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Summary record of the 44th meeting*

Held at the Palais Wilson, Geneva, on Tuesday, 4 October 2022, at 3 p.m.

Chair: Mr. Abdel-Moneim

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* No summary records were issued for the 43rd meeting.

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The meeting was called to order at 3.05 p.m.

Consideration of reports *(continued)*

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant *(continued)*

Fourth periodic report of Guatemala (continued) (E/C.12/GTM/4; E/C.12/GTM/Q/4; E/C.12/GTM/RQ/4)

1. *At the invitation of the Chair, the delegation of Guatemala joined the meeting.*
2. **The Chair** invited the delegation to reply to the questions raised by Committee members at the previous meeting.
3. **A representative of Guatemala** said that Congress had made a commitment to guarantee the economic, social and cultural rights of the Guatemalan people despite the serious challenges posed by the coronavirus disease (COVID-19) pandemic. Priorities for public spending had been established and programmes aimed at mitigating the effects of the pandemic had been adopted. They included a family cash transfer programme, an employment protection programme, a working capital loan programme, the electricity rate subsidy programme and a programme to support micro-, small and medium-sized enterprises. The Hospital and Health Centre Remodelling and Infrastructure Programme had included the establishment of COVID-19 testing laboratories across the country's hospital network. Several decrees had been adopted in 2022 to stimulate the country's economic recovery and mitigate the impacts of the COVID-19 pandemic, storms Eta and Iota and the Russia-Ukraine war. At least 17 of the legislative initiatives that had been presented in Congress in September 2022 were aimed at prioritizing the sustainable and comprehensive development of the Guatemalan people. An additional \$1.6 billion had been allocated to economic recovery programmes.
4. With regard to abortion, the preamble of the Constitution affirmed the primacy of the human person as the subject and purpose of the social order and recognized the family as the primary and fundamental source of the spiritual and moral values of society. Article 1 of the Constitution stipulated that the State of Guatemala was organized to protect the person and the family and that its supreme goal was the realization of the public good, while article 2 established the duty of the State to guarantee to the country's inhabitants life, liberty, justice, security, peace and the integral development of the person. Article 3 provided that the State guaranteed and protected human life from the time of conception. In order to comply with those constitutional duties, Congress was justified in prescribing measures that were aligned with the country's ideological principles. Under Guatemalan law, no legislation could be enacted that was contrary to the Constitution. In addition, article 4 (1) of the American Convention on Human Rights established that "every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life."
5. **A representative of Guatemala** said that the reforms introduced under Decree No. 4-2020 to the Act on Non-Governmental Organizations for Development and the Civil Code were intended to enhance the country's development by establishing mechanisms to ensure the transparency of the actions of national and international non-governmental organizations (NGOs). They did not involve any restriction on the rights to freedom of association or of expression and did not disproportionately hinder Guatemalans' ability to defend human rights or the activities of NGOs. The Constitutional Court had already dealt with a number of constitutional challenges to the decree in question. While further proceedings were pending, the relevant articles of the Decree had been suspended. As at 4 October 2022, a total of 236 NGOs had complied with the requirement to update their information, 66 NGOs had registered under the amended legislation and 24 were in the process of being registered. Of the 1,993 organizations currently registered, 88 per cent had not updated their information, which meant that it was not known whether they were engaged in any operational activities. The objective was simply to establish which organizations were operating in the country. A civil court had issued a provisional *amparo* decision permitting NGOs to update their information for an indefinite period.

