

NATIONS UNIES
DROITS DE L'HOMME
HAUT-COMMISSARIAT



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

13 April 2018

Excellency,

I have been following the third cycle of the Universal Periodic Review (UPR) of Guatemala and welcome your personal engagement and that of your Government during the 28th session of the UPR Working Group in November 2017.

As the final outcome report on the review of Guatemala was recently adopted by the Human Rights Council at its 37th session, I am writing to follow up on a number of areas raised in two reports that my Office prepared for the review - the compilation of UN information and the summary of stakeholders' submissions - which I consider in need of particular attention over the next four and a half years until the next cycle of the UPR. In identifying these areas, I have also considered the recommendations made by 68 countries, Guatemala's presentation and responses, and the action taken by the Government to implement the 111 recommendations it accepted during the second cycle of the UPR. The areas cover a range of issues and are set out in the annex to this letter.

I am encouraged by Guatemala's voluntary commitments, including to develop a programme of protection for journalists, developing policies and programmes to prevent armed violence in order to reduce violent deaths, with particular attention to juvenile and to continue with its policy agenda to strengthen the specialized justice system to protect women. I am also encouraged by Guatemala's commitment to continue with its permanent system to follow-up the recommendations, which was created by the Presidential Human Rights Commission and will permit to submit a mid-term report on the progress made to implement the received recommendations. With the meaningful participation of and systematic consultation with civil society and non-governmental organizations, this system may lead to the effective implementation of recommendations from international and regional human rights protection mechanisms. These efforts towards strengthening the national mechanism for comprehensive reporting and follow up in relation to international and regional human rights mechanisms and treaty obligations are highly commendable. I strongly recommend Guatemala the use of the practical guide that my Office released in 2016 on this topic and which is available at: http://www.ohchr.org/Documents/Publications/IdR_PUB_16_3_NMRF_Practical_Guide.pdf

/..

H.E. Ms. Sandra Erica Jovel Polanco,
Minister for Foreign Affairs
Guatemala



In this regard, I also encourage Guatemala to develop a national human rights action plan in order to achieve concrete results in the areas contained in the annex and to facilitate preparations for the fourth cycle of the UPR. The development of such a plan should include consultations with all stakeholders, in particular the NHRI and civil society organisations, and, where necessary, the support of international organisations, including the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other United Nations entities, under the leadership of the UN Resident Coordinator.

I welcome the renewal of the agreement on the mandate of my Office in Guatemala on 19 September 2017 for three years. I am also grateful for the collaboration of your Government in the official visit I undertook to Guatemala on 17 and 18 November 2017. I encourage Guatemala to cooperate fully with and support the International Commission Against Impunity in Guatemala (CICIG) in all aspects of its mandate.

Please be advised that I will be sharing my advice with all Member States as they go through the third cycle with a view to assisting them to begin implementing the UPR recommendations early on, following the review. An important measure that can contribute positively to follow up action is voluntary mid-term reporting. I encourage Guatemala to submit a mid-term report for the third cycle, by 2020.

As the Secretary-General states in his 2017 report on the work of the Organization (A/72/1, paragraph 98): *"The Human Rights Council's universal periodic review process is now entering a new cycle, with every Member State scheduled for a third round of scrutiny. We will work to strengthen the relevance, precision and impact of the Council's recommendations, including by providing better support to Member States in implementation, stronger collaboration with United Nations country teams and the establishment of national mechanisms for human rights reporting and follow-up to link the universal periodic review to the implementation of the Sustainable Development Goals."*

I look forward to discussing with you ways in which my Office may assist Guatemala to take action in the areas I have identified.

Please accept, Excellency, the assurances of my highest consideration.

