



Economic and Social Council

Distr.: General
9 November 2020
English
Original: Spanish
English, French and Spanish only

Committee on Economic, Social and Cultural Rights

List of issues in relation to the fourth periodic report of Guatemala*

A. General information

1. Please provide information on the impact that the state of public emergency declared in response to the coronavirus disease (COVID-19) pandemic has had on the enjoyment of economic, social and cultural rights. In particular, please describe the impact, if any, of the state of siege declared in five municipalities under Government Decree No. 13-2020.
2. In the light of the adoption of Government Order No. 99-2020, please provide updated information on the functions of the mechanism responsible for monitoring the State party's compliance with its international obligations, especially those arising from the Covenant, in the area of economic, social and cultural rights.
3. Taking into account the information provided by the State party in paragraphs 8 to 18 of its report to the Human Rights Committee on follow-up to the concluding observations on its fourth periodic report to that Committee (CCPR/C/GTM/FCO/4), please provide information on the measures taken to protect defenders of economic, social and cultural rights from all forms of reprisal, including acts of violence, harassment, threats and attacks on their lives and personal integrity, and on the impact of those measures. Please also provide information on the measures taken to prevent the offence of trespass from being used as a means of harassing human rights defenders. Please state how many complaints have been received, how many cases have been investigated and prosecuted and how many convictions have been handed down during the reporting period, and give details of the remedies provided in cases involving acquittals.
4. Please provide information on measures aimed at adapting to climate change and mitigating its adverse effects on the enjoyment of economic, social and cultural rights, especially for disadvantaged groups, in particular in view of the K'atun "Our Guatemala 2032" National Development Plan. Please indicate how the State party reconciles its energy production sector, its policy on extractive industries and its main monoculture export crops, namely bananas, sugar, coffee, African palm oil and rubber, with its commitments under the Paris Agreement on climate change.

B. Issues relating to the general provisions of the Covenant (arts. 1–5)

Right to freely dispose of natural wealth and resources (art. 1 (2))

5. In the light of the information in paragraphs 20 to 28 of the State party's above-mentioned report to the Human Rights Committee (CCPR/C/GTM/FCO/4) and in paragraphs 5 to 9 of its report to the Committee on Economic, Social and Cultural Rights (E/C.12/GTM/4), please provide further information on how legislative processes and the

* Adopted by the pre-sessional working group at its sixty-seventh session (19–23 October 2020).



measures taken by the State party ensure that consultation is carried out with the full participation and free, prior and informed consent of indigenous peoples, in accordance with international human rights standards. In particular, please provide information on the efforts made to undertake consultations in compliance with the Constitutional Court rulings concerning hydroelectric projects and mining exploration and extraction initiatives. If the consultation process has already been conducted and free and informed consent obtained, please provide details on the outcome of those stages and of any environmental impact studies that have been carried out. In that connection, please specify the steps taken by the State party to build the outcome of the consultation process into its plans.

6. Please describe the measures taken by the State party to ensure that indigenous peoples' traditional forms of land tenure and ownership are recognized and that their rights to their ancestral lands and territories are protected. Please provide updated information on Bill No. 5188 on the regularization of land tenure, the main aim of which is to establish procedures for regularizing land tenure (E/C.12/GTM/4, para. 4), and on its impact.

7. Please provide further information on measures taken by the State party to ensure that companies exercise due diligence and accountability in relation to human rights, in particular with regard to the environmental, social and human rights impacts that their activities have on lands and territories inhabited by indigenous peoples.

Maximum of available resources (art. 2 (1))

8. In order for the Committee to assess whether the State party is using the maximum available resources to give effect to the rights recognized in the Covenant, please provide information on trends over the past 10 years in the following areas:

(a) The proportion of the population living below the national poverty line, and the levels of inequality both before and after tax, preferably expressed as the ratio of the total income of the richest 10 per cent of the population as compared to that of the poorest 40 per cent;

(b) Government revenue as a percentage of gross domestic product, the proportion of government revenue generated through taxes, and the proportions of tax revenue derived from direct and indirect taxes;

(c) The measures taken to progressively increase tax collection and ensure adequate funding for the social sector. In particular, please provide an update on the bills introduced by the State party in this area and on the Act on Tax Simplification, Updating and Incorporation adopted on 23 September 2019 (E/C.12/GTM/4, paras. 10 and 11), including its expected impact on the provision of maximum available resources for the progressive realization of economic, social and cultural rights;

