



International Covenant on Civil and Political Rights

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Human Rights Committee

Information received from Guatemala on follow-up to the concluding observations on its fourth periodic report*, **

Addendum

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* The present document is being issued without formal editing.
** The annex to the present report is available on the Committee's web page.



I. Information on follow-up to the recommendations made in paragraph 31 (a)–(e)

1. With regard to the prioritization of constitutional and legislative reforms, under article 277 of the Constitution of Guatemala, the following persons and bodies have the power to request the initiation of constitutional reform: the President of the Republic sitting in Council of Ministers, a group of 10 or more Members of Congress, the Constitutional Court and, with a petition addressed to Congress and signed by no less than 5,000 citizens duly registered on the electoral rolls, the public.
2. Regarding the security of tenure of judges, articles 205, 206 and 208 of the Constitution provide that, as an essential safeguard, judges have functional independence and security of tenure – i.e., they may not be removed from their positions save in the cases provided for by law. Security of tenure is thus recognized constitutionally and is protected under article 3 of the Judicial Service Act (Legislative Decree No. 41-99).
3. The judges of the Supreme Court of Justice and the chambers of appellate courts and other courts in the same category are elected by Congress from among a list of candidates put forward by a duly established nominations committee, in accordance with articles 215 and 217 of the Constitution. Judges of the chambers of the appellate courts and other courts in the same category are appointed by the judicial authorities, in accordance with article 217 of the Constitution.
4. In accordance with article 209 of the Constitution, the selection and appointment of the judges of lower courts falls within the purview of the Supreme Court. Prospective judges are required to follow the procedure established in the Judicial Service Act, which incorporates the guiding principles on the conduct of judicial duties. This competitive procedure ensures the appointment of competent justices of the peace and judges of courts of first instance.
5. The election of judges to the Supreme Court is currently under way, pursuant to an *amparo* decision issued by the Constitutional Court, ruling in sole instance, in case No. 1169-2020, in accordance with which the Congress, meeting in plenary, adopted Governmental Agreement No. 14-2020 of 24 June 2020 on the procedure for the election of judges to the appellate courts and other collegiate courts in the same category and of judges to the Supreme Court. This agreement is applicable to the current election only. The election process began in 2021 and remains on the agenda of the Congress's plenary sessions.
6. Pursuant to congressional Decrees No. 3-2021 and No. 7-2021, the judges of the Constitutional Court for the constitutional term 2021–2026 were appointed by the Congress meeting in plenary, the General Assembly of the Bar and Notaries Association of Guatemala, the full bench of the Supreme Court, the Higher University Council of the University of San Carlos and the President of the Republic sitting in Council of Ministers.
7. At its plenary session of 11 January 2018, Congress adopted legislative agreement No. 1-2018 providing for the establishment of a nominations committee for the appointment of the Attorney General and Director of the Public Prosecution Service, in accordance with article 251 of the Constitution. The President of the Republic appointed the current Attorney General from a list of six candidates submitted by the nominations committee.
8. Regarding the appointment of the Comptroller General, on 11 January 2018, Congress, meeting in plenary, adopted legislative agreement No. 18-2018 summoning the rectors of the country's universities, the deans of the faculties responsible for courses in public accounting and auditing and the Guatemalan Association of Economists, Public Accountants and Auditors to appoint and/or elect representatives to a nominations committee, which presented to Congress a list of six candidates for the position of Director of the Comptroller General's Office. At its plenary session of 3 April 2019, Congress, adopting legislative agreement No. 7-2019, appointed the Director of the Comptroller General's Office.
9. With regard to the safety of judges, in agreement No. 35-2016, the Supreme Court approved the establishment of the Directorate for the Security of the Judiciary, which has a mandate to direct, guide, coordinate and evaluate processes and procedures for protecting the President and judges of the Supreme Court, judges of the appellate courts and other collegiate

courts, judges of the courts of first instance and justices of the peace, and to ensure the security of judicial infrastructure throughout the country.

10. The Security Department of the Public Prosecution Service has 321 agents who provide personal security services to prosecutors upon request, subject to risk assessments.

11. In 2021, the Service for the Protection of Persons Involved in Proceedings and Persons Connected with the Administration of Justice attached to Public Prosecution Service had a budget of 187,600,853 quetzales.

12. Four bills have been submitted to Congress on the amendment to the 2002 Act on Preliminary Misconduct Proceedings (see annex).

13. With regard to efforts to combat corruption and impunity, the mandate of the International Commission against Impunity in Guatemala was to support, strengthen and assist the State institutions responsible for criminal prosecution. This mandate was temporary and ended in September 2019, at which point the Commission's powers were transferred to the Public Prosecution Service.

14. Bolstering efforts to combat corruption is one of the themes of the second component of the Public Prosecution Service's Institutional Strategic Plan 2018–2023. Pursuant to agreement No. 59-2019, the Office of the Special Prosecutor against Impunity was strengthened and made a division of the Public Prosecution Service. It is now part of the Public Prosecution Service and is currently one of the prosecutors' offices working in cooperation with the Service's Anti-Corruption Secretariat. This institutional restructuring has coincided with an increase in the number of prosecutions, criminal organizations dismantled, cases investigated and convictions secured under the current Administration.