Zeid Ra'ad Al Hussein
High Commissioner for Human Rights



Annex

Scope of international obligations and cooperation with international human rights mechanisms and bodies

- Ratify the following international human rights treaties: Second Optional Protocol to the International Covenant on Civil and Political Rights in order to abolish death penalty; the Optional Protocol to the International Covenant on Economic, social and Cultural Rights; the International Convention for the protection of All Persons from Enforced Disappearance; the Second Optional Protocol to the ICCPR on a communications procedure; the Optional Protocol to the Convention the Rights of the Child on a communications procedure; and the International Labour Organization Convention 189 on Decent Work for Domestic Workers.
- Take action to publish the report of the Subcommittee on Prevention of Torture in order to assist a dialogue on the implementation of its recommendations.
- Comply with the judgments of the Inter-American Court of Human Rights. In this regard, investigate the cases of human rights violations committed between 1981 and 1999, identifying structural obstacles to justice such as lack of access to military information.
- Fully cooperate with and support the International Commission Against Impunity (CICIG) in Guatemala in all aspects of its mandate and ensure that it is able to perform its work effectively.

National human rights framework.

- Increase resources and provide political support for government human rights institutions and programs, including the Presidential Commission on Human Rights, the Human rights Ombudsman's Office and the National Reparations Program.
- Appoint independent and qualified members to its National Preventive Mechanism to enable it to function in accordance with the objectives of the OP-CAT and ensure it is fully functional and able to investigate all reported cases, including the necessary resources to fulfil its mandate effectively.
- Establish a systematic consultation and follow-up mechanism with civil society and non-governmental organizations on the implementation of UPR recommendations.

Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Cross-cutting issues

Equality and non-discrimination

- Combat discrimination, racism, xenophobia, in particular discriminatory practices against indigenous people, migrants, refugees and people of African descent; place

particular attention to the structural elements of discrimination that might affect the effective exercise of the rights of indigenous people and people of African descent; expedite the implementation of the Public Policy for Coexistence and Elimination of Racism and Racial Discrimination; Criminalize any diffusion of ideas based on racial superiority or hatred, incitement to racial discrimination or any act of racially motivated violence.

- Adopt awareness-raising measures to guarantee that people belonging to the LGBTI community are not discriminated against on the grounds of their sexual orientation and gender identity and who are sometimes victims of hate crimes; create a legislative framework and implement public policies to eliminate violence and discrimination based on sexual orientation and gender identity; amend the Criminal Code to penalise hate crimes and crimes of social intolerance based on sexual orientation, gender identity and sexual characteristics; adopt measures to ensure the protection of the life and physical integrity of LGBTI and intersex persons.

Development, the environment, and business and human rights

- Ensure that all private security companies are registered and that their activities are properly monitored; take into account the human rights impact of projects to exploit natural resources, including mining and hydroelectric projects; ensure that environmental impact studies include analysis of social impacts and that appropriate mitigation measures are taken.
- Finalize and implement a national action plan to follow-up the UN Guiding Principles on Business and Human Rights.

B. Civil and political rights

Right to life, liberty and security of person

- Establish a de jure official moratorium on the use of death penalty and abolish it.
- Adopt appropriate measures to ensure safety and protection of human rights defenders; take all necessary steps to work towards diminishing threats and violence against human rights defenders, especially women and journalists and to implement an effective mechanism to protect them from these threats; ensure that human rights defenders can carry out their legitimate activities without fear or undue impediment, obstruction, or legal or administrative harassment; put an end to the use of the criminal justice system to intimidate, threat, marginalize and stigmatize journalists, social organizations and human rights defenders engaged with the defence of economic, social, cultural and environmental rights and of indigenous people's rights, particularly in the context of hydroelectric and mining projects; finalize the Public Policy for the Protection of Human Rights Defenders with strong participation by civil society and with an adequate budgetary allocation and ensure its full implementation; ensure prompt, systematic, thorough, effective and impartial investigations regarding attacks against human rights defenders and the full implementation of the Protocol of the Public Prosecutor's Office on the Investigation of Cases against human rights defenders;

