



Guatemala

Joint Submission to the UN Universal Periodic Review
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**Submission by CIVICUS: World Alliance for Citizen Participation,
NGO in General Consultative Status with ECOSOC,**

AND

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1. (A) Introduction

- 1.1** CIVICUS is a global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, we proudly promote marginalised voices, especially from the Global South, and have members in more than 170 countries throughout the world.
- 1.2** Red Latinoamericana para el Caribe y la Democracia (RedLad) is a non-profit organisation with over 400 members, including civil society organisations, networks, academics and social movements from Latin America and the Caribbean. RedLad arduously works to strengthen democratic systems, the protection of human rights, sustainable development, and the social integration of citizens in the region.
- 1.3** In this document, CIVICUS and RedLad examine the Government of Guatemala's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Guatemala's fulfilment of the rights to freedom of association, assembly, and expression, as well as unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in October 2012. To this end, we assess Guatemala's implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of specific, action-oriented follow-up recommendations.
- 1.4** During the 2nd UPR cycle, the Government of Guatemala received 11 recommendations relating to the above mentioned rights. Of these recommendations, eight were accepted and three were noted. An evaluation of a range of legal sources and human rights documentation, which are addressed in subsequent sections of this submission, demonstrate that the Government of Guatemala has only partially implemented two of the recommendations relating to freedom of expression and not implemented nine of the recommendations relating to civil society space.¹
- 1.5** According to the CIVICUS Monitor,² civic space in Guatemala is rated as "obstructed", indicating that "civic space is heavily contested by power holders, who impose a combination of legal and practical constraints on the full enjoyment of fundamental rights."³

¹ See Annex 1, Matrix of recommendation and implementation status.

² The CIVICUS Monitor is a research collaboration between CIVICUS, our members and partners which the aim of providing constantly-updated information and analysis on the space for civil society and citizen activism in every country of the world- For more information about CIVICUS Monitor: <https://monitor.civicus.org/>

³ CIVICUS Monitor, available at: <https://monitor.civicus.org/Ratings/>

1.6 CIVICUS and RedLad are deeply concerned by the lack of implementation of UPR recommendations relating to protection of human rights defenders, many of whom, specifically environmental and land rights defenders, are subject to a range of legal and extra-legal restrictions. We are further concerned by the lack of timely, independent and transparent investigations into the physical attacks against human rights defenders, union workers and civil society activists.

1.7 CIVICUS and RedLad are alarmed by the persecution of journalists and media workers exemplified by high levels of violence committed to silence independent journalists as well as the government's failure to implement protection mechanisms to safeguard the work of journalists.

- In Section B, CIVICUS and RedLad examine Guatemala's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of association.
- In Section C, CIVICUS and RedLad examine Guatemala's implementation of UPR recommendations and compliance with international human rights standards related to the protection of human rights defenders, civil society activists and journalists.
- In Section D, CIVICUS and RedLad examine Guatemala's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of expression, independence of the media, and access to information.
- In Section E, CIVICUS and RedLad examine Guatemala's implementation of UPR recommendations and compliance with international human rights standards related to freedom of assembly.
- In Section F, CIVICUS and RedLad make a number of recommendations to address the concerns listed.

2. (B) Freedom of association

2.1 During Guatemala's examination under the 2nd UPR cycle, the government received no recommendations on the right to freedom of association. However, despite the lack of explicit recommendations on freedom of association, as illustrated below, this right is undermined in practice.

2.2 Article 34 of the Constitution of Guatemala guarantees the right to freedom of association. Moreover, Article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Guatemala is a state party, also guarantees this freedom.

However, despite these protections, civil society organisations (CSOs) and unionised workers face many obstacles that have prevented them to operate freely.⁴

2.3 Since Guatemala's previous UPR examination, the government has continued to violate the right to freely associate. Union members in Guatemala are especially targeted with violence and are often subjected to death threats, intimidation and targeted assassinations.⁵ The environment for unions is so precarious that Guatemala is considered one of the ten worst countries in the world for union members.⁶ In the last half of 2016, the CIVICUS Monitor has documented the assassination of two union members.⁷ Moreover, in its country report, the Inter-American Commission on Human Rights expressed concern over the situation of union leaders in the country, and highlighted that at least six union members were killed in Guatemala in 2014 alone.⁸