6. **A representative of Guatemala** said that substantial progress had been made in combating corruption thanks to the concrete action taken by the authorities responsible for the prevention, investigation and prosecution of acts of corruption.
7. **A representative of Guatemala** said that various State institutions, in particular the Office of the Comptroller-General of Accounts, had established mechanisms and regulations for preventing and reporting acts of corruption. Congress had also enacted legislation designed to strengthen transparency and promote the correct use of public funds. The Presidential Commission against Corruption published quarterly reports. The Ministry of the Interior had adopted a policy for the prevention of corruption in 2022.
8. **A representative of Guatemala** said that, since the agreement between the United Nations and the Government of Guatemala concerning the provision of support to the Public Prosecution Service by the International Commission against Impunity in Guatemala had ended in 2019, the Office of the Special Prosecutor against Impunity had been strengthened by being converted to a Section Prosecutor's Office. The number of staff assigned to the Office had increased from 80 to 140 following the creation of a technical support unit. There were now 10 Guatemalan investigators, whereas previously there had only been international investigators. Those changes had yielded positive results. For example, in the 12 years that the International Commission had been providing support, the Office of the Special Prosecutor against Impunity had prosecuted an average of 10 cases per year, whereas since May 2018 that figure had risen to 23 cases per year. Similarly, while an average of 27 persons had been convicted every year during the 12 years of the Commission's existence, that figure had risen to an average of 85 per year since May 2018. The National Civil Police had conducted 535 raids since May 2018, resulting in the arrest of 555 individuals, of whom 386 had been prosecuted and 330 convicted.
9. **A representative of Guatemala** said that the independence of the judiciary was considered a fundamental guarantee of a fair trial. Consequently, judges must demonstrate judicial independence both individually and institutionally. Independence was not a privilege or prerogative but a responsibility, as established in the Bangalore Principles of Judicial Conduct and the Basic Principles on the Independence of the Judiciary. With regard to the female judge who had not been sworn into the Constitutional Court, it should be noted that, under the Constitution, the five judges of the Constitutional Court were selected by five entities, of which three represented the three branches of Government; those appointments could not be challenged. The appointments of the other two entities, however, could be appealed, which was what had happened in the case of the judge in question. The judge who had heard the appeal had issued a decision that was now final, concluding that the appointment had not complied with all legal requirements. Failing to respect that decision would in itself be an attack on the independence of the judiciary.
10. **A representative of Guatemala** said that it was important to make a distinction between cases brought against human rights defenders, trade unionists and members of vulnerable groups and those brought against prosecutors and judges. The former were the result of complaints lodged by citizens against fellow citizens, whereas the latter were the result of complaints by citizens against public officials. The right of individuals to lodge complaints could not be restricted in any way. The Public Prosecution Service had endeavoured to ensure coverage throughout the entire national territory so as to encourage the reporting of crimes and guarantee access to justice for all. All complaints made against judges and prosecutors must be investigated. Under Guatemalan law, judges accused of misconduct had an inalienable right to a preliminary hearing, which meant that they could not be arrested or subjected to criminal proceedings without a judicial body first establishing that the complaint had not been lodged for spurious, political or illegitimate reasons. If that was found not to be the case, the Public Prosecution Service could initiate criminal proceedings with all procedural safeguards guaranteed. The same rules applied to public prosecutors. There were 1,376 judges and 4,036 public prosecutors in Guatemala.
11. **A representative of Guatemala** said that the Ministry of the Interior organized awareness-raising workshops and training in connection with the legal provisions on the obligation of the National Civil Police not to discriminate on the grounds of race, religion, sex, age, colour, language, nationality, economic status, birth or any other condition or opinion. Training had been provided to more than 85,000 persons, including 37,000 police officers, on the subject of gender-based violence. A range of materials on the prevention of domestic violence and violence against women and other vulnerable groups had also been

distributed. Other measures taken in that area included the development of an indicator of violence in all forms against women and girls and a territorial priority index.

12. Different units in the Ministry of the Interior organized regular workshops on specific at-risk population groups, including lesbian, gay, bisexual, transgender, queer and intersex persons. With the support of a number of foreign embassies, a series of protocols had been developed on violence against women, domestic violence and violence against vulnerable communities. The Ministry of the Interior's plan of action for vulnerable population groups was in the process of being reviewed to establish the technical and budgetary criteria for its implementation. The Ministry had recommended a series of security measures to be taken to protect human rights defenders who felt threatened. Emergency hotlines had been set up to allow them to report threats. Protection measures had also been put in place for trade unionists.

13. **A representative of Guatemala** said that, despite the challenges posed by the pandemic, the National Tripartite Commission on Labour Relations and Trade Union Freedom had managed to maintain an active tripartite dialogue on the application of its road map, as had been recognized by a high-level mission of the International Labour Organization (ILO). The three parties to the dialogue agreed that various aspects of the road map would require new initiatives to ensure its full implementation.

