



大会

Distr.  
GENERAL

A/HRC/11/2/Add.7  
4 May 2009

CHINESE  
Original: ENGLISH

人权理事会  
第十一届会议  
议程项目 3

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菲利普·奥尔斯顿的报告 \*

增 编

国别建议后续行动——危地马拉 \*\*

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\* 迟交。

\*\* 本报告的内容提要以所有正式语文分发。报告本身载于内容提要之后的附件，仅以英文和西班牙文分发。

## 内容提要

本报告分析危地马拉在落实法外处决、即审即决或任意处决问题特别报告员于 2006 年 8 月 21 日至 25 日访问危地马拉后所作建议(A/HRC/4/20/Add.2)的情况。自特别报告员访问以后，危地马拉的凶杀率有了大幅上升。尤其令人不安的是对人权维护者的持续袭击、杀害妇女事件的增加和出现了非法凶杀的新对象(公共交通工具驾驶营运人)。该国对于非法凶杀事件的调查和反应仍然不力。对于刑事司法机构、证人保护、预算分配和财政政策并没有作出迫切需要的改善。随着消除危地马拉国内有罪不罚现象国际委员会的建立，情况已有很大改善。该委员会具有改善刑事调查和法律追究程序、证人保护和帮助国家执行必要国家安全法律的能力。

## Annex

### **FOLLOW-UP REPORT SUBMITTED BY THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS, PHILIP ALSTON, REGARDING HIS VISIT TO GUATEMALA (21 - 25 AUGUST 2006)**

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## I. METHODOLOGY

1. This report analyses the progress made by Guatemala in implementing recommendations made by the Special Rapporteur on extrajudicial, summary or arbitrary executions following his visit to Guatemala from 21-25 August 2006 (A/HRC/4/20/Add.2).

2. In accordance with past practice,<sup>1</sup> the follow-up report was compiled based on information provided by the Government, as well as through consultation with domestic and international civil society, and by reference to publicly available reports and materials<sup>2</sup>. The Special Rapporteur requested from the Government and from civil society actors information on what steps had been taken to implement the recommendations of the Special Rapporteur. Information on the non-implementation of recommendations was also sought. In addition, information was sought on the current state of the phenomenon of extrajudicial executions in the country, and particularly on whether and how the situation had improved, deteriorated or remained static since the Special Rapporteur's visit.

3. This follow-up report and the follow-up report on the Philippines (A/HRC/11/2/Add.8) constitute an important component to one of the principal working methods of the Special Rapporteur – conducting country visits to investigate allegations of violations of the right to life. Country visits provide an opportunity for the Special Rapporteur to ascertain the facts on a first-hand basis, to analyse in detail the forms and causes of unlawful killings, and to engage in constructive dialogue with the country concerned. Following the visit, the Special Rapporteur prepares a detailed report on his findings, including recommendations directed at reducing unlawful killings and promoting accountability. Country visits can only achieve their full potential if Governments give real consideration to these recommendations. Accordingly, the Commission on Human Rights requested States to carefully examine recommendations and to report to the Special Rapporteur on actions taken on the recommendations (res. 2004/37).

4. In order to assess the extent to which States had implemented recommendations, in 2006, the Special Rapporteur initiated follow-up reports on visits conducted. The first follow-up report (E/CN.4/2006/53/Add.2) concerned the recommendations made by his predecessor, Ms Asma Jahangir, on her visits to Brazil, Honduras, Jamaica, and Sudan. In 2008, a follow-up report (A/HRC/8/3/Add.3) was issued on the first two missions conducted by Special Rapporteur Philip Alston – Sri Lanka and Nigeria.

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<sup>1</sup> E/CN.4/2005/7, para. 30; E/CN.4/2006/53/Add.2, para.4; A/HRC/8/3/Add.3, para 5.

<sup>2</sup> Some of the information received by the Special Rapporteur with regard to Guatemala was provided on a confidential basis, but much of it is reflected in various public reports including: *International Commission against Impunity in Guatemala—CICIG—“One Year Later”* (September 2008); Washington Office on Latin America, *The Captive State: Organized Crime and Human Rights in Latin America* (October 2007); Washington Office on Latin America, *Activistas Contra La Impunidad: Un estudio de caso sobre la motivilización por los derechos humanos en Guatemala* (December 2008); Procurador de los Derechos Humanos, *Informe Anual Circunstanciado: Resumen ejecutivo del Informe Anual Circunstanciado al Congreso de la República de las actividades y de la situación de los derechos humanos en Guatemala durante el año 2008* (January 2009); Report of the Working Group on the Universal Periodic Review, Guatemala, A/HRC/8/38 (29 May 2008).

