

REFERENCE: GH/fup-134

6 de abril de 2022

Excelencia:

En mi calidad de Relatora Especial para el Seguimiento de las Observaciones Finales del Comité de Derechos Humanos, tengo el honor de referirme al seguimiento de las recomendaciones contenidas en los párrafos 31, 37 y 39 de las observaciones finales sobre el informe periódico de Guatemala ([CCPR/C/GTM/CO/4](#)), aprobadas durante el 122º período de sesiones del Comité, del 12 de marzo de 2018 al 6 de abril de 2018.

El 8 de abril de 2020 y el 27 de enero de 2022, el Estado parte envió una respuesta de seguimiento al Comité. Durante el 134º período de sesiones (del 28 de febrero al 25 de marzo de 2022), el Comité evaluó la respuesta del Estado parte. La evaluación del Comité y la información adicional solicitada al Estado parte están reflejadas en el Addendum 2 ([CCPR/C/134/3/Add.2](#)) del Informe de seguimiento de las observaciones finales ([CCPR/C/134/3](#)). Por medio de la presente se adjunta, una copia de la sección pertinente del mencionado informe (versión avanzada no editada).

El Comité consideró que las recomendaciones seleccionadas para el procedimiento de seguimiento no han sido plenamente aplicadas y decidió solicitar información adicional acerca de su aplicación. Habida cuenta de que el Estado parte ha aceptado el procedimiento simplificado de presentación de informes, el Comité incluirá la información solicitada en la lista de cuestiones previa a la presentación del quinto informe periódico de Guatemala.

El Comité confía en poder continuar su diálogo constructivo con el Estado parte sobre la aplicación del Pacto.

Acepte, Excelencia, la expresión de mi más distinguida consideración.



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Evaluation of the information on follow-up to the concluding observations on Guatemala

Concluding observations (122nd session): [CCPR/C/GTM/CO/4](#), 28 March 2018

Follow-up paragraphs: 31, 37 and 39

Information received from State party: [CCPR/C/GTM/FCO/4, 8 April 2020](#) and [CCPR/C/GTM/FCO/4/Add.1, 27 January 2022](#)

Information received from stakeholders: Various CSOs with support of CCPR Centre (JS1) [30 November 2020](#) and [27 January 2022](#); [Asociación Ixoqib' MIRIAM \(MIRIAM\) 20 January 2022](#); [Bufete Juridico de Derechos Humanos \(BDH\), 25 January 2022](#)

Committee's evaluation: 31[C], 37[C] and 39[B] [C]

The text of the follow-up paragraphs, containing the Committee's recommendations, is not reproduced due to the word limit.¹

Paragraph 31: Judicial independence, autonomy of the public prosecution service and efforts to combat corruption²

Summary of information received from the State party

(a) The Constitution (Articles 205, 206 and 208) and the Judicial Service Act (Decree 41-99) guarantee independence and security of tenure for judges.

(b) Congress selects and appoints judges from a list, submitted by the respective Nominating Commission. This competitive selection process follows the procedure under the Judicial Service Act. For the Attorney-General and Head of the Public Prosecutor's Office, the Legislative Agreement 1.2018 stipulates that the President of the Republic appoints a candidate, chosen from six candidates presented by the Nominating Commission.

(c) The Supreme Court approved the creation of the Directorate of Institutional Security of the Judiciary to direct, guide, coordinate and evaluate all relevant institutions and judges, and to ensure the security of the infrastructure of the judiciary throughout the territory.

(d) Four bills have been presented to the Congress with the aim to reform the 2002 Law on preliminary misconduct proceedings.

(e) The International Commission against Impunity in Guatemala is no longer active as its mandate has expired and the relevant agreement with the United Nations has not been renewed. However, Guatemala has adopted a number of legislative and institutional measures, including the establishment, in 2020, of the Presidential Commission on Corruption to assist the executive branch in coordinating the Policy on Preventing and Combating Corruption and to establish corruption prevention mechanisms and bring legal proceedings to recover stolen public funds.

¹ [A/RES/68/268, para. 15.](#)

² [CCPR/C/GTM/CO/4](#), para. 31.