14. **A representative of Guatemala** said that all acts of violence and threats against trade union leaders and members were promptly investigated. The Office of the Public Prosecutor for Crimes against Justice Officials and Trade Unionists had been established in 2019. The Office was not only dealing with new complaints as they were submitted but was also clearing the backlog of cases. For example, so far in 2022, 629 complaints had been received while 1,210 cases had been legally resolved.

15. **A representative of Guatemala** said that the National Tripartite Commission's road map addressed the issue of reinstatements. A total of 215 workers had been reinstated in 2020, 727 in 2021, and 688 from January to August 2022. The number of labour court judges had been increased, and a special court had been established to rule on cases involving public and private entities that had ignored court orders to reinstate workers. An electronic notification system had been introduced to reduce case processing times.

16. **A representative of Guatemala** said that the Government had developed evidence-based, cost-effective strategies for tackling malnutrition in the country. The number of cases identified by the Ministry of Health and Social Welfare had fallen by 6.8 per cent in the past year, while the number of children aged under 5 years identified as suffering from chronic malnutrition had fallen from 107 to 84.8 per 10,000 inhabitants between 2020 and 2021. As part of the Great National Crusade for Nutrition, actions taken to prevent chronic malnutrition in children included the provision of vitamin and iron supplements and prenatal care to mothers and the promotion of exclusive breastfeeding in the first six months of life. In addition, as part of a programme implemented jointly with the World Food Programme, the Government provided fortified foods to all children aged 6 months to 2 years, or up to 5 years for children suffering from chronic malnutrition. The programme had benefited around 712,000 children in 2021 and 270,000 children so far in 2022. Drawing on lessons learned during the COVID-19 pandemic, the Government had launched mobile health units in those areas where chronic malnutrition was most prevalent and set aside funding of 50 million quetzales for their long-term operation. Such initiatives had contributed to reducing child mortality from 21.4 to 14.9 per 10,000 inhabitants between 2006 and 2020. That rate was expected to fall further to 11.6 per 10,000 inhabitants for 2022.

17. To further broaden access to health care, particularly in rural areas, the Government had compiled a list of facilities, including around 2,800 community centres, throughout the country where health-care services could be provided. It had drawn up plans for the construction of a number of new hospitals and had repurposed temporary facilities established during the COVID-19 pandemic. For example, one such facility had been converted into a maternity hospital. Municipalities and community councils for urban and rural development were consulted on the construction of new facilities.

18. **A representative of Guatemala** said that water catchment areas were protected under the Constitution and the Act on Environmental Protection and Improvement (Decree 68-1986). The Government had established inter-institutional technical committees and put in place tailored management systems to protect water resources. A water quality laboratory

had been established to measure the physical, chemical and microbiological properties of wastewater discharge against benchmark values.

19. Under the Guatemala Emissions Reduction Programme, funded by the World Bank Group, incentive payments to encourage the reduction of deforestation and land degradation, and hence carbon emissions, totalling \$52.5 million would be distributed transparently among stakeholders, including indigenous persons. Concessions granted to local communities for the sustainable management of forests in the Maya Biosphere Reserve would generate over 7,500 direct jobs. In addition, under the Resilient Livelihoods of Vulnerable Smallholder Farmers in the Mayan Landscapes and the Dry Corridor of Guatemala (RELIVE) project, funded by the Green Climate Fund in the amount of \$66.7 million, direct technical assistance would be provided to some 116,000 farmers, most of whom were members of indigenous peoples and over a third of whom were women. The project was expected to indirectly benefit a further 500,000 persons.

20. **A representative of Guatemala** said that the Guatemalan Social Security Institute was taking steps to broaden social security coverage in line with the growth of businesses. Around 200,000 more formal sector employees had social security coverage in June 2022 than in July 2020, owing in part to the economic recovery from the COVID-19 pandemic and in part to the introduction of new schemes for business owners, entrepreneurs and sole traders. The Institute had recently approved a further scheme for the coverage of employers with only one employee. Domestic workers could obtain maternity and accident coverage at a quarterly cost of 102 quetzales to the employee and a further 224 quetzales to the employer – based on the minimum wage for non-agricultural work. Over 500 domestic workers had joined the scheme and 34 of them had received benefits. The scheme currently covered only Guatemala City and its municipalities but would then be rolled out to the rest of country. Agricultural workers could obtain coverage from the outset of their employment, without having made prior contributions. As of July 2022, the Institute provided coverage to over 6,000 workers on palm oil farms. The Institute had recently built seven new hospitals, providing an additional 3,000 beds for affiliates of the system. Its mobile health-care units provided a further 200 beds. The number of affiliates to the Institute's programmes had risen from 3.3 million in 2019 to over 3.5 million in 2021.

