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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Situation of human rights in Guatemala

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Guatemala prepared by the Special Rapporteur of the Commission on Human Rights in accordance with paragraph 14 of Commission resolution 1985/36 of 13 March 1985.

ANNEX

Interim report on the situation of human rights in Guatemala
prepared by the Special Rapporteur of the Commission on
Human Rights

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I. INTRODUCTION

1. The situation of human rights in Guatemala was considered by the Commission on Human Rights at its thirty-fifth, thirty-sixth and thirty-seventh sessions, when it adopted decision 12 (XXXV) and resolutions 32 (XXXVI) and 33 (XXXVII), respectively.

2. At its thirty-eighth session, the Commission adopted resolution 1982/31, in pursuance of which the Chairman of the Commission was requested to appoint a Special Rapporteur to study the human rights situation in Guatemala.

3. At its thirty-seventh session, the General Assembly, in its resolution 37/184 of 17 December 1982, invited the Government of Guatemala and other parties concerned to co-operate with the Special Rapporteur.

4. At its thirty-ninth session, the Commission on Human Rights adopted resolution 1983/37, in which it expressed its disappointment that a Special Rapporteur had not been nominated and requested the Chairman, once again, to make such an appointment with the shortest possible delay.

5. Following consultations with the bureau, the Chairman of the Commission at its thirty-ninth session decided to appoint Viscount Colville of Culross, QC, of the United Kingdom of Great Britain and Northern Ireland, as Special Rapporteur, who expressed his readiness to serve; his mandate has been renewed by the Commission in its resolutions 1984/53 and 1985/36, the text of which is reproduced in appendix I, and endorsed by the Economic and Social Council in its decisions 1984/137 and 1985/146. In this connection the Special Rapporteur has submitted reports to the General Assembly at its thirty-eighth and thirty-ninth sessions and to the Commission on Human Rights at its fortieth and forty-first sessions (A/38/465, A/39/635, E/CN.4/1984/30 and E/CN.4/1985/19, respectively).

6. The present report is submitted to the General Assembly pursuant to paragraph 14 of Commission on Human Rights resolution 1985/36; the final report will be submitted to the Commission on Human Rights at its forty-second session, in February 1986.

7. The report includes comments on the following main matters:

(a) Some questions of methodology;

(b) Sources of information on events in Guatemala, additional to the Special Rapporteur's own research;

(c) The role of the police and the judiciary in solving cases of human rights violations;

(d) Other organizations inside Guatemala concerned with such violations;

(e) Particular allegations of violations;

- (f) Disappearances;
- (g) Clandestine prisons and civil patrols;
- (h) Development poles and model villages;
- (i) Other projects concerning social and economic rights;
- (j) The electoral process and the new Constitution.

8. The order in which those topics are covered is not intended to indicate any ranking in terms of importance; all need to be considered as part of an overall assessment of the human rights situation in Guatemala.

II. SOME QUESTIONS OF METHODOLOGY

9. As a result of the presentation by the Special Rapporteur of his reports over the past two years, two bodies in particular have approached him with constructive suggestions on ways of improving his method of work. One is the Representación Unitaria de la Oposición Guatemalteca (RUOG) and the other is Comisión de Derechos Humanos de Guatemala (CDHG). Both have put their views in writing; the Special Rapporteur has discussed the matters with both, though in greater detail with CDHG.

10. The Special Rapporteur does not underestimate the importance of methodology. It is only some seven or eight years since the Commission on Human Rights began to appoint special rapporteurs, representatives or others with a mandate to investigate human rights abuses on a national or generic basis. Uniformity of approach is difficult to achieve and perhaps undesirable given the wide differences between situations and the matters under inquiry.

11. Thomas Hammerberg, Secretary-General of Amnesty International, writing in the International Herald Tribune on 12 April 1985 says, in an article "Human Rights: The Battle for Information":

"It is crucial for human rights work that attempts to disrupt and undermine reporting of rights issues be countered. The United Nations should challenge, much more forcibly than it yet has, governments which refuse to cooperate with agreed investigative procedures. Media and voluntary organizations should insist on their own right to operation ... The fact that some governments sabotage the fact-finding does not give rapporteurs licence to be less responsible in dealing with information. Allegations of torture and other violations are often used as political weapons - by opposition groups as well as governments. That in itself is ground for caution and care.

"It is also self-defeating to publish reports which are badly researched. Even minor mistakes can undermine the most serious message. Reports which do not stand up to scrutiny can, in fact, tarnish the credibility of human rights reporting in general.

