



International Covenant on Civil and Political Rights

Distr.: General
19 April 2012
English
Original: Spanish

Human Rights Committee

104th session

New York, 12–30 March 2012

Consideration of reports submitted by States parties under article 40 of the Covenant

Concluding observations of the Human Rights Committee

Guatemala

1. The Human Rights Committee considered the third periodic report of Guatemala (CCPR/C/GTM/3) at its 2874th and 2875th meetings (CCPR/C/SR.2874 and 2875), held on 19 and 20 March 2012. The Committee adopted the following concluding observations at its 2887th and 2888th meetings (CCPR/C/SR.2887 and 2888), held on 28 March 2012.

A. Introduction

2. The Committee welcomes the third periodic report of Guatemala and the information contained therein. It expresses its appreciation for the opportunity to renew its constructive dialogue with the delegation on the measures adopted by the State party during the reporting period to apply the provisions of the Covenant. The Committee thanks the State party for its written replies (CCPR/C/GTM/Q/3/Add.1) to the list of issues (CCPR/C/GTM/Q/3), which were supplemented by the oral replies provided by the delegation and additional information provided in writing.

B. Positive aspects

3. The Committee welcomes the ratification of the Rome Statute of the International Criminal Court in January 2012.

4. The Committee also welcomes:

(a) The adoption of the Prison System Regime Act and its regulations;

(b) The adoption of the Act against Femicide and Other Forms of Violence against Women (Decree No. 22-2008); and the approval of the Act against Sexual Violence, Exploitation and Trafficking in Persons (Decree No. 9-2009 of the Congress of the Republic of Guatemala);

(c) The signing of the bilateral cooperation agreement between the State of Guatemala and the International Commission against Impunity in Guatemala (CICIG) in order to assist and improve the investigation of human rights violations and organized crime.

C. Principal subjects of concern and recommendations

5. The Committee is concerned at the apparently limited level of awareness of the provisions of the Covenant among the population, legal officials and lawyers, as a result of which there are few cases in which the provisions of the Covenant have been invoked or applied by justice officials (art. 2).

The State party should guarantee full compliance, in the domestic legal system, with the obligations assumed under the Covenant. To that end, the State should raise awareness among judges, legal officials and the general public of the rights set out in the Covenant and their applicability under domestic law. In its next periodic report, the State party should include detailed information on implementation of the Covenant by the national courts.

6. The Committee welcomes the progress in the investigation, prosecution and punishment of genocide and other serious human rights violations committed during the internal armed conflict. Nevertheless, the Committee is concerned at the personal messages issued by high-level representatives of the Executive Power, who are questioning and undermining those efforts, and at the lack of an overall State policy to support the investigation and punishment initiatives that are under way. The Committee also regrets the persistent gaps in the legal authorities' institutional capacity to perform their duties adequately in all cases (arts. 2 and 14).

The State party should take a clear position in support of the processes initiated by the Public Prosecution Service and the courts in cases of genocide and other serious human rights violations committed during the internal armed conflict. The State party should also provide the legal and investigative institutions with all necessary human and material resources so that they can comply with their international human rights obligations.

7. The Committee is concerned that the main reparative measures adopted under the National Reparations Programme have been economic in nature, whereas insufficient attention has been given to psychosocial support, restoration of dignity and recovery of historical memory (art. 2).

The State party should ensure that the reparations measures adopted under the National Reparations Programme systematically include comprehensive care with cultural and linguistic relevance, with a focus on psychosocial support, restoration of dignity and recovery of historical memory. For that purpose, the State party should establish mechanisms for coordination and partnerships with the sectors specializing in that field, and provide the institutions that help to implement the reparations measures with specialized staff and the necessary resources to carry out their functions throughout the country.

8. The Committee remains concerned at the low level of representation of women in Congress and in decision-making posts in the public and private sectors. The Committee reiterates its concern at the very vulnerable situation and the high levels of racial, social and gender discrimination suffered by indigenous and Afro-descendent women, despite the formal recognition of their rights and the multiplicity of institutions and programmes designed to promote those rights (arts. 3, 25 and 26).

The State party should adopt and implement legislation on the equality of men and women, thus recognizing officially the special nature of discrimination against women and addressing it appropriately. The State party should develop additional policies to promote genuine gender equality that includes a specific perspective in favour of indigenous and Afro-descendent women, and strengthen Government programmes and institutions with mandates that include promotion of the rights of indigenous and Afro-descendent women and prevention of discrimination against them.

