



**Agreement between the United Nations and the
State of Guatemala on the establishment of an
International Commission Against Impunity in Guatemala
("CICIG")**



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The United Nations and the State of Guatemala,

Considering that it is the duty of the State of Guatemala to protect the right to life and personal integrity of and provide effective judicial redress for all the inhabitants of the country,

Considering that the State of Guatemala has assumed international human rights commitments to establish effective mechanisms for the protection of human rights pursuant to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms,

Considering that illegal security groups and clandestine security organizations seriously threaten human rights as a result of their criminal activities and capacity to act with impunity, defined as the de facto or de jure absence of criminal, administrative, disciplinary or civil responsibility and the ability to avoid investigation or punishment, all of which weaken the rule of law, impeding the ability of the State to fulfil its obligation to guarantee the protection of the life and physical integrity of its citizens and provide full access to justice, with the resulting loss of confidence of citizens in the democratic institutions of the country,

Considering that the Government of the Republic of Guatemala undertook under the Comprehensive Agreement on Human Rights of 22 March 1994 to combat illegal security groups and clandestine security organizations with the aim of assuring that such forces and organizations no longer exist and, additionally, assumed the obligation to “effectively guarantee and protect the work of human rights defenders and organizations” and that, in accordance with the Framework Law of the Peace Agreements, the State is legally bound to honour these commitments,

Considering that pursuant to articles 55 and 56 of its Charter, the United Nations promotes respect for human rights and fundamental freedoms for all and Member States pledge themselves to take action in cooperation with the Organization for the achievement of that purpose,

Considering the political agreement of 13 March 2003 and its addendum between the Minister of Foreign Affairs of Guatemala and the Human Rights Ombudsman on the establishment of a Commission to Investigate Illegal Groups and Clandestine Security Organizations in Guatemala,

Considering the 4 April 2003 letter of the Government of Guatemala requesting assistance from the United Nations for the establishment and operation of an investigatory commission to assist with the investigation and dismantling of illegal security groups and clandestine security organizations,



Considering the above, therefore, it is necessary to implement an international agreement on human rights that would establish mechanisms to effectively combat the impunity produced by illegal security groups and clandestine security organizations that seriously undermines fundamental human rights,

Considering that the establishment of an International Commission Against Impunity in Guatemala (CICIG) will strengthen the capacity of the State of Guatemala to effectively fulfil its obligations under the human rights conventions to which it is a party and its commitments under the Comprehensive Agreement on Human Rights of 29 March 1994,

Further considering that the Secretary-General and the Government of Guatemala have carried out negotiations towards the establishment of CICIG, as a non-UN organ, functioning solely in accordance with the provisions of this agreement,

Have therefore agreed as follows:

Article 1. Purpose of the Agreement

1. The fundamental objectives of this Agreement are:

(a) To support, strengthen and assist institutions of the State of Guatemala responsible for investigating and prosecuting crimes allegedly committed in connection with the activities of illegal security forces and clandestine security organizations and any other criminal conduct related to these entities operating in the country, as well as identifying their structures, activities, modes of operation and sources of financing and promoting the dismantling of these organizations and the prosecution of individuals involved in their activities;

(b) To establish such mechanisms and procedures as may be necessary for the protection of the right to life and to personal integrity pursuant to the international commitments of the State of Guatemala with respect to the protection of fundamental rights and to international instruments to which Guatemala is a party;

(c) To that end, an International Commission Against Impunity in Guatemala shall be established pursuant to the provisions of this Agreement and the commitments of the State under national and international human rights instruments, in particular the Comprehensive Agreement on Human Rights, sections IV, paragraph 1, and VII, paragraph 3;

(d) For the purposes of this Agreement, illegal security groups and clandestine security organizations shall mean those groups that:

- (i) commit illegal acts in order to affect the full enjoyment and exercise of civil and political rights and
- (ii) are linked directly or indirectly to agents of the State or have the capacity to generate impunity for their illegal actions.

2. CICIG shall carry out the activities mentioned in the above section in accordance with Guatemalan law and the provisions of this Agreement.



Article 2. Functions of the Commission

1. In order for this instrument to achieve the above-mentioned purposes and objectives, the Commission shall have the following functions:

(a) Determine the existence of illegal security groups and clandestine security organizations, their structure, forms of operation, sources of financing and possible relation to State entities or agents and other sectors that threaten civil and political rights in Guatemala, in conformity with the objectives of this Agreement;

(b) Collaborate with the State in the dismantling of illegal security groups and clandestine security organizations and promote the investigation, criminal prosecution and punishment of those crimes committed by their members;

(c) Recommend to the State the adoption of public policies for eradicating clandestine security organizations and illegal security groups and preventing their re-emergence, including the legal and institutional reforms necessary to achieve this goal.

