



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Report on follow-up to the concluding observations of the Human Rights Committee\*

#### Addendum

### Evaluation of the information on follow-up to the concluding observations on Guatemala

<i>Concluding observations (122nd session):</i>	<a href="#">CCPR/C/GTM/CO/4</a> , 28 March 2018
<i>Follow-up paragraphs:</i>	31, 37 and 39
<i>Information received from State party:</i>	<a href="#">CCPR/C/GTM/FCO/4</a> , 8 April 2020, and <a href="#">CCPR/C/GTM/FCO/4/Add.1</a> , 27 January 2022
<i>Information received from stakeholders:</i>	Multiple civil society organizations, <a href="#">30 November 2020</a> and <a href="#">27 January 2022</a> , and <a href="#">Bufete Jurídico de Derechos Humanos</a> , 25 January 2022
<i>Committee's evaluation:</i>	31[C], 37[C] and 39[B][C]

### Paragraph 31: Judicial independence, autonomy of the public prosecution service and efforts to combat corruption<sup>1</sup>

#### Summary of the information received from the State party

(a) The Constitution (arts. 205, 206 and 208) and the Judicial Service Act (Decree No. 41-99) guarantee the independence of and security of tenure for judges.

(b) Congress elects the judges of the Supreme Court, of the chambers of appellate courts and of other courts in the same category from a list submitted by the respective nominations committee. 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. This competitive selection procedure ensures the appointment of competent justices of the peace and judges of courts of first instance. Legislative agreement No. 1-2018 provides for the establishment of a nominations committee for the appointment of the Attorney-General and the Director of the Public

\* Adopted by the Committee at its 134th session (28 February–25 March 2022).

<sup>1</sup> The paragraphs containing the Committee's recommendations are not reproduced in the present document owing to the word limit specified in General Assembly resolution [68/268](#), para. 15.



Prosecution Service. The President of the Republic appointed the current Attorney General from a list of six candidates submitted by the nominations committee.

(c) The Supreme Court approved the establishment of the Directorate for the Security of the Judiciary to direct, guide, coordinate and evaluate processes and procedures for protecting judges and to ensure the security of judicial infrastructure throughout the country.

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

(e) The International Commission against Impunity in Guatemala is no longer active as its mandate has expired and the relevant agreement with the United Nations has not been renewed. However, Guatemala has adopted several legislative and institutional measures to combat corruption, including the establishment, in 2020, of the Presidential Commission on Corruption to assist the executive branch in coordinating the Policy on Preventing and Combating Corruption, to establish corruption prevention mechanisms and to bring legal proceedings to recover stolen public funds.

### **Summary of the information received from stakeholders**

(a) According to multiple civil society organizations and Bufete Jurídico de Derechos Humanos, Guatemala has not adopted reforms to ensure judicial independence. On 8 November 2021, the Constitutional Court decided to suspend several articles of the Judicial Service Act, weakening the power of the Judicial Service Council. Multiple civil society organizations indicate that the Attorney General's Office attempted to remove the immunity of four magistrates: Gloria Porras, Bonerge Mejía, Francisco de Mata Vela and Neftaly Aldana.

(b) According to multiple civil society organizations and Bufete Jurídico de Derechos Humanos, judicial elections have been delayed since 2019 owing to procedural flaws. Multiple civil society organizations claim that the proliferation of private law schools, which can be represented on nominations committees, has distorted the role that was originally intended for representatives of academia.

(c) According to multiple civil society organizations and Bufete Jurídico de Derechos Humanos, judicial officials, including Judge Erika Aifán, have faced harassment, threats, reprisals and requests for their impeachment and removal of immunity without any State protection.

(d) According to multiple civil society organizations, the scope of the Act on Preliminary Misconduct Proceedings has not been clarified and the bills that have been tabled would further compromise the independence of the judiciary, including by allowing Congress to remove judicial immunity.

(e) According to multiple civil society organizations and Bufete Jurídico de Derechos Humanos, there have been several attempts to undermine anti-corruption efforts, including the non-renewal of the mandate of the International Commission against Impunity in Guatemala, the declaration of its Commissioner as persona non grata and attacks against prosecutors of the Special Prosecutor's Office against Impunity, including Juan Francisco Sandoval, without adequate State protection. Multiple civil society organizations note that the Presidential Commission on Corruption has operated under the control of the executive branch and that no major investigation has been conducted in that regard.