5. The Special Rapporteur is grateful to officials of the Office of the High Commissioner for Human Rights, and to Sarah Knuckey, Joanna Edwards, and Wade McMullen from New York University School of Law, for their assistance in the preparation of these reports.

## II. INTRODUCTION

6. The Special Rapporteur visited Guatemala from 21-25 August 2006 and published his final report on 19 February 2007. In his report, the Special Rapporteur examined the severe security crisis in Guatemala, a country with one of the highest murder rates in the world, and where the perpetrators of grave crimes rarely face justice. He noted that Guatemala bears responsibility for this crisis, both *directly* – through killings by state actors – and *indirectly* – through the State's failure to protect its citizens and prosecute perpetrators.

7. The report emphasized that Guatemala stood at a cross roads: it could either establish a working system of criminal justice based on human rights and the rule of law, or it could fall back on the *mano dura* (hard-handed) tactics of the past by broadening police discretion and reducing civil liberties in pursuit of "security". The Special Rapporteur attributed the existence of the crisis to a lack of political will within the State, which had failed to enact important legislation required by the Peace Accords and to allocate sufficient funds to enable its criminal justice system to function properly.<sup>3</sup> He recommended that Guatemala undertake stronger efforts to end impunity, including by: reforming and expanding the criminal justice system to effectively investigate and prosecute murders; adopting the legislation required to implement the International Commission Against Impunity in Guatemala and the package of security related legislation necessary to realize the Peace Accords; establishing a witness protection program; and increasing the funds allocated to the institutions of the criminal justice system.

8. This follow-up report documents the continued deterioration of the security situation in Guatemala since the Special Rapporteur's 2006 mission. The types and quantities of killings have increased. Social cleansing, the murder of women, lynchings, attacks on human rights defenders, and prison violence continue to be significant problems. The year 2008 also saw the rise of a new category of violence: attacks on conductors of public transit.

9. Guatemala has inadequately responded to these unlawful killings, and the country continues to suffer from a high rate of impunity. The main causes for this continue to be deficiencies in the police, prosecutorial, and justice systems, and the refusal of witnesses to testify due to the danger of reprisals. Guatemala has not succeeded in addressing any of these factors. As a result, approximately 98 percent of crimes continue to go unpunished.

10. However, and despite this sobering picture, various steps taken over the last year by President Alvaro Colom suggest that there are reasons to be optimistic that Guatemala has

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<sup>3</sup> The Peace Accords, which were signed in 1996, provided a comprehensive plan for transforming Guatemala from a country that relied on brutal counter-insurgency tactics to one that maintained order while fully respecting the civil, political, economic, social and cultural rights of all of its citizens. The Accords consisted of a series of agreements dealing with human rights, the establishment of a truth commission, the rights of indigenous peoples, the agrarian situation, the role of the armed forces, the terms of a ceasefire, the constitutional and electoral regime, the integration of guerrilla forces, and mechanisms for verifying compliance with the agreements.

begun moving towards reform. Colom's administration, which took power in January 2008, has made efforts to vet the police force and the Officer of the Public Prosecutor, and remove those found not to be acting in the public interest. Some steps have been taken to address the problems of witness protection and national security. Importantly, Guatemala established the International Commission Against Impunity in Guatemala (CICIG), which is tasked with investigating and prosecuting clandestine security groups. CICIG has already begun investigations in several cases, and has been working with the Government to reform the justice system.