(d) Public expenses as a percentage of gross domestic product, and the proportion of total public expenditure dedicated to social priorities (education, food, health, water, sanitation and housing);

(e) Fiscal policy measures designed to address the COVID-19 pandemic and its effects;

(f) Medium- and long-term policies designed to improve the operations of State institutions responsible for revenue collection and to curb potential tax evasion and fraud;

(g) Additional measures taken to ensure transparency in the public sector, to prevent and combat corruption in the State party's institutions and to address the negative impact of corruption on the State party's ability to protect and give effect to economic, social and cultural rights. In addition to the information provided to the Human Rights Committee (CCPR/C/GTM/FCO/4, paras. 8–19), please give further details of the mechanisms used to conduct independent investigations into cases of corruption during the reporting period, including cases investigated since the end of the mandate of the International Commission against Impunity in Guatemala, and describe the protection afforded to persons who report cases of corruption, including measures to strengthen judicial independence.

Non-discrimination (art. 2 (2))

9. Please give details of the specific measures that have been adopted to combat structural discrimination, and explain their concrete impact. In the context of the exercise of economic, social and cultural rights, please describe any programmes in place to reduce inequality gaps, discrimination on the basis of gender identity and/or sexual orientation, and multiple and intersectional discrimination against Maya, Xinca and Garifuna indigenous peoples, Afro-Guatemalans, women, persons with disabilities and migrants. Please provide information on the steps taken to establish mechanisms for the reporting, investigation and punishment of discrimination, in particular discrimination against indigenous peoples. Please also provide details of any affirmative action to promote non-discrimination and equal treatment in the State party.

Equal rights of men and women (art. 3)

10. Please provide further information on the measures taken to ensure that indigenous women in rural areas can obtain access to programmes for the acquisition of land, inputs, means of production and technical assistance, in particular the mechanisms and requirements for having access to land and to the means of production and technical knowledge to ensure that land is productive.

C. Issues relating to the specific provisions of the Covenant (arts. 6–15)

Right to work (art. 6)

11. Please provide further information on the concrete measures taken to reduce the size of the informal economy, ensure protection for persons working in it and guarantee equal access to the formal economy, and on the results obtained through the application of those measures. Please report on measures in place to ensure that workers in the informal sector are able to maintain their livelihoods during the COVID-19 pandemic.

Right to just and favourable conditions of work (art. 7)

12. Please provide additional information on the following areas:

(a) The way in which the authorities ensure that the minimum wage established annually is sufficient to guarantee decent living conditions for workers and their families, especially agricultural, maquila and domestic workers and particularly in the context of the recovery from the COVID-19 pandemic;

(b) The current status of the concrete action taken with regard to the road map for ratification of the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189) and adoption of the ILO Domestic Workers Recommendation, 2011 (No. 201) (E/C.12/GTM/4, paras. 101–104), in particular in view of the assessment of the follow-up to the recommendations issued by the Committee on the Elimination of Discrimination against Women (letter dated 14 July 2020);

(c) The work performed in the agricultural sector by women, who are treated as helpers under article 139 of the Labour Code, and the mechanisms in place to ensure women's access to the rights enshrined in the Covenant, in particular the right to the same working conditions as men, with equal pay for equal work, and to health, maternity protection and a minimum level of inalienable benefits;

(d) Measures taken to reduce the pay gap between men and women, and the effects of those measures.

13. Please explain the protective measures taken by the State party during the COVID-19 pandemic to ensure safe and satisfactory working conditions, in particular in the maquila sector, with a focus on inspections conducted, sanctions procedures launched and punitive actions taken. Please also explain the protective measures in place for domestic workers.

14. Please provide statistical data on forced labour and labour exploitation and on cases investigated and prosecuted and their outcomes. Please provide information on the measures taken by the State party, and in particular by the General Labour Inspectorate, to prevent and combat trafficking in persons for the purposes of labour exploitation and forced labour, in particular at sugar, coffee and palm oil plantations, and on the impact of those measures. Please indicate the outcome of labour inspections and the number of cases investigated and prosecuted, both in the labour courts and the criminal justice system, the sanctions imposed and the protection and reparation measures granted to victims.

15. Please provide information on the impact of the measures taken to ensure the effective functioning of the General Labour Inspectorate, including the allocation of sufficient human and material resources. Please also indicate how many inspectors conduct inspection visits to ensure that labour legislation is being implemented effectively (E/C.12/GTM/4, paras. 87–90 and 107).