15. The Office of the Special Prosecutor's technological tools were made more effective by developing modules that connect with the Information System of the Public Prosecution Service and establishing a technical support unit, which is composed of 60 criminal and financial analysts and investigators. The staff of this newly established unit were transferred from the Criminal Investigations Directorate, the Criminal Analysis Directorate, the National Civil Police and the Special Monitoring Intendancy. The technical support unit provides investigative, evidentiary and analytical support to the Office of the Special Prosecutor with respect to existing and future cases. The Office has filled its vacant positions and is receiving assistance from the technical support unit. In addition, the remit of the Office of the Special Prosecutor against Impunity has been extended to Quetzaltenango Department.

16. The office responsible for the information system used by the Public Prosecution Service has negotiated and signed inter-institutional cooperation agreements to facilitate the efficient and timely gathering of information and has introduced innovative technologies that allow lead prosecutors to sign documents with electronic signatures and fingerprints. Agreements have been concluded with the Ministry of Finance, the Office of the Superintendent of the Tax Administration, the Guatemalan Social Security Institute, the Comptroller General's Office and the Land Registry.

17. In November 2021, the Attorney General and Director of the Public Prosecution Service inaugurated a new computer system called Technological Applications for the Strategic Solution of Cases and Victim Assistance of the Public Prosecution Service. The launch of this official registration and work tool is a great step forward in the Service's digital transformation: it shifts the focus of criminal proceedings from nothing but the case itself to the people involved, integrates all relevant information, even suggesting lines of inquiry for specific offences and criminal activities, and facilitates victims' access to the Public Prosecution Service.

18. Through governmental agreement No. 28-2020, the President established the Presidential Commission on Corruption. The Commission is chaired by the President of the Republic and has a mandate to: (i) promote and strengthen measures to prevent and combat corruption and promote integrity, accountability and the proper management of public affairs and public property; (ii) to coordinate the Public Policy on Preventing and Combating Corruption; (iii) to restore trust in and the credibility of State institutions; and (iv) to bring legal proceedings to recover stolen public funds.

II. Information on follow-up to the recommendations made in paragraph 37 (a)–(e)

19. Regarding public policy on the protection of human rights defenders, the Presidential Commission for Peace and Human Rights has taken steps to strengthen the teams responsible for monitoring the formulation of public policy proposals relating to human rights defenders and the programme for the protection of journalists.

20. The staff of the Presidential Commission have received special training in the protection of human rights defenders to enable them to lead the process of building public policy, thereby promoting a broad, open and inclusive dialogue at the national level with various stakeholders.

21. In follow-up to the commitments made by Guatemala, the Presidential Commission has resumed its work on the protection of journalists, holding meetings with the institutions directly affected and building the technical capacities of officials of the Ministry of the Interior, the National Civil Police, the Public Prosecution Service, the Media Secretariat of the Office of the President and the Office of the Human Rights Advocate in the area of freedom of expression and protection of journalists, with the technical assistance of the Office of the United Nations High Commissioner for Human Rights in Guatemala.

22. The division of the Public Prosecution Service specializing in offences against justice officials and trade unionists acts in accordance with instruction No. 5-2018 approving the protocol for the investigation of crimes committed against human rights defenders and instruction No. 1-2015 on the investigation and effective criminal prosecution of crimes committed against trade unionists, members of workers' organizations and other defenders of union and labour rights.

23. The division has been strengthened through the appointment, as at 2021, of 40 members of staff, whose role is to coordinate with specialized institutions such as the Special Criminal Investigation Division in the investigation and follow up of cases, organize working groups to review case files and carry out tasks set by the head of the division, and hold meetings with the Integrated Management System Department to facilitate and monitor progress in implementing the new comprehensive case management model.

24. In March 2020, the Public Prosecution Service introduced its new system of comprehensive case management. One of the most significant advantages of this system is that it established separate teams for cases that were already being managed before the launch date and for new cases from after that date. This system is informed by the concept of the natural prosecutor, meaning that a single prosecutor handles each case from beginning to end – i.e., until the exhaustion of all possible appeals.

25. Under agreement No. 69-2019 of 26 November 2019, the Office of the Prosecutor for Offences against Journalists was established as a division of the Public Prosecution Service with a mandate to handle, investigate and initiate prosecutions in respect of offences against journalists – specifically, acts in violation of the human rights of working journalists and acts of intimidation, harassment or retaliation targeting journalists because of their work. The Office was established in Guatemala City and has two agencies. Their activities include:

(a) Monthly reviews by prosecutors of case files prepared by assistant prosecutors;

(b) Working groups in which prosecutors and assistant prosecutors: (1) discuss the cases to be resolved that month; (2) comply with directives issued in relation to high-impact cases and cases brought before the courts; (3) assess the applicability of alternatives to prosecution in appropriate cases; (4) hold virtual meetings with the agency in Quetzaltenango to verify the progress of and share reports on specific cases; (5) hold meetings with the head of the Office at which presentations on specific cases are given, covering the progress of investigations, projected timelines and the follow-up required in each case; and (6) organize spot checks by lead prosecutors of cases handled by assistant prosecutors, including checks on paper and digital resources to rectify any inconsistencies, update files and determine the appropriate procedural solution in each case. These measures are taken independently of circulars issued on the proper performance of the tasks of the prosecutor's office.