### III. CONTEXT

11. In 2001, there were 3,230 homicides in Guatemala. By 2006, the year that the Special Rapporteur visited Guatemala, this had increased to a startling 5,884. In 2007, there was a slight drop, to 5,781. But in 2008, the number of homicides had increased dramatically again, to 6,292 – making last year the deadliest year since the signing of the Peace Accords.<sup>4</sup> This represents a 95 per cent increase between 2001-2008, and an average of 17 killings per day. During the second half of 2008, which was significantly more violent than the first, the homicide rate averaged 20 killings per day. At least 687 of the victims were women, and 591 victims were children or adolescents. Over ten percent appear to have signs of torture.<sup>5</sup>

12. A large threat to peace and security in Guatemala is the presence of regional organized criminal groups involved in the drug trade. Guatemala's geographic location—halfway between the growers in the South and the buyers in the North—and its weak institutions, combined with the near total impunity for serious crimes, leave it in serious danger of becoming a narco-state. For this reason, the actions that the Government chooses to take at this time are particularly crucial.

### IV. TYPES OF KILLINGS

13. In his report, the Special Rapporteur indicated several particularly problematic types of killings that occur in Guatemala: social cleansing; lynching; femicide; attacks targeting people for being gay, lesbian, transgender or transsexual;<sup>6</sup> attacks on human rights defenders; and violence against those in prisons. In addition, in the last few years a new form of violence has taken hold—attacks against conductors of public transit.

#### A. Social cleansing

14. The phenomenon of social cleansing persists, with detailed studies by NGOs suggesting that approximately 8-10 per cent of killings are carried out with the aim of “weeding out” suspected gang members and other criminals. While social cleansing is often carried out by

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<sup>4</sup> Office of Human Rights Annual Report on Human Rights in Guatemala, available at [http://www.pdh.org.gt/index.php?option=com\\_frontpage&Itemid=80](http://www.pdh.org.gt/index.php?option=com_frontpage&Itemid=80) [PDH Report], based on statistics from the National Civil Police (PNC); also relied on by CICIG and OHCHR.

<sup>5</sup> PDH Report at 202. In a study of 3,679 cases, 458 of the bodies studied appeared to have some signs of torture, for a total of 10.81 per cent of those analyzed; the methods of torture included burning, mutilation, sexual violence, elimination of an opportunity to resist binding and gagging the victim, stoning, and strangulation.

<sup>6</sup> Updated information on attacks in Guatemala against those perceived to be gay, lesbian, transgender or transsexual was not provided.

organized criminal groups, often with the support of local authorities and private security agencies, investigations by the Procuraduría de los Derechos Humanos (PDH) and NGOs found continued involvement in at least some of these cases by police forces, both directly and indirectly.<sup>7</sup>

15. In his 2006 report, the Special Rapporteur found credible evidence of the involvement by the División de Investigación Criminal (DINC) of the Policía Nacional Civil (PNC) in social cleansing. He found that while the killings were more than just the actions of a few rogue officers, they had not “risen to the level of officially-sanctioned policy.”<sup>8</sup> After the PNC was implicated in the murder of three Salvadorian Parliamentarians in March 2007, the Minister of the Interior was removed from office, along with over 1,900 police officers. Some civil society interlocutors have noted that this signalled a positive shift in the culture of the police leadership.

16. Nonetheless, the State has not given the absolute and categorical rejection to these forms of extrajudicial executions that the Special Rapporteur recommended in his report.<sup>9</sup>

### **B. Lynching**

17. The PDH reports that there were 18 individuals killed by lynching in 2008. While this represents a reduction on the average numbers (23 to 54) killed in the period 1996-2001, there has been little change since the Special Rapporteur’s 2006 visit. In 2006 and 2007, there were 18 and 20 lynchings respectively. In his 2007 report, the Special Rapporteur had analysed MINUGUA’s 2002 extensive study of the phenomenon and supported its reasoned recommendations.<sup>10</sup> As was the case when the Special Rapporteur visited Guatemala in 2006, the majority of lynchings continue to be carried out against individuals suspected of being responsible for robberies. However, the Special Rapporteur is aware of no measures taken to address these killings.

### **C. Femicide**

18. In 2008, an estimated 722 women were murdered in Guatemala. The number of such killings has dramatically risen over the last eight years (303 women were reported killed in 2001). The majority of women killed are between 16 and 30 years old, and are killed by strangulation.<sup>11</sup> Approximately 14 percent of victims show signs of torture, and approximately 13 percent show signs of sexual abuse.<sup>12</sup>

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<sup>7</sup> See PDH Report, p. 210 (“En [la “limpieza social”] no se puede descartar la participación de agentes del Estado, como lo ha documentado la PDH en casos que la han sido denunciados.”)

