



# International Covenant on Civil and Political Rights

Distr.: General  
30 November 2015  
English  
Original: Spanish  
English, French and Spanish only

## Human Rights Committee

### List of issues prior to the submission of the fourth periodic report of Guatemala\*

The Human Rights Committee, at its ninety-seventh session (A/65/40, vol. I, para. 40), established an optional procedure which consists in the preparation and adoption of a list of issues to be transmitted to the State party concerned prior to the submission of its periodic report. The replies of the State party to this list of issues will constitute its report under article 40 of the Covenant.

#### Constitutional and legal framework (arts. 1 and 2)

1. Please provide information on the measures taken to implement the Committee's most recent recommendations (CCPR/C/GTM/CO/3), including relevant statistical data. Please also provide information on the procedures in place for implementing the Views adopted by the Committee under the Optional Protocol to the International Covenant on Civil and Political Rights.
2. Please provide information on any significant developments in the legal and institutional system for the promotion and protection of human rights that have occurred since the adoption of the previous concluding observations, including examples of cases in which provisions of the Covenant have been applied by national courts.
3. Please explain what steps have been taken to ensure that the Office of the Human Rights Advocate is provided with adequate human and financial resources, in accordance with the principles relating to the status of national institutions (Paris Principles). Please also provide information on the steps taken to ensure the independence and proper operation of the Office of the Human Rights Advocate.

#### Non-discrimination, equal rights between men and women, and violence against women (arts. 2, 3, 6, 7, 17 and 26)

4. In the light of the Committee's previous concluding observations (CCPR/C/GTM/CO/3, para. 11), please provide information on the nature and results of the measures, including awareness-raising campaigns, taken to prevent and provide effective protection against violence and discrimination based on sexual orientation or

\* Adopted by the Committee at its 115th session (19 October-6 November 2015).



gender identity, in particular against transgender women. Please include information on any relevant court decisions in this regard. Please also include information on the number of complaints received concerning violence against lesbian, gay, bisexual, transgender or intersex (LGBTI) persons, the investigations carried out in these cases and their results, including the sentences handed down to the perpetrators and the remedies provided to the victims.

5. In response to the Committee's previous concluding observations (CCPR/C/GTM/CO/3, para. 8), please provide up-to-date information on the nature and results of the measures taken to ensure equality between women and men in all spheres, including their participation in political life. Please also provide information on the steps taken to strengthen government programmes and institutions that seek to promote the rights of indigenous and Afro-descendent women and to prevent discrimination against them, including measures taken to strengthen the Office for the Defence of Indigenous Women. Please describe the steps taken by the State party to eliminate the wage gap between men and women and to prevent workplace harassment.

6. In response to the Committee's previous recommendations, (CCPR/C/GTM/CO/3, para. 9), please provide detailed, up-to-date information on the steps taken to combat discrimination and to establish effective mechanisms for monitoring compliance with labour legislation and regulations applying to domestic, agricultural and maquiladora workers. In particular, please provide information on the work of the Inspectorate-General for Labour, including an indication as to whether it has sufficient resources to carry out its functions. Please also provide information on the special regime for domestic workers, which restricts a number of labour rights, and explain whether or not this regime is compatible with the Covenant.

7. Please provide information on the steps taken by the State party in response to the concern expressed by the Committee in its previous concluding observations (CCPR/C/GTM/CO/3, para. 19) regarding violence against women in the State party. Please comment on information provided to the Committee indicating that there is a notable difference between the way that ordinary courts and specialized courts apply the law and that ordinary courts offer less protection to women victims of violence. Please also include statistical data relating to the period under review, disaggregated by age of the victim (adult/minor), on: (a) complaints received concerning the various forms of violence against women, including cases of sexual violence; (b) the investigations carried out in these cases and their results, including the sentences handed down to perpetrators; and (c) the remedies provided to victims, including rehabilitative measures. Please provide information on the steps taken to strengthen the National Coordination Body for the Prevention of Domestic Violence and Violence against Women and to ensure the proper operation of the Comprehensive Care Centres for Women Survivors of Violence.

8. Please provide information on the steps taken to address the fact that women so frequently become the victims of violent murders because of their gender (femicide). Please provide information on the current statistical system for collecting disaggregated data on gender-based violence, particularly the violent murder of women.

