of which they had been accused. However, an appeals court granted the appeals filed by the plaintiffs, namely the Public Prosecution Service, the Counsel General's Office and Congress. In the case of Nanci Sinto, an investigation was ordered into the possible excessive use of force by the police, but no progress has been made.
79. In the case of Jorge Coc and Marcelino Xol, Q'eqchi' defenders of land and territory who have been in prison for more than four years, the defence filed an appeal in cassation<sup>64</sup> on the basis of formal and substantive shortcomings in the conviction handed down by the lower court.<sup>65</sup> The appeal was declared inadmissible, and the defence filed a remedy of *amparo* before the Constitutional Court.<sup>66</sup>
80. In March, the Q'eqchi' defender Bernardo Caal Xol<sup>67</sup> was granted early release from prison. A remedy of *amparo* filed by his lawyer before the Constitutional Court in September 2021 is pending resolution. In other criminal proceedings opened against him, he is accused of the offence of misappropriation and improper retention.
81. María Cuc Choc, a Q'eqchi' environmental defender, was sentenced to two years' imprisonment for the offence of aggravated trespass and acquitted of the offences of making threats and illegal detention.<sup>68</sup>
82. As OHCHR has noted in previous reports,<sup>69</sup> the inadequate functioning of national protection mechanisms increases the risk of attacks against human rights defenders. In addition, it has been documented that human rights defenders have stopped filing reports with the Public Prosecution Service due to lack of trust and fear of reprisals.
83. OHCHR has expressed its willingness to provide assistance to the State on the formulation of a public policy for the protection of human rights defenders.

<sup>60</sup> Information provided by the Office of the Human Rights Advocate.

<sup>61</sup> Information provided by the Public Prosecution Service.

<sup>62</sup> See <https://udefegua.org/>.

<sup>63</sup> [A/HRC/49/20](#), para. 75; file No. MP-0014-2020-76 and court case No. 0175-2021-00029.

<sup>64</sup> Files of Jorge Coc (No. 01004-2020-00693) and Marcelino Xol (No. 01004-2020-00694).

<sup>65</sup> [A/HRC/49/20](#), para. 75, file No. 16005-2017-00211.

<sup>66</sup> File No. 6480-2022.

<sup>67</sup> [A/HRC/49/20](#), para. 77.

<sup>68</sup> [A/HRC/46/74](#), para. 86.

<sup>69</sup> [A/HRC/49/20](#), para. 73, and [A/HRC/46/74](#), para. 83.

## B. Freedom of expression

84. OHCHR observed a deterioration in conditions for the exercise of the right to freedom of expression and documented attacks against journalists following the publication of investigations in which they denounced possible acts of corruption. OHCHR notes with concern that criminalization and due process violations against journalists undermine the exercise of freedom of expression and access to information.

85. OHCHR recorded 38 allegations of attacks against media workers and journalists (23 men and 6 women) and 9 media outlets.

86. The Observatory of the Association of Journalists of Guatemala recorded 66 attacks on journalists and media outlets during the first half of the year.<sup>70</sup>

87. Carlos Ernesto Choc Chub, a Q'eqchi' journalist with the Prensa Comunitaria outlet, was acquitted in September of incitement to commit an offence after being reported by 13 National Civil Police officers while covering demonstrations against mining activities in El Estor (Izabal). However, there is another active case against Mr. Choc relating to accusations made by Compañía Guatemalteca de Níquel, a nickel-mining company, in connection with making threats and illegal detention.

88. The president and founder of the newspaper *El Periódico*, José Rubén Zamora, was arrested in July following a raid on his home. He was indicted on charges on influence peddling, money-laundering and bribery. On the day of his arrest, the offices of the media outlet were raided and eight workers were detained for more than 16 hours. OHCHR has observed violations of due process in this case, involving the right to information on the nature of the charges, to a trial without undue delay, to a defence, to a public trial by an independent and impartial tribunal and to the presumption of innocence. The last edition of *El Periódico* was printed on 30 November.

89. OHCHR has documented six journalists (two women and four men) who have left the country fearing reprisals for their work. One of them is the CNN journalist Michelle Mendoza.

90. OHCHR has expressed its willingness to provide assistance to the State in creating a comprehensive protection system for journalists that meets international human rights standards.