9. The Committee remains concerned at the conditions of workers in domestic labour, agriculture and the *maquila* industry and at violations of workers' human rights. In particular, the Committee is concerned by companies' discriminatory practices affecting women, for example, mandatory pregnancy tests at the time of recruitment and laying off pregnant women without respecting their labour rights (arts. 3 and 26).

The State party should establish effective control mechanisms for compliance with labour legislation and regulations for domestic, agricultural and *maquila* industry workers.

10. The Committee is concerned at the continuing de facto exclusion of indigenous and Afro-descendent workers in all areas, including land ownership, access to basic services, labour conditions, access to the formal economy and justice, participation in decision-making forums and State institutions and representation in the media and in the public debate. The Committee regrets the lack of appropriate criminalization of acts of discrimination and xenophobia suffered by indigenous and Afro-descendent persons, as a result of which the crime of discrimination applies only to acts that impede or hinder the exercise of a legally constituted right (arts. 3, 26 and 27).

The State party should continue its efforts to eradicate stereotypes and discrimination against indigenous and Afro-descendent persons by, inter alia, carrying out more education campaigns to promote tolerance and respect for diversity. The State party should adopt measures to promote equal opportunity and access to services through appropriate efforts to resolve existing inequalities. Lastly, the State party should amend article 202 bis of the Criminal Code to ensure the investigation of acts of racial discrimination, the prosecution and punishment of the perpetrators, and adequate compensation for the victims so that it is not necessary to establish that those acts impede or hinder the exercise of one or more rights in order to constitute an offence.

11. The Committee is concerned at the discrimination and violence suffered by lesbian, gay, bisexual, transgender and intersex persons and rejects all violations of their human rights on the basis of their sexual orientation or gender identity (arts. 3, 6, 7 and 26).

The State party should state clearly and officially that it does not tolerate any form of social stigmatization of homosexuality, bisexuality or transexuality, or harassment of or discrimination or violence against persons because of their sexual orientation or gender identity. The State party should ensure the investigation, prosecution and punishment of any act of discrimination or violence motivated by the victim's sexual orientation or gender identity.

12. The Committee is concerned at the increase in levels of violence in the State party, mainly as a result of drug trafficking, the proliferation of firearms and growing social inequality. The Committee regrets the increase in repressive measures, which leads to further stigmatization and limitation of the exercise of civil rights. In that connection, the Committee is concerned at the frequency with which the State party has declared states of emergency under the Public Order Act, when they should be considered as an exceptional measure (arts. 4 and 6).

The State party should adopt a comprehensive strategy that includes the prevention, control and appropriate punishment of violence, ensuring the full exercise of the rights of all persons as established in the Covenant. From that standpoint, the State party should promote preventive measures, focusing its security policies on the perspective of the human rights of the victims and the victimizers involved in criminal acts. It should also amend the 1965 Public Order Act so as to strictly limit the use of states of emergency, ensure systematic compliance with all the conditions set out in article 4 of the Covenant, and give priority to actions that have a greater impact on preventing violence.

13. The Committee notes with satisfaction the implementation of a de facto moratorium on the death penalty since the year 2000, as well as the commutations ordered by the Supreme Court in all cases of capital punishment. Nevertheless, the Committee expresses concern at the bills introduced in the past two years with a view to resuming executions and at the growing support for those bills (art. 6).

The State party should consider officially abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant.

14. The Committee is concerned at the proliferation of weapons and regrets the current legal framework governing arms and ammunition and its interpretation by the Constitutional Court, which has implemented it in such a way that the number of weapons per person has increased and proper controls on the bearing of arms and ammunition have been impeded. A very high percentage of homicides committed in the country are a result of the use of firearms (art. 6).

The State party should amend its legal framework and urgently implement a public policy that would establish stricter limits on the acquisition and bearing of arms and ammunition by individuals.

15. The Committee is concerned at the limitations on the functioning of the National Civil Police, in terms of both human and material resources. It is also concerned at the slow progress in implementation of the reform of the National Civil Police and the inadequacy of the budget allocated to that reform. The Committee is also concerned at the increase in the military presence and the growing number of joint patrols by the National Civil Police and the Army (arts. 6, 7, 9 and 14).

The State party should prioritize the adoption, financing and implementation of the reform of the National Civil Police and ensure that it has the human and material resources required for the effective exercise of its mandate. In that context, the State party should implement effective selection, training, internal monitoring and accountability mechanisms and provide opportunities for professional development and ongoing monitoring mechanisms as an incentive for full respect for human rights. The State party should ensure that any Army intervention in actions of the National Civil Police takes place without diversion of police budget resources, in accordance with clear and previously established protocols and for strictly defined durations and goals. The State should also take measures to prevent persons involved in human rights violations from performing functions in the public security forces.