<sup>8</sup> See A/HRC/4/20/Add.2, p. 10.

<sup>9</sup> For example, two police officers accused of having assassinated a group of alleged delinquents in September 2007 are currently being prosecuted. However, there has been no investigation or prosecution of the leadership structures within the National Police or the Interior Ministry from the prior administration, who are suspected to have been involved in these tactics.

<sup>10</sup> MINUGUA, “Los Linchamientos: Un Flagelo que Persiste” (July 2002). See analysis of the MINUGUA study in the Special Rapporteur’s report on Guatemala, A/HRC/4/20/Add.2, paras. 27-31.

<sup>11</sup> PDH Report, p. 203.

<sup>12</sup> Ibid..

19. In the Special Rapporteur's 2007 report, he noted that the causes of the dramatic upward trend in the murder of women were poorly understood, and he called for further research so that tailored strategies could be adopted to reduce violence against women. Unfortunately, the causes of femicide are still not properly understood, and the State has failed to identify the causes of this rapid increase in violence. The justice system continues to fail to adequately investigate and prosecute such cases.<sup>13</sup> Police continue to demonstrate a gender bias in the early stages of investigations, discrediting the victim either by blaming her for the crime, claiming she is a member of a gang, speculating about her sexual history or alleging that she is a prostitute.

20. In 2008, Congress passed the Law Against Femicide and Other Forms of Violence Against Women.<sup>14</sup> The law criminalizes any form of economic, sexual, psychological, and physical violence against women. The law is a step in the right direction, drawing resources and attention to a growing problem, and has resulted in an increase in complaints from women and requests for protection. However, the law lacks clear and uniform guidelines, which is inhibiting its implementation. Furthermore, while there has been an increase in the resources to deal with these complaints, most of the progress that has occurred has been concentrated in the capital.

#### **D. Attacks on human rights defenders**

21. Human rights defenders continue to operate in an environment characterized by fear and intimidation. They are regularly subjected to death threats as well as physical attacks. In both 2007 and 2008, there were approximately 200 attacks on human rights defenders.<sup>15</sup> In 2008, there were 12 reported killings of human rights defenders. Such killings have pervasive effects across society – spreading fear and creating a severe chilling effect on human rights work throughout the country. The greatest threats remain against those working in the areas of economic and social rights, and those seeking accountability for past atrocities. Attacks against human rights defenders are still not adequately investigated, and requests for protection are met with slow and insufficient responses.<sup>16</sup>

22. In January 2008, the Government created a unit (the Institute for the Analysis of Attacks against Human Rights Defenders) within the Interior Ministry to study the patterns of attacks on human rights defenders. A human rights unit in the DINC was also created to respond to complaints of threats and intimidation. While these were justly celebrated achievements, the heads of each of the new units were recently removed from office, and the future of both initiatives is currently uncertain.

#### **E. Violence against prisoners**

23. Prisons continue to be sites of torture and killings. The Government reported 31 violent deaths in prison between 2007 and 2008. Many of these were at the hands of other inmates,

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<sup>13</sup> According to CICIG, between 2005 and 2007 over 1,960 women were killed, but only 40 cases were brought to trial.

<sup>14</sup> Decree 22-2008. The Law took effect on 15 May 2008.

<sup>15</sup> PDH Report, p. 231.

<sup>16</sup> PDH Report, p. 230. According to information received, of 47 reports received by the Office of the Public Prosecutor, responsible parties were only identified in two cases.



particularly members of youth gangs. In one incident, which demonstrates the complex relationship between prisons, organized crime, and security, three Salvadorian members of the Central American Parliament and their driver were kidnapped in February 2007, a few hours after entering the country with a Guatemalan security detail. They were tortured and shot, and their bodies were later found on a ranch outside Guatemala City. The weapons used were registered to the Criminal Investigations Division (DINC) and investigations pointed to police officers who were allegedly members of an organized crime unit operating within the PNC.<sup>17</sup> Four police officers were arrested in conjunction with the case and sent to the maximum-security prison, El Boquerón. However, shortly before they were to give testimony to the FBI on the case, the officers were attacked, their throats were slit and they were shot inside their cells. These assassinations were originally attributed to a group of gang members within the prisons; however, they were later cleared. Nonetheless, two of the formerly accused were among seven inmates tortured and killed in the Pavoncito jail.<sup>18</sup> The case remains unsolved.