Summary of information received from stakeholders

(a) JS1 and BDH stated that Guatemala has not adopted reforms to ensure judicial independence, and that, on 8 November 2021, the Constitutional Court decided to suspend several articles of the Judicial Service Act, to the effect of weakening the power of the Judicial Service Council. JS1 indicated that the Attorney General's Office attempted to remove the immunity of four magistrates: Gloria Porras, Bonerge Mejía, Francisco de Mata Vela and Neftaly Aldana.

(b) JS1 and BDH noted a delay in judicial elections since 2019, owing to procedural flaws. JS1 claimed that the proliferation of private law schools, which can be represented in the Nominations Commissions, has distorted the role that was initially intended for representatives of academia.

(c) JS1 and BDH indicated that judicial officials, including Judge Erika Aifán, faced harassment, threats, reprisals and requests for their impeachment and removal of immunity without any State protection.

(d) JS1 stated that the scope of the law on preliminary misconduct proceedings had not been clarified, and tabled bills would further compromise the independence of the judiciary, including by allowing the Congress to remove judicial immunity.

(e) JS1 and BDH reported on attempts to undermine anti-corruption efforts, including the non-renewal of the mandate of the International Commission against Impunity, the declaration of its Commissioner as persona non grata and attacks against prosecutors of the Special Prosecutor's Office against Impunity, including prosecutor Juan Francisco Sandoval, without adequate State protection. JS1 noted that the Presidential Commission against Corruption operated under the control of the executive branch with no major investigation conducted.

Committee's evaluation

[C]: (a), (b), (c), (d) and (e)

The Committee regrets the lack of information on measures taken since the adoption of the previous concluding observations, reiterates its recommendation and requests information on the alleged threats, intimidation and attempts on the lives of judges and prosecutors and on the legal proceeding aiming to eliminate the judicial immunity of four magistrates: Gloria Porras, Bonerge Mejía, Francisco de Mata Vela and Neftaly Aldana.

The Committee regrets the lack of information provided by the State party on measures taken since the adoption of the previous concluding observations to ensure that the selection and appointment of magistrates, judges and prosecutors, as well as of the Attorney General and the Comptroller General, are based entirely on the use of objective, transparent criteria for the assessment of candidates' merits in terms of their qualifications, competence and integrity. The Committee reiterates its recommendation and requests information on: (a) the impact and application of the Judicial Service Act, particularly regarding the selection and appointment of magistrates, judges and prosecutors; (b) the alleged delays and undue interference in the elections of judges and magistrates; and (c) the role of representatives of academia in the Nominations Commissions.

The Committee notes the information on the creation of the Directorate of Institutional Security of the Judiciary, but regrets the lack of concrete information on measures taken to develop a protocol for the protection of judicial officials and persons involved in judicial proceedings, to strengthen the witness protection programme and to uphold the independence of judicial officials in their deliberations, determinations and work. It reiterates its recommendation.

The Committee notes the information on the four bills to amend the law on preliminary misconduct proceedings being presented to the Congress. It reiterates its recommendation.

The Committee regrets the non-renewal of the mandate of the International Commission against Impunity. It notes the adoption of various agreements and other measures and the establishment of the Presidential Commission on Corruption. It requests information on the impact of these legislative and institutional measures on fight against corruption, and on the alleged threats and intimidation against prosecutors of the Special Prosecutor’s Office against Impunity and the lack of available protection measures.

Paragraph 37: Freedom of expression, assembly and association³

Summary of information received from the State party

(a) Guatemala recognizes the importance of the work of human right defenders and began drafting a policy for their protection in September 2016. In 2019, the process continued with the active participation of State institutions and civil society organizations. The Presidential Commission for Peace and Human Rights held meetings with relevant institutions and strengthened technical capacities of officials from the Ministry of Interior, National Civil Police, Public Prosecutor’s Office, Social Communication Secretariat of the Presidency and Human Rights Ombudsman’s office on issues of freedom of expression and protection of journalists, with the assistance of the OHCHR.

(b) The Prosecution Section for Crimes Committed against Justice Operators and Trade Unionists in the Public Prosecutor's Office carries out its activities in accordance with the General Instruction 5-2018, which approved the Protocol for the Investigation of Crimes Committed against Human Rights Defenders containing criteria and tools for such investigation, and the Instruction 1-2015 for the investigation and effective criminal prosecution of crimes committed against trade unionists and members of workers' organisations and other defenders of trade union and labour rights. Forty staff were newly appointed to the Office.

