

LOSING ONE'S LIFE TO DEFEND THE LAND

Final REPORT
International Mission
Carried out in Guatemala,
August, 2018



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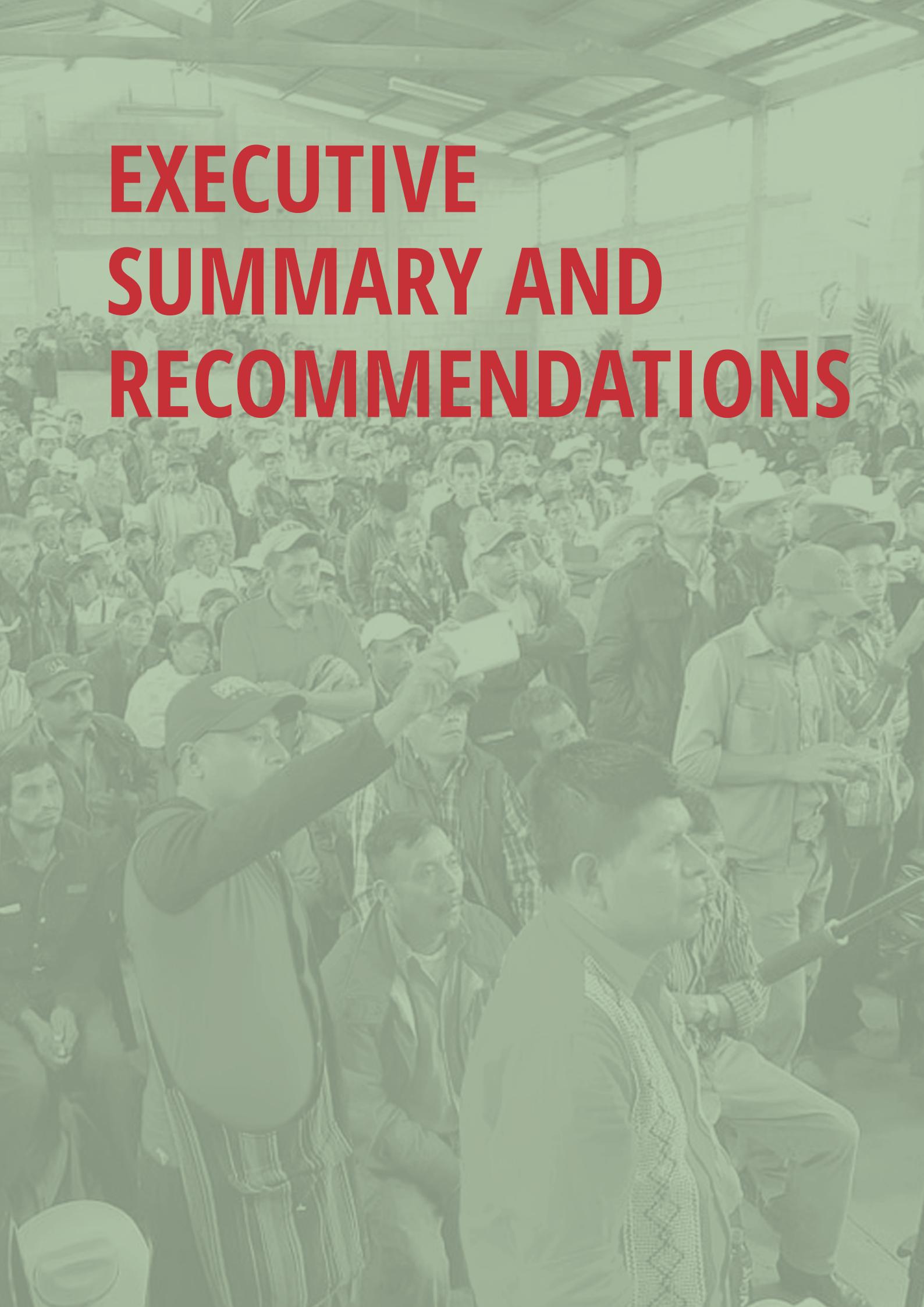
Mission Participants:



Collaborating with:



EXECUTIVE SUMMARY AND RECOMMENDATIONS



1. EXECUTIVE SUMMARY AND RECOMMENDATIONS

This report presents the findings of an International Mission to Guatemala from August 6-10, 2018. The visit followed the violent deaths, within one month, of at least eight human rights defenders, and concentrated its evaluation on those defenders who worked on land and territories.