16. The Committee regrets the growing delegation of citizens' security functions to private companies without adequate registration or control. The Committee notes the adoption of the Private Security Services Act and the establishment of the Private Security Services Department. Nevertheless, the Committee regrets that the Act contains inaccuracies and that the Department has not yet been provided with the necessary resources and institutional support for fulfilment of its mandate (arts. 6, 7 and 9).

The State party should ensure the registration and control of private security services by implementing Legislative Decree 52-2010, which regulates such services. In this context, the State party should provide the Private Security Services Department with the necessary resources for its functioning. It should also ensure the subordination of private to public security, and provide access to justice and effective reparation mechanisms for the victims of acts committed by private security companies. The State party should take measures to prevent persons involved in human rights violations from performing functions in private security forces.

17. The Committee is concerned that the local security boards originally established to prevent crime are carrying out State tasks relating to territorial control and the use of force and that, according to information received by the Committee, they commit abuses and violations (arts. 6, 7 and 9).

The State party should amend National Civil Police General Order 11-99, which created the local security boards, and clearly define the role of communities in crime prevention, so that all State security functions are excluded from their competency.

18. The Committee is concerned at the persistence of lynchings, in both rural and urban areas, and at the lack of impact of the State party's initiatives to prevent such offences (arts. 6, 7 and 14).

The State party should conduct information and education campaigns in schools and the media on the need to eliminate lynchings, regardless of the circumstances and causes. It should also continue the efforts to prevent, investigate, prosecute and punish lynchings.

19. The Committee welcomes the State party's efforts to increase awareness of acts of sexual and gender-based violence, in particular femicide, domestic violence and trafficking in persons, and to prevent and punish them. However, the Committee is concerned at the persistence of very high levels of violence against women. The Committee is also concerned at the frequent inadequacy of the investigation mechanisms used by law enforcement officials and forensic doctors and the small number of treatment centres, which are the only support available to women survivors of violence (arts. 6, 7, 8, 14 and 26).

The State party should continue its efforts to prevent sexual and gender-based violence and to encourage the victims to report such acts. The State party should ensure the inclusion of the issue of protection of women against violence in school curricula. It should also strengthen and institutionalize a training course with a gender perspective, which should be mandatory for all legal and law enforcement officials and health service personnel, in order to ensure that they are able to respond effectively to all forms of violence against women. Specific attention should be given to the collection of forensic evidence, treatment of victims, coordination between the authorities responsible for investigation, punishment and victim protection. In addition, the State party should ensure that all victims of sexual or gender-based violence have access to treatment centres or shelters.

20. The Committee expresses concern at the criminalization of abortion, resulting from rape or incest, which forces pregnant women to seek clandestine abortion services that endanger their health and their lives. The Committee is also concerned at the continuing high levels of adolescent pregnancy and maternal mortality, despite the State party's efforts to combat them (arts. 3 and 6).

The State party should, pursuant to article 3 of its Constitution, include additional exceptions to the prohibition of abortion so as to save women from having to resort to clandestine abortion services that endanger their lives or health in cases such as

pregnancy resulting from rape or incest. The State party should ensure that reproductive health services are accessible for all women and adolescents in all regions of the country. In addition, the State party should increase its education and awareness-raising programmes at the formal (schools and colleges) and informal (mass media) levels on the importance of contraceptive use and on reproductive health rights.

21. The Committee is concerned that, despite the years that have passed since the end of the armed conflict, thousands of families of disappeared persons still do not know the whereabouts of their loved ones. The Committee regrets that no national commission of inquiry has yet been established, as set out in draft act No. 3590, and that there is no single centralized registry of disappeared persons. However, the Committee takes note of the State party's commitment, during the public meeting on consideration of the report, to include the adoption of the aforementioned Act in the legislative agenda of Congress (arts. 6 and 14).

In order to promote and facilitate the mechanisms for justice, truth and reparation for victims of forced disappearances committed during the armed conflict, the State party should adopt draft act No. 3590 on the establishment of a national commission to investigate the whereabouts of disappeared persons, provide it with the necessary human and material resources and establish a single centralized registry of disappeared persons.