2.4 For example, according to a report by the Inter-American Commission on Human Rights, in 2014, union member Marlon Dagoberto Vásquez López was murdered. He was part of a youth union in the city of Quetzaltenango.⁹ The CIVICUS Monitor also documented a case in 2016. Eliseo Villatoro, union leader from the Union of Municipal Employees of Tiquisate, Escuintla (SEMOT) was killed in a context of a conflict between the union and the Tiquisate Municipality.¹⁰

3. (C) Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists

3.1 Under Guatemala's previous UPR examination, the government received seven recommendations on the protection of human rights defenders, journalists and civil

⁴ CIVICUS Monitor, country description, available at:

<https://monitor.civicus.org/newsfeed/2016/11/01/association-Guatemala/>

⁵ ITUC, Global Rights Index 2016, available at: http://www.ituc-csi.org/IMG/pdf/survey_ra_2016_eng.pdf

⁶ ITUC Global Rights Index: Workers' Rights Weakened in Most Regions, Worst Year on Record for Attacks on Free Speech and Democracy, June 2016, available at: <http://www.ituc-csi.org/ituc-global-rights-index-workers>

⁷ CIVICUS Monitor: Journalists continue to work in a hostile environment in Guatemala, August, 2016, available at: <https://monitor.civicus.org/newsfeed/2016/08/26/journalists-continue-work-hostile-environment-guatemala/>; CIVICUS Monitor: Human rights defenders continue to be killed in Guatemala, December 2016, available at: <https://monitor.civicus.org/newsfeed/2016/12/20/journalist-union-activist-and-environmental-defender-murdered-early-november/>

⁸ ICHR, Country report: Human rights situation in Guatemala, 2016, available at: <https://www.oas.org/es/cidh/informes/pdfs/Guatemala2016.pdf>

⁹ Idem, page 105

¹⁰ CIVICUS Monitor: Human rights defenders continue to be killed in Guatemala, December 2016, available at: <https://monitor.civicus.org/newsfeed/2016/12/20/journalist-union-activist-and-environmental-defender-murdered-early-november/>

society representatives. The government committed to several relevant recommendations including to “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”¹¹ and to “seek to protect human rights defenders especially journalists and trade union members.”¹² Of the seven recommendations received, the government accepted four and noted three. However, as examined in this section, the government has failed to effectively operationalise these recommendations. Of the seven recommendations on the protection of HRDs, the government has not implemented any of them. As documented below, attacks and criminalisation against human rights defenders with impunity have continued unabated since Guatemala’s previous UPR examination.

- 3.2** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure the protection of human rights defenders. The ICCPR further guarantees the freedoms of expression, association and assembly. However, in spite of these protections, human rights defenders, activists and union members continue to be the subject of physical attacks, harassment and intimidation by state and non-state actors.
- 3.3** According to documented cases by the local civil society organisation UDEFEGUA,¹³ with the exception of 2016, attacks against human rights defenders have increased since 2013. The organisation documented 657 attacks against human rights defenders in 2013;¹⁴ representing a 46 % increase over 2012, when Guatemala committed during the UPR examination to reduce the attacks and aggressions against human rights defenders. This worrying trend did not improve in 2014 when the organisation documented 814 attacks against defenders.¹⁵ Although levels of violence declined during the following two years with 493 attacks documented in 2015¹⁶ and 265 in 2016, much more needs to be done by the government to take necessary preventative actions to protect human rights defenders in Guatemala.
- 3.4** In addition to physical attacks, scores of human rights defenders in Guatemala have been extra-judicially killed since Guatemala’s last UPR. Over the course of the last four years, 51 human rights defenders, many of them working on environmental and land

¹¹ Recommendation 99.53

¹² Recommendation 99.76

¹³ CIVICUS interviewed with member of UDEFEGUA

¹⁴ UDEFEGUA, Report on the situation of human rights defenders, 2013, available at: http://udefegua.org/wp-content/uploads/2015/08/informe_final_2013.pdf

¹⁵ UDEFEGUA, Report on the situation of human rights defenders, 2014, available at: http://udefegua.org/wp-content/uploads/2015/08/informe_final_2014.pdf

¹⁶ UDEFEGUA, Report on the situation of human rights defenders, 2015, available at: http://udefegua.org/wp-content/uploads/2015/08/informe_final_2015.pdf

rights issues, were killed in Guatemala. For example, in 2016, after a series of threats, land rights defender Diego Choc Pop, a representative of Comité Campesino del Altiplano- an organisation that fights for the improvement of the living conditions of the indigenous farmers - was murdered.¹⁷

