

108th Session, Geneva, June 2019

Committee on the Application of Standards

Following the decisions made during the informal tripartite consultations on the working methods of the CAS in March 2019, governments appearing on the preliminary list of individual cases have now the opportunity, if they so wish, to supply on a purely voluntary basis, written information before the opening of the session of the Conference.

Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

Guatemala

Indigenous and Tribal Peoples Convention, 1989 (No. 169)

Guatemala (Ratification: 1996). The Government has provided the following written information.

The Government of the Republic of Guatemala informs that in response to the communication Ref.: ILC 108-500-7 dated May 7th 2019 from the International Labour Standards Department, containing the preliminary list of cases as submitted by the social partners to be consider for a possible discussion during the Committee on the Application of Standards of the International Labour Conference, the following information is presented:

1. Recently, in April 25th-26th 2019, the State of Guatemala presented its report to the Committee on the Elimination of Racial Discrimination (CERD) (Combined sixteenth and seventeenth periodic reports) presented by an official delegation accompanied by 12 institutions of the 3 branches of the State of Guatemala¹ The CERD welcomed the presentation of the Combined 16th and 17th periodic reports in a single document and expressed its satisfaction with the open dialogue held with the High-Level Delegation representing the State, likewise, the CERD thanked the additional information provided after the interactive dialogue. In this regard, the CERD at its 2731th and 2732th sessions held on May 7-8, 2019 adopted its concluding observations through the document (CERD/C/GTM/ 16-17), which contains 49 recommendations that have being already transferred to the Government of Guatemala, among them, some concerns that coincide with the comments of the Committee of Experts on the Application of Conventions and Recommendations -CEACR- of the ILO. The Government of Guatemala requests the ILO to take into consideration the recent examination presented by the State of Guatemala and

¹ Congress of the Republic, Constitutional Court, Ministry of Foreign Affairs, Ministry of Labor and Social Welfare, Ministry of Social Development, Ministry of Culture and Sports, Presidential Commission Coordinator of Executive Policy on Human Rights, Presidential Dialogue Commission, Ombudsman's Office for Indigenous Women, Guatemalan Indigenous Development Fund, Agrarian Affairs Secretariat and Peace Secretariat.

the recommendations issued by the CERD, as well as the periodicity with which the Government is examined on similar topics, including the presentation of the Report on Convention 169 of the ILO to the CEACR on August 31st 2019.

Specific Cabinet for Social Development and Thematic Committee on Indigenous Peoples

2. The Government of Guatemala wishes to state that through the Government Agreement Number 11-2019 the Specific Cabinet of Social Development was created in order to coordinate, articulate and manage within the framework of the K'atun National Development Plan Our Guatemala 2032, specifically the policies related to development, social protection and prevention of violence to reduce gaps in inequity and inequality of the population in conditions of vulnerability, such as "indigenous peoples". To implement the Cabinet, 11 thematic committees were created, with the Vice-Presidential instruction to provide follow-up and continuity to all commitments, judicial judgments and other issues dealt by the abrogated cabinets (Act 01-2019), among them, those concerning indigenous peoples. It is appropriate to indicate that the Indigenous Peoples Thematic Committee will continue under the lead of the Ministry of Labor and Social Welfare supported by the Presidential Commission against Discrimination and Racism against Indigenous Peoples - CODISRA-, also with the support and participation of 18 institutions. In that sense, in ordinary session (Act 02-2019) the Cabinet approved the Work Plan of the Indigenous Peoples Thematic Committee and on May 22nd, 2019 proposed the creation of 5 technical committees² whose most relevant commitments are: create consultation conditions for indigenous peoples, considering the judgements issued by the Constitutional Court and have an impact on the legislative agenda to promote and enhance the rights of the indigenous peoples at the Legislative Branch.