Trade union rights (art. 8)

16. Please provide detailed additional information on how the authorities ensure that the right to form trade unions, the right to collective bargaining and the right to strike can be exercised freely and without reprisals in all economic sectors, particularly the agricultural and maquila sectors. With reference to those sectors, please indicate how many trade unions exist and how many collective bargaining agreements on working conditions are in force. Please provide information on the investigations conducted in both the labour and criminal justice systems and on the outcomes in cases of violations of trade union rights, including details of the personal protection measures and reparations provided to victims, especially in the agricultural and maquila sectors.

Right to social security (art. 9)

17. Following the adoption of the measures set out in the Institutional Strategic Plan for the period 2018–2022 (E/C.12/GTM/4, para. 123), please provide further information on the impact and results achieved to date with regard to the introduction of universal social security coverage, with a particular focus on ensuring a targeted approach to the provision of social protection and on guaranteeing access to social services for vulnerable groups, especially agricultural workers, including casual agricultural workers, maquila workers and domestic workers.

18. Please provide detailed information on social protection measures and programmes intended to act as a bridge between the crisis caused by the COVID-19 pandemic and the introduction of universal social security coverage, particularly in the area of health care, with priority initially given to especially vulnerable population groups. In this regard, please indicate how vulnerable population groups are defined and identified. Please provide statistical data disaggregated by coverage, age and geographical location, and give details of the guidelines established to ensure that these programmes reach the most vulnerable and marginalized population groups. Please provide information on the budget that has been made available and how it has been spent to ensure that social programmes are responsive to the needs created by the crisis and that social protection plans are effective.

Protection of the family and children (art. 10)

19. Please provide updated information, including disaggregated statistics, on the prevalence of child labour in the State party, particularly in agriculture and domestic work. Please provide information on the concrete measures adopted and mechanisms envisaged by the State party to prevent, combat and punish various forms of violence and exploitation directed at children and to protect and rehabilitate victims, with particular reference to Bill No. 4849, which is intended to harmonize approaches to the prevention and eradication of child labour. In addition, please indicate whether Bill No. 4849 lists child trafficking and servitude, the use of children in armed conflict and related practices among the worst forms of child labour, in line with the ILO Worst Forms of Child Labour Convention, 1999 (No. 182). Please also provide information on whether Bill No. 4849 complies with article 32 of the Convention on the Rights of the Child with regard to the application of appropriate sanctions to punish the exploitation of children for economic or labour purposes, with a

particular focus on labour and criminal sanctions against employers and on mechanisms to provide redress for human rights violations of this type.

20. Please describe the measures taken by the State party to prevent physical, sexual, psychological and all other forms of violence, especially when perpetrated against women and girls, women with disabilities and transgender persons, and to protect victims of violence and provide them with the support they require, with a particular focus on the state of emergency declared in response to the COVID-19 pandemic.

Right to an adequate standard of living (art. 11)

21. Please provide information on the design and concrete impact of the measures taken to tackle poverty and extreme poverty (E/C.12/GTM/4, paras. 160–169). In particular, please describe how the needs of the most disadvantaged population groups, including women, indigenous peoples and persons with disabilities, have been taken into account, and give details of the resources allocated for the implementation of the measures. Please provide further details on strategic and operational planning initiatives undertaken in accordance with national development priorities, with particular reference to the National Development Plan, poverty reduction and social protection (E/C.12/GTM/4, paras. 170–171). Please describe any cash transfer programmes that have been developed in response to the crisis caused by the COVID-19 pandemic with a view to ensuring an adequate standard of living for persons who lost their income. Please include details of the coverage and scope of any such programmes.

22. Please provide information on the comprehensive action and measures taken and the budgetary resources allocated by the State party, during the reporting period, to address food insecurity and chronic and acute malnutrition affecting children, especially indigenous children and those living in rural areas, in particular during the COVID-19 pandemic. Please include data disaggregated by year and region. Please give details of the extent to which the budgetary resources allocated have been spent, and provide estimates of the proportion of the population reached, disaggregated by age and by municipality. Please explain the impact of the National Strategy for the Prevention of Chronic Malnutrition, and in particular the “1,000-day Window of Opportunity” initiative, on the reduction of chronic and acute malnutrition between 2016 and 2020 (E/C.12/GTM/4, paras. 172, 176 and 189). Please report on the steps taken to comply with the rulings upheld by the Constitutional Court in connection with the Camotán cases.