9. Taking into account the Committee's previous concluding observations (CCPR/C/GTM/CO/3, para. 20), please provide information on how access to voluntary termination of pregnancy is assured and on the exceptions to the prohibition on abortion provided for by law. In this regard, please include information on the training provided to health workers and justice officials, as well as statistics on the number of cases where legal voluntary terminations of pregnancy were performed and the number where the procedure was denied, and explain the reasons for those

decisions. Please also provide updated statistical data on maternal mortality in the past four years. Please describe the steps taken to ensure that women are properly informed about access to contraceptives and the prevention of unwanted pregnancy, to promote sexual and reproductive health education for adolescents and to reduce the maternal mortality rate, especially among teenage girls.

**Right to life, prohibition of torture and other cruel, inhuman or degrading treatment, and the fight against impunity (arts. 2, 6 and 7)**

10. In response to the Committee's previous recommendations (CCPR/C/GTM/CO/3, para. 6) and in the light of the Constitutional Court decision of 2013 on the inadmissibility of amnesties and statutes of limitations in cases of serious human rights violations, please provide information on the measures adopted to overcome internal legal obstacles in order to ensure that persons responsible for past human rights violations are investigated, prosecuted and punished. Please also provide information on the steps taken to establish a national search commission and a single, centralized register of disappeared persons. Taking into account the Court decision of October 2013 ordering the retrial of Efraín Ríos Montt and the decision to reopen judicial proceedings in January 2015, please comment on reports that *amparo* applications or other legal obstacles are being used to unduly delay those judicial proceedings. Please also comment on information provided to the Committee regarding possible abuses of the *Amparo* Act.

11. In the light of the Committee's previous recommendations (CCPR/C/GTM/CO/3, para. 7) and progress reports on follow-up to its concluding observations (CCPR/C/109/2 and CCPR/C/112/2), please provide information on the steps taken to ensure that the reparations awarded under the National Reparations Programme systematically include comprehensive and culturally and linguistically relevant care, with a focus on psychosocial support, restoration of dignity and recovery of historical memory. Please also comment on reports of unreasonable delays in the processing of requests for compensation and indicate whether the Programme has an adequate operating budget.

12. In response to the Committee's previous recommendations (CCPR/C/GTM/CO/3, para. 23), please provide information on the steps taken to define torture as a criminal offence. Please also provide statistics, disaggregated by sex, age, ethnicity and nationality of the victim, regarding complaints of acts of torture and ill-treatment during the reporting period. Please include information on the related investigations, the outcome of disciplinary and criminal proceedings, the sentences handed down and the disciplinary or criminal penalties imposed in such cases. Please indicate the measures adopted to ensure that victims receive compensation. Please describe the steps taken to prevent torture, in particular how the Public Prosecution Service's effective operation is ensured.

13. In the light of the Committee's previous concluding observations (CCPR/C/GTM/CO/3, para. 15), please provide information on the steps taken to ensure that the National Civil Police has the human and material resources required for the effective exercise of its mandate. Please also provide information on the steps taken to prevent and investigate human rights abuses and violations committed by law enforcement officials, particularly torture and ill-treatment, and to punish those responsible; in addition, please provide information on the training provided to those officials. Specifically, please provide statistical data, from 2012 onward, on: (a) the number of complaints received concerning human rights violations attributed to police officers, especially those involving torture or ill-treatment; (b) the number of

proceedings and disciplinary actions undertaken in relation to these cases; (c) the number of subsequent trials, indicating the charges and the penalties and disciplinary measures imposed on those found guilty; and (d) the protection and compensation provided to victims in these cases.

14. Please provide information on the presence of the army in areas of activity that are traditionally under the responsibility of the National Civil Police and explain how the observance of the rights and guarantees enshrined in the Covenant by the army is ensured in practice. In particular, please indicate whether interventions by the army are conducted in accordance with clear and previously established protocols and for strictly defined durations and goals.

15. In the light of the Committee's previous recommendations (CCPR/C/GTM/CO/3, para. 16), please provide information on the steps taken by the Directorate-General of Private Security Services to oversee security companies and indicate what mechanisms have been established to protect Covenant rights. Specifically, please provide information on the measures taken to prevent persons involved in human rights violations from working in private security forces. Please also provide information on human rights violations committed by private guards, the investigations carried out in these cases and their results, including the sentences handed down to the perpetrators and the reparation provided to the victims.