Human Rights of Indigenous Peoples and Access to Justice

3. The Government of Guatemala wishes to express that as part of the implementation of the judgement issued by the Inter-American Court on Human Rights on Case Defender vs Guatemala, the Public Protection Policy for Human Rights Defenders in Guatemala is currently under construction. Highlighting that in February 2018 during his visit Rapporteur Michel Forst contributed to the preparation of the abovementioned proposal. Also, a process of socialization at the national level, is being currently implemented on the Monitoring System of Recommendations for Guatemala of the International Protection Systems of Human Rights - SIMOREG- in order to provide an immediate response and handle in the best way the recommendations made by international human rights bodies to the country.
4. The Constitutional Court for its part, following the objective of Access to Constitutional Justice with Equity and Equality of its Five-Year Strategic Plan, created the Unit of Attention to Persons in Conditions of Vulnerability during its 2018 presidency. This Unit takes care in a specialized manner and complies with national and international human rights law in cases related to persons in conditions of vulnerability. Also, with the technical support of the United States Agency for International Development -USAID- the "Access to Constitutional Justice Policy for Persons in Vulnerability Conditions", was designed in which 8 variables of attention were identified: childhood and adolescence, elderly people, women, indigenous peoples, persons with disabilities, migrants, people

² These are: i) control mechanisms, ii) planning system, iii) consultations with indigenous peoples, legislative agenda and strengthening of education.

with chronic diseases, people deprived of liberty. Among other actions, the data disaggregation is promoted in the provision of services.

5. The creation of the Secretariat of Indigenous Peoples of the Public Prosecutors Office since the year 2017 shows a fundamental institutional action for the rights of the indigenous peoples. In October 2018 the First National Meeting between the Public Prosecutors Office and Indigenous Authorities was held, at the national level, with the participation of 190 persons, including the Indigenous Authorities of the departments of Huehuetenango, San Marcos, Totonicapán, Quiché, Petén, Sololá, Chimaltenango, Escuintla, Guatemala, Jalapa, Jutiapa, Santa Rosa, Alta Verapaz, Baja Verapaz, Izabal and Chiquimula. As a result, it was agreed to implement 13 regional roundtables with the objective of addressing social conflicts and articulate institutional actions to search for joint solutions. The first round of meetings was held in May 2019 and all the roundtables were created. Coordination agreements with Authorities have been signed by Indigenous Authorities of Sololá, Quiché, and Totonicapán, as well as the Ombudsman's Office for Indigenous Women, CODISRA and the Tz'ununija Indigenous Women's Movement in order to strengthen institutional coordination with these sectors of the Indigenous Peoples. The Public Prosecutors Office in order to serve with cultural relevance and access to justice in their own language in 2018 had counted with 63 interpreters, who work in 15 indigenous languages, conducting 10,709 interpretations. From January to April 2019 6,522 interpretations were conducted. Currently the Public Prosecutors Office works in the institutionalization of the Access Policy for Indigenous Peoples, which proposes an integral approach in the transformation of the services provided to indigenous peoples, indigenous women and persons with disabilities. In addition, dialogue roundtables have been held with the peasant sector in order to have an approach with them and deal with cases related to social conflict in the region and continue facilitating access to justice and addressing the concerns of indigenous populations strengthening trust with the Public Prosecutors Office.
6. Concerning the Judicial Branch during 2018 and the current year, it has focused its priorities in the provision of its services with cultural and linguistic relevance through the translation of documents, the elaboration of the Instrument of Work in the Judicial Branch, preparation and training the administrative and jurisdictional personnel on rights of indigenous peoples and strengthening the coordination between the System of Ordinary Justice and Indigenous Justice. As to linguistic relevance, in the year 2018 more than 11,000 hearings were held in Mayan languages in different jurisdictional bodies at national level. The most required languages for the hearings held were: Maya K'iche' 2,893; Maya Q'eqchi' 2,504; Maya Mam 1,979 and Kaqchikel 1,140. The interpretation and translation services in the languages of the users of the Judicial Branch strengthens access to justice in their own language. Two "National Encounters of Indigenous Authorities and Justice Operators" were held.
7. On the other hand, on July 2nd 2016, in a judgment contained in file C-13005-2013- 00139 (13005-2015-00109) the First Tribunal in charge of Criminal Offenses, Drug Trafficking and Crimes against the Environment of Guatemala, acquitted 6 persons accused, among them two linked (Rigoberto Juarez Mateo and Domingo Baltazar), to social conflicts due to the case of Hidro Santa Cruz hydroelectric plant, located in Santa Cruz Barillas, Huehuetenango. The expert studies demonstrated that the indigenous authorities acted in accordance with the decisions of the community assemblies and with their intervention in the resolution of social conflicts. Similarly, on April 26th. 2019 first-degree acquittal was issued to Mr. Abelino Chub Caal, whose release was ordered by the Court of First