- 3.5** Additionally, women human rights defenders in Guatemala are increasingly becoming the target of attacks. Analysis by UDEFEGUA shows that during 2013, 21% of the attacks were against women human rights defenders. However, this percentage increased substantially in subsequent years as more than half of the attacks in 2014 were committed against women. For instance, in 2016, trade union member, Brenda Marleni Estrada, was shot 5 times while driving through Guatemala City. Brenda was a member of the Coalition of Workers' Unions of Guatemala and was actively involved in labour rights issues, especially in investigations regarding labor rights in several banana plantations.¹⁸
- 3.6** During its examination under the 2nd UPR cycle, Guatemala committed to implement “immediate, independent and systematic investigations of abuses perpetrated against human rights defenders”.¹⁹ However, structural impunity remain a problem in Guatemala as evidenced by the International Commission against Impunity in Guatemala. In its 2015 report the Commission reported that over 98 % of²⁰ murder cases between 2008 and 2014 remained unresolved.²¹

4. (D) Freedom of expression, independence of the media and access to information

- 4.1** Under the 2nd UPR cycle, the government received three recommendations relating to freedom of expression and access to information. For example, the government pledged to “ensure a safe working environment for journalists and continue to take proactive measures against impunity”²² and “ensure free access to information for the

¹⁷ CIVICUS Monitor: Land Rights activist killed, June 2016m available at:

<https://monitor.civicus.org/newsfeed/2016/06/29/june-29th-update-guatemala/>

¹⁸ CIVICUS Monitor: Journalists continue to work in a hostile environment in Guatemala, August, 2016, available at: <https://monitor.civicus.org/newsfeed/2016/08/26/journalists-continue-work-hostile-environment-guatemala/>

¹⁹ Recommendations 99.52, 99.53, 100.14, 99.76 and 100.15

²⁰ ICHR, Country report: Human rights situation in Guatemala, 2016, available at:

<https://www.oas.org/es/cidh/informes/pdfs/Guatemala2016.pdf>; CICIG, Sistema de medición de la impunidad en Guatemala, available at: http://www.cicig.org/uploads/documents/2015/Docto_SisMedImp_20160414.pdf

²¹ ICHR, Country report: Human rights situation in Guatemala, 2016, available at:

<https://www.oas.org/es/cidh/informes/pdfs/Guatemala2016.pdf>; CICIG, Sistema de medición de la impunidad en Guatemala, available at: http://www.cicig.org/uploads/documents/2015/Docto_SisMedImp_20160414.pdf

²² Recommendation 99.74

population of Guatemala through the effective protection of journalists and media as they are occasionally threatened by drug traffickers and organised crime”.²³ Of the recommendations received, all three were accepted. However, as discussed below, the government partially implemented two of these recommendations.

4.2 Article 19 of the ICCPR guarantees the right to freedom of expression and opinion. Article 35 of the Constitution of Guatemala also guarantees the right to freedom of expression. However, in policy and practice the government has imposed restrictions on the exercise of this right.

4.3 In 2012, the Constitutional Court issued a decision exhorting the Guatemalan Congress to issue regulations to guarantee indigenous people access to the broadcasting spectrum in order for them to disseminate information in their languages, and on their traditions and spirituality.²⁴ Subsequently, the government during the UPR examination supported a recommendation to follow up and implement that decision.²⁵ However, to date, specific legislation on community radio has not been enacted, and the government has not taken any positive measures to ensure that historically excluded groups have access to a platform where they can exercise their right to freedom of expression. Furthermore, and contrary to this commitment, Guatemala has used provisions in the criminal code to unwarrantedly prosecute informal users. For example, in April 2014, two community radio programs were suspended by the authorities after their offices were raided by security agents.

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4.4 During its 2nd UPR examination, the Government of Guatemala committed to protect journalists. In December 2013, the government publicly committed to start developing this protection programme for journalists.²⁷ Although the government has attempted to create such a programme, to this date, effective implementation remains a major challenge.²⁸ Furthermore, as evidenced below, attacks against journalists and media workers remain commonplace in the country.