### **Committee's evaluation**

[C]: (a), (b), (c), (d) and (e)

The Committee regrets the lack of information on measures taken since the adoption of the concluding observations, reiterates its recommendation and requests information on the alleged threats, intimidation and attempts on the lives of judges and prosecutors and on the legal proceeding aiming to eliminate the judicial immunity of four magistrates: Gloria Porras, Bonerge Mejía, Francisco de Mata Vela and Neftaly Aldana.

The Committee regrets the lack of information provided by the State party on measures taken since the adoption of the concluding observations to 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. The Committee reiterates its recommendation and requests information on: (a) the impact and application of the Judicial Service Act, particularly regarding the selection and appointment of magistrates, judges and prosecutors; (b) the alleged delays and undue interference in the elections of judges and magistrates; and (c) the role of representatives of academia in the nominations committees.

While noting the information on the establishment of the Directorate for the Security of the Judiciary, the Committee regrets the lack of specific information on measures taken to develop a protocol for the protection of judicial officials and persons involved in judicial proceedings, to strengthen the witness protection programme and to uphold the independence of judicial officials in their deliberations, determinations and work. It reiterates its recommendation.

The Committee notes the information on the four bills on the amendment to the Act on Preliminary Misconduct Proceedings that have been submitted to Congress. It reiterates its recommendation.

The Committee regrets that the mandate of the International Commission against Impunity in Guatemala has not been renewed. It notes the adoption of several measures, including the establishment of the Presidential Commission on Corruption. It requests information on the impact of the legislative and institutional measures taken to combat corruption, and on the alleged threats and intimidation against prosecutors of the Special Prosecutor's Office against Impunity and the lack of available protection measures.

## **Paragraph 37: Freedom of expression, assembly and association**

### **Summary of the information received from the State party**

(a) Guatemala recognizes the importance of the work of human rights defenders and began drafting a policy for their protection in September 2016. In 2019, the process continued with the active participation of State institutions and civil society organizations. The Presidential Commission for Peace and Human Rights held meetings with relevant institutions and strengthened technical capacities of officials from 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.

(b) 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, containing criteria and tools for such investigation, 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. Forty new staff were appointed to the division in 2021.

(c) Under agreement No. 69-2019 of 26 November 2019, the Office of the Prosecutor for Offences against Journalists was established in Guatemala City. In investigating cases, that Office has ensured that complainants' interests are taken into account through reconciliation meetings and has sought appropriate reparation when cases have been brought to trial. The Public Prosecution Service coordinates with the Office of the Human Rights Advocate, 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. The Public Prosecution Service has also created a digital platform on which journalists can file complaints and, in March 2020, it

introduced a new comprehensive case management model, creating separate teams to manage both old and new cases.

(d) Regarding guarantees of due process, Guatemala 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.

(e) No additional information was provided, apart from that on strengthening technical capacities (see subpara. (a) above).

### **Summary of the information received from stakeholders**

#### *Multiple civil society organizations*

(a) No policy for the protection of human rights defenders, journalists and trade unionists has yet been adopted and the 2014 decision of the Inter-American Court of Human Rights has not been implemented. In 2021, the so-called non-governmental organization (NGO) law was adopted, allowing for the deregistration of NGOs and the criminalization of members of organizations that use international financing for activities that disturb public order.

(b) Protection measures for human rights defenders, such as those requested by the Inter-American Commission on Human Rights, have been poorly implemented and even violated. Harassment, attacks, murders and criminalization of human rights defenders, journalists and judicial officials have continued and increased during the coronavirus disease (COVID-19) pandemic. The Division for Protection and Security of the National Civil Police does not have sufficient resources to provide adequate protection.

(c) There has been no significant progress in terms of investigation, prosecution and redress in cases involving human rights defenders. Dismissal rates are high, indictment rates are low and impunity persists. The staff of the Public Prosecution Service and the district prosecution services have not been sufficiently informed about or trained on the protocol for the investigation of crimes committed against human rights defenders, issued by the Service in May 2018.

(d) Criminal law continues to be used against human rights defenders, including indigenous leader Bernardo Caal Xól, without due process. Excessive use of force and pretrial detention also continue to be used against human rights defenders.

(e) Journalists, including those reporting on indigenous peoples, and particularly female journalists, continue to suffer harassment, attacks, surveillance and criminalization, without adequate State protection, particularly in the digital sphere. Media legislation favours the concentration of media ownership in a few hands, and initiatives to promote indigenous peoples' right to access the media have been stalled by Congress. The number of cases of murder of trade union members and leaders has increased.

### **Committee's evaluation**

[C]: (a), (b), (c), (d) and (e)

While the Committee welcomes the efforts made to draft a public policy on human rights defenders, it regrets the delay in its adoption and requires information on whether the policy covers journalists and trade unionists.