21. **A representative of Guatemala** said that the family cash transfer programme launched by the Ministry of Social Development to support the most vulnerable members of society during the COVID-19 pandemic had benefited around 572,000 persons in remote areas whose homes had no electricity. In 2020, in total, the cash transfer programmes had benefited more than 2.6 million persons throughout the country, at a cost to the Government of over 6 billion quetzales. In devising them, the Government had striven to reach those persons who were not eligible for support under any other specific social programme. It had taken prompt action to determine and meet beneficiaries' needs in the areas of health and education.

22. **Mr. Uprimny** (Country Task Force) said that a number of questions, including those concerning the outcome of judicial cases involving violence against women and children, health expenditure, the child mortality rate, access to water, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement) and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, remained unanswered. He hoped that the Committee would receive further information on those matters from the delegation in writing.

23. He would be grateful for a reply at the current meeting to his earlier question regarding the separation of powers, the independence of the judiciary and the refusal of Congress to approve the re-election of Gloria Porras to the Constitutional Court. Lastly, he wished to point out that the criminalization of abortion in all circumstances was not consonant with the Covenant, as explained in the Committee's general comment No. 22 (2016) on the right to sexual and reproductive health. The State party's argument that its total criminalization of abortion was justified by the provisions of the Guatemalan Constitution that provided for the protection of the right to life did not hold up in the light of international law and comparative constitutional law.

24. **Mr. Windfuhr** said that he would be interested to learn what measures the Government had taken in follow-up to the recent recommendations of the ILO Committee of

Experts on the Application of Conventions and Recommendations with regard to trade union rights and collective bargaining in Guatemala. He wished to know whether the Government was working on any initiatives to promote social dialogue between employers, trade unions and workers with a view to improving labour relations in all sectors.

25. **Mr. Nonthasoot** said that he would welcome information on the action that the Government had taken in follow-up to the recommendations of the Inter-American Commission of Human Rights in relation to the case of the Mayan Q'eqchi' indigenous community of Agua Caliente, which had been referred to the Inter-American Court of Human Rights. An update on the status of the case would also be welcome. He wondered whether the Government had considered developing a holistic action plan on business and human rights that addressed the nexus between the rights of indigenous peoples, labour rights and environmental rights.

26. **The Chair** said that he wished to encourage the State party to reflect on how it might reduce income disparities among its population and protect lower- and middle-income households from the negative effects of those disparities on their enjoyment of the right to an adequate standard of living in accordance with article 11 of the Covenant.

27. **Mr. Mancisidor de la Fuente** (Country Rapporteur) said that it would be useful to receive detailed information on the percentage of the population that was either partially or fully vaccinated against COVID-19. In that connection, he would be interested to hear more about the obstacles faced by the State party in its roll-out of the COVID-19 vaccine; in particular, he wondered whether the State had had difficulty procuring doses of the vaccine on the international market or had faced challenges in conserving and distributing the vaccine within the country.

28. He would be grateful for up-to-date figures on the percentage of the annual State budget allocated to education for the current year and each previous year in the reporting period. More information on the steps taken to tackle the negative impact of the COVID-19 pandemic on children who had been unable to participate in distance learning because of their lack of access to the Internet would be welcome, as would information on how the State party planned to guarantee access to information and communication technologies and the Internet for all students in the future.

29. It would be useful to receive information on sexual and reproductive health education; in particular, he wished to know whether education was provided on the prevention of early and unwanted pregnancy and whether sexual and reproductive health classes were in any way undermined by traditional attitudes towards such issues. He also wished to know whether mechanisms were in place to ensure that pregnant teenagers were able to remain in education.