22. The Committee is concerned at the very high levels of violence against and attacks on human rights defenders. Although it welcomes the restoration of the Unit for the Analysis of Attacks against Human Rights Defenders in January 2012, the Committee regrets that the Unit has still not been able to begin its activities. The Committee also regrets the lack of sufficient protection mechanisms for human rights defenders, as well as recent campaigns to undermine the initiatives of civil society organizations (arts. 6 and 7).

The State party should publicly acknowledge the contribution of human rights defenders to justice and democracy. It should also take immediate measures to provide effective protection for defenders whose lives and security are endangered by their professional activities and also to support the immediate, effective and impartial investigation of threats, attacks and assassinations of human rights defenders, and to prosecute and punish the perpetrators. The State party should provide the Unit for the Analysis of Attacks against Human Rights Defenders with the human and material resources that it needs to carry out its functions and to ensure the participation at the highest level of State institutions with decision-making power.

23. The Committee reiterates its concern at the fact that the State party has not yet brought the definition of the crime of torture in the Criminal Code into line with international standards. The Committee is also concerned that the police and the judiciary do not have reliable records of cases of torture (art. 7).

The State party should review its legislation, in particular articles 201 bis and 425 of the Criminal Code, in order to define the crime of torture in accordance with international standards. The State party should ensure that any alleged act of torture or any instance of cruel, inhuman or degrading treatment is duly recorded, prosecuted and punished in a manner proportionate to its severity.

24. The Committee is concerned at the high levels of overcrowding and the poor conditions prevailing in detention centres, as recognized by the State party, and at the high incarceration rate. In addition, the Committee is concerned at reports that minors are detained together with adults and that detained women are frequently the victims of sexual and gender-based violence at the time of arrest, during transfer or during the period of imprisonment (arts. 3 and 10).

The State party should increase its efforts to improve the conditions of detained persons, in accordance with the Standard Minimum Rules for the Treatment of Prisoners. It should address the issues of overcrowding and the segregation of minors and of female and male prisoners as a matter of priority. The State party should also adopt specific measures to protect the rights of detained women, especially during transfers.

25. The Committee is concerned that the reforms of the justice system needed to ensure that the significant progress achieved in criminal investigation and prosecution of high-profile cases becomes an institutional, permanent and sustained mechanism have not yet been made. The intimidation, threats and attacks suffered by some victims, witnesses and justice officials during proceedings related to past cases or to organized crime are a continuing obstacle to compliance with the right to truth and justice (art. 14).

The State party should give priority to the discussion and approval of legal reforms to the professional career system of the judiciary and in the Public Prosecution Service, in order to eliminate any structural obstacle that may exist to the independence and impartiality of the courts. The State party should also continue to support the CICIG in its efforts to improve criminal investigations, prosecutions and the implementation of legislation relating to public safety.

26. The Committee is concerned at the existing limitations on access to justice owing to the inadequate geographical coverage of the judicial system and to the prevalence of a monocultural vision within that system. The Committee also regrets the lack of interpreters to meet the needs of indigenous persons (arts. 14 and 27).

The State party should take the necessary measures to facilitate the access of all persons to justice in their own language by adopting effective policies to recruit bilingual officials, creating the necessary number of interpreter posts, providing adequate training to professionals so that they can discharge their functions and constantly evaluating the quality of service in all regions of the country. In addition, the State party should implement specific training programmes for legal officials responsible for representing the judiciary in indigenous areas.

27. While recognizing the measures taken by the State party, such as the 2009–2012 Programme for the Development of Indigenous Peoples and the constitutional reforms of 2001 designed to ensure respect for indigenous rights, the Committee regrets that indigenous peoples are not effectively consulted by the State party during decision-making processes that affect their rights (arts. 2, 25 and 27).

The State party should comply with its international commitment to carry out prior and informed consultations with indigenous peoples for all decisions relating to projects that affect their rights, in accordance with article 27 of the Covenant. The State party should also recognize and take due account of all decisions taken by indigenous peoples during such consultations.

28. The State party should widely disseminate the Covenant, the text of the third periodic report, the written replies it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations in order to raise the awareness of the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as of the general public. The Committee also suggests that the report and the concluding observations be translated into the official languages of the State party. The Committee also requests the State party, when preparing its fourth periodic report, to consult extensively with civil society and non-governmental organizations.

29. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations in paragraphs 7, 21 and 22 of the present concluding observations.

30. The Committee requests the State party to provide in its next periodic report, due by 30 March 2016, specific, up-to-date information on all the recommendations and on its compliance with the Covenant as a whole.
