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PROMOTION AND PROTECTION OF HUMAN RIGHTS

HUMAN RIGHTS DEFENDERS

**Letter dated 21 January 2003 from the Permanent Mission of Guatemala
to the United Nations Office at Geneva addressed to the secretariat of
the Commission on Human Rights**

I have the honour to enclose herewith the comments of the Government of Guatemala on the report of Ms. Hina Jilani, Special Representative of the Secretary-General on the situation of human rights defenders, concerning her visit to Guatemala,* and kindly request you to have them circulated as an official document of the fifty-ninth session of the Commission on Human Rights.

(Signed): Carla Rodríguez Mancia
Chargé d'affaires a.i.

* Reproduced as received, in Spanish and English only.

Annex

**Ministry of Foreign Affairs
Guatemala City, Guatemala**

1. The report presents a balanced and detailed account of the information and impressions received by the Special Representative of the Secretary-General on the situation of human rights defenders during her visit to Guatemala. It offers a broad, well-documented panorama that provides an overall view of the country and the difficulties of political transition. Therefore, the purpose of the comments offered below is merely to enrich the report, to offer more insight into the facts it presents and to seek ways to overcome the problems to which it points. Specifically:
2. The second paragraph of the Executive summary mentions "a degree of impunity for acts committed in the past", while paragraph 25 states that "no progress has been made with regard to the elimination of impunity ...". I would think, knowing the difficult but exemplary cases of Bishop Gerardi and Myrna Mack, that the first description appropriately describes the process in Guatemala.
3. In the same paragraph of the Executive summary, I believe that COPREDEH should be added to the list of official bodies dealing with human rights issues, especially as that institution is extensively quoted in the report.
4. The fourth paragraph of the Executive summary mentions "limitations on the independence of the judiciary", but what the report actually reveals is its extreme weakness, or at all events limitations on its independence imposed by those holding the real power. As it is currently worded, it would appear that it is the traditional presidential regime that is responsible for such limitations and/or weaknesses.
5. The same paragraph mentions "the need to protect justice officials ...". While I believe this is entirely true, I think the report should underscore the limitations on protection under the current law and the lack of legal resources for the protection of witnesses.
6. In the report itself, paragraph 7: It is not "revenue from taxes", but the "tax burden", according to economic terminology.
7. Probably owing to translation, paragraph 8 could be understood as meaning that the Peace Agreement had to be signed once the causes of the conflict had been overcome. It would perhaps be most constructive to state that the Peace Agreement must contribute to overcoming the causes of the conflict as a condition for a strong and lasting peace. There is no analysis of whether the Peace Agreement is capable of doing this, nor of its implicit prerequisites, which have not been fulfilled, thus hampering its concrete implementation.
8. Paragraph 17: There are other articles that guarantee privacy and the right to information. The text should explain which limitations are established by the Constitution and the law, as theoretically it is just the opposite.

9. Paragraph 19, at the end: So far there have been no reasonable cases supporting the assertion that freedom of information and expression might be restricted. On the other hand, it is advisable to strike a healthy balance between the protection of a person's reputation and freedom of expression. In recent years there have been many examples of the need for this in order to benefit democracy and increase political action.

10. Paragraph 24: Amendments to the Labour Code are mentioned as still pending, but nothing is said about the difficult reforms successfully carried out since the year 2000.

11. Paragraph 25: The text states that "the laws on the creation of a national intelligence system ... have not progressed". In fact, the Secretariat for Strategic Analysis (Secretaría de Análisis Estratégico, SAE) promoted the Access to Information Law, which has now had its second reading in Congress. The SAE has completed consultations on a law governing the classification and declassification of State secrets and is taking part in efforts promoted by civil society for the adoption of a framework law on intelligence. Generally, there has been progress, though not yet with concrete results, in comparison with January 2000 when this was not even a topic of public debate.

12. The same paragraph, paragraph 25, states that there has been no progress made in respect of defence policy. In fact, there was a proposal for a military doctrine, but the defence policy had to be defined before it could be adopted. President Portillo has established a round table to discuss and formulate a defence policy for the twenty-first century, with broad participation by society and the State. This is a step forward in comparison with the situation when the present Government took over.

13. In respect of the Presidential General Staff (Estado Mayor Presidencial, EMP), it is correct that its demobilization is planned for October 2003. However, the report does not state that until 2000 no preparations had been made to replace EMP, that in the intervening three years the Administrative and Security Affairs Secretariat (Secretaría de Asuntos Administrativos y Seguridad, SAAS) has been established and strengthened and has assumed the functions of EMP, and that on 29 December the first contingent was demobilized, representing 25 per cent of EMP. The demobilization is not an instantaneous act, but rather a process that is already under way.

14. Paragraph 26: It could either be said that the Access to Information Law is still pending, or that it has reached the stage of second reading. It is not true that this initiative would establish an Ombudsman's Office, as one already exists: the Human Rights Ombudsman. However, it is true that judges are being given the power to promote access to information even if it is classified as secret or confidential.

15. Paragraph 27: Not only did the Court rule in favour; the President has sent on the paperwork required to proceed with ratification.

16. Paragraph 35: It was not "some" human rights groups that decided not to participate. It was the Movement identified by the report further on in the text, acting as a unified body. Thus, they all decided not to participate.

17. Paragraph 36: The security measures taken by the Government to protect persons who are threatened should be mentioned, although, as is noted subsequently, human rights defenders do not always have confidence in them.

18. Paragraphs 29 and 41: It would help convey the scale of the problem if the technical criteria for the figures were described, as the sources do not appear compatible (MINUGUA and the National Human Rights Movement). In general, the use of figures should be more consistent, and the report should preferably contain an annex explaining the methodology behind them and the meanings of terms such as "victims", "cases" and "violations".

