



**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***

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* The present document is being issued without formal editing.



I. Introduction

1. The State of Guatemala hereby presents its report on follow-up to the recommendations made in paragraph 31 (judicial independence, autonomy of the public prosecution service and efforts to combat corruption), paragraph 37 (freedom of expression, assembly and association) and paragraph 39 (rights of indigenous people) of the concluding observations issued by the Human Rights Committee (CCPR/C/GTM/CO/4) following its review of the fourth periodic report of Guatemala on the implementation of the International Covenant on Civil and Political Rights in March 2018.

II. National context

2. The second round of a general election was held in Guatemala in August 2019, resulting in the election of Dr. Alejandro Eduardo Giammattei Falla and Mr. César Guillermo Castillo Reyes as President and Vice-President of the Republic, respectively, for the 2020–2024 period.

3. A state of disaster has been declared in Guatemala in response to the coronavirus disease (COVID-19) pandemic. Various measures have been taken to handle the effects of the pandemic, including the issuance in March 2020 of Governmental Decrees No. 5-2020, No. 6-2020 and No. 7-2020, which limit certain rights, including freedom of movement after 4 p.m. and the right to participate in mass gatherings, and authorize teleworking for employees of public institutions and private enterprises.

4. In the light of the above, Guatemala wishes to emphasize that in preparing the present report, the Presidential Commission for the Coordination of Human Rights Policy was able to hold only one of the three meetings that it had scheduled with representatives of institutions to gather information on the follow-up given to the above-mentioned recommendations.

5. Guatemala therefore wishes to inform the Committee that while some information on the follow-up to certain recommendations is provided below, once the COVID-19 situation has been overcome, meetings with relevant institutions will be rescheduled and further information on follow-up will be provided in due course.

III. Follow-up to recommendations

Paragraph 31 (Judicial independence, autonomy of the Public Prosecution Service and efforts to combat corruption):

(e) **Strengthen support for the International Commission against Impunity in Guatemala and for the Attorney General's Office and ensure that they remain independent so that they can effectively combat corruption and impunity.**

6. Since its mandate has expired and the relevant agreement with the United Nations has not been renewed, the International Commission against Impunity in Guatemala is no longer active. However, the State has continued to take considerable measures to combat corruption, including the following:

(a) On 9 October 2019, the Cooperation Agreement on Good Governance was concluded between the Comptroller General's Office, the Public Prosecution Service, the judiciary, the Ministry of Finance, the Office of the Superintendent of Banks, the Office of the Superintendent of the Tax Administration and the National Association of Municipalities. The Agreement provides for the establishment of cooperation, coordination and inter-institutional assistance mechanisms intended to build the capacities of the signatory institutions in their respective areas of jurisdiction in order to promote measures that improve the quality of public spending, foster a culture of integrity, transparency and accountability and prevent corruption and impunity.

(b) On 14 January 2020, the current Government, led by President Giammattei, adopted the Cooperation Agreement on Inter-Institutional Anti-Corruption Measures, an

agreement between the executive authorities, the Public Prosecution Service, the Counsel General's Office, the Comptroller General's Office, Office of the Superintendent of the Tax Administration and the Office of the Superintendent of Banks that provides for the establishment of inter-institutional coordination and assistance procedures intended to strengthen efforts to combat corruption within the jurisdiction and power of each signatory institution in accordance with its legal framework. The procedures are also designed to help ensure that public monies are spent more wisely, foster a culture of integrity, transparency and accountability, prevent corruption and impunity and encourage the reporting of suspected illegal activity, irregularities and suspicious behaviour in public institutions to the Public Prosecution Service.

(c) In 2020, through Governmental Decree No. 28-2020, the President of the Republic, acting through the Ministry of the Interior, established the Presidential Commission on Corruption to assist the ministries and institutions of the executive branch of the Government with the coordination of the Policy on Preventing and Combating Corruption, to establish mechanisms to prevent the recurrence of cases of corruption and to help to rebuild public trust in and the credibility of public institutions by bringing legal proceedings to recover stolen public funds.

7. Information on follow-up to the recommendations made in subparagraphs (a), (b), (c) and (d)¹ will be provided in due course.