24. As discussed by the Special Rapporteur in his original report, the fact that prisoners are killed by fellow inmates does not absolve the State of legal responsibility for the deaths under international law.<sup>19</sup> First, the circumstances of some cases suggest that prison wardens were either directly or indirectly involved in the abuses. Second, the State has a due diligence obligation to take measures to prevent murders, and the custodial context permits the State to take unusually effective measures to prevent abuses by private actors. The Special Rapporteur has received no information to indicate that the State has taken any steps to fulfil these obligations.

#### **F. Attacks on public transit operators**

25. The last few years have seen the surge of a new wave of violence – against conductors of public transit, their assistants, and business owners. The focus of the violence has been on bus drivers in the capital. In 2008, 165 drivers and 12 co-pilots were assassinated. The deaths of 5 drivers were reported in the first two weeks of 2009 alone. These assassinations are attributed to the *maras*, who extort money from bus drivers, sometimes on a daily basis. If the money is not paid, the driver and/or the assistant are assassinated. Killings were usually committed in front of passengers in broad daylight, often on busy streets.

26. To the knowledge of the Special Rapporteur, the State has taken no specific measures to study or address these killings. The motives for the killings are assumed to be largely financial, and the rapid rise an effect of impunity for prior killings, and the ease with which money can continually be extorted. While the killings may have a financial motive, they also have the political effect of destabilizing the state and contributing to the general sense of insecurity in Guatemala. Each assassination sparks protests by other drivers, which in turn paralyzes the public transport system and leaves thousands without a way to get to work. As such, it has the effect of creating social unrest and undermining the Government, which has been slow respond. CICIG has now begun investigating these assassinations, and should continue this important work, bring prosecutions, and continue the process of dismantling the gangs responsible.

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<sup>17</sup> WOLA Special Report, “The Captive State”.

<sup>18</sup> PDH Report, p. 214.

<sup>19</sup> A/HRC/4/20/Add.2, para. 41.

## **V. ASSESSMENT OF REFORM MEASURES UNDERTAKEN**

27. To address the high rates of unlawful killings and impunity in Guatemala, the Special Rapporteur recommended a number of reforms to the criminal justice sector, witness protection, the method of investigations, the role of foreign donors, and fiscal policy. As might be assumed given the worsening security situation over the last few years, these reforms have been only partially implemented.

### **A. Establishment of the International Commission Against Impunity in Guatemala**

28. In his February 2007 report, the Special Rapporteur supported the establishment of the International Commission Against Impunity in Guatemala (CICIG). While not a panacea for addressing impunity, it had the potential to play an important role in pushing cases through the criminal justice system. The CICIG was subsequently established, and began its work in January 2008.<sup>20</sup> The CICIG's mandate is to investigate and dismantle violent criminal networks.<sup>21</sup> It is not a replacement for Guatemala's criminal justice institutions; rather, it may carry out investigations and act as a complimentary prosecutor, helping to bring representative cases to trial in national courts. The stated goal of the CICIG is not just to prosecute these cases but also to strengthen the national criminal justice system and demonstrate that it can be made to work.<sup>22</sup>

29. To date, there are important reasons to be optimistic about CICIG's work. It has signed cooperation agreements with the Office of the Public Prosecutor and the Ministry of the Interior. These have allowed the CICIG to create a Special Prosecution Unit which is able to bring cases. The Minister of the Interior assigned 30 members of the National Civil Police (PNC) to CICIG, to create a joint PNC-CICIG police force. The existence of this joint police force is designed to facilitate the investigation of the cases CICIG chooses to pursue. Together with the United Nations Office of the High Commissioner for Human Rights, CICIG provided these officers with training on how to investigate extrajudicial executions, the use of firearms, and the function of the police in respecting human rights.

30. In his August 2006 report, the Special Rapporteur noted the dysfunctional relationship between the police and the Office of the Public Prosecutor. In a step towards combating this, the CICIG has encouraged the creation of joint investigative teams, with the hope that, as the CICIG international staff are gradually replaced, these police officers and prosecutors will be able to take over an increasing amount of the work of the CICIG.