19. Paragraph 42: The text should clarify the use of the Spanish terms "homicidios" and "asesinatos", and should illustrate such cases with small descriptions to ensure that they are better understood.

20. Paragraph 43: It is worthwhile to distinguish between those behind the attacks, i.e., private security firms and public security forces.

21. Paragraph 46: For the Government's purposes, it is important for the report to state which cases, and what proportion of cases, include allegations of army involvement in human rights violations.

22. Paragraph 63: The text should give the context, to provide an idea of the importance of the de facto powers, as was done previously. Human rights do not escape the pattern of violation of economic, social and cultural rights.

23. Paragraph 66: This assertion could apply equally to public security forces and private security firms. However, there have been reports and testimony according to which the public security forces such as SAAS do have some credibility, for example in the Mack case.

24. Paragraph 70: The reference to responsibility attributed to the State should establish whether it is attributed to the State itself or to "agents of the State", the difference being whether it is an institutional policy or agents that are involved. The mere fact that in 9 per cent of the cases some official responsibility has been determined demonstrates that the impunity is not absolute.

25. Footnote 7: Verify the budget of the Public Prosecutor's Office, as it does not appear to correspond to the official figures.

26. Paragraph 73: There have been various speeches by President Portillo in support of the work of human rights defenders. See for example the speech of 29 December 2001, his report to Congress on 14 January 2002 and the speech delivered to students at the military academy on 1 September 2002.

27. Paragraph 75: In order to provide context, reference should be made to the policy and legislation which established the National Civilian Police (Policía Nacional Civil, PNC). The New York Times has reported that this transition provided the finest example of "how not to reform the police".

28. Paragraph 78: Since the subject of "remilitarization" is so controversial in Guatemala, it would be worthwhile to establish exactly what is meant by this phenomenon, and the obvious and substantive cases observed. The tasks of the "joint patrols" are a response to the weaknesses in the reform of the police, but also have a legal basis that it is important to recognize. In addition, the abuses or violations that have occurred during such patrols should be documented. On the other hand, civil and social tasks have been assigned to the army in a context which is related to the outdated national procurement regime, in which military spending has been kept secret. It would be appropriate, in the spirit of a constructive report that refers to causes and not only to phenomena, to highlight such problems and describe them in all their aspects.

29. Paragraph 81: According to the Ministry of Public Finance, the expenditure still falls under the limits set by the Peace Agreement. Transfers took place because Congress had cut back appropriations without previously carrying out a reform of the military, including staff cutbacks, dismantling of facilities, etc. These reforms have now begun. They can be seen in Chimaltenango, and have been announced in the southern part of the country. It has also been established that some of the proceeds from bond issues in the coming days will be used to demobilize a substantial part of the army. Comparison of the military budget should be based on certain technical criteria such as deflated figures, etc.

30. Paragraph 84: The Ministry of the Interior is about to send information on the reported training of PNC officers at the intelligence school of the army. If proven, it will be necessary to find out what sort of training was involved.

31. Paragraph 93: The text refers to "a clear decline in the commitment of the Government to pursue the goals set by the ... peace agreements" and a "major setback for the reform agenda". Clearly there are weaknesses and shortcomings, but they are part of our process, and do not necessarily reflect abandonment or a decline in commitment. The laws for the basic reform of the State - decentralization, community development councils and municipal codes - demonstrate the depth of the reforms already adopted. Other areas requiring reform, such as education, culture, health and planning, should be reviewed to show the nuances in the text's assertion.

32. Paragraph 98: I believe the reference is to 2003.

33. Paragraph 104: The text refers to a tendency among public officials to attack human rights defenders. In fact, just one case (a former Minister of the Interior) is cited, as is a counterexample: the report on the role of SAE, to which this report refers.

34. The text fails to mention the action taken by the Government in March 2000 before the Organization of American States, when it recognized the responsibility of the State in concrete cases, and consequently its responsibility to assist in the mourning process, to investigate violations and disseminate information on them, and to meet the moral and material claims of victims and their families.

Office of the President

**Presidential Commission for Coordinating Executive Policy
in the Field of Human Rights (COPREDEH)**

**GENERAL OBSERVATIONS CONCERNING THE CONTENT
OF THE DOCUMENT SENT BY Ms. HILA JILANI, SPECIAL
REPRESENTATIVE OF THE SECRETARY-GENERAL ON
THE SITUATION OF HUMAN RIGHTS DEFENDERS**

The Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH) has been asked to comment on factual errors (such as incorrect dates or figures) in the report on the visit of the Special Representative to Guatemala that is to be published officially on the United Nations Internet site in the coming weeks and submitted to the forthcoming session of the United Nations Commission on Human Rights.

A study of the document has revealed no factual errors (such as incorrect dates or figures). However, it calls for the following comments:

- Paragraph 30 states that in Guatemala discrimination is not considered to be a crime as no such offence appears in the Penal Code.

A few days after the visit of the distinguished Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Dr. Rodolfo Stavenhagen, on 3 and 4 September 2002, the Guatemalan Congress, by means of Decree No. 57-2002, issued an amendment to the Penal Code. It has been incorporated into the Code as article 202 bis (crime of discrimination). The text of the Decree is enclosed.

- Paragraph 37 states that COPREDEH has seven regional offices. COPREDEH currently has eight regional offices in the interior (Chimaltenango, El Quiché, Sololá, Quetzaltenango, Chiquimula, Alta Verapaz, El Petén, Huehuetenango).

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