(c) In November 2019, the Prosecutor's Office for Crimes against Journalists was created in Guatemala City. In investigating cases, it has considered complainants’ interests, held conciliation meetings and secured dignified reparations. The Public Prosecutor's Office coordinates its activities with the Human Rights Ombudsman's Office, the Association of Journalists of Guatemala, the National Civil Police, specifically with the Human Rights Activists Investigation Section, and the General Directorate of the National Civil Police (e.g. perimeter surveillance). It has also created a digital platform for filing complaints and, in March 2020, implemented the New Integrated Case Management Model, creating work teams to hear old and new cases.

(d) With regard to due process guarantees, Guatemala respects the function of the criminal process in observance of the rights and guarantees set forth in its Constitution, domestic legislation and international treaties.

(e) No additional information was provided, apart from that on strengthening the technical capabilities (see (a) above).

Summary of information received from stakeholders

(a) JS1 noted the lack of policy for the protection of human rights defenders, journalists and trade unionists and of implementation of the 2014 decision of the Inter-American Court of Human Rights. It also stated that, in 2021, the so-called NGO law was adopted, allowing for deregistration of NGOs and criminalization of members of organizations using international financing for activities that disturb public order.

(b) JS1 noted the poor implementation and even violations of protection measures for human rights defenders, such as those requested by the Inter-American Commission

³ [CCPR/C/GTM/CO/4](#), para. 37.

on Human Rights. It stated that harassment, attacks, murders and criminalization of human rights defenders, journalists and judicial officials continued and increased during the COVID-19 pandemic. JS1 claimed that the National Civil Police's unit for protecting human rights defenders did not have the requisite resources to provide adequate protection.

(c) JS1 reported on the lack of significant progress in terms of investigation, prosecution and redress in cases involving human rights defenders, noting the high dismissal and low indictment rates, and the persisting impunity. It also stated that the protocol for the investigation of crimes against human rights defenders, issued by the Public Prosecution Service in May 2018, was not sufficiently made known to its own staff and the district prosecution services.

(d) JS1 stated that criminal law continued to be used against human rights defenders, including indigenous leader Bernardo Caal Xol, without due process and with the use of excessive force and pretrial detention.

(e) JS1 noted the continued harassment, attacks, surveillance and criminalization of journalists, including those reporting about indigenous peoples, and particularly female journalists, without adequate State protection, particularly in the digital sphere. It claimed that the media legislation favoured the concentration of media ownership in a few hands, and initiatives to promote indigenous peoples' right of access to the media had been stalled by the Congress. It also noted the increased cases of murder of trade union members and leaders.

Committee's evaluation

[C]: (a), (b), (c), (d) and (e)

While the Committee welcomes the efforts made to draft a public policy on human rights defenders, it regrets the delay in its adoption and requires information on whether the policy covers journalists and trade unionists.

The Committee notes the information on efforts to provide existing agencies with necessary resources to improve analysis of attack and ensure they are investigated, but regrets the lack of information on the impact of these measures, including on the protocol for the investigation of crimes committed against human rights defenders issued by the Public Prosecution Service, and its implementation, and statistics on the number of investigations, convictions of perpetrators and victims receiving full redress. It reiterates its recommendation.

The Committee regrets the lack of detailed information on measures taken by the State party to ensure that due process guarantees are upheld in cases in which criminal charges are brought against human rights defenders. It reiterates its recommendation.

The Committee regrets the lack of information from the State party on measures to ensure that any restriction on the right to freedom of opinion and expression and the right to freedom of assembly and association fully meets the strict requirements set out in articles 19 (3), 21 and 22 (2) of the Covenant. It reiterates its recommendation.

Paragraph 39: Rights of indigenous peoples⁴

Summary of information received from the State party

(a) In 2019, the Ministry of Energy and Mining (MEM), through the Office of the Deputy Minister for Sustainable Development, undertook 18 consultation processes leading to agreements between companies applying for licences to mine for non-metallic minerals and the communities in the affected areas. Given the absence of a legal framework regulating consultation with indigenous peoples, the Ministry, through the same Office, in application of judgments on the conduct of consultations

handed down by the Constitutional Court, has established operational tools and guidelines for dialogue and consultation between project developers and the linguistic communities that reside in areas affected by their projects. Round tables have been set up to monitor and evaluate compliance with the agreements reached.

