

Agreement
Between The United Nations and the Government of Guatemala
for the Establishment of a Commission for the Investigation
of Illegal Groups and Clandestine Security Organizations
in Guatemala (“CICIACS”)

The United Nations and the Government of Guatemala,

Recalling the political agreement of 13 March 2003 and addenda between the Minister of Foreign Affairs of Guatemala and the Human Rights Ombudsman on the establishment of a Commission for the Investigation of Illegal Groups and Clandestine Security Organizations in Guatemala (“CICIACS”);

Recalling the 4 April 2003 letter from the Government of Guatemala requesting assistance from the United Nations for the establishment and operation of CICIACS with a view to investigating and dismantling illegal groups and clandestine security organizations responsible for threats and attacks against human rights defenders, members of the judiciary, witnesses, labor and other activists, and prosecuting those responsible for their formation and operation;

Considering that the establishment of CICIACS will strengthen the capacity of the State of Guatemala to effectively fulfill its obligations under the human rights conventions to which it is a party, and its commitments under the Global Human Rights Agreement of 29 March 1994, specifically Commitment IV, numeral 1, which establishes that “[i]n order to maintain unlimited respect for human rights, there must be no illegal security forces nor any clandestine security organizations. The Government of the Republic recognizes that it has the obligation to combat any manifestation of these groups;”

Considering further that in Commitment VII, numeral 2, of the Global Human Rights Agreement, the Guatemalan Government assumed the obligation to take “special measures to protect those persons or entities working in the field of human rights [and] investigate in a timely and exhaustive manner all claims presented concerning acts or threats directed against them,” and in numeral 3 of the same Commitment reiterated “the commitment to effectively safeguard and protect the work of individuals and entities engaged in defending human rights;”

Recalling further that the Secretary-General and the Government of Guatemala have held negotiations for the establishment of CICIACS;

Now, therefore, they have agreed as follows:

Article 1
Establishment of CICIACS

1. There is hereby established a Commission for the Investigation of Illegal Groups and Clandestine Security Organizations in Guatemala (hereinafter “CICIACS”) to assist the State of Guatemala, pursuant to the terms of this Agreement, the commitments of the State set forth in international human rights instruments, and Commitment IV of the Global Human Rights Agreement, to investigate the structure and activities of illegal groups and clandestine security organizations and their association with the State and organized criminal activities, as well as prosecute those persons responsible for the formation and operation of these entities.
2. CICIACS shall conduct its investigation and prosecution activities in accordance with Guatemalan law as modified by this Agreement.

Article 2
Competence of CICIACS

1. CICIACS shall have the power to investigate the structure and activities of illegal groups and clandestine security organizations, their modalities of operation and sources of financing, without prejudice to the powers vested in the Public Ministry by the Guatemalan legal system. It shall, in particular, seek to identify:
 - (a) persons responsible for attacks perpetrated against human rights defenders, justice sector professionals, witnesses, journalists and labor and other social sector activists;
 - (b) connections that may exist between these illegal associations and agents of the State, organized crime and private security forces as they adversely affect respect for human rights in Guatemala pursuant to the objectives of this Agreement; and
 - (c) any other illegal activities which may constitute transnational crimes, such as international organized crime and related crimes, which directly or indirectly harm the capacity of the criminal justice system to protect human rights as provided in this Agreement.
2. CICIACS shall have the power to initiate criminal prosecutions, in accordance with the terms of Article 3 of this Agreement, of persons responsible for crimes related to the activities described in Article 2.1 (a), (b) and (c) of this Agreement.

3. CICIACS shall, for the purposes of its mandate, enter into one or more agreements with the Attorney General and Head of the Public Ministry to govern cooperation between CICIACS and the Public Ministry in the investigation and criminal prosecution of persons involved in illegal activities within the scope of the CICIACS mandate, which agreements may include the appointment by the Attorney General of special prosecutors to work with CICIACS. In addition, CICIACS may carry out activities with the Public Ministry to strengthen the capacity of the Public Ministry to investigate and prosecute illegal groups and clandestine security organizations. CICIACS may also enter into agreements for the same purposes with other entities of the State of Guatemala.
4. CICIACS may recommend legal and institutional reforms necessary for the strengthening of the justice system in Guatemala.
5. CICIACS shall, at the conclusion of its mandate, publish a detailed report on its activities and the results of its investigations.
6. CICIACS shall have the power to take all other measures considered necessary for the fulfillment of its mandate, subject to the provisions of this Agreement and Guatemalan law.