Paragraph 37 (Freedom of expression, assembly and association):

(a) **Adopt and implement, without delay, an effective public policy for the protection of human rights defenders, journalists and trade unionists and publicly acknowledge, and raise public awareness about, the legitimacy of their activities.**

8. Guatemala recognizes the importance of the work of human right defenders and has therefore never limited their ability to exercise their rights; the State's response to criminal acts committed under the banner of the struggle for the protection of human rights should not be taken, wilfully or inadvertently, for efforts to limit the rights of human rights defenders. The Presidential Human Rights Commission has received support from the Office of the United Nations High Commissioner for Human Rights in Guatemala and the Special Rapporteur on the situation of human rights defenders, Mr. Michel Forst, in its efforts to develop a draft public policy on human rights defenders.

9. The process of drafting a protection policy began in September 2016. The political situation of the country in the second semester of 2018 led to a drop in participation in the process by civil society organizations, which came to the conclusion that conditions were not conducive to continuing the policy formulation process. They nonetheless continued expressing the need to resume the process as soon as possible.

10. In 2017, consensus was reached on a basic policy document, which has since been approved by the authorities of the institutions that make up the policy working group. Work was also completed on an input document used for public policy analysis. This process has been coordinated by a coordinating group composed of the Presidential Human Rights

¹ **Recommendations contained in paragraph 31 (Judicial independence, autonomy of the Public Prosecution Service and efforts to combat corruption):**

...

(a) Place priority on the adoption of constitutional and legislative reforms to ensure the security of tenure of judges and magistrates and to ensure that the administrative functions of the Supreme Court are carried out by an independent and impartial body;

(b) Ensure that the selection and appointment of magistrates, judges and prosecutors, as well as of the Attorney General and the Comptroller General, are based entirely on the use of objective, transparent criteria for the assessment of candidates' merits in terms of their qualifications, competence and integrity;

(c) Develop a protocol for the protection of justice officials and persons involved in judicial proceedings, strengthen the witness protection programme and uphold the independence of judicial officials in their deliberations, determinations and work;

(d) Amend the law on preliminary misconduct proceedings (Ley en Materia de Antejjuicio) in order to clarify its scope.

Commission, which performs the executive tasks, the Office of the United Nations High Commissioner for Human Rights, which liaises with civil society organizations, and the Planning and Programming Secretariat of the Office of the President, which provides technical support in public policy matters.

11. The process continued in the first semester of 2019 with the active participation of State institutions, which made it possible to set up a technical board tasked with analysing patterns of attacks on human rights defenders and composed of representatives of the Public Prosecution Service, the National Civil Police, the Office of the Deputy Minister for Security of the Ministry of the Interior and the judicial authorities.

12. Civil society organizations became involved in the process again in the second semester of 2019. The focus of efforts was on updating the policy analysis and agreeing on a set of standard concepts recognized by both the participating human rights defenders and State institutions. Meetings were organized with a technical group composed of the representatives of 21 State institutions and approximately 30 civil society organizations.

13. In 2020, the new leadership of the Presidential Human Rights Commission opened its doors to dialogue and pushed for the continuation of efforts to draft the public policy for the protection of human rights defenders. In this context, the coordinating group has held four meetings in order to agree on the next steps and define a road map for consultations on the basic document in the country's regions. The technical group has met once.

14. The senior authorities of the policy working group are kept up to date with the progress made towards the adoption of the basic document and have been asked to approve the road map prepared by the coordinating group.

15. It was decided that the following groups will be consulted in their capacity as human rights defenders:

1. Human rights organizations
2. Organizations promoting sexual diversity
3. Women's organizations
4. Children's and adolescents' organizations
5. Young persons' organizations
6. Campesino organizations
7. Environmental organizations and organizations for the defence of the land
8. Organizations of justice officials
9. Trade unions
10. Organizations of ancestral authorities
11. Organizations of journalists and social communicators

16. The management of the Presidential Human Rights Commission has submitted to the coordinating group a proposal for the constitution of a group of observers that would oversee the process and support the work of the Commission. The proposed group would include representatives of the:

1. Office of the Human Rights Advocate
2. Office of the United Nations High Commissioner for Human Rights
3. United Nations Educational, Scientific and Cultural Organization
4. United Nations Entity for Gender Equality and the Empowerment of Women
5. International Labour Organization
6. United Nations Children's Fund
7. European Union

17. The Presidential Human Rights Commission has approached international organizations. At a meeting of the coordinating group, representatives of the European Union, for example, conveyed the European Union's commitment to and willingness to support the measures set forth in the road map, within its field of competence. The Office of the United Nations High Commissioner for Human Rights has also pledged its support as a member of the coordinating group.