"This makes it all the more important that there be critical discussion about the techniques used by human rights reporters themselves - whether they are media, United Nations rapporteurs or non-governmental organizations. That discussion should take into account the methods of fact-finding, evaluation and presentation.

"First, fact-finding. There are seldom independent witnesses in the torture centre. Still, it is sometimes possible to put together a case showing prima facie evidence that torture did take place. A medical examination can sometimes corroborate the prisoner's testimony. Reports from other prisoners can add essential information. Forensic expertise can occasionally add to the picture. So fact-finding is often a painstaking process of obtaining as many pieces of information from as many sources as one can find.

"It is crucial that official sources be tapped. However well-based the allegations against the government may appear, it is essential that its own version be sought.

"Likewise, it is important that the fact-finder be independent of the authorities - and appear to be so. The United Nations Rapporteur who came with a military escort in villages in Guatemala may not have got a full answer to his question on whether there had been a massacre in that village ...

"Second, the evaluation of information has to be thorough and professional. The reports should ideally be based on several independent sources allowing for cross-checking. This may not always be possible and a constant dilemma is what to do with information which appears reliable but cannot be corroborated.

"In some cases one could make a case for government investigation on the grounds that the allegations, even though not fully conclusive, are substantiated sufficiently to call for an inquiry - and thereby, in a sense move the burden of proof on to the government. The government's own reaction may be a factor in this evaluation process. Has it provided any information? If there was a trial was it open? Were the charges published? How have the authorities acted in similar cases before?

"There are traps to be avoided. One relates to recycled information which may appear as independent and corroborative. Often a witness spreads allegations in various directions which later surface in different reports by different groups. Still, the original report may be one and the same - and not necessarily reliable. It can happen that the most horrifying reports are subject to the least thorough checking before they are disseminated. This is human; it may not be easy to question the methodology behind a report if its message is emotionally overwhelming. All the more important then that those bodies and institutions which vet the reports develop an atmosphere of critical intellectual scrutiny.

"Third, the presentation is not only a question of making headlines. In the long run it is not convincing to pretend to say more than can be said. It is better to point openly to gaps in the information.

"In addition, readers have a right to know how the report was produced, what methods were used, what period it covers, how many people were interviewed, if there was an on-the-spot investigation and so on. Newspapers are often not the least at fault when it comes to providing such data.

"The greatest dilemma here is that sources must often be protected and cannot be named. There is no way around that; but this good reason must not be misused by the reporters themselves to disguise sloppy work."

12. The Special Rapporteur takes note of these views (the reference to himself and the alleged massacre is to Santiago Ixcán (see E/CN.4/1985/19, paras. 31-41): no further identification of those outlying hamlets or of the whereabouts of the alleged witnesses has been forthcoming). Pressure of time may thwart these ideals, but ideals they remain.

13. The criticisms of RUOG on methodology were presented in February 1985. The Special Rapporteur has studied carefully the whole document and sets out below the particular alterations suggested by RUOG and his comments thereon.

"4. Some suggestions for the study of the situation in Guatemala

After studying carefully the reports made by the Special Rapporteur, we believe that some actions are necessary to guarantee the proper analysis of the situation.

(a) The Centre for Human Rights should gather all the information produced regarding the situation in Guatemala. Such information should be collected, organized, and presented in statistical form."

14. The Centre does gather information and organize it. Problems arise, however, both in terms of the intrinsic accuracy of some allegations and as to reliable attribution of the persons responsible. The Special Rapporteur does not consider his mandate to include the preparation of statistics of all internal crimes.

"(b) The Special Rapporteur should receive reports every two months from the Centre and decide which allegations would need further investigation and what actions should be taken immediately in regard to the Guatemalan government (it is hard for us to understand why, with the level of repression and denunciation that exists, the Special Rapporteur has done nothing to aid the victims)".

15. The Special Rapporteur is regularly informed of events in Guatemala. If, however, a more elaborate system is envisaged that should not be confined only to this mandate, as it would lead to demands for a parallel extension to all other field missions under the Special Procedures, with inevitable staff and resource implications. The Special Rapporteur keeps his own current record of matters that

may warrant investigation on his next visit. He does intervene on individual cases by officially contacting the Government. In regard to disappearances he is well aware that the Working Group on Enforced or Involuntary Disappearances does the same, using where requisite the urgent procedure; similarly, the Special Rapporteur on Summary or Arbitrary Executions makes specific representations, one at least of which the Special Rapporteur investigated on the spot (Cantel, Quetzelnango) (see E/CN.4/1985/19, paras. 52-59).