While noting the information on efforts to provide existing agencies with the necessary resources to improve analysis of attacks and ensure they are investigated, the Committee regrets the lack of information on the impact of these measures, including the protocol for the investigation of crimes committed against human rights defenders issued by the Public Prosecution Service and its implementation, and of statistics on the number of investigations, convictions of perpetrators and victims receiving full redress. It reiterates its recommendation.

The Committee regrets the lack of detailed information on measures taken by the State party to ensure that due process guarantees are upheld in cases in which criminal charges are brought against human rights defenders. It reiterates its recommendation.

The Committee regrets the lack of information from the State party on measures to 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. It reiterates its recommendation.

### **Paragraph 39: Rights of indigenous peoples**

#### **Summary of the information received from the State party**

(a) 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 companies applying for licences to mine for non-metallic minerals and the communities in the affected areas. Given the absence of a legal framework regulating consultation with indigenous peoples, the Ministry, through the same Office, in application of judgments on the conduct of consultations handed down by the Constitutional Court, has established operational tools and guidelines for dialogue and consultation between project developers and the linguistic communities that reside in areas affected by their projects. Round tables have been set up to monitor and evaluate compliance with the agreements reached.

(b) 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 agreement 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.

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.

(c) Evictions are carried out legally, respecting all recognized safeguards and eviction protocols.

(d) Guatemala complies with the provisions of article 2 of the Public Order Act and article 4 (3) of the Covenant.

(e) 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. Articles 61 and 62 of congressional Decree No. 94-96 on the adoption of the General Telecommunications Act establish the procedure for the allocation of a radio frequency. Amendments to this Act must be proposed in a bill duly submitted to Congress.

#### **Summary of the information received from stakeholders**

##### *Multiple civil society organizations*

(a) Despite several orders of the Constitutional Court to conduct consultations with affected indigenous peoples, the Ministry of Energy and Mining has either failed to hold consultations or excluded real representatives of the affected indigenous peoples from the process, in collusion with the mining company, as was the case with the Fénix mining project in El Estor, Izabal. In 2018, the Ministry began pre-consultation processes and technical meetings with indigenous peoples to discuss the El Escobal mining project.

(b) No legislation on consultations with indigenous peoples has been adopted. The two bills that were tabled were not in line with international standards and effective consultations were not conducted with indigenous peoples.

(c) Insufficient prevention and mitigation measures have been taken concerning forced evictions, eviction orders have been issued without prior notice or due process guarantees and in a violent manner, and the authorities have resorted to criminalizing usurpation and states of siege to justify and carry out evictions. The Government has defended the interests of private companies in extractive projects to the detriment of indigenous peoples' rights.

(d) More than 20 states of emergency have been imposed since January 2020, including during the COVID-19 pandemic, resulting in increased violence, persecution and criminalization of indigenous peoples, with impunity.

(e) There has been a lack of progress in adopting legislation on indigenous community-based media, community radio operators have continued to be prosecuted and the judgment of the Inter-American Court of Human Rights dated 6 October 2021 ordering, inter alia, reparations for indigenous peoples has not been implemented.

### **Committee's evaluation**

[B]: (a) and (b)

The Committee welcomes the information provided by the State party on consultation processes carried out in 2019, on the adoption of operational tools and guidelines for the conduct of consultations and on the first substantive agreement concluded in 2021 between the parties to a consultation process with the Maya Q'eqchi' indigenous people, held in accordance with the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), in relation to the Fénix mining project. It requires information on: (a) the result of the round tables set up to monitor and evaluate compliance with the agreements reached; (b) any difficulties encountered in the application of the operational tools and guidelines for the conduct of consultations; (c) alleged attempts to exclude from consultations real representatives of the indigenous peoples, as in the case of the Fénix mining project in El Estor; (d) the pre-consultation processes and technical meetings with indigenous peoples to discuss the El Escobal mining project; and (e) the implementation of the 2021 agreement.

[C]: (c), (d) and (e)

The Committee regrets the lack of information on measures taken since the adoption of the concluding observations to ensure that forced evictions that are not in line with international standards are not carried out; that the application of states of emergency strictly adheres to the conditions set out in article 4 of the Covenant; and that indigenous peoples are able to express themselves in their own languages and promote their cultures on commercial and community radio stations on an equitable basis. It reiterates its recommendations.

**Recommended action:** A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be included in the State party's next periodic report.

**Next periodic report due:** 2028 (country review in 2029, in accordance with the predictable review cycle).

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