31. CICIG is currently investigating approximately twenty open cases and is prosecuting four cases together with local officials. The cases focus on targeting the clandestine networks

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<sup>20</sup> The Secretary-General appointed a Public Prosecutor of the Supreme Court of Spain, Carlos Castresana Fernández, as Commissioner. Currently the staff is made up of a diverse, mostly international staff, with the hope that the number of Guatemalan staff will be increased in the future. See CICIG report, "One Year Later".

<sup>21</sup> CICIG's functions include "determining the existence of illegal security groups and clandestine security structures, collaborating with the State in dismantling of such groups and structures, promoting the investigation, criminal prosecution and punishment of crimes committed by their members, and recommending to the State the adoption of public policies for eradicating such groups and structures and preventing their re-emergence." CICIG Report, "One Year Later"

<sup>22</sup> CICIG report, "One Year Later"

within Guatemala; they include a gunfight between narco-trafficking groups which led to at least 11 deaths and several injuries in Zacapa province, which is being brought in conjunction with the Special Prosecutor for Drug Activities. Because the CICIG's mandate is to assist with the investigation and prosecutions, each of these cases also helps train the local police and investigators working on the case. In addition, the pursuit of each case functions to build capacity and trust in Guatemala's justice system.

32. While CICIG should continue to receive strong support, neither Guatemala nor the international community should fall into the trap of seeing CICIG as "the" solution to Guatemala's failing criminal justice system. While its international staff and independent funding have guaranteed a certain level of independence, it still faces obstruction from police and Government officials. CICIG has the power to file criminal and/or administrative complaints against civil servants who contribute to impunity by interfering with their investigations. While progress is being made in this area, corruption extends through all sectors of society in Guatemala, including the legislative and executive branches. Since CICIG's power only extends to civil servants, its efficacy as a method for eradicating corruption outside of the PNC and the judiciary is limited. More importantly, CICIG must be seen as one component of a package of necessary reforms to the criminal justice sector. CICIG's mandate is limited to organized crime syndicates, and so it cannot address other sources of crime. While it is positioned to contribute to the training of police and prosecutors, the numbers are small, and do not represent the form of change necessary to effect structural reform. CICIG's term will expire in September 2009. While Guatemala should extend its mandate for a second two-year term, this should serve as a reminder that CICIG is a temporary solution to a lasting problem.

### **B. Efforts to reform the police and the prosecution service**

33. Together with encouraging the establishment of the CICIG, the Special Rapporteur also recommended that Congress should greatly increase the funds allocated to the criminal justice institutions, should reform and expand the PNC and the Office of the Public Prosecutor, and address the dysfunctional relationship between the public prosecutors and the police.

34. The expansion and increase in resources to the criminal justice institutions that the Special Rapporteur recommended have not occurred. Rather, the police force continues to be understaffed, underfunded, and undertrained. Corruption and ineffectiveness are widespread. The dysfunctional relationship between the PNC and the Office of the Prosecutor continues to stymie effective coordination and prosecutions.

35. However, there have been some efforts at reform of the police force directed at reducing the number of unlawful killings. The killings of the Salvadorian Parliamentarians were seen as public evidence of the reach of the various clandestine security networks within the State itself. As a result of the public outcry, both the Minister of the Interior and the head of the PNC were removed from their positions in March 2007. The new administration then instituted three purges of the PNC, eventually removing a total of 1,929 individuals. Unfortunately, despite evidence of the involvement of the DINC, only 27 of those removed were from this division.

36. Despite the purges, the PNC continues to be implicated in serious abuses. For example, the Office of Professional Responsibility of the National Civil Police (PNC) reported that they had investigated 32 accusations of killings involving PNC personnel and determined that PNC

personnel were responsible for the deaths in 18 of the 32 cases (with 14 cases remaining under investigation). Particularly well known cases include that of Mario Caal, who was killed by the use of excessive force by PNC officers, and the relatives of the mayor of Ocos, San Marcos, for which three officers from the Department of Criminal Investigation (DINC) were accused. In another well-known case, the PNC were implicated in the kidnapping and eventual execution of a group of adolescents. While this shows the difficulty in reforming the police, the State must continue to vet and remove officers who cannot fulfil the requirements of a democratic police force. At the same time, current officers must receive training and the resources required to function effectively. While the establishment of the CICIG-PNC force is a useful step, the thirty officers involved make up only a small fraction of the total police force and cannot make up for a lack of training in the rest of the organization.