2. CICIG shall enjoy complete functional independence in discharging its mandate.

Article 3. Powers of the Commission

1. In order to discharge its mandate, the Commission shall have the power to:

(a) Collect, evaluate and classify information provided by any person, official or private entity, non-governmental organization, international organization and the authorities of other States;

(b) Promote criminal prosecutions by filing criminal complaints with the relevant authorities. The Commission may also, in accordance with this Agreement and the Code of Criminal Procedure, join a criminal proceeding as a private prosecutor (*querellante adhesivo*) with respect to all cases within its jurisdiction;

(c) Provide technical advice to the relevant State institutions in the investigation and criminal prosecution of crimes committed by presumed members of illegal security groups and clandestine security organizations and advise State bodies in the implementation of such administrative proceedings as may be required against state officials allegedly involved in such organizations;

(d) Report to the relevant administrative authorities the names of civil servants who in the exercise of their duties have allegedly committed administrative offences so that the proper administrative proceedings may be initiated, especially those civil servants or public employees accused of interfering with the Commission's exercise of its functions or powers, without prejudice to any criminal proceedings that may be instituted through the Office of the Public Prosecutor;

(e) Act as an interested third party in the administrative disciplinary proceedings referred to above;

(f) Enter into and implement cooperation agreements with the Office of the Public Prosecutor, the Supreme Court, the Office of the Human Rights Ombudsman, the National Civilian Police and any other State institutions for the purposes of carrying out its mandate;



(g) Guarantee confidentiality to those who assist the Commission in discharging its functions under this article, whether as witnesses, victims, experts or collaborators;

(h) Request, under the terms of its mandate, statements, documents, reports and cooperation in general from any official or administrative authority of the State and any decentralized autonomous or semi-autonomous State entity, and such officials or authorities are obligated to comply with such request without delay;

(i) Request the Office of the Public Prosecutor and the Government to adopt measures necessary to ensure the safety of witnesses, victims and all those who assist in its investigations, offer its good offices and advice to the relevant State authorities with respect to the adoption of such measures, and monitor their implementation;

(j) Select and supervise an investigation team made up of national and foreign professionals of proven competence and moral integrity, as well as such administrative staff as is required to accomplish its tasks;

(k) Take all such measures it may deem necessary for the discharge of its mandate, subject to and in accordance with the provisions of the Guatemalan Constitution; and

(l) Publish general and thematic reports on its activities and the results thereof, including recommendations pursuant to its mandate;

Article 4. Legal personality and capacity

1. Upon ratification of this Agreement, CICIG shall have the legal personality and capacity to:

- (a) Enter into contracts;
- (b) Acquire and dispose of movable and immovable property;
- (c) Institute legal proceedings; and

(d) Take such other action as may be authorized under Guatemalan law in order to carry out its activities and fulfil its mandate.

2. CICIG shall have the capacity to enter into agreements with other States and international organizations to the extent that they may be necessary for the implementation of its activities and fulfilment of its functions under this Agreement.

Article 5. Composition and organizational structure

1. CICIG shall be composed of a Commissioner, such specialized staff as may be required and a secretariat.

(a) The Commissioner, appointed by the Secretary-General of the United Nations, shall have overall responsibility for the activities of CICIG and represent the Commission before the Government of Guatemala, other States and local and international organizations. He or she shall be a jurist with a high level of professional competence in the areas directly related to the mandate of CICIG, particularly human rights, criminal law and international law, and must also have extensive experience in the investigation of and fight against impunity. The Commissioner shall submit periodic reports on the activities of CICIG to the United Nations Secretary-General.



(b) The international and national personnel recruited by the Commissioner shall include professionals and specialized technicians with expertise in carrying out investigations in the field of human rights and may include, inter alia, investigators, forensic experts and experts in information technology.

(c) The secretariat shall be headed by an international official, who shall be responsible for the general administration. The secretariat shall operate under the overall authority and direction of the Commissioner.

Article 6. Cooperation with CICIG

1. The Government of Guatemala shall provide CICIG with all the assistance necessary for the discharge of its functions and activities, in conformity with Guatemalan law, and shall ensure, in particular, that its members enjoy:

(a) Freedom of movement without restriction throughout Guatemalan territory;

(b) Freedom of access without restriction to all State locations, establishments and installations, both civilian and military, as well as to all penitentiaries and detention facilities without prior notice, in accordance with and subject to the relevant provisions of Guatemalan Constitution;

(c) Freedom to meet and interview any individual or group of individuals, including State officials, military and police personnel, community leaders, non-governmental organizations, private institutions and any persons whose testimony is deemed necessary for the discharge of its mandate;

(d) Free access to information and documentary material that has a bearing on its investigations, official archives, databases and public records and any similar report, archive, document or information in possession of the relevant persons or entities, whether civilian or military, in accordance with and subject to the relevant provisions of the Guatemalan Constitution.

2. In order to fulfil the purposes of this Agreement, and in accordance with Guatemalan legislation and bilateral cooperation agreements in force:

(a) The Public Prosecutor shall appoint such special prosecutors and take all other relevant actions as may be necessary to carry out investigations and criminal prosecutions, in particular in order to:

(i) Rely upon professional staff qualified to carry out the activities which are the subject of this Agreement;

(ii) Carry out relevant procedures for criminal investigations and prosecutions;

(iii) Receive technical assistance and other support from CICIG to strengthen the capacity of the Office of the Public Prosecutor;

(iv) Maintain adequate coordination with CICIG for the purposes of this Agreement, in particular facilitating CICIG's exercise of its role as private prosecutor (*querellante adhesivo*);

(b) The National Civilian Police will facilitate the creation of special police units to support the investigations of the Public Prosecutor.