Article 3

Powers of investigation and prosecution of CICIACS

1. For the purpose of carrying out investigations within the scope of its mandate, CICIACS shall have all necessary investigative powers.
2. CICIACS shall be invested with the legal status of private prosecutor (querellante adhesivo) defined in article 116 of the Guatemalan Code of Criminal Procedure, as modified by this Agreement, in all cases within its competence. It shall have the power to initiate criminal prosecutions or join prosecutions already initiated by the Public Ministry at any stage of a criminal investigation or prosecution without the limitations imposed in article 118 of the Guatemalan Code of Criminal Procedure. The provisions of articles 121 and 339 of the Code of Criminal Procedure, granting certain parties and the court the right to object to the intervention of a private prosecutor, shall not apply to CICIACS.
3. Notwithstanding the above, CICIACS shall have the power to independently initiate and carry out criminal prosecutions on matters within the scope of its competence when, in the view of the CICIACS Commissioner, a failure to initiate or continue a prosecution would significantly impede the ability of CICIACS to fulfill its mandate or cause irreparable harm to the full

effectiveness and enjoyment of the legal rights whose protection falls within the competence of CICIACS.

4. CICIACS shall have the power to request the appropriate state authorities to initiate administrative proceedings as provided for under Guatemalan law and regulations against public officials identified by CICIACS as responsible for acts or failures to act in the exercise of their functions which create obstacles for CICIACS investigations, without prejudice to any corresponding criminal proceedings that may be applicable.

Article 4 **Juridical personality and legal capacity**

1. CICIACS shall possess the juridical personality and legal capacity to:
 - a) contract;
 - b) acquire and dispose of movable and immovable property;
 - c) institute legal proceedings; and
 - d) undertake any other actions permissible under Guatemalan law for the conduct of its activities and the fulfillment of its mandate.
2. CICIACS shall have the power to enter into agreements with the Government of Guatemala, the Public Ministry, the Supreme Court of Justice, the Human Rights Ombudsman, and other State entities to regulate the modalities of their cooperation with CICIACS within the scope of their respective competencies.
3. CICIACS shall have the power to enter into agreements with third States and International Organizations as may be necessary for the conduct of its activities and the fulfillment of its functions under this Agreement.

Article 5 **Composition and Organizational Structure**

1. CICIACS shall be composed of a Commissioner, investigation and prosecution staff, and a Secretariat.
 - a) A Commissioner, appointed by the Secretary-General of the United Nations, shall be responsible for the overall activities of CICIACS, and shall represent it in its relations with the Government of

Guatemala, third States and local and international organizations. The Commissioner shall be a member of the legal profession, and shall possess a high level of professional competence in fields directly related to the CICIACS mandate, particularly human rights, criminal law and international criminal law, and extensive experience in the investigation and prosecution of organized crime. The Commissioner shall submit periodic reports on the activities of CICIACS to the Secretary-General and the Government of Guatemala.

- b) International and national personnel recruited by the Commissioner shall include prosecutors and defense lawyers experienced in the conduct of investigation and prosecution in the fields of human rights and organized crime, and may include investigators, police and military personnel, forensic experts and information technology experts, among others.
 - c) A Secretariat, headed by an international official who shall be responsible for servicing the investigative and prosecutorial units, and for the general administration of CICIACS. The Secretariat shall operate under the overall authority and direction of the Commissioner.
2. By virtue of their appointment, CICIACS staff shall be invested with the legal faculties of public officials required by Guatemalan law to exercise the functions attributed to them by this Agreement.
3. In the performance of their functions, members of CICIACS shall not accept or seek instructions from any Government or any other source.

Article 6 **Cooperation with CICIACS**

1. The Government shall cooperate with all organs of CICIACS. It shall respond without delay to any request for assistance from CICIACS and shall enforce compliance with any such request directed to officials and employees of the State, and any other persons or entities under its authority. In any case in which a CICIACS request for access to facilities or information as set forth in Article 6.2 is obstructed, CICIACS may request the full assistance of the public security forces to carry out the activity and such assistance shall be granted without delay.