During its visit to Guatemala City, the International Mission met with more than 25 civil society organizations, diplomatic representatives, bilateral and multilateral cooperation agencies¹ and national and local authorities². Additionally, it held meetings with communities living the criminalization and assassination of its leaders. During those meetings, the mission obtained countless testimonies corroborating its initial concerns of the critical situation faced by human rights defenders in Guatemala.

Guatemala implements a discriminatory development model. During the last decade, GDP doubled while poverty rates increased, with 75% of indigenous population living in poverty and 49% of children under the age of 5 suffering stunted growth due to malnutrition.

The mission was alarmed and concerned by both, the rates of murdered human rights defenders in only a few weeks and the inaction by the State. Since the start of 2018 to date, 19 human rights defenders have been assassinated. Many more have been threatened, intimidated and persecuted, and this trend is on the rise. While threats are regularly reported, authorities do not show serious attempts to follow due process to investigate and prosecute the perpetrators of the attacks. Neither do they show a genuine interest in providing the necessary protection to human rights defenders.

Currently, the Law - especially Criminal Law- does not guarantee the rights of people and communities. Instead, it seems to be used as an additional tool of oppression. It is worrying that governmental mechanisms to protect human rights are intentionally

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- 1 At the time of writing, the President of Guatemala announced, during a press conference on Friday, September 3, 2018, the non-renewal of the mandate of the International Commission Against Impunity in Guatemala or CIGIC. During this declaration, the President was accompanied by the Interior Minister Enrique Degenhart, the Defence Minister, Luis Ralda and the Chancellor of the Republic, Sandra Jovel
 - 2 Unfortunately, and despite having confirmed attendance, the Foreign Affairs Ministry cancelled at the last minute the meeting with other authorities of the central Government (see annexes)

and consistently undermined. Community leaders, who work for the welfare of their people, offered numerous testimonies indicating their feeling of abandonment by the State. Public entities -of the executive and judicial branches- are not providing them, as they should, with support, protection and justice, but criminalizing and persecuting them.

In this context of increasing violence against human rights defenders and inaction by the State, it is very difficult for human rights defenders, especially land and environmental defenders, to obtain justice.

There is a strong feeling that the State hostility is increasing towards the work of human rights defenders. It greatly concerning that attacks are not random acts, but a systematic pattern of persecution which puts the country at risk of falling again into violent contexts of the past. The State urgently needs to gain trust of its citizenry, especially those living in rural and indigenous communities. It is imperative to take significant measures to defend the rights, already established in the Guatemalan Constitution and international human rights treaties ratified by the State, to life, land and freedom of peaceful organization. The Guatemalan government cannot continue to ignore citizens' land rights. Polarization has reached a breaking point. Land reform -or agricultural land redistribution- is not an old issue but rather a matter of the 21st Century, which also tops the political agendas of countries like South Africa, Colombia or Indonesia. If agricultural land is redistributed, all Guatemalan citizens will have better opportunities to earn a living in a dignified manner, and peace will be able to flourish.

In order to reverse the current situation and addressing structural causes, accountability and needs of protection, the International Mission presents the following recommendations. It is urgent to put an end to the critical situation of human rights defenders, particularly of those who defend land, territories and Indigenous Peoples.

1.1. RECOMMENDATIONS TO STATE AND GOVERNMENT AUTHORITIES

1.1.1. Regarding structural causes of problem

Legitimate rights to land and territories of peasant and indigenous communities must be recognized, based on the constitutional Article that instructs the State to seek for the common good³. This acknowledgment should be the starting point of development models, led by community and Indigenous Peoples, in order to reverse their situation of poverty and truly accomplish the international SDG goal of "not leaving anyone behind".