(b) On 10 December 2021, the first substantive agreement was signed on the consultation process according to the ILO Convention 169 with the Maya Q'eqchi' Indigenous People, for the mining extraction Fénix. The agreements will be monitored by a Follow-up Committee. The consultation process was carried out through organisations representing the indigenous peoples, who together with local leaders held community assemblies to ensure that the agreements and views of the indigenous peoples came from their community bases in the area of influence, in accordance with the Constitutional Court's amparo ruling.

Based on the above, taking as a reference the Consultation Methodology to carry out the Pre-Consultation and Consultation processes for the "Oxec" and "Oxec II" power plant projects, the MEM has established a current consultation methodology, which is used as a basis and support document for other energy and mining projects.

(c) The evictions are carried out legally, respecting all recognised guarantees, according to eviction protocols.

(d) Guatemala complies with the provisions of article 2 of the Law on Public Order, as well as with article 4 (3) of the Covenant.

(e) The Superintendence of Telecommunications is responsible for legally recognising the community radio broadcasting sector so that indigenous peoples can express themselves in their languages and promote their culture. Articles 61 and 62 of Decree 94-96, General Telecommunications Law, establish the procedure for the allocation of a radio frequency, and any amendment to this Law must be submitted to the Congress through a legislative initiative.

Summary of information received from stakeholders

(a) JS1 stated that, despite the Constitutional Court's several orders to conduct consultations with affected indigenous peoples, the MEM either failed to hold them or excluded real representatives of the indigenous peoples from the process in collusion with a mining company, as in the Fénix mining project in El Estor, Izabal. It noted that, in 2018, the MEM began pre-consultation processes and technical meetings with indigenous peoples to discuss the El Escobal mining project.

(b) JS1 noted that no legislation on consultations with indigenous peoples had been adopted, and two tabled bills were not in line with international standards and had not effectively consulted indigenous peoples.

(c) JS1 indicated that, with regard to forced evictions, insufficient prevention and mitigation measures had been taken, eviction orders were issued without prior notice or due process guarantees and in a violent manner, and the authorities resorted to the criminalization of usurpation and the state of siege to justify and carry out evictions. It also claimed that the Government defended the interests of private sectors in extractive projects to the detriment of indigenous peoples' rights.

(d) JS1 noted that more than twenty states of emergency imposed since January 2020, including during the COVID-19 pandemic, increased violence, persecution and criminalization of the indigenous peoples with impunity.

(e) JS1 noted the lack of progress in adopting legislation on indigenous community-based media, the continuing prosecution of community radio operators, and the failure to implement the judgement of the Inter-American Court of Human Rights dated 6 October 2021 ordering, inter alia, reparations for the indigenous peoples.

Committee's evaluation

[B]: (a) and (b)

The Committee welcomes the information provided by the State party on consultation processes carried out in 2019 and the adoption of operational tools and guidelines for the conduct of consultations and on the first substantive agreement on consultation process according to the ILO Convention 169 with the Maya Q'eqchi' Indigenous People, for the mining extraction Fénix in 2021. It requires information on: (a) the result of the round tables set up to monitor and evaluate compliance with the agreements reached; (b) any difficulties encountered in the application of the operational tools and guidelines for the conduct of consultations; (c) alleged attempts to exclude from consultations real representatives of the indigenous peoples, as in the case of the Fénix mining project in El Estor; (d) the pre-consultation processes and technical meetings with indigenous peoples to discuss the El Escobal mining project; and (e) the implementation of the 2021 agreement.

[C]: (c), (d) and (e)

The Committee regrets the lack of information on measures taken since the adoption of the previous concluding observations to ensure that forced evictions that are not in line with international standards are not carried out; that the application of states of emergency strictly adheres to the conditions set out in article 4 of the Covenant; and that indigenous peoples are able to express themselves in their own languages and promote their cultures on commercial and community radio stations on an equitable basis. It reiterates its recommendations.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

Next periodic report due: 2028 (country review in 2029, in accordance with the predictable review cycle).