## C. Freedom of peaceful assembly

91. OHCHR observed, in person and online, 137 mostly peaceful demonstrations organized by a variety of actors, including Indigenous authorities, campesino movements and students. OHCHR documented the use of tear gas against peaceful protesters on some occasions despite their willingness to engage in dialogue, the disproportionate deployment of officers from the National Civil Police,<sup>71</sup> participants being photographed with the aim of intimidating them, and military police officers performing public security functions. OHCHR also noted that former military demonstrators assaulted police officers during a demonstration.<sup>72</sup>

92. OHCHR received information on reprisals such as intimidation, harassment, coercion, surveillance, criminal complaints and workplace dismissals against students, faculty and administrative staff of the University of San Carlos for having exercised their right to peaceful assembly and freedom of expression during the election process of the Rector of the university for the period 2022–2026.

<sup>70</sup> See [https://twitter.com/APG\\_1947/status/1553029601860935691](https://twitter.com/APG_1947/status/1553029601860935691).

<sup>71</sup> OHCHR on-site observation of the demonstration organized by the Campesino Development Committee, 21 September 2022.

<sup>72</sup> OHCHR remote observation of the demonstration organized by ex-military personnel, 4 October 2022.

93. OHCHR advised members of the Office of the Inspector General of the National Civil Police on the application of the human rights-based approach to policing, particularly the proportional use of force.

#### **D. Security and states of exception**

94. OHCHR documented five states of exception, including three states of siege, decreed by the executive branch and ratified by Congress<sup>73</sup> in response to structural and social problems.

95. OHCHR has documented an increased presence of the army in public security functions, through combined patrols by the army and the National Civil Police. In addition, the presence of vehicles without licence plates has been documented during arrests and raids, and members of the National Civil Police have been observed getting out of such vehicles. OHCHR noted the presence of the military in civilian functions, such as vaccinating against COVID-19.

### **VII. Conclusions and recommendations**

96. **Guatemala continues to face systemic and structural challenges. In 2022, these challenges relate, in particular, to inequality and discrimination, the justice system and the fight against impunity, democratic spaces and the right to promote and protect human rights. This context prevents significant progress in the exercise and enjoyment of human rights.**

97. **OHCHR reiterates its commitment to continuing to support Guatemala in the fulfilment of its international obligations to protect and uphold all human rights for all people and the Sustainable Development Goals. On the basis of the activities of OHCHR in Guatemala, and in addition to previous recommendations, OHCHR recommends that the State:**

(a) **Expand the investment in and coverage of non-contributory social programmes and ensure that they reach the poorest and most vulnerable people through tools such as the Social Household Registry;**

(b) **Guarantee the full application of international standards on Indigenous Peoples' right to consultation and on the conditions for their participation in decision-making; and recognize and strengthen the economic, social, cultural and environmental contributions of Indigenous and Afro-Guatemalan women;**

(c) **Strengthen the capacities and coverage of the specialized justice system and the Office of the Prosecutor for Femicide, in order to reduce impunity; and strengthen the mandate of the Presidential Secretariat for Women and provide it with the human and financial resources necessary for its proper functioning;**

(d) **Amend national legislation and/or adopt the necessary legal regulations to fully implement the Convention on the Rights of Persons with Disabilities, particularly in matters of legal capacity;**

(e) **Guarantee the participation of all stakeholders in the implementation of the National Action Plan on Business and Human Rights and ensure the application of the Guiding Principles on Business and Human Rights for the protection of human rights defenders;**

(f) **Take relevant, decisive and urgent measures to strengthen and guarantee the independence of the justice system and provide the necessary comprehensive protection to the judiciary, especially officials who are responsible for cases of transitional justice, human rights violations and/or corruption;**

<sup>73</sup> Decrees Nos. 1-2022, 34-2022, 35-2022, 37-2022 and 50-2022.

(g) Continue making progress in the field of transitional justice and upholding the rights of victims, recalling that the norms and measures adopted by the State in this area must be compatible with international human rights law;

(h) Guarantee the right of victims to reparation by adopting measures to guarantee the implementation of judgments, the adequate functioning of the National Reparations Programme and the establishment of remembrance initiatives with the participation of victims;

(i) Take measures to recognize the work of and guarantee protection for human rights defenders, including journalists, justice officials and defenders of Indigenous land and territory, for the benefit of society;

(j) Ensure that any measure of deprivation or restriction of liberty respects the principle of legality, is compatible with international human rights norms and standards and meets the requirements of suitability, necessity, exceptionality and proportionality;

(k) Urgently resume the development of a public policy for the protection of human rights defenders with the participation of civil society organizations, taking into account the diversity of human rights defenders and ensuring the prompt design and implementation of a mechanism for the protection of journalists;

(l) Make progress in the ratification of international human rights instruments.

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