30. In the light of the ruling of the Inter-American Court of Human Rights in the case of the *Maya Kaqchikel indigenous peoples of Sumpango et al. v. Guatemala*, in which the Court had found the State responsible for the violation of the rights of various indigenous communities on the ground that it effectively prevented them from legally operating community radio stations, he wished to know what steps were being taken to ensure that all indigenous and campesino communities were able to exercise their rights to freedom of expression and to participation in cultural life.

The meeting was suspended at 4.45 p.m. and resumed at 5.05 p.m.

31. **A representative of Guatemala** said that, as at 29 September 2022, the Ministry of Health had registered the administration of around 18 million doses of COVID-19 vaccine, of which just under 9 million were first doses and just under 7 million were second doses. The remainder were booster shots. The Government's vaccination campaign had been undermined not only by supply shortages, but also by widespread rejection of the vaccine among the population. In 2021, a general survey on vaccination status had been carried out: 30 per cent of respondents had reported that they were unvaccinated and had no intention of receiving the vaccine. The Ministry of Health and the Pan-American Health Organization had carried out an ethnographical survey in 26 of the 29 national health districts, the results of which had revealed that 68.2 per cent of male respondents and 68.4 per cent of female respondents had no intention of receiving the COVID-19 vaccine, and that 64 per cent of respondents between the ages of 18–34 years, 68 per cent of respondents between the ages of 35–49 years and 70 per cent of respondents over the age of 50 years felt the same way. Rejection of the vaccine was even higher among indigenous groups. A number of mobile

health teams that had been dispatched to administer the vaccine had been the target of violent attacks and some health professionals had even been kidnapped. In order to promote uptake of the vaccine, it was now offered as part of a comprehensive package of health services.

32. **A representative of Guatemala** said that, in follow-up to the recommendations of the Inter-American Commission on Human Rights in relation to the case of the Mayan Q'eqchi' indigenous community of Agua Caliente, in December 2021, the Government had organized consultations with that community and 52 other communities whose territories were in the zone of the influence of the mining project in question. Following *amparo* proceedings brought before the national courts, the territorial scope of the mining project had been greatly reduced and, as a result, the project no longer overlapped with the territory of the Mayan Q'eqchi' community. Moreover, the community had also been granted official titles to its land. That information had been presented to the Inter-American Court of Human Rights in March 2022. The Court's final decision was still pending.

33. **Mr. Contreras Escobar** (Guatemala) said that the Presidential Commission for Peace and Human Rights was receiving technical assistance from the Office of the United Nations High Commissioner for Human Rights in Guatemala in the preparation of an action plan on business and human rights that would meet all relevant international standards. The Government had recently participated in a regional forum on business and human rights, where it had had the opportunity to exchange experiences with other Latin American countries.

34. Members of the Commission had recently had the opportunity to compare experiences with other Latin American countries at a regional forum on business and human rights in Colombia.

35. The Commission was currently conducting a nationwide analysis of the State's institutional structure and also of the kind of contributions the business sector and civil society might be able to make to its work. Using the data collected, a baseline could be set to help in implementing a national action plan.

36. **A representative of Guatemala**, referring to the question of trade union rights, said that the number of reinstatements had more than doubled in 2020–2021 and more were likely to follow in 2022. A special tribunal had been established to provide a remedy in criminal law for cases where employers, in either the private or the public sector, failed to comply with requirements for reinstatement or the provision of other benefits. The hope was, however, that criminal proceedings would not be necessary. In the context of ongoing efforts to rebuild confidence between the partners, the Ministry of the Interior had reactivated its trade union committee, which was responsible, among other things, for looking into attacks on trade unionists. In addition, the General Labour Inspectorate had set up a number of committees in order to reduce conflict by means of dialogue rather than resorting to legal proceedings, with a success rate thus far of 20 per cent, which it was hoped would improve. Overall, the focus was on mediation of conflicts and outreach to the community.

37. **A representative of Guatemala** said that there were 10 judges on the Constitutional Court bench. Under the *Amparo*, Habeas Corpus and Constitutionality Act, appointments to the bench made by the Supreme Court, the plenary of Congress and the President of the Republic in the Council of Ministers could not be challenged. The appointments made by the Higher University Council of the University of San Carlos and the Guatemalan Bar Association could be challenged.