"(c) Having analyzed this information carefully, the Special Rapporteur should plan his visits to the country, without informing anyone of the exact itinerary in advance but letting all parties concerned know of the date, so that they may make special requests to him."

16. The Special Rapporteur does exactly what is suggested. His own staff are not informed prior to arrival in Guatemala, except for requests to meet members of Government, officers of State and other leaders of the country, so that appointments may be made. In the past when the Special Rapporteur has visited by helicopter remote places said to be the scene of abuses, the army has asked for two days' notice of the general area to be visited. Wherever possible the exact destination has been kept undisclosed until just before take-off or has been reached by a vehicle from a predetermined landing point.

"(d) The Special Rapporteur should be accompanied by a person fluent in Spanish. Except for the official visits, he should never be accompanied by members of the army or government officers nor use military or official transportation. He should ask that the United Nations, the Red Cross, or other international organizations provide him with escort."

17. No matter what rumours abound to the contrary the Special Rapporteur has always and at all times been accompanied by a fully qualified United Nations Spanish-English interpreter of the highest grade. Neither military nor other government interpreters have been used. If it has been necessary to talk to people who do not speak Spanish, a second local civilian interpreter has always been found. There are two minor exceptions which the Special Rapporteur would be happy to explain; in both cases he is entirely satisfied that the interpretation was true and accurate.

18. The point about using official transport and accepting official accompaniment is well understood. Mr. Hammarberg says the same in his article. There is, however, a problem. Nobody denies that there is violence in Guatemala, both in cities and the countryside. Where there is violence and conflict there are liable to be human rights abuses. Not without misgivings about everybody's safety, the Special Rapporteur has thought it right to visit these places. The Government has, however, considered itself responsible for the security of the United Nations team. The arrangement reached between the Special Rapporteur and the Government before his mandate was first implemented included a reduction to the minimum of the accompanying team. Normally it has been one person from the Ministry of External Affairs and one army officer in civilian clothes and unarmed. Having reached the chosen destination the Special Rapporteur has conducted interviews in the absence of any governmental attendant. Budgetary matters apart, it is not realistic to

request the local United Nations agency or the Red Cross to take these responsibilities. However, on his visit in August 1985 the Special Rapporteur did not request the use of a helicopter to visit certain places where abuses were alleged to have occurred. He went by road. In the light of the local tension at Patzún and Santiago Atitlán this was also prudent. The disadvantage was, for example, five hours of one daylight period spent uselessly in transit; various matters were left uninvestigated and a nearby town, the subject of a different allegation, unvisited.

"(e) Any audience should be held in a place of easy access to all Guatemalans and in a climate free of intimidation and terror."

19. Concerning access to him by people in Guatemala, the Special Rapporteur's visit is always well publicized. There appears to have been no difficulty for people who have wanted to contact him, although in this undertaking the co-operation of the Resident Representative at the United Nations Development Programme office is all-important.

20. Frequently it is only possible to interview people where they are. Problems enough arise to persuade an indigenous family in a remote village to give details on the bread-winner's disappearance to a foreign group suddenly appearing on the scene. They may be frightened; they still give much information if asked in the right way. It is fantasy to suppose they could go to meet the Special Rapporteur anywhere else.

"(f) Just as, following the visit, the Special Rapporteur provides to the Guatemalan government information on the allegations against it so that it may defend itself, he should also inform the opposition about allegations against the popular and revolutionary forces, to guarantee that these allegations may be properly addressed."

21. The allegations referred to by RUOG concern the attribution of responsibility of certain acts perpetrated by "heavily armed men in civilian clothes", often operating at night. The reality is that nobody can tell who they are. If the popular and revolutionary forces would like to inform the Special Rapporteur, in confidence or otherwise, of the explanation relating to any event, he would be glad to discuss the matter.

"We, the members of RUOG, make some specific requests of the Special Rapporteur, for him to fulfill at the forty-first session of the Commission on Human Rights:

(a) That the lists provided to the Special Rapporteur by the Guatemalan government regarding cases brought before the Special Tribunals and people illegally detained be made public and that an accounting be offered of what has become of all persons on those lists."

22. This has still not been done officially. The Special Rapporteur believes, however, that the details are known.

"(b) That the Special Rapporteur report carefully about the situation of the University of San Carlos, the Catholic Church, student associations, and trade unions."

23. Those aspects were partly investigated again in August 1985, but it is accepted that more inquiries are needed.

"(c) That the names of the two persons the Special Rapporteur reports to have been sighted outside Guatemala with the guerrilla groups, and who had been reported as disappeared in Guatemala, be given immediately to the Commission on Human Rights" (see E/CN.4/1985/19, para. 81).