Racism is deeply ingrained in agrarian conflicts and in the criminalization and violence against community leaders who defend their rights. The State needs to fully recognize Indigenous Peoples and their distinctive cultures and identities: their languages, institutions and governance, land and justice systems, among other indigenous features. These are recognized by the Peace Accords, the Guatemalan Judiciary and the United Nations. Exclusionary practices require the State to strengthen the Commission Against Discrimination and Racism or CODISRA to ensure its autonomous and directly-coordinated action with *Mayan*, *Garifuna* and *Xinca Peoples*. Public servants must be educated to acquire an intercultural perspective and fully respect human rights, while paying special attention to Indigenous Peoples' collective rights. At the same time, State agencies must ensure the use of the various native languages during consultation processes, land or environmental conflicts, and when dealing with criminalization cases of indigenous defenders.

The right to free, prior and informed consent must be promoted when policies may have a potential impact on communities. This measure should guarantee that all legislation on free, prior and informed consultation reflects the spirit of the International Labour Organization (ILO) Convention 169, and respects and protects the rights of communities and Indigenous Peoples and the consultations' findings. Consultation processes with communities and Indigenous Peoples should be monitored to ensure their compliance with agreements reached.

- Resolve agrarian conflicts and the policy of evictions. Land ownership must be decentralized by public redistribution policies, recovering indigenous territories and ensuring both, land access to farming communities and Indigenous Peoples, and their legal protection. Thus, migration may be contained and the

³ According to Article 1, Title I, of the Political Constitution of the Republic of Guatemala on the Protection of the Individual, "the State of Guatemala organizes itself to protect the individual and the family; its ultimate goal is the realization of the common good"

right to food guaranteed. Likewise, it also urges to develop agile, efficient and well-equipped governmental mechanisms to facilitate access to land and help to overcome the problems presented by current market-based measures to agrarian reform developed by the Land Fund. Lastly, national agricultural policy in Guatemala should be implemented in a comprehensive manner.

- Recommendations to drastically reduce the amount of agrarian conflicts include developing appropriate legislation, effective implementation and competent institutional management. Institutional performance must be examined against the provision of the conditions needed to boost community development of most vulnerable groups, including the end of conflicts, land tenure legal protection and adequate services.

1.1.2. Regarding protection of defenders

The right to defend human rights and to function in a safe and suitable environment must be recognized and publicly dignified as a measure to stop stigmatization and dissemination of hate speech.

The areas of the country with land or environmental conflicts involving agricultural and extractive industries, or other types of companies, must be demilitarized, and not resort to the Army to repress local peasant and the indigenous population.

Public policy to protect human rights defenders must be approved and start functioning. In order to implement it, the following is essential: a wide consultation, including participatory and regular national evaluations; granting of necessary resources; permanent and effective complaint mechanisms; special attention to Indigenous Peoples' rights; measures for women defenders; and support and legal, economic and psycho-social protection to those victims of attacks, particularly to spouses, daughters and sons of assassinated defenders.

When groups of people carry out any type of action to exercise their rights, the Interior and Public Ministries, under supervision by the Human Rights Ombudsman's Office, must respect human rights standards and international commitments signed by the Guatemalan State.

- Review conventions and procedures for granting natural resource use in order to analyse potential harm to livelihoods for surrounding communities. The regulation guiding environmental impact assessments must include indicators of respect and protection for the human rights of Indigenous Peoples and communities. Elaboration of environmental impact assessments must comply with programmed timelines of regulatory provisions, and be carried out by recognized independent

professionals, so that required levels of quality, ethics, fairness and truthfulness are guaranteed.