16. In response to the Committee's previous recommendations (CCPR/C/GTM/CO/3, para. 13), please provide information on the progress made towards officially abolishing the death penalty and the consideration given to acceding to the Second Optional Protocol to the Covenant.

### **Persons with disabilities (arts. 2, 7, 9, 10 and 26)**

17. Please provide information on the nature and impact of measures adopted to prevent and effectively protect persons with disabilities against discrimination. Specifically, please provide information on the steps taken to ensure that social services are provided on the basis of free and informed consent and that persons with disabilities are protected against arbitrary deprivation of liberty in care facilities on grounds of disability. Please indicate whether there is an independent inspection mechanism to oversee the quality of care and supervision in mental health and social welfare institutions. In particular, please provide information on the steps taken to improve conditions in the Federico Mora National Mental Health Hospital. Please also describe the measures adopted to ensure that all complaints of ill-treatment and abuse committed against persons with disabilities are investigated, that the alleged perpetrators are prosecuted and punished and that the victims receive full compensation.

### **Prohibition of trafficking in persons (art. 8)**

18. Please provide information on the nature and results of the steps taken to prevent trafficking in persons, particularly women and children, to investigate instances of trafficking, to punish traffickers and to protect and rehabilitate victims. Please include statistics, from 2012 onward, disaggregated by sex, age and country of origin of the victim, on: (a) complaints received concerning trafficking in persons; (b) investigations carried out and their outcomes, including punishments imposed on the perpetrators; (c) protection measures for victims, family members and witnesses in connection with investigations into trafficking; (d) reparations granted to victims; and (e) follow-up on foreign victims of trafficking who are repatriated. In addition, please provide information on the training provided to judges, prosecutors, police officers

and other State agents in detecting, investigating and handling cases of trafficking in persons.

**Right to liberty and security of person, rights of persons deprived of their liberty, right to a fair trial and due process (arts. 6, 7, 9, 10, 14 and 24)**

19. In the light of the Committee's previous recommendations (CCPR/C/GTM/CO/3, para. 24), please indicate what steps the State party has taken to improve detention conditions, in accordance with article 10 of the Covenant. In particular, please provide information on the steps taken:

- (a) With regard to serious overcrowding;
- (b) To improve infrastructure, access to health care and hygienic conditions;
- (c) To ensure that minors, women and men are held separately;
- (d) To protect detained women during transfers;
- (e) With regard to the situation whereby persons deprived of their liberty exercise self-government in prisons;
- (f) To prevent inter-prisoner violence and the practice known as *talacha*, whereby organized groups extort money from other prisoners.

20. Please describe the steps taken to ensure that pretrial detention is limited to exceptional cases and is ordered only when it is necessary and consistent with articles 9 and 10 of the Covenant. Please also provide details on the progress made in increasing the use of alternatives to pretrial detention. In this connection, please include updated information, with statistics disaggregated by sex, age group and ethnic origin or nationality, on the number of persons held in pretrial detention.

21. Please comment on reports that the criteria used in the recent selection and appointment of high-level judicial authorities are neither objective nor transparent. Specifically, what steps has the State party taken in respect of the challenges and *amparo* proceedings filed against decisions taken by Nominating Commissions and Congress? In the light of the Committee's previous recommendations (CCPR/C/GTM/CO/3, para. 25), please comment on information provided to the Committee according to which judges and prosecutors involved in high-impact cases have recently been the targets of a series of attacks and provide information on the steps taken to ensure the independence and impartiality of the judiciary.

22. Please provide information on the system for imposing disciplinary sanctions on judges and magistrates and indicate whether it ensures their impartiality and independence. Please provide information on the sanction imposed on a judge by the Honour Tribunal of the Guatemalan Bar Association in April 2014 for allegedly offending one of the lawyers of Efraín Ríos Montt during his trial in 2013.