²³ Recommendation 99.75

²⁴ Constitutional Court decision, available at: <http://200.35.179.203/Sentencias/819600.4238-2011.pdf>

²⁵ Recommendation 99.78

²⁶ RSF, Cierran dos radios comunitarias en Guatemala, available at: <https://rsf.org/es/noticias/cierran-dos-radios-comunitarias-en-guatemala>

²⁷ Ministerio de Gobernacion, Programa de proteccion al periodista, available at: <https://www.youtube.com/watch?list=UU8u2nvyHewt-mjdWSj0HJmQ&v=EDqYEQvui2E>

²⁸ IFEX, Asociaciones de periodistas en Guatemala exigen implmentacion de programa de proteccion a periodistas, available at: https://www.ifex.org/guatemala/2015/04/15/carta_asociaciones_bonilla/es/; CERIGUA, PDH insta al gobierno a la pronta implementaci3n del Programa de Protecci3n a Periodistas, available at: <https://cerigua.org/article/pdh-insta-al-gobierno-a-la-pronta-implementacion-d/>

- 4.5** The environment for media workers and journalists in Guatemala remains gravely dangerous. The local civil society organization, CERIGUA, documented 264 attacks against journalists from 2013 to 2016.²⁹ According to CERIGUA, the State is the primary perpetrator of these attacks. In the first half of 2016 alone, at least five journalists from local and independent media were killed in Guatemala.³⁰ One recent example, in September 2016, Felipe David Munguía Jiménez was shot dead after attending a community assembly. The journalist received death threats the day before his assassination.³¹
- 4.6** Guatemala enacted access to information legislation in 2008. However, as documented by the 2015 Annual Report of Guatemala's Ombudsperson, proper implementation of the law is still lacking. The report, which monitors levels of compliance with the law shows that 61.9 % official online portals do not made available mandatory information.³²

5. (F) Freedom of peaceful assembly

- 5.1** During Guatemala's examination under the 2nd UPR cycle, the government received one recommendation on the right to freedom of assembly. Guatemala supported this recommendation by committing to "educate the national security forces to effectively uphold law and order particularly when policing demonstrations and large crowds".³³ However, as evidenced by police response to peaceful protests, the government has not implemented this recommendation.
- 5.2** Article 21 of the ICCPR guarantees freedom of peaceful assembly. In addition, article 33 of the Guatemalan Constitution also guarantees this right.
- 5.3** In 2014 the Guatemala Congress enacted the Traffic Circulation and Obstruction of Roads Act, known as the Ley de Túmulos, which prohibits roadblocks and any other obstacles to vehicular circulation, and penalises noncompliance with the law with

²⁹ CERIGUA, available at: <https://cerigua.org/publicaciones/informes-libertad-de-expresion>

³⁰ CIVICUS Monitor: Land activist killed, June 2016, available at: <https://monitor.civicus.org/newsfeed/2016/06/29/june-29th-update-guatemala/>

³¹ IFJ, Guatemala: cinco periodistas asesinados en 2016, October 2016, available at: <http://www.ifj.org/nc/es/news-single-view/backpid/252/article/guatemala-cinco-periodistas-asesinados-en-2016/>

³² Procurador de los derechos humanos, Annual Report 2015, available at: <http://www.pdh.org.gt/biblioteca/informes/file/113.html>

³³ Recommendation 99.79

fines and up to a year of prison term.³⁴ The vague terms of the legislation is a cause of concern for human rights defenders and civil society organisations amid fears that the law could be invoked to unduly criminalise peaceful protests which disrupt traffic.³⁵

5.4 Despite constitutional protections for freedom of assembly, security forces have used excessive force to disperse protestors, especially protests led by indigenous communities to protect their territories. In 2014, security forces used tear gas, stun grenades and rubber bullets to disperse members of an indigenous community in San José del Golfo y San Pedro Ayampuc who were demonstrating against a mining project.³⁶ Cases of excessive use of force by police against indigenous communities have also been documented by the UN Office of the High Commissioner for Human Rights. During a recent mission to Guatemala, the High Commissioner's Office urged the government to address the lack of police training, security protocols and proper use of equipment, all of which have contributed to excessive use force against protesters.

6. (F) Recommendations to the Government of Guatemala

CIVICUS and RedLad call on the Government of Guatemala to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders, and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, freedom of peaceful assembly, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made:

6.1 Regarding freedom of association

- Take measures to foster a safe, respectful, enabling environment for civil society, including through the removal of legal and policy measures which

³⁴ <http://www.scp.gob.gt/dam/municipalidad-scp/documentos/Decretos/2014/DECRETO-8-2014/DECRETO%208-2014.pdf> , CIVICUS Monitor, country description, available at: <https://monitor.civicus.org/newsfeed/2016/11/01/peaceful-assembly-Guatemala/>

³⁵ ISHR, Documento Informativo, 2015, available at: https://www.ishr.ch/sites/default/files/documents/guatemala_esp_final_0.pdf

³⁶ ICHR, Country report: Human rights situation in Guatemala, 2016, available at: <https://www.oas.org/es/cidh/informes/pdfs/Guatemala2016.pdf>

unwarrantedly limit the right to association.