2. The Government shall provide all assistance necessary for the conduct of CICIACS investigations and prosecutions, and shall, in particular, ensure its members:

- a. unhindered freedom of movement throughout the territory of Guatemala;
 - b. free and unhindered access to all places, establishments and installations of the State, both civilian and military, and to all prisons and detention centers without prior notice;
 - c. freedom to meet and interview, and to receive any information from, any person or group of persons, including government officials, military and police personnel, community leaders, non-governmental organizations, private institutions and any person whose testimony is considered necessary for the fulfillment of its mandate;
 - d. free access to information and documentary material relevant to CICIACS investigations, official archives, data-bases and public registers and any such reports, files, documents or information in possession of the relevant persons or entities, whether civilian or military.
3. During the course of 2004, the Government shall submit to the Congress of the Republic of Guatemala and promote a set of legal reforms to ensure the proper functioning of the Guatemalan criminal investigation and prosecution system. These legal reforms shall be prepared in consultation with representatives of the United Nations, the Guatemalan State and civil society to bring the Guatemalan legal system into compliance with international conventions on human rights and the United Nations Convention against Transnational Organized Crime.

Article 7
Expenses of CICIACS

The expenses of CICIACS shall be borne by voluntary contributions from the international community.

Article 8
Security and protection of CICIACS personnel

1. The Government of Guatemala shall take all effective and adequate measures required to ensure the security and protection of CICIACS personnel referred to in the present Agreement.

2. The Government shall also guarantee the security of victims, witnesses and any person who collaborates with CICIACS, for the duration of its mandate and after the completion of its work in Guatemala.

Article 9
Premises

The Government shall assist in the provision of premises for CICIACS and such utilities, facilities and other services as may be necessary for its operation.

Article 10
Inviolability of premises and documents; exemption from taxation

1. The premises of CICIACS shall be inviolable. The property, funds and assets of CICIACS, wherever located and by whomsoever held, shall be immune from search, seizure, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

2. All documents and materials belonging to or used by CICIACS, wherever located and by whomsoever held, shall be inviolable.

3. CICIACS, its funds, assets, income and other property shall:

(a) Be exempt from all direct taxes. It is understood, however, that CICIACS will not claim exemption from taxes which are, in fact, charges for public utility services;

(b) Be exempt from customs duties and prohibitions and restrictions on articles imported or exported for official use. It is understood, however, that articles imported under such exemptions will not be sold in Guatemala except under conditions agreed upon with the Government;

(c) Be exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

Article 11
Privileges and immunities of CICIACS personnel

1. The Commissioner shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance 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;
 - (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 accorded to experts on missions for the United Nations in accordance with Article VI of the Convention on the Privileges and Immunities of the United Nations. 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 CICIACS;
 - (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. Guatemalan personnel shall be accorded:
- (a) Immunity from legal process in respect of words spoken or written and all acts performed by them in their official capacity. Such immunity shall continue to be accorded after termination of employment with CICIACS;

- (b) Immunity from taxation on salaries, allowances and emoluments paid to them by CICIACS.
4. The privileges and immunities of CICIACS personnel are granted in the interests of CICIACS and not for the personal benefit of the individuals concerned. The right and duty to waive immunity, where it can be waived without prejudice to the purpose for which it is granted, shall lie, in the case of the Commissioner, with the Secretary-General, and in the case of all other CICIACS personnel, with the Commissioner.

Article 12
Withdrawal of cooperation

The United Nations reserves the right to cease its cooperation with the Government pursuant to this Agreement

- (a) should the Government of Guatemala cease to materially cooperate with CICIACS in a manner which would hamper its activities;
- (b) should the Government fail to introduce and the Congress fail to approve the legal reforms referred to in Article 6 (3) of this Agreement prior to January 1, 2005; or
- (c) in the case of a lack of financial support from the international community.

Article 13
Settlement of disputes

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

Article 14
Entry into force and duration

The present Agreement shall enter into force on the date on which the Government of Guatemala formally notifies the United Nations that it has completed its domestic approval and ratification procedures. It shall remain in force for a period of two (2) years and may be extended by written agreement between the parties.

Article 15
Amendment

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

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

Done at New York on 7 January 2004 in two originals in English and Spanish, both texts being authentic.

For the United Nations

For the Government of Guatemala