37. The Office of the Public Prosecutor has also begun an internal review process. The installation of a new Attorney-General in August 2008 brought about a review of the Office's members and the removal of ten public prosecutors. These changes have increased the level of transparency and collaboration of the Prosecutor's Office, resulting in the creation of an office to develop investigations with CICIG and the creation of a work plan designating priority topics.

### **C. Reforms to witness protection**

38. In his first report, the Special Rapporteur stressed the importance of instituting an effective witness protection programme. Without it, witnesses would continue to be too afraid to testify, especially in cases involving abuses by state actors. Since his visit, the Ministry of Justice approved in 2007 the Regulations on the Law of Protection of Subjects, Proceedings and Persons Connected with the Administration of Criminal Justice,<sup>23</sup> which establishes the regulations and organs governing witness protection. To the knowledge of the Special Rapporteur, the law has however been left without the structure that would allow it to be effectively applied.

39. As a result, CICIG has focused strongly on the need to improve security for witnesses and members of the judiciary who are involved in high profile cases and is working with the Government to completely rebuild the witness protection program. The CICIG is currently in the process of trying to create special, high security courts to deal with cases involving transnational criminal networks, which are currently not being prosecuted because of security concerns. The courts would be located in the capital of Guatemala, but would have jurisdiction over crimes committed throughout the country, particularly crimes committed in the border areas where there are drug-affiliated gangs. In addition to the creation of the special courts, CICIG has suggested allowing witnesses to testify via video conference, and recommended the creation of a maximum-security prison to hold former criminal members who are testifying against their colleagues. Such measures would assist greatly in protecting witnesses, and thereby enable the successful prosecution of perpetrators. The Government should work with CICIG to ensure the implementation of these reforms.

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<sup>23</sup> Decreto 70-96 del Congreso de la República.

#### **D. National security legislation**

40. The Special Rapporteur recommended that the package of security-related legislation needed to realize the Peace Accords be implemented. In partial fulfillment of that recommendation, in 2008, Congress approved the Law on the National Security System Framework,<sup>24</sup> the objective of which is to establish regulations to coordinate activities relating to domestic and foreign security and intelligence. The Framework creates a National Security Council, tasked with defining and getting approved the Strategic Security Agenda and the Strategic Security Plan and coordinating the various agencies responsible for national security issues.<sup>25</sup>

41. However, Guatemala has not finished implementing the package of legislation much needed to bring crime under control. While CICIG is working with the State and various civil society organizations to reform and implement security related legislation, Guatemala has still not passed the Law on Arms and Munitions, which would limit the number of weapons each individual could buy, despite the fact that it has been pending in Congress for six years. Guatemala has also failed to pass the Law on Private Security. Both of these laws are necessary in order to address the causes of violence in Guatemala, where over 80 percent of killings are committed with firearms, and where private security officers are well-known to be involved in social cleansing. The Law on the National Intelligence System is also currently pending.

#### **E. Fiscal policy and the role of foreign donors**

42. In his February 2007 report, the Special Rapporteur concluded that the crisis in relation to extrajudicial executions could be attributed in part to the Government's failure to behave in a fiscally responsible manner, and to tax sufficiently so that adequate resources could be allocated to the police and justice systems. There have been some improvements in the allocation of resources, including a 70 percent budget increase between 2006 and 2009 to the PDH. However, Guatemala has not made the changes to its fiscal policy recommended by the Special Rapporteur. The State has acknowledged that the low budgets of the PNC, the prison system and the judicial system need to be improved. Given the increase in the prison population, the current budget for the prison system is not sufficient to provide for even basic services for prisoners. The low salaries of police and prison guards leave them vulnerable to corruption and the influence of criminal organizations.

43. The establishment of CICIG has in some ways made the situation more complex. CICIG is funded entirely by international donations; as a result, any improvements that it is making are not part of Guatemala's budget. There is thus a danger that the State will allow CICIG to replace its own functions rather than provide the resources necessary to build its own institutions. Moreover, without a change in its fiscal policy, Guatemala will not have the resources to continue the work CICIG is doing when the CICIG's short mandate is over.