- Abandon the use of regressive legislation on human rights issues and against non-governmental organizations. Instead, it is necessary to respect the right of all Guatemalan citizens to freedom of association and peaceful assembly. Simultaneously, adoption and promotion of a public policy respecting the freedom of expression of each person and the media is needed, including via community radios and other alternative media means.
- Strengthen human rights and justice institutions, particularly the Human Rights Ombudsman' Office and the Constitutional Court, by providing them with enough resources to ensure proper and impartial institutional functioning.
- Renew the mandate of the International Commission Against Impunity in Guatemala to allow it to fully operate to dismantle the Illegal Clandestine Security Apparatuses or CIACS, which are responsible for attacks and assaults on human rights defenders.
- Educate Public Ministry officials at the District Prosecutor Offices on the General Instructions to investigate attacks on human rights' defenders, training them to address cases of defenders under threat with the required celerity to prevent situations worsening.
- The Presidential Commission for Coordinating Executive Policy in the Field of Human Rights or COPREDEH must fully comply with precautionary or protection measures established by the Inter-American System of Human Rights (ISHR).

1.1.3. Regarding accountability

Access to transparent information on environmental matters and the granting of rights over natural resources must be guaranteed; in addition, it is necessary to create a public register, with pertinent records, of concessions granted.

- Guatemala must endorse the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters – Escazú Agreement- and must submit its endorsement to the relevant national authorities for immediate ratification⁴

⁴ At the time of writing, the Government of Guatemala signed the Escazú Agreement ", but ratification and implementation in the country are still pending.

1.2. RECOMMENDATIONS FOR DEVELOPMENT COOPERATION

1.2.1. Regarding structural causes of problem

The donor community supporting Guatemala must favour development processes led by communities and Indigenous Peoples and based on their life principles. These processes must meet the needs of the poorest and more criminalised groups and be able to reverse patterns of exclusion.

Processes of free, prior and informed consultation must be incorporated by multilateral banks (IDB, IMF, World Bank, etc.) as inescapable requirements for any project funding. When communities allow the implementation of projects, the institutions must guarantee due diligence and respect UN guiding principles.

The UN Food and Agriculture Organization (FAO) must ensure that implementation of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGTs) starts by recognizing the role of rural communities and peasant/indigenous organization in achieving food and nutritional security for Guatemalan citizens. The implementation of the VGGTs should be carried out within the framework of the Guatemalan national agricultural policy. In order to succeed, implementation should acknowledge historical injustices related to land access.

1.2.2. Regarding protection of defenders

It is imperative to recognize and highlight community human rights defenders as leaders who contribute, from the local to the national level, to democracy-building. In this regard, the recommendation to the international community is to resume regular meetings with human rights defenders and to publicise the support.

Alternative and community media outlets must be supported to complement public and corporate data. This will promote a plurality of voices and ensure diversity of information sources.

The Filtro Group must maintain and strengthen its support during trials of human rights defenders, especially during trials of defenders of land and territories; it is also recommended to issue national and international press releases against criminalization to widen support.

International, regional and development aid organizations must allocate resources to deal with emergencies (temporary shelter, local legal action, etc.), with the aim to access international courts of justice and strengthen regional and global support networks.

1.2.3. Regarding accountability

In order to solve conflicts, the Government must use a cross-sectoral and coordinated approach and show respect to human rights international standards. Evictions must be considered the last resort and undesirable mechanisms to tackle conflicts. Governmental institutions must promote, facilitate and demand transparency of information related to investors and international investments in Guatemala. It also must probe, in cases of investment chain links that harmfully impact upon land, water and natural resources in the territories, adherence to international human and environmental rights principles.

1.3. RECOMMENDATIONS TO NATIONAL AND INTERNATIONAL PRIVATE SECTORS

1.3.1 Regarding structural causes

The private sector must contribute to implement the Guatemalan agricultural policy to decentralize land and eradicate agrarian conflicts.

In relation to private investments within the territories, the sector must respect obligations and commitments agreed with different actors involved. This should be done before, during and after the investment, respecting human rights and in compliance with international, environmental, social and cultural standards. The right to participation and consultation must be respected and promoted, together with agreements reached through these processes.

The private sector must reject corrupt practices, abuse of power and disrespecting the rights of indigenous and rural communities, from the local to the global levels and throughout the entire investment value chain.