23. Please describe the measures taken by the State party to guarantee access to water for everyone, without discrimination. Please provide details of the steps taken to monitor water quality in communities and health facilities, and include information on the financial resources allocated to and spent on water treatment projects and initiatives to provide access to drinking water for personal and domestic use. Please indicate the administrative, legislative and judicial steps taken by the State party to ensure that productive investment projects, particularly in the energy and monoculture export crop sectors, do not result in restricted access to water for personal and domestic use and for small-scale subsistence farming, especially in rural and indigenous communities. Please provide information on the initiatives taken to guarantee the supply of water, electricity and sanitation services, particularly for vulnerable communities, during the lockdown imposed owing to the COVID-19 pandemic.

24. Please provide information about the specific measures taken by the State party to counter the adverse effects that the cultivation of monoculture export crops, namely bananas, sugar, coffee, African palm oil and rubber, has had on the ability of indigenous peoples and rural communities to obtain access to land.

25. Please provide information on the policies and measures adopted to ensure that forced evictions, especially of indigenous peoples and in rural areas, are carried out only as a last resort and that such evictions comply with human rights standards, including those relating to the provision of alternative accommodation and all conditions necessary to ensure that resettlement is conducted in a dignified manner, as well as to the use of force by the police or non-State actors during evictions. In particular, please report on the results achieved and difficulties encountered in this area. Please provide information on measures taken in respect

of evicted communities that have been granted precautionary measures by the Inter-American Commission on Human Rights.

Right to physical and mental health (art. 12)

26. Please provide further information on the measures taken by the State party to ensure that the public health system receives effective financial resources and adequate human resources to improve the accessibility, availability and quality of health services and facilities, including appropriate mental health services throughout the State party, especially in rural and remote areas and for the most disadvantaged and marginalized population groups. Please provide information on health indicators, including infant mortality, maternal mortality and life expectancy, and on indicators relating to access to health services, disaggregated by household income (income quintiles or deciles). In particular, please provide an update on the bills mentioned in paragraphs 191 to 193 of the State party's report (E/C.12/GTM/4) and, if applicable, on the implementation of their provisions.

27. In particular, please provide details of the measures the State party has taken, including the resources allocated and spent in each department, to provide adequate access to a good standard of health care during the COVID-19 pandemic. Please provide information on the impact of the current situation on essential health services, particularly those intended to prevent maternal and child mortality. Please describe how the State party ensures access to accurate information on health risks and the ways in which people can protect themselves, their family and their community, taking into account cultural and linguistic differences.

28. Please provide information on:

(a) The measures adopted to decriminalize termination of pregnancy and to ensure that sexual and reproductive health services and related information are available and equally accessible to all persons of all ages throughout the country;

(b) Bill No. 5272, which provides for the adoption of the Act on the Protection of Life and the Family, with particular reference to how, under the Act, the right to sexual and reproductive health will be guaranteed in the terms set out in the Covenant;

(c) The measures taken to reduce child and teenage pregnancies;

(d) The public health policies implemented by the State party to mitigate and reduce the harm caused by drug use, and the number and territorial coverage of existing public treatment centres in the country.

Right to education (arts. 13–14)

29. Please provide more information on:

(a) The implementation of the National Strategy for a Successful Transition (E/C.12/GTM/4, para. 221); the concrete outcomes achieved as a result with regard to school dropout rates in primary and secondary education; and the measures adopted to reduce inequality gaps in terms of access and resources, together with statistics, disaggregated by household income levels, on access to education and on retention rates;

(b) The proportion of students entering and completing higher education; the measures that have been taken and resources allocated to ensure that higher education is accessible, suitable and of good quality, particularly for indigenous young persons, women and girls and in rural areas; and the impact of those measures;

(c) The nature and impact of measures taken to address sexual harassment in educational establishments, especially in secondary schools and universities;

(d) School attendance programmes and measures put in place by the State party during the COVID-19 pandemic to provide access to a good standard of education, including resources to facilitate distance education for everyone without discrimination, especially in rural areas. In particular, please provide disaggregated data on retention rates in the distance education system, any increase in dropout rates and the impact on quality.

Cultural rights (art. 15)

30. Please provide information on concrete measures taken to protect cultural diversity and to preserve and promote the languages and culture of indigenous peoples. Please also give details of the measures taken to reduce the digital divide, in particular with regard to ensuring access for persons living in rural areas. Please provide information on how the State party ensures that decisions taken in the context of the COVID-19 pandemic are informed by the best scientific knowledge available.