3. The Executive Branch shall submit to the Congress of Guatemala and shall promote a series of legislative reforms required to ensure the proper functioning of the Guatemalan criminal investigation and judicial prosecution system. Such proposals for legislative reform shall be developed in consultation with representatives of institutions of the Guatemalan State and the United Nations in order to bring the Guatemalan legal system in line with international conventions on human rights.

Article 7. CICIG expenditures

1. The expenditures of CICIG shall be met from voluntary contributions by the international community.
2. The Executive Branch will provide to CICIG the offices and other installations required for CICIG to appropriately carry out its functions.

Article 8. Security and protection of CICIG staff

1. The Government of Guatemala shall take such effective and adequate measures as may be required to ensure the security and protection of the persons referred to in this Agreement.
2. The Government shall also ensure the security of the victims, witnesses and any other person who cooperates with CICIG for the duration of its mandate and after it completes its work in Guatemala.

Article 9. Inviolability of premises and documents; tax exemptions

1. The premises, documents and materials of CICIG shall be inviolable. The real property, funds and assets of the Commission shall be immune from search, confiscation, attachment, requisition and expropriation.
2. CICIG, its funds, assets, income and other property shall be:
 - (a) exempt from all direct taxes. It is understood, however, that CICIG will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
 - (b) exempt from all types of duties in respect of goods imported by CICIG for its official use. It is understood, however, that articles imported under such exemption will not be sold in Guatemala except under conditions agreed with the Government;
 - (c) exempt also from import and export duties in respect of its publications.

Article 10. Privileges and immunities of CICIG personnel

1. The Commissioner shall enjoy the privileges and immunities, exemptions and facilities granted to diplomatic agents in conformity with the 1961 Vienna Convention on Diplomatic Relations. He shall, in particular, enjoy:
 - (a) Personal inviolability, including immunity from arrest or detention;
 - (b) Immunity from criminal, civil and administrative jurisdiction in conformity with the Vienna Convention;
 - (c) Inviolability of all papers and documents;



- (d) Exemption from immigration restrictions and other alien registrations;
- (e) The same immunities and facilities in respect of his or her personal baggage as are accorded to diplomatic agents by the Vienna Convention;
- (f) Exemption from taxation in Guatemala on his or her salary, emoluments and allowances.

2. International personnel shall enjoy the privileges and immunities granted to experts on missions for the United Nations coming within the scope of article VI of the United Nations Convention on Privileges and Immunities. They shall, in particular, enjoy:

- (a) Immunity from personal arrest or detention and from seizure of their personal baggage;

- (b) Immunity from legal process in respect of words spoken or written and acts done by them in the course of the performance of their mission. This immunity from legal process shall continue to be accorded after the completion of their employment with CICIG;

- (c) Inviolability for all papers and documents;

- (d) The same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys;

- (e) Exemption from taxation in Guatemala on his or her salary, emoluments and allowances.

3. Privileges and immunities are granted to the Commissioner and officials of CICIG in the interest of the Commission and not for the personal benefit of the individuals themselves. The right and the duty to waive immunity whenever it may be relevant without prejudice to the purpose for which it is granted, shall require, in the case of the Commissioner, authorization from the Secretary-General of the United Nations and, in the case of CICIG staff, authorization from the Commissioner.

4. The Government agrees to provide to CICIG and its personnel the security necessary for the effective completion of CICIG's activities throughout Guatemala, and to protect the personnel of CICIG, whether international or national, from abuse, threats, reprisals or acts of intimidation in virtue of their status as personnel of, or their work for CICIG.

Article 11. Withdrawal of cooperation

The United Nations reserves the right to terminate its cooperation with the State if:

- (a) The State fails to provide full cooperation with CICIG in a manner that will interfere with its activities;

- (b) The State fails to adopt legislative measures to disband clandestine security organizations and illegal security groups during the mandate of CICIG;

- (c) CICIG does not receive adequate financial support from the international community.



Article 12. Settlement of disputes

Any dispute between the parties concerning the interpretation or application of this Agreement shall be settled by negotiation between the parties or by any other mutually agreed mode of settlement.

Article 14. Entry into force

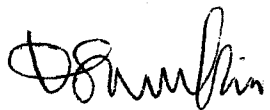
This Agreement shall enter into force on the date on which the State of Guatemala officially notifies the United Nations that it has completed its internal procedures for approval and ratification. It shall have a duration of two (2) years and may be extended by a written agreement between the parties.

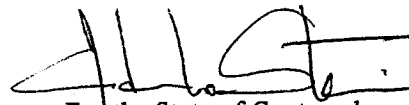
Article 15. Amendment

This instrument may be amended by written agreement between the parties.

IN WITNESS WHEREOF, the following representatives, duly authorized by the United Nations and by the State of Guatemala, have signed this Agreement.

Done in the city of New York on 12 December 2006, in two originals in English and Spanish, both texts being equally authentic.


For the United Nations


For the State of Guatemala