- Adopt a mechanism to protect journalists and release all journalists detained for exercising their freedom of expression, adopt a framework for the protection of media professionals, based on the U.N. Plan of Action on the Safety of Journalists and the Issue of Impunity; approve and implement the Programme for the Protection of Journalists, in consultation with the latter; lift restrictions on freedom of expression and adopt legal and regulatory measures for the protection and safety of journalists against persecution, intimidation and harassment; decriminalize defamation and refrain from adopting any laws providing for censorship; adopt Bill 4087 which would authorize one community radio station per municipality.
- Pursue efforts to prevent and combat human trafficking, exploitation of persons and other contemporary forms of slavery, including sexual exploitation, provide support to victims and ensure that key government institutions responsible for tackling human trafficking are properly funded.
- Strengthen the role and capacity of the National Civil Police with a view to reducing the role of the armed forces in the maintenance of public order and ensuring a prompt end to army intervention in public security activities; exercise effective control and oversight over private security companies ensure that all of them are registered and penalize those that do not comply with the law.

Administration of justice, including impunity, and the rule of law

- Strengthen the independence and effectiveness of the judiciary; increase efforts in the fight against impunity and corruption, including by increasing the financial resources for the judiciary; Develop and implement a protection protocol for cases of threats and attacks against judges.
- Carry out the judicial reforms aimed at fully ensuring the independence of the judiciary ensuring that these include: the protection of the rights of indigenous peoples to maintain and strengthen their justice system, guarantees respect for multiculturalism and gender equality in access to the justice system; guarantees a professional career track establishing selection mechanisms for judges and magistrates that eliminate the risk of politicization; and ensure respect for the principle of separation of administrative and judicial functions of the Supreme Court guaranteeing its full independence and impartiality; establish mechanisms for the protection of judges which allow to rule out any risk of politicization or conflict of interest.
- Adopt measures to ensure the sustainability of efforts to fight corruption, such as legal and public policy reforms, to improve public confidence in the justice system.
- Ensure that serious human rights violations committed during the internal armed conflict are investigated and perpetrators brought to justice, including persons in the chain of command.

C. Economic, social and cultural rights

- Develop and implement comprehensive and efficient policies to fight poverty; adopt a law on rural development with a view to effectively implement the National Policy

for Comprehensive Rural Development; implement measures to facilitate access to healthcare and education, particularly for the most vulnerable population; address the structural causes of poverty faced by the most economically vulnerable communities; continue investing resources to expand social programmes that promote and protect rights of older persons.

- Counter child malnutrition and strengthen programmes to eradicate poverty and extreme poverty; assign the necessary human and financial resources for the prompt implementation of the National strategy to Prevent Chronic Malnutrition 2016-2020; ensure that community development councils channel funds for their projects to address chronic malnutrition; strengthen its Food Aid Program to prevent food insecurity; intensify efforts to prevent and eradicate chronic malnutrition.
- Implement compulsory primary education providing resources to ensure quality and infrastructure of the education system; take measures to ensure children's access to education, particularly those with disabilities and living in remote communities; continue efforts to reduce illiteracy, and to provide universal education for all children.
- Take specific measures to promote access to health-care services, and increase resource allocation and accessibility to public health services; adopt effective measure to address widespread child pregnancy and ensure access to sexual and reproductive health rights.

D. Rights of specific persons or groups

Women

- Combat violence against women inter alia, developing government programs and strategies to prevent, investigate and punish human rights violations against women and strengthening the "Creciendo Segura" Program, aimed at low-income women; combat impunity and strengthen efforts to carry out prompt, impartial and effective investigations into all forms of violence against women and bring those responsible to justice; place a higher priority on the prosecution of violence and discrimination against women, transgender and transsexual people as well as access to justice for victims of these crimes; carry out awareness raising campaigns inter alia, to sensitize about the criminal nature of domestic violence; improve coordination and strengthening of various institutions dealing with violence against women; intensify efforts to tackle femicide and allocate sufficient resources to concerned specialized courts and tribunals and towards the full implementation of the Law Against Femicide; carry out awareness-raising measures on the recommendations of the Committee on the Elimination of Discrimination Against Women;
- Actively work towards equal remuneration for men and women; promote balanced representation in decision-making positions, equality in the work market and entrepreneurship, including equal pay and equal access to credit and other financial services; strengthen strategies to combat stereotypes and all forms of discrimination against women elaborate and implement programs to encourage sharing of domestic responsibilities and child care with a view to eliminating gender stereotypes;