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<sup>24</sup> Decreto 18-2008, Ley Marco del Sistema Nacional de Seguridad.

<sup>25</sup> The Council will be led by the President and will include the Vice President, Foreign Minister, Interior Minister, Minister of Defence, Secretary of Strategic Intelligence, and the Attorney General.

## **VI. CONCLUSIONS**

**44. Since August 2006, the security situation in Guatemala has deteriorated in nearly every category. Furthermore, many of the reforms under consideration at the time of the Rapporteur's original mission have still not been implemented.**

**45. As was the case when the Special Rapporteur visited Guatemala, the policies that need to be pursued to improve the security situation and improve accountability for crimes are well-known to Guatemalans. It is crucial that Guatemala renew the mandate of the CICIG, which is set to expire in September of this year, so that it can continue to dismantle violent criminal networks. Guatemala needs to develop a responsible fiscal policy, and allocate sufficient funds to the chronically underfunded criminal justice institutions. It also needs to ensure that funds are set aside so that Guatemala can continue CICIG's work, without full reliance on international donations. Priority should also be given to improving witness protection, and Guatemala should work with CICIG to establish the necessary safety mechanisms. Guatemala should also continue to implement the pending national security legislation, particularly the Law on Arms and Munitions and the Law on Private Security.**

## Appendix

### Summary of follow-up to each recommendation

**Many kinds of violence afflicting Guatemala are poorly understood, impeding efforts to craft solutions and mobilize coalitions for change;**

**Continuities between current violations and those from the period of armed confrontation are surprisingly widespread and should be the cause of great concern among both the national and international community;**

**The resort to executions of suspects and other persons considered socially undesirable as a strategy for ensuring order and reducing crime should be absolutely and categorically rejected at every level of Government;**

This recommendation has been partially implemented.

**While there is insufficient information to reliably determine how many killings are committed by State agents versus private individuals, both appear to be widespread. Any strategy to confront these killings must have two prongs:**

- **Relentlessly root out the practice of social cleansing by government bodies;**

This recommendation has not been implemented.

- **Reform and expand the criminal justice system - especially the PNC and the Ministerio Público - to effectively investigate and prosecute murders;**

This recommendation has not been implemented.

**A lack of political will and of resources allocated to criminal justice has made effective crime control impossible. Guatemala must fully accept the scope of State responsibility under international law and take the necessary measures - including costly measures - to bring crime under control in a manner that is effective and just;**

- **Congress should enact the legislation required to implement CICIG and the package of security-related legislation needed to realize the Peace Accords;**

There has been significant progress on this recommendation, but it has not been fully implemented.

- **Congress should greatly increase the funds allocated to the institutions of the criminal justice system;**

This recommendation has not been implemented.

**A witness-protection programme adequate to address the needs and fears of witnesses, including victims, to human rights violations in which the State or other powerful actors are implicated should be set up. This might be established under the supervision of the PDH;**

This recommendation has not been implemented.

**The counterproductive division of responsibility for conducting investigations between the Ministerio Público and the PNC must be ended. Establishing a system of investigative prosecutors is one possibility that should be considered;**

This recommendation has not been implemented.

**Foreign donors are playing a complex, and in some ways problematic, role: rather than funding projects that the State cannot afford, they are funding projects that the State has simply opted not to be able to afford. Insofar as these projects benefit those with the least power over the legislative agenda, such foreign assistance is commendable. Moreover, foreign assistance makes up a relatively small proportion of the Government's budget, and its withdrawal would not necessarily stimulate more responsible fiscal policies. Nevertheless, the donor community should carefully consider whether its assistance is doing as much as possible to push the State to assume its own responsibilities.**

**At the end of the day, even the crisis in relation to extrajudicial executions can be attributed in good part to the Government's failure to behave in a fiscally responsible manner. The refusal of the elites to raise the overall level of income derived from taxation to a level at which an honest and effective police force and system of justice can be afforded, along with a system which respects core economic, social and cultural rights, has produced predictable and sometimes disastrous results. After all, even Governments get what they pay for.**

This recommendation has not been implemented.

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