23. In response to the Committee's previous recommendations (CCPR/C/GTM/CO/3, para. 12), please provide information on the steps taken to combat structural violence in the State party, in particular steps taken in connection with the implementation of the National Policy for Violence and Crime Prevention, Citizen Security and Peaceful Coexistence (2014-2034). Please also provide information on the steps taken to prevent lynching, to investigate instances of lynching and to prosecute and punish those responsible. Please also provide information on the steps taken to set stricter limits on the acquisition and bearing of arms and ammunition by individuals (CCPR/C/GTM/CO/3, para. 14). In particular

please indicate whether the State party intends to develop a national disarmament plan.

### **Freedom of expression and association (arts. 9, 19, 21 and 22)**

24. In the light of the Committee's previous recommendations (CCPR/C/GTM/CO/3, para. 22) and progress reports on follow-up to its concluding observations, please provide up-to-date information on:

(a) The impact of the steps taken to provide protection to journalists and human rights defenders;

(b) The work of the Unit for the Analysis of Attacks against Human Rights Defenders of the Ministry of the Interior in investigating cases in which human rights defenders have been victims of threats, attacks and/or murders;

(c) The number of complaints received and criminal proceedings undertaken in connection with cases in which journalists and human rights defenders have been victims of threats, violent attacks and/or murders and the outcomes of those proceedings, including the sentences imposed on perpetrators and the reparation provided to victims;

(d) The use of media smear campaigns against human rights defenders and the measures taken to combat this practice.

(e) Allegations that human rights defenders are subjected to arbitrary detention and accused of terrorism, land-grabbing, illegal confinement and involvement in organized crime;

(f) The bill on the prevention of terrorism and corporate espionage (Bill No. 4843) and whether it is in line with the Covenant.

25. Please provide information on the number of reports received of violent attacks against or murder of trade union members and on ensuing investigations and criminal proceedings. Please comment on reports that workers are frequently denied the right to organize and resist mass dismissals.

### **Measures for the protection of minors (arts. 7 and 24)**

26. Please provide information on the steps taken to ensure that minors in conflict with the law are accommodated in suitable centres that facilitate their reintegration, that the detention or imprisonment of minors is used as a measure of last resort and for the shortest possible time and that minors in conflict with the law have the right to appropriate legal assistance. Please also provide information on the steps taken to increase the number of judges who specialize in juvenile matters and on the training programmes provided for them. Please also report on the measures taken to prevent violence in detention centres among children deprived of their liberty.

27. Please provide information on the legislative and practical measures taken to eradicate child labour, especially in domestic work and dangerous farming activities. Please provide information on the steps taken to ensure that all births in the territory of the State party are registered, in particular those of indigenous children living in rural areas.

**Rights of indigenous peoples (arts. 2, 26 and 27)**

28. In the light of the Committee's previous recommendations (CCPR/C/GTM/CO/3, para. 27), please provide information on the consultation mechanisms or processes in place to ensure that the prior, free and informed consent of indigenous peoples is obtained regarding legislative or administrative measures which may affect them directly. Please also cite examples of consultations carried out during the period under consideration. Please indicate whether the State party recognizes the right of indigenous peoples, as such, to acquire land titles and comment on the Constitutional Court ruling (Case No. 628-2013, October 2014) recognizing the collective property rights of the indigenous community of Chuarrancho. Please comment on information provided to the Committee concerning the repeated use of states of emergency as a way to resolve social conflicts and provide information on the compatibility of this practice with the provisions of the Covenant. Please also provide information on the steps taken to increase the number of indigenous persons who hold decision-making positions.

29. In the light of the Committee's previous recommendations (CCPR/C/GTM/CO/3, para. 26), please provide information on the work of the Indigenous Affairs Unit of the Judiciary and the Department of Coordination with Indigenous Peoples and Civil Society and indicate whether the Unit has sufficient human and financial resources to provide coverage for the entire country. Please also provide information on the steps taken to ensure that indigenous peoples have access to justice in their own language. Please comment on the Supreme Court decision (*Amparo* No. 1552-2012, February 2014) denying the existence of indigenous jurisdiction, in contradiction with the position taken in prior judicial decisions recognizing such jurisdiction.

**Corruption (arts. 14 and 25)**

30. Please provide information on the specific measures adopted to fight corruption in politics and the judiciary, as well as on the investigation of corruption cases and the disciplinary and judicial penalties handed down in those cases during the past five years. Please also provide information on the strengthening of the justice system and the support afforded to the International Commission against Impunity in Guatemala.

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