26. The Office carries out its investigations in accordance with all legal requirements, not only in terms of the proceedings as such but also in terms of ensuring that the interests of the complainants are taken into account through reconciliation meetings; agreements made at such meetings have led to prosecutions in application of the principle of prosecutorial discretion, and in those cases that have been brought to trial, appropriate reparation has been sought.

28. The Public Prosecution Service coordinates and communicates with the Office of the Human Rights Advocate in relation to cases involving journalists and the preparation of reports, *inter alia*. It also coordinates with the Journalists Association of Guatemala, the Human Rights Activists Investigation Division of the National Civil Police and the unit for the protection of high-profile persons of the General Directorate of the National Civil Police in order to request security measures, such as perimeter surveillance.

29. Under the Attorney General's general instruction No. 5-2018, a protocol for investigating offences against human rights defenders (including journalists, pursuant to agreement No. 35-2021) was adopted; the aim is to provide prosecution officials involved in the investigation of such offences with guidelines and tools based on the national and international regulatory framework governing the constitutional role of the Public Prosecution Service in this area.

30. The Public Prosecution Service handles the cases of journalists who have been killed for their work or are victims of crimes affecting their property or threats to their safety or other protected legal rights.

31. The Public Prosecution Service has developed a digital platform on which journalists can file complaints. Complaints may also be filed by telephone or in person at the competent prosecutor's office.

32. Regarding guarantees of due process, the State entrusts the conduct of criminal proceedings to its competent judicial bodies, in observance of the rights and guarantees established in the Constitution, international human rights treaties and domestic legislation.

III. Information on follow-up to the recommendations made in paragraph 39 (a)–(e)

33. On 10 December 2021, the first substantive agreement was concluded between the parties to a consultation process with the Maya Q'eqchi' indigenous people, held in accordance with the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), in relation to the Fénix mining project in the municipality of El Estor, Izabal. The consultation process is being coordinated by the Office of the Deputy Minister for Sustainable Development of the Ministry of Energy and Mining. This is the first agreement of its kind under the current Administration and as such is a step forward for human rights, indigenous peoples and the environment.

34. The agreements were negotiated at round-table sessions, including seven consultations involving the three main stakeholders – namely, the communities represented by the municipal development councils and community councils of the Maya Q'eqchi' communities of El Estor and Panzós in the area of influence of the project, the representatives and alternative representatives of the Compañía Guatemalteca de Níquel, and the Government of Guatemala, represented by the Ministry of Energy and Mining, the Ministry of the Environment and Natural Resources and the Ministry of Culture and Sports, among other stakeholders indicated in the ruling. The agreements revolve around a comprehensive local development plan, the main components of which are: (a) productivity and employment; (b) education; (c) health; and (d) culture and spirituality.

35. It was also deemed necessary to address the specific requests of the communities concerned, which related to job creation, capacity-building, protection of the environment and infrastructure. As promised, the agreements will be monitored by a follow-up committee in 2022. The consultation process was carried out in cooperation with organizations representing indigenous peoples, who, together with local leaders, organized community assemblies to ensure that the views of the indigenous communities living in the area likely to

be affected were taken into account in the negotiations, in accordance with the *amparo* ruling of the Constitutional Court.

36. The Constitutional Court has developed guidelines on consultation with indigenous peoples within the framework of ILO Convention No. 169; if no consultation process has been conducted, the mining project must be suspended until such a process is carried out.

37. Drawing on the methodology used in the pre-consultation and consultation processes carried out in respect of the power plant projects Oxec and Oxec II, the Ministry of Energy and Mining established the current consultation methodology, which serves as the basis for all consultations carried out in respect of energy and mining projects (see annex).

38. According to the judicial authorities, the judicial bodies competent to rule on evictions have established that, when an eviction is carried out in compliance with all recognized safeguards and in the light of available evidence, the person or persons occupying the property have no rights with respect to the property from which they are being evicted. The law enforcement authorities, including the National Civil Police, a force that has its own eviction protocols, assist with evictions.

39. With regard to the application of states of emergency, the State complies with the provisions of article 2 of the Public Order Act and article 4 (3) of the Covenant.

40. Lastly, with respect to the assignment of frequencies to public, commercial and community radio broadcasters on an equitable basis, the Office of the Superintendent of Telecommunications is responsible for granting legal recognition to community radio broadcasters so that indigenous peoples are able to express themselves in their own languages and promote their cultures. The aim of this legal recognition is to prevent the imposition of criminal penalties on unauthorized broadcasters. The only legally established procedure for the allocation of a radio frequency is that established in articles 61 and 62 of congressional Decree No. 94-96 on the adoption of the General Telecommunications Act. Amendments to the General Telecommunications Act must be proposed in a bill duly submitted to Congress.