Instance, without prejudice to the actions that the accusing party could undertake according to law.

Mechanisms for Consultation and Participation of Indigenous Peoples

8. In the same way, the judgments issued by the Constitutional Court regarding to San Juan Cotzal, Oxec and Oxec II cases had a close follow up and compliance by the Ministry of Energy and Mines, including the Case of Minera San Rafael.

Lands

9. The Government of Guatemala reports that in relation to the recognition and declaration of lands, the Cadastral Information Registry developed a popularized version of the Specific Regulation for the recognition and declaration of communal lands with cultural relevance, which contains 15 steps to declare a communal land. In that matter, from 2005 to the present, 68 areas have been declared in the cadastral process, covering the same number of municipalities and representing a territorial area of 52.21% of the national territory; in which the initial previous activities and cadastral processes have been developed as established in the RIC Law. In 38 of the declared zones in cadastral process the mapping phase has been completed, 13 zones have been declared registered. It is important to indicate that in the areas that have been declared in cadastral process, communal properties have been identified in possession or ownership of indigenous communities or peasants whose administration system is constituted by the so-called communal ownership. In this context, since the approval and implementation of the Specific Regulation for Recognition and Declaration of Communal Lands, 36 diagnoses have been conducted in the same number of communities identified as potential Communal Lands to be declared. It is important to indicate that, deriving from the socio-cultural characteristics' aspects of the country, the process for the recognition and declaration of land communal activities is slow, taking into account the series of previous awareness-raising activities required not only with the community, but also with the municipal authorities. From the 36 communities identified and diagnosed, 11 have been Declared Communal Lands.

Statistical information on sociocultural and sociodemographic composition

10. The Government of Guatemala planned and executed the pre-census and census activities of the XII National Population Census and VII Housing in the period 2017-2018. Since the last trimester of the year 2018 and the first of 2019, the post census stages are executed: edition, digitization and data consistency; waiting for September 2019 to release the first official census results to the population. In this sense, this process has counted with the support of the United Nations Population Fund -UNFPA-, the Economic Commission for Latin America and the Caribbean -ECLAC- and the Latin American Demographic Center -CELADE-. Regarding the census methodology, it should be noted that, in all the operational processes, high priority was given to the gender, and human right to self-identification was promoted and carried out according to the people and linguistic community of belonging, including for the first time the answer option: Afrodescendant / creole / afroestizo to determine the number of Afro-descendants who live in the country.

Agreement on Identity and Rights of Indigenous Peoples AIDPI

11. The Peace Secretariat is currently conducting "The Agenda for Peace 2017-2026 commitments to fulfill", whose objective is to analyze the fulfillment of the 12 Peace Agreements. Concerning to the Agreement on Identity and Rights of Indigenous Peoples -AIDPI- 118 commitments are recorded, of which 36 have been fulfilled (formally and sustainably), and 56 partially fulfilled³. Worth noting that the Government of Guatemala expresses its unrestricted interest and commitment in taking the necessary actions to give continuity to the fulfillment of those commitments that are pending or partially fulfilled.

³ Excerpt from institutional information transferred by the Peace Secretariat in the communication DS-226-2019 / SEPAZ / GV dated March 28th of 2019 to the Ministry of Labor and Social Welfare.