The sector must implement models of good practices with a rights-based approach, including formal mechanisms to resolve agrarian conflicts in an appropriate cultural and gendered manner.

Modern leadership promoting transparency and dialogue needs to develop, leading to concrete solutions to agrarian conflicts.

1.3.2. Regarding protection of defenders

Any action in Guatemala entailing potential violations of individual or collective rights must immediately cease to prevent citizens having to defend and protect themselves and be exposed to situations of criminalization, violence and murder.

It is urgent to stop the use - and abuse - of the Criminal Code as a mechanism to resolve agrarian conflicts.

The private sector must take responsibility, at the global level, for human rights violations perpetrated against defenders at the local level.

1.3.3. Regarding accountability

It is necessary to monitor and disseminate results on the adherence of human rights and investment standard rules at local, national, regional and global levels.

Information about investment shareholder participation -individual and societal- must be presented in a transparent manner, establishing internal good governance practices and including the expulsion of those transgressing international human rights standards.

1.4. RECOMMENDATIONS TO THE MEDIA AND LOCAL, NATIONAL AND INTERNATIONAL CIVIL SOCIETY

1.4.1. Regarding structural causes of problem and protection

In order to have an impact when advocating against defenders' criminalization, it is necessary to facilitate strategic linkages between civil society organizations and social movements. Thus, a critical, unified voice can be heard to interact with the State and eradicate conflicts within the unified framework of the Guatemalan agricultural policy.

- Encourage the involvement of defenders and social organizations in regional and global human rights mechanisms to overcome local isolation and facilitate access to regional and international courts.
- Promote, strengthen or establish defenders' networks, and make visible cases of violence and criminalization in regional and global spheres, in public media and key institutions: Human Rights Defenders World Summit 2018; Global Land Forum 2018; UN New York; FIDH; Observatory of Human Rights and Business; UN Working Group on Arbitrary Detention, among others.

- Coordinate a national campaign, with the objective to raise awareness among political decision-makers and the general public, on all dimensions of the issue: public condemnation of land grabbing; visibility of conflicts and cases of violations of individual and collective rights; and visibility of systematic infringement of international conventions on human rights signed by the State.
- Coordinate available emergency, crisis or protection funds targeting human rights defenders at regional and global levels, including legal assistance and self-protection programs, to obtain a more efficient and effective coverage with wider geographic reach.

1.4.2. Regarding accountability

Any abuse perpetrated against human rights defenders must be evaluated and made public, exposing the people involved and without risking the safety of victims during the promotion of regional or global campaigns.

The incorporation of international resolutions in domestic politics should be promoted and monitored, particularly resolutions of cases and those related to Indigenous Peoples and land rights.

Information on land and territories dynamics must be generated and increased. It is also imperative to monitor: the effective reduction of conflicts with the Guatemalan Secretariat of Agrarian Affairs (SAA) and the Prosecutor's Office; concentration processes of natural resources; investments, domestic and international investors, and links in their investment chains. Information must be shared with the Business and Human Rights Resource Centre to inform the general public of the interactions between land, natural resources, accumulation and the violation of rights.

- Strengthen own accountability and performance standards in achieving own goals, as a positive practice to improve the relationship with society and, simultaneously, as powerful protection tool.
- The media should comply with the highest and ethical professional standards to provide independent information, based on real data and maintaining updated and accurate information on human rights defenders at national and international levels.
- Report the cases of rights violations and lack of democratic institutions, calling attention, if needed, of the general public.
- Finally, local populations must be informed and involved in their native languages, so to construct a development model arising from communities themselves.



*Everyone has the right to life,
liberty and security of person*

Article 3 of the Universal Declaration of Human Rights



The **INTERNATIONAL LAND COALITION** is a global alliance of 255 civil society and intergovernmental organizations, in more than 70 countries, working together to put people at the centre of land governance.



FRONT LINE DEFENDERS is an international human rights organization focused on the safety and protection of human rights defenders at risk



CIVICUS is a global alliance of individuals and civil society organizations dedicated to strengthening citizen action and civil society around the world. It has over 4000 members in 175 countries.