18. The road map sets out dates on which work, starting in the last week of March and continuing throughout the months of April, May and June, was due to be carried out. However, given the current situation in the country, this schedule will have to be amended, and there will have to be a re-evaluation to determine which measures can go ahead and which must be suspended until a return to normal. An update in this regard will be provided in due course.

19. Information on follow-up to the recommendations made in subparagraphs (b), (c), (d) and (e)² will be provided in due course.

Paragraph 39 (Rights of indigenous peoples):

(a) Ensure that meaningful consultations are held with the indigenous peoples concerned with a view to obtaining their free and informed prior consent before the adoption or application of any measure that may have a substantial impact on their way of life and culture and ensure that indigenous peoples are consulted prior to the adoption of any regulatory instrument relating to such consultations.

20. In order to enhance community participation and dialogue in areas affected by projects under its jurisdiction, in 2019 the Ministry of Energy and Mining, through the Office of the Deputy Minister for Sustainable Development, undertook 18 consultation processes leading to agreements between communities in affected areas and companies applying for licences to mine for non-metallic minerals.

21. These processes, which involved meetings in which information on the projects was shared, led to the establishment of agreements that enable peaceful coexistence and the sustainable exploitation of natural resources through monitoring and checks to ensure that operators comply with their social and environmental obligations.

22. In view of the absence of a legal framework regulating consultation with indigenous peoples, the Ministry of Energy and Mining, through the Office of the Deputy Minister for Sustainable Development, in application of judgments on the conduct of consultations handed down by the Constitutional Court, has established the following operational tools:

- A guide setting out methodological procedures for consultation with indigenous peoples that consist of seven basic phases or stages, preceded by a preparatory phase, that are intended to safeguard cultural integrity and ensure redress for any damages. The guide sets forth the following basic phases or stages: (a) identification of the measure to be taken; (b) identification of the indigenous peoples and/or linguistic communities to be consulted; (c) public notification of the measure to be taken; (d) assessment of the measure to be undertaken; (e) internal assessment of the measure to be taken; (f) intercultural dialogue; and (g) final decision.

² **Recommendations contained in paragraph 37 (Freedom of expression, assembly and association):**

...

(b) Provide existing agencies with the necessary resources to improve the State's analysis of attacks on human rights defenders, journalists and trade unionists and the State's response to those attacks;

(c) Intensify its efforts to ensure that all such attacks are investigated, that the perpetrators are brought to justice and that victims receive full redress;

(d) Ensure that due process guarantees are upheld in cases in which criminal charges are brought against human rights defenders;

(e) Ensure that any restriction on the right to freedom of opinion and expression and the right to freedom of assembly and association fully meets the strict requirements set out in articles 19 (3), 21 and 22 (2) of the Covenant.

- 15 maps of conflict areas disaggregated by department.

23. On the basis of guidelines issued by the Constitutional Court, the Ministry of Energy and Mining has established procedures for dialogue and consultation between project developers and the linguistic communities that reside in areas affected by their projects.

24. Round tables have been set up to monitor and evaluate compliance with the agreements reached. These round tables are formed on a voluntary basis and are intended to improve communication and understanding between stakeholders and to help to identify measures that can be taken to support important aspects of development identified by communities in areas affected by projects.

(b) Amend the laws that impede the exercise of this right and, in the interim, recognize the community consultations convened in accordance with the rules of the Municipal Code while ensuring that they are conducted in full conformity with the Covenant.

25. A bill on consultation with indigenous peoples, bill No. 54-16, has been submitted to Congress and is currently undergoing review and analysis by various governmental and non-governmental institutions at Congress's request.

26. A number of bills have been introduced by legislative decree and governmental agreement with a view to regulating consultations with indigenous peoples in accordance with the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169).

27. The Ministry of Energy and Mining, the Ministry of Labour and Social Welfare, the Ministry of the Environment and Natural Resources and the Ministry of Culture and Sports are working together to expedite proceedings in this regard.

28. Information on follow-up to the recommendations made in subparagraphs (c), (d), (e) and (f)³ will be provided in due course.

³ **Recommendations contained in paragraph 39 (Indigenous peoples):**

...

- (c) Ensure that forced evictions not in line with international standards are not carried out;
- (d) Ensure that the application of states of emergency strictly adheres to the conditions set out in article 4 of the Covenant;
- (e) Assign access and frequencies to public, commercial and community radio broadcasters on an equitable basis, accord legal recognition to the community broadcasting sector so that indigenous peoples are able to express themselves in their own languages and promote their cultures, and refrain from imposing criminal penalties on unauthorized broadcasters.