



## RESPONSES TO INFORMATION REQUESTS (RIRs)

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Guatemala: The procedures for lodging a complaint with the police and the procedures to lodge a complaint against the police for misconduct

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### The procedure for lodging a complaint with the police

In correspondence sent to the Research Directorate on 17 April 2009, a coordinator of the unit for the protection of human rights defenders (Unidad de Protección de Defensoras y Defensores de Derechos Humanos, UPDDH), a Guatemalan Non-Governmental Organization (NGO), provided the following information.

To lodge a complaint with the police, a victim of crime can either call the emergency telephone number (110), speak to a police officer or go to a police station (*comisaría*). However, to be considered as a "criminal complaint" (*queja criminal*) the file must be transferred to the Office of the Public Prosecutor (*Ministerio Público*). Complaints received through the emergency telephone number (110) are not directly sent to the Office of the Public Prosecutor; therefore, a complainant must go to the office of permanent service (*Oficina de Atención Permanente*) of the Office of the Public Prosecutor to formally register the complaint. A complaint made directly to a police officer or at a police station will be sent to the Office of the Public Prosecutor. In Guatemala, the Office of the Public Prosecutor is the official investigating body and the police conduct investigations under the direction of a public prosecutor who is assigned. The police have operational autonomy to conduct an investigation only within the 24 hours after an alleged crime has been committed.

The public prosecutor in charge of a case must investigate it without delay. The victims do not have a role in this process, except to confirm and explain their complaint. Only if the complainants present themselves as [translation] "private pursuers" (*perseguidores privados*), will they be allowed, through their lawyer, to know the status of the investigation, add details, or discuss the direction of the investigation.

In correspondence sent to the Research Directorate on 23 April 2009, a representative of the commission for human rights in Guatemala (Comisión de Derechos Humanos de Guatemala, CDHG), a Guatemalan NGO, stated that a complaint can be made by phone or by fax, which should be sent to the police station nearest the place of the crime. The police complete a preliminary investigation and send the file to the Office of the Public Prosecutor which is in charge of investigating it (CDHG 23 Apr. 2009). The Office of the Public Prosecutor also contacts the complainant or potential witnesses of the crime to corroborate the complaint and, if necessary, to offer protection to the witness (*ibid.*). According to the Representative of the CDHG, a complaint can also be made directly either to the national police (*Policía Nacional Civil*, PNC) or to the the Office of the Public Prosecutor (*ibid.*). However, after a preliminary investigation, the PNC must send the complaint to the Office of the Public Prosecutor (*ibid.*). The Representative of the CDHG added that it is also possible to lodge a complaint with the auxiliary prosecutor of human rights (*Auxiliatura de la Procuradería de los Derechos Humanos*), but only for cases involving state security forces (i.e., civil servants or government authorities) (*ibid.*).

## The procedure for lodging a complaint against police

With regard to police misconduct, the Coordinator of the UPDDH stated in 17 April 2009 correspondence with the Research Directorate, that a person who wishes to report police misconduct must make a complaint with the office of professional responsibility (*Oficina de Responsabilidad Profesional*). The complaint is investigated by the office and submitted to the "inspectorate" (*Inspectoría General, IG de la Policía Nacional Civi, PNC*). In some cases, the accused official is required to appear before disciplinary courts (UPDDH 17 Apr. 2009). The anonymity of the complainant is guaranteed (*ibid.*). This type of complaint can also be made by calling the emergency telephone number (110) (*ibid.*). These complaints are anonymous and follow the same procedure as the complaints made in person (*ibid.*). For cases where a crime has been committed, the "inspectorate" brings the case to the Office of the Public Prosecutor of Administrative Crimes (*Fiscalía de Delitos Administrativos*) for investigation. Complaints against the police can also be made directly to the Office of the Public Prosecutor (*ibid.*).

The Representative of the CDHG corroborated that complaints against police can be filed orally or in written form to the "general inspectorate" of the national civil police (*Inspectoría General, IG de la Policía Nacional Civil, PNC*) who initiate an internal investigation and produce a report, which is transferred to General Management (*Dirección General*) (CDHG 23 Apr. 2009). A person can also make an oral or written complaint to the office of the Attorney for Human Rights (*Procurador de los Derechos Humanos - PDH*) or to one of its departments (*ibid.*).

In the correspondence of 19 April 2009, the Coordinator of the UPDDH stressed that the procedures for lodging a complaint with the police, and for lodging a complaint against the police for misconduct, should follow the officially stated laws of Guatemala, but she indicated that the actual mechanisms in place do not always make this possible. She added, for example, that the Office of the Public Prosecutor is not effective in all departments of the country; that offices of the Public Prosecutor of Administrative Crimes exist in only a few jurisdictions, and, finally, that a [translation] "culture of impunity" gives citizens the perception that a complaint process does not exist, or is highly inefficient (CDHG 23 Apr. 2009). No corroborating information on the effectiveness of the Office of the Public Prosecutor could be found among the sources consulted by the Research Directorate.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

### References

Comisión de Derechos Humanos de Guatemala (CDHG). 23 April 2009. Correspondence from a representative.

Unidad de Protección de Defensoras y Defensores de Derechos Humanos (UPDDH). 19 April 2009. Correspondence from a representative.

### Additional Sources Consulted

**Oral sources:** The Comisión Presidencial de Derechos Humanos (COPREDEH), the Ministerio Público, the Policía Nacional Civil (PNC) and the Procurador de los Derechos Humanos (PDH) did not provide information within the time constraints of this Response.

**Internet sites, including:** Centro de Estudios de Justicia de las Américas (CEJA), Comunidad latinoamericana y del Caribe de inteligencia policial (CLACIP), Guatemala — Ministerio público, Guatemala — Procuraduría de los Derechos Humanos Organisation des États américains (OÉA).

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