- Promote large scale registration campaigns for women voters, notably indigenous women, to ensure their full participation in the political and public life; take measures to improve women representation in decision-making positions and reduce the gender pay gap, promote equal representation of men and women in public office; establish a mechanism to increase participation of women, particularly indigenous women, in key state positions and decision-making processes;
- Decriminalize and eliminate all punitive measures related to termination of pregnancies in cases of rape, incest and severe foetal impairment.

Children

- Ensure free, universal birth registration; take measures to fight against trafficking in children, and protect them from sexual exploitation and other forms of slavery; increase efforts to abolish child labour, including by conducting systematic labour inspections; adopt measures to reduce vulnerability of children to child labour and sexual exploitation; Intensify labour inspections focusing on child labour and prosecution of violators of child labour legislation;
- Strengthen the child protection system through reforms that adopt a human-rights based approach; train personnel for the optimal care of children in education and health care; prohibit corporal punishment of children in all settings; put in place a policy for the protection of children and adolescents with a view to better protecting them against violence and crimes;
- Guarantee the life, integrity and physical safety of children and adolescents placed in State shelters, and provide adequate reparation for caused damages; ensure that the cause and circumstances of the tragedy occurred in *Hogar Seguro Virgen de la Asuncion* in March 2017 is investigated, those responsible brought to justice, and profound reforms to the child welfare system are adopted; bring juvenile detention centres into line with international standards, inter alia preventing and punishing all types of ill-treatment of minors deprived of their liberty and ensure their access to independent complaints mechanisms.

Persons with Disabilities

- Develop economic assistance programs for persons with disabilities, ensure they full enjoy their rights, ensure equal access to justice and exercise of political rights to them and integrate children with disabilities in a national education system; expedite the adoption of initiative 5125 on the framework Law on Disability, in order to contribute to the due implementation and fulfilment of the Convention on the Rights of Persons with Disabilities; abolish practices of forced sterilization and coercive abortions of women and girls with disabilities, investigating and punishing their perpetrators.

Indigenous Peoples

- Increase substantially state spending on programs for indigenous peoples and institutions; Guarantee the rights of indigenous peoples; facilitate and promote indigenous peoples' access to education, sanitation, property and public positions;

strengthen the system of Development Council in order to improve participation of indigenous population in the public management; combat structural causes of racial discrimination against indigenous peoples in order to ensure access to quality education and health services.

- Establish effective consultation processes with indigenous communities; ensure that the requirement to consult with them on decisions concerning lands they traditionally own is enshrined in law, and that this instrument complies with international standards; ensure full participation of indigenous peoples in decision-making processes which concern them, and ensure that they are consulted in the context of the planning and implementation of large scale economic projects; prevent land conflicts between indigenous peoples and farmers.
- Strengthen national efforts to prevent land conflicts between indigenous peoples and farmers; Set up a legal framework to recognize indigenous people's rights to have access to and manage their territories of origin and their natural resources, in accordance with international standards; substantially increase state spending on programs and institutions for indigenous peoples.
- Establish effective consultation processes with indigenous communities; ensure that the requirement to consult with them on decisions concerning lands they traditionally own is enshrined in law, and that this instrument complies with international standards; ensure full participation of indigenous peoples in decision-making processes which concern them, and ensure that they are consulted in the context of the planning and implementation of large scale economic projects; ensure that the consultation processes to protect the rights of indigenous peoples are a prerequisite to issuing any licence or permit for natural resources exploitation and development projects affecting indigenous peoples.
- Ensure the promotion of the rights of indigenous peoples and efforts to facilitate and promote indigenous peoples' access to education, sanitation, property and public positions.