38. The State had complied with its responsibilities under international agreements such as the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women to ensure access to justice for women survivors of violence. It had passed legislation such as the Act on Femicide and Other Forms of Violence against Women and, in 2020, notwithstanding the pandemic, had pursued over 5,000 cases in the courts, giving rise to nearly 25,000 hearings, more than 1,500 convictions and 1,800 alternative resolutions. Thus far in 2022, over 6,000 cases had been brought, giving rise to over 40,000 hearings, nearly 2,500 convictions and over 4,000 alternative resolutions.

39. **A representative of Guatemala** said that, under Government Order No. 239-2020, a special programme had been created to ensure proper care for children aged 0–4 years, their families, pregnant women and breastfeeding mothers. Comprehensive early development

programmes were available through the community centres targeted by the Great National Crusade for Nutrition and provided a flexible alternative method for narrowing equity gaps and reducing discrimination. Various ministries contributed to the strategy, which not only guaranteed success when the children joined the school system but, above all, supported mothers in caring for their children during early childhood.

40. The Ministry of Education provided comprehensive sex education as part of the national curriculum. The syllabus covered male and female reproductive anatomy and the care of the body and organs, the function of the male and female hormones, male and female sexuality and reproduction, relationships between men and women and responsible motherhood and fatherhood.

41. **A representative of Guatemala** said that his country's sex education programme had had an impact on the prevention of sexual harassment.

42. Children were protected from violence under the National Education Strategy for Peaceful Coexistence and Violence Prevention and by various protocols to enable the detection and referral of cases. All State officials and employees who worked with or had contact with students were required to have a certificate showing that their names did not appear in the national sex offenders register; disciplinary proceedings could be taken where necessary and could result in dismissal or criminal prosecution.

43. School classes in Guatemala had not been interrupted during the pandemic. The Ministry of Education had developed an emergency curriculum for learning at home through radio, television and computer, and had drawn up self-teaching guides focusing on Spanish and other national languages, communication and mathematics. The Government had invested in the necessary technological equipment for over half a million primary schoolchildren and more than 13,000 teachers, with solar panels being installed in rural communities lacking access to electricity. In that way, the digital divide had begun to narrow and the population was acquiring alternative means to embark on or continue their studies; 147 virtual classrooms were planned across the country, a major investment that would benefit more than 150,000 students within and outside the school system.

44. In general, Guatemala was not lagging behind in terms of education. The education budget had stood at around 3 per cent of GDP in 2019 and 2020 and around 2.9 per cent of GDP in 2021 and 2022.

45. **A representative of Guatemala** said that, under the Ministry of Social Development's social survey of households, the Government would for the first time have reliable data on the most disadvantaged households in the country. The pilot project would be completed within the next three months and, on the basis of the information collected, it would be possible to strengthen programmes such as the cash transfers for health and education, to further expand the social canteen project – there had been only 7 when the current Government had taken office; there were now 66 – and to reach out to communities and municipalities in the remotest areas of the country.

46. **A representative of Guatemala**, after having provided some statistics on the number of prosecutions brought and persons convicted in cases of violence against women or children between 2017 and 2022, said that full details would be submitted to the Committee in writing in the next 48 hours.

47. **Mr. Mancisidor de la Fuente** said that he commended the State party's delegation on its constructive approach to the dialogue with the Committee. He nevertheless found it regrettable that several questions, notably those on the school dropout rate and early pregnancies, remained unanswered.

48. **Mr. Contreras Escobar** (Guatemala) said that, despite the difficulties it faced in ensuring the conditions for economic, social and cultural rights as a result of the pandemic, climate change and the pressure historically exerted on it owing to its geopolitical situation, Guatemala had demonstrated its resilience and its determination.

49. With regard to the low tax revenues mentioned by Committee members, he wished to point out that there had been no need to introduce new taxes; the country had achieved record growth by means of transparent, effective use of its resources and by inspiring trust and confidence in its administration. Nevertheless, his delegation would submit information on the question of tax revenue in writing, as requested by the Committee.

The meeting rose at 6 p.m.