24. The Special Rapporteur's informant was murdered.

"(d) That the list of persons disappeared in Guatemala, presented by the Mutual Support Group, be made known to the members of the Commission on Human Rights, and that the Special Rapporteur identify precisely which of them are with the insurgent forces, in accordance with assertions he made publicly in Guatemala."

25. The list is no secret, nor are the circumstances surrounding the disappearance of those persons. The point, however, is misconceived. The essence of the problem is that those persons who join the guerrillas often fail to inform their family, or the Government, and then assume a pseudonym. The Special Rapporteur has spoken to some who did exactly that but later returned under the continuing amnesty to find their names on a list of the disappeared. It would be naive, however, to request them to identify themselves at any earlier stage and the Special Rapporteur has no source of information enabling him to identify them.

26. He has, however, established that senior members of the Government have no system that would enable them to check the names of those who take advantage of the amnesty against lists of disappeared persons (see paras. 150 and 151 below).

27. Representatives of CDHG have also submitted comments to the Special Rapporteur. In August he met them before his visit to Guatemala. Individual matters raised by them are reported below. There are, however, broader issues that require examination.

"The Special Rapporteur should not act as a private detective, but should report only on the allegations of human rights, abuses and investigations of these by the judiciary and other authorities."

28. It is, of course, a matter for any Government to decide whether they wish to present the international community with an answer to alleged violations of human rights within their territory. The Government of Guatemala has not done so, or at best has made a minimal response to the accusations. The exception is the document published as E/CN.4/1985/60 concerning events in the municipality of Patzún (see para. 101 (n) below). Thus a system of merely setting out in parallel the allegations and the response of the Government would remain hopelessly one-sided. It would in any case be an exercise that could be carried on without any special

rapporteur. He eventually agreed with CDHG that his on-the-spot investigations, despite the severe limits imposed by time, were of value not least in order to put pressure on the Government to carry out such inquiries itself.

"The Special Rapporteur should set out in his report the views of those opposed to the present Government, even if these views do not coincide with his own. Development on model villages, civil patrols and the institutional coordination system were given as examples."

29. The Special Rapporteur has done so.

"Equal exposure should be given to other reports and documents published about the human rights situation in Guatemala."

30. The Special Rapporteur has summarized the main recent reports and made certain comments on them.

"Statistics of different violations of human rights should be included in the report."

31. This is referred to above and further comment appears in paragraphs 89 to 95 below.

III. SOURCES OF INFORMATION ON EVENTS IN GUATEMALA, ADDITIONAL TO THE SPECIAL RAPPORTEUR'S OWN RESEARCH

32. In paragraph 15 of its resolution 1985/36, the Commission on Human Rights requested the Special Rapporteur "to continue to take into account information from all reliable sources". In 1985, a number of general reports have been published on the question of human rights in Guatemala, to which the Special Rapporteur refers briefly and on which he offers comments that may assist in judging their reliability. Other more specialized assessments are referred to later in the text. In addition, the Special Rapporteur has studied material published on a regular basis, including the following:

(a) The monthly analyses published by the Comisión de Derechos Humanos de Guatemala (CDHG), based in Mexico City;

(b) Monthly analyses published by the Comité pro Justicia y Paz (CJP) also operating outside Guatemala;

(c) "Enfoprensa", a weekly news-agency report of events in Guatemala, based in Mexico City and Brussels;

(d) The Guatemalan press, mainly the daily newspapers Prensa Libre and El Gráfico published in Guatemala City.

International Association of Democratic Lawyers

33. In January 1985, a three-person team from this body, a recognized non-governmental organization, visited Guatemala. The "conclusions and perspectives" of the published report may briefly be summarized as follows:

- (a) Although the number of murders and disappearances is less than in the period 1978-1982, the number is high and such events happen daily;
- (b) Families still seek an answer as to whether their disappeared relatives are alive or dead;
- (c) The process leading to the elections in the autumn of 1985 is a political game to try to obtain military and economic aid from the United States of America and to improve the country's image;
- (d) The human rights provisions in the new Constitution will not be observed in practice;
- (e) The history of elections in Guatemala since 1954 consists of fraud or military control. The 1984 elections were clean but controlled by the military. It will be the same next time. The civilian Government will have to deal with the economic system and problems, while the army keeps control of security and the war in the country. The team has been reliably told that a presidential candidate has already received a list of the army's demands - no land reform, no tax reform, no inquiry into deaths and disappearances as occurred in Argentina, no inquiry into abuses or corruption by the army or police, autonomy for the army, a coup d'état if these pledges are broken: the presidency of Sr. Méndez Montenegro between 1966 and 1970 is cited as a parallel;
- (f) The Mejía Víctores régime continually violates human rights by massacres, extrajudicial executions, disappearances and clandestine prisons;
- (g) The Special Rapporteur has said that "disappearances are a thing of the past";
- (h) The army has institutionalized the militarization of the country through the system of "Institutional Co-ordination" in order to retain its various economic vested interests: this is the reason for systematic human rights violations and will not change with the new elections;
- (i) Democracy in Guatemala requires that the army relinquish power, land reform, an independent judiciary fully respecting the law, electoral pluralism without persecution of the centre or left and an inquiry into past abuses, with condemnation of those responsible as a test of the new Government's integrity.

34. The authors of the report are convinced that the army will continue, even after the change of Government, to kill, torture and kidnap civilians in order to retain effective power.

35. The foregoing is the classic list of accusations and forebodings. It is important to note that the team made no attempt to contact the Special Rapporteur who was, as they themselves said, simultaneously in the country. He could have been very interested to hear their witnesses, whose interviews are quoted. They make specific allegations about four separate disappearances, in each case attributing the blame to the security forces. These matters occurred in 1983 and 1984.

36. As for their conclusions, the Special Rapporteur does not disagree with (b) and (i) above; (a) is exaggerated and (c), (d) and (e) are speculation; (h) is not supported by evidence and (g) is untrue, as the Special Rapporteur explained while the team of the Association was in the country and in his report, which was published before their own (see E/CN.4/1985/19, para. 67).

37. The team specifically said that they had not read any of the Special Rapporteur's reports, but had read a criticism of one of them. They had numerous interviews with a broad range of people, but do not appear to have travelled outside the capital. In particular, they did not visit any of the "development poles".

British Parliamentary Human Rights Group

38. A two-man team from this informal body visited Guatemala in October 1984. They presented to the Special Rapporteur a preliminary report, but their final document appeared too late for comment in the Special Rapporteur's previous report. The Special Rapporteur notes that his previous reports are not listed among the documents recommended for "Further Reading" in the final report of the Group.

39. The team based its methodology on a six-day visit to Guatemala in October 1984 followed by three days in Mexico. Two researchers took testimonies earlier in the month of the visit. According to their reports, they met high-ranking government officials, members of the army and political party leaders and received a total of 70 personal testimonies inside Guatemala, a further 10 in Mexico and a number of "group testimonies" from trade union representatives, the Group de Apoyo mutuo (Mutual Support Group) and representatives of human rights organizations. They stated that although they had received testimony of human rights violations in 1983 and before, the focus of the report was on 1984 and, so far as possible, the period after 1 July 1984, the National Constituent Assembly election. Anonymity was used. However, there was no further indication as to whom the team met in an official capacity, nor where (if anywhere) they went outside the capital. Numerous references are made to individual incidents in different parts of the country and to the "development poles" and the policy underlying them. A map is annotated with a sign designating certain villages, notably in the Ixil Triangle in Quiché, as "prison camps"; these are referred to as "refugees" or "re-education" camps: the source is the Guatemalan Church in Exile, based in Managua. There are numerous photographs with captions; all but two are undated. Of the individual testimonies printed, one each relates to 1982 and 1983 and three to 1984.

40. The report's findings are as follows:

(a) Statistics of killings and disappearances over a period of 30 years are given in round and global figures: killings and disappearances continued in 1984, if anything at a higher level than in 1983;

(b) The army and civil patrols continue to carry out group and individual killings and abductions;

(c) High numbers of trade unionist leaders, students and other urban workers continue to be killed or abducted at a rate of 50 per month (higher than 1983);

(d) Government assertions that the disappeared are the responsibility of the guerrillas or criminals, or have gone to Cuba or the Soviet Union for training is a "brazen lie"; the evidence points to the state security apparatus as responsible;

(e) The civil patrol system is a form of involuntary servitude, forces the rural population to participate in such acts as kidnapping, beating, torture, rape and murder and violates freedom of movement;

(f) The model village and development pole policy inflicts further suffering on the rural population and militarizes every aspect of life in those areas;

(g) Barbaric torture continues to be used against political and common criminals in rural and urban centres;

(h) The political move towards the "democratic opening" is severely restricted. The army will keep control, as has been the case over the past 30 years. The parties of the centre and left will not be able to participate except with great personal risks;

(i) Any improvement in human rights is doubtful. (There follow recommendations about international aid policies that are outside the Special Rapporteur's mandate.)