- Promote a meaningful political dialogue that allows and embraces diverging views, including those of human rights defenders, CSOs, journalists, political activists and indigenous population representatives.
- Guarantee the effective and independent functioning of autonomous trade unions and foster a safe and enabling environment for unionised workers and punish the perpetrators of attacks against them.

6.2 Regarding the protection of human rights defenders

- Civil society members, journalists and human rights defenders should be provided a safe and secure environment to carry out their work. Conduct impartial, thorough and effective investigations into all cases of attacks, harassment, and intimidation against them and bring perpetrators of such offences to justice.
- Ensure that human rights defenders are able to carry out their legitimate activities without fear or undue hindrance, obstruction or legal and administrative harassment.
- All human rights defenders including journalists and bloggers detained for exercising their right to fundamental rights to freedom of expression, association, and assembly should be unconditionally and immediately released. Their cases should be reviewed to prevent further harassment.
- Senior government officials should publicly condemn instances of harassment and intimidation of civil society activists and organisations.
- The Government should apply, systematically, legal provisions that promote and protect human rights and establish mechanisms that protect human rights activists by adopting a specific law on the protection of human rights activists in accordance with Council Resolution 27/31 of the Human Rights Council.

6.3 Regarding freedom of expression, independence of the media and access to information

- Ensure freedom of expression and media freedom by bringing all national legislation into line with international standards.

- Approved Community Radio legislation in order to ensure that historically excluded groups have effective access to radio and other means of communication.
- All radio programs unwarrantedly closed should be reinstated.
- The authorities must cease the practice of confiscating radio equipment.
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the Government may find sensitive.
- Take adequate steps to lift restrictions on freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.
- Develop an action plan ensuring that Internet laws comply with the government's commitment to guarantee freedom of expression and information, so as to ensure free access to electronic media, liberalise electronic media ownership rules and allow national bloggers, journalists, other Internet users to play a full and active role in promoting and protecting human rights.
- Implement positive measures regarding access to information legislation and establish mechanisms to facilitate public access in line with best practices.
- Organise inclusive consultations with journalists and community leaders in order to resolve disputes that exist concerning the telecommunications law.
- Refrain from adopting any laws providing for censorship or undue control over the content of the media.
- Refrain from censoring social and conventional media and ensure that freedom of expression is safeguarded in all forms, including the arts.

6.4 Regarding freedom of assembly

- Best practices on freedom of peaceful assembly should be adopted, as put forward by the UN Special Rapporteur on the Right to Peaceful Assembly and Association in his annual report (2012).

- The Traffic Circulation and Obstruction of Roads Act should be amended in order to fully guarantee the right to freedom of assembly.
- All demonstrators, journalists and human rights defenders detained for exercising their right to freedom of peaceful assembly should be unconditionally and immediately released. Their cases should be reviewed to prevent further harassment.
- All instances of extra-judicial killing and excessive force committed by security forces while monitoring protests and demonstrations should be immediately and impartially investigated.
- Review and, if necessary, update existing human rights training for police and security forces with the assistance of independent nongovernmental organizations to foster more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
- Senior government officials should publically condemn the use of excessive and brutal force by security forces in the dispersal of protests. A formal investigation into such instances should be launched, and perpetrators should be brought to justice.
- Recourse for judicial review and effective remedy should be provided including compensation in cases of unlawful denial of the right to freedom of assembly by state authorities.

6.5 Regarding access to UN Special Procedures mandate holders

- In 2001 the Government of Guatemala extended a standing invitation to all UN Special Procedure mandate holders and therefore should prioritise official visits with the: 1) Special Rapporteur on the situation of human rights defenders; 2) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 3) Special Rapporteur on the rights to freedom of peaceful assembly and of association; 4) Special Rapporteur on the Independence of Judges and Lawyers; 5) Special Rapporteur on extrajudicial, summary or arbitrary executions; 6) Special Rapporteur on the rights of indigenous peoples ; and 7) Working Group on Arbitrary Detention.

6.6 Regarding State engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with civil society organizations on all issues mentioned above and enable more effective involvement of civil society in the preparation of law and policy.
- Include independent civil society organisations in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society and NGOs on the implementation of UPR including by holding periodical comprehensive consultations with a diverse range of civil society stakeholders.
- Incorporate the results of this UPR into action plans for the promotion and protection of all human rights, taking into account the proposals of civil society, and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.