41. The report also contains the traditional list of alleged abuses which previously figured in similar reports. The statistics reproduce without analysis figures published by other organizations. There is no indication that photographs relate to what the team saw or their witnesses described. The team appears to have made no attempt to investigate in the villages concerned the serious allegations of abuses that they have printed. No attempt was made to pursue with the authorities the individual cases quoted, and those cases appear not to have been presented to the authorities at all for their comments or answers.

42. Accordingly, the Special Rapporteur has reservations about the methodology employed by the team of the British Parliamentary Human Rights Group and hence about the reliability of the report. The Special Rapporteur can say from his own experience that testimonies given in Guatemala itself, Mexico or elsewhere are sometimes truthful and accurate; others have proved, at the very least, open to doubt. An investigation is desirable.

Other organizations

43. Other organizations that have visited Guatemala in 1985 to investigate the human rights situation include:

(a) Amnesty International, which issued no statement but published a report in October 1985. A three-person team visited Guatemala in May 1985. The 1985 report contains no reference to that visit nor to anything ascertained in its course. Amnesty International refers to the Special Rapporteur's report of November 1984, but reproduces one allegation of a human rights abuse at San Ildefonso Ixtahuacán - without taking any account of the Special Rapporteur's investigation of that matter (see E/CN.4/1985/19, paras. 47-51);

(b) Socialist International, which also issued neither statement nor report so far as the Special Rapporteur knows;

(c) Inter-American Commission of Human Rights, which, at a press conference, expressed the opinion that the human rights situation was better; the worst features were the kidnappings and disappearances; there was a need for a general and centralized register of all persons detained. An allegation made by the Movimiento de Liberación Nacional (MLN, a political party) of the mass sterilization of indigenous women by substances added to foodstuff distributed under aid programmes (see E/CN.4/1985/19, para. 26) was considered and rejected;

(d) International Confederation of Free Trade Unions, whose delegation was in Guatemala in early 1985. Their report is considered in paragraph 156;

(e) The International League for the Rights and Liberation of Peoples, a recognized non-governmental organization, whose report is contained in document E/CN.4/1985/NGO/21. That report refers to the Special Rapporteur's previous report in critical tones. It quotes from documents prepared by other organizations and mentions some events between 1981 and 1984. There is no indication of any first-hand acquaintance with the situation or any original research.

IV. THE ROLE OF THE POLICE AND THE JUDICIARY IN SOLVING CASES
OF HUMAN RIGHTS VIOLATIONS

A. The rule of law

44. The Special Rapporteur has previously reported on what he perceives to be serious defects in the process of the criminal jurisdiction in Guatemala (see E/CN.4/1985/19, paras. 110-117). He had no opportunity during his visit in January 1985 to discuss such matters with the President of the Supreme Court; in August he did so.

45. The background to the issue is the existence in Guatemala of a criminal procedure based on the Napoleonic Code, with additional provisions (not universally included, it is thought, in such procedures among countries using the Napoleonic Code) that give added protection to an accused person. It is probably not for the

Special Rapporteur, coming from a common law background, to comment on the criminal procedure, except to say that he is assured that, on paper, it is entirely correct. However, he has heard that it has not been entirely effective in practice over many years.

46. A current diagnosis of the effectiveness of the judicial system must start with an all pervasive problem: over 80 members of the judiciary, court staff and legal profession were killed in the early 1980s. Many others must have suffered grievous threats. Such events make their mark and cannot quickly be mitigated. The problem is not corruption, but fear. Nevertheless, other countries have had to place their judiciary and legal profession on the firing-line in order to clear up intolerable violations of human rights, to bring criminals to justice and to enforce the rule of law. If potential hazards attend the choice of a career in the judiciary or court staff, this should be recognized in a suitable way. The President of the Supreme Court and his entire team of judges and officials would receive international understanding, support and helpful, practical advice.

47. The authorities in Guatemala have their own programmes. Courses for judges and magistrates are now being introduced. Qualifications for new judicial appointments are being tightened up. The effect of that on the role of the judge of the peace (who has an initial three days for preliminary investigation of a crime) might perhaps deserve detailed consideration in rural areas. At present the judge of the peace is often the mayor, who has no legal qualifications but great ability to discover facts and draw conclusions. There would be a need for a trained lawyer equally well acquainted with local affairs to fill this office. However, the emphasis is on training and professionalism throughout the judicial system.

48. The Special Rapporteur chose one case that has been before the criminal courts since April 1984 and has received much press publicity. It concerns the alleged murder by 20 members of a civil patrol of a married couple and their children aged 12 and 11 years in the municipality of Fray Bartolomé de las Casas, Alta Verapaz. It appears to have derived from a feud between the villages of Yaxhá and San José Buena Vista and from a family's desire for vengeance. The Special Rapporteur's interest initially centred on certain technical matters that led to a retrial. The President of the Supreme Court has transmitted copies of the Courts' judgements, which appear to raise matters of wider interest in current criminal procedure. The Special Rapporteur is taking technical advice before making any further comment.

49. Whether or not that case may illustrate the problems about obtaining a conviction where a criminal charge is defended, the police remain critical of the judicial process. They say that especially in cases of kidnapping, robbery or murder the presumption of innocence is taken to extremes with the result that, either within the 15 days available for investigation by the examining judge of first instance or on appeal from him, most accused persons in those categories are freed. The Ministerio Público has the right of appeal on behalf of the prosecution, but apparently this, though often used, is seldom successful in ensuring that the defendant is put on trial. The police, however, maintain good relationships with the courts; a dialogue is beginning so that police and judiciary should understand better their respective requirements for the purpose of criminal proceedings.

50. Nothing discovered so far dissuades the Special Rapporteur from his conviction that a serious vicious circle needs to be broken. Many persons accused of serious crimes, including renegade policemen, are presented before the criminal courts. A large number are released because of insufficient or inadmissible evidence. The inadequacy of the evidence stems in part from the public's unwillingness to co-operate or give evidence. That unwillingness is caused by their lack of confidence in the judicial system and by the probability that the accused person will rapidly be released; whereupon it may be supposed that he will take action against anyone who did give evidence. Further serious crimes ensue and the problem is intensified.

51. The Head of State, the President of the Supreme Court and the Director General of the Police are anxious for any international assistance, by way of advice on training, which would ameliorate this chronic situation (see para. 252).

52. In the field of civil remedies the Special Rapporteur inquired about successes by the judges in pursuing writs of habeas corpus (recursos de exhibición personal). The President of the Supreme Court said that 303 writs had been presented, relating to 1,074 persons, in 1985. Some came from CDHG, but writs from the Grupo de Apoyo Mutuo involved 706 persons. These cases are not all 1985 cases, but relate also to earlier years. The President of the Supreme Court had personally received representatives of the Group in this connection.

53. The procedure is well-established, and the Special Rapporteur accepts that the judges to whom were given the various caes acted with thoroughness in the course of their investigations. It should be said that they have ready access to prisons and police stations. The President of the Supreme Court himself had been to the capital's main prison, la Granja Penal de Pavón, where he had looked at the so-called underground cells which have, in the past, been said to be a secret prison within a prison: there were indeed basement quarters, but the inmates told him that they were there at their own request in order to avoid pressures placed upon them by other prisoners (see also para. 166 below).

54. The result of the judges' endeavours in 1985 in pursuit of writs of habeas corpus was the discovery of three persons improperly detained: an under-age girl, a man who was discovered to be in detention and a young woman who had run away from home.

55. Such activities absorbed much judicial time. They will doubtless be criticized, the Special Rapporteur believes, as having failed (except for the three cases). Any such failure can only be correlated with the supposed existence of detention centres containing missing persons of which the judges were not informed and which, therefore, they did not visit. The entire issue of clandestine prisons is thus resurrected (see paras. 163-169).

B. The National Police

56. The Special Rapporteur met with senior officers of the National Police at their headquarters in the capital. The press was in attendance throughout. The police are now commanded by a Director General who is a professional police officer with 20 years service, Commissioner Alvarez Arévalo, who took over on 1 June 1985 from the army colonel previously in charge. The Special Rapporteur wished to bring to the attention of the National Police certain killings and disappearances and to inquire into the progress of their investigations. The police wished to present to the Special Rapporteur information which they thought relevant to his inquiries.

57. In the period between 1 January 1985 and 6 August 1985, 24 police officers (including one woman) were killed in the execution of their duties, mainly in Guatemala City; the newspapers in the Special Rapporteur's possession cover 20 of these cases; six of the police were from the Special Branch. Although some of the murderers were arrested, many were not and are described in the usual phrases such as "a group of unidentified armed men". The body of one of the policemen had cigarette burns on his throat.

58. At least another 12 police were wounded, seriously in many cases, again one being a woman.

59. Over the same period more members of the police forces were discovered to have been involved in crime. The Special Rapporteur has a list of 96 names, including two inspectors, of those so detected between 1 January and 16 August 1985. The crimes include homicide, aggravated robbery, rape, kidnapping, drug trafficking, fraud and other less heinous crimes. In fact the number may be greater, since the list does not appear to include other police personnel who have been reported in the press as having been caught in criminal activities, including four members of the Police Department of Technical Investigation and four civilians in the police headquarters dismissed and handed over to the courts for corruption. Some 145 more were dismissed for disciplinary offences.

60. Although all those accused of crimes were brought before the courts, the police informed the Special Rapporteur that the majority of the 96 on their list had not been sent for trial, but on the contrary were freed by the examining judge. The point was previously reported (see E/CN.4/1985/19, para. 110) and is further discussed in paragraphs 49 and 50 above. One result is that one of the former policemen, after having been arrested for murder, was rearrested 60 days after that crime for another offence. He had been freed on the first charge.

61. The police presented to the Special Rapporteur material indicating that they had been very successful in finding and rescuing kidnap victims, including children and minors; that they had caught common criminals and gangs who engaged in all sorts of theft, dishonesty, drug-trafficking etc. Their claim was that 90 per cent of crimes were detected; that during the two months after the new Commissioner took office 7,059 persons were arrested for murder or lesser crimes and 147 for drug offences. Of 625 reported stolen vehicles, 523 were recovered. This is no doubt an admirable achievement, but two questions remain:

(a) How many of those arrested are ever brought to trial, let alone convicted? There are no statistics and the President of the Supreme Court did not have information on which to make an approximate estimate;

(b) Why is it that the politically sensitive murders and disappearances constitute the main area, presumably within the 10 per cent where the police have little success? The police themselves draw attention to the unwillingness of citizens to give information, the lack of co-operation and confidence.

62. The police are concentrating on a clean-up within their own ranks, which has proved alarmingly necessary but has been relentlessly pursued, on their training school and their forensic services. Unfortunately they have not yet solved most of the incidents on which international attention has focused, if of course those crimes can be solved soluble within the borders of Guatemala (see paras. 82 and 148).

V. OTHER ORGANIZATIONS INSIDE GUATEMALA CONCERNED WITH SUCH VIOLATIONS

63. Until recently there have been no internal and non-governmental organizations or groups concerned with human rights functioning within Guatemala. Some international non-governmental organizations have been given access to the country in the past two years, but other groups, consisting of Guatemalan citizens, have decided to base themselves abroad. They do not consider that they could operate with safety inside the country.

64. It is important that they should once again feel able to do so, and they desire the freedom and security that would allow their return. Past suspicions, however, are a thick entanglement. As the Special Rapporteur has previously reported, the bitter divisions in the early 1980s and the repercussions of the continuing conflict with the guerrillas will not be easily healed. In this, Guatemala is no different from a number of other countries.

A. Grupo de Apoyo Mutuo (Mutual Support Group)

65. Into this unpromising territory there has emerged within almost the last year an organization now known as GAM (Grupo de Apoyo Mutuo), consisting of the families of the disappeared (see E/CN.4/1985/19, paras. 88 and 89). The Special Rapporteur had several meetings with its leaders and with individual members in January 1985. It remains an extremely important body.

66. GAM has continued its work in 1985 with peaceful demonstrations and much other public activity. The leaders have been involved with dialogues and meetings with the Head of State and the Archbishop, among many others. The Group does not accept the inability of the Government, so far, to explain what has happened to the disappeared.

67. The Group suffered three serious setbacks in 1985 that have caused great tension and anxiety.

68. One was the death of one of its leaders, María Rosario Godoy de Cuevas, her two-year old son, Augusto Rafael Cuevas Godoy, and her brother, Mynor Godoy Aldana (21 years old). It is said that they left home on the morning of 4 April 1985 to go shopping in a centre in the capital. Their bodies were found later that evening in a ravine some distance from the City. Sra. Godoy's husband, a student in the School of Political Science at the University of San Carlos, had disappeared on 15 May 1984, CDHG attributed that act to government security forces. It is also said that Sra. Godoy had previously received death threats because of her participations in GAM.

69. Another was the death of Héctor Orlando Gómez (32 years old), the brother of a disappeared person. He was found dead on 31 March 1985 on the verge of the main road to the Pacific coast, 26 km outside the Capital, near Amatitlán. CDHG stated that he had been threatened if he continued inquiries into his brother's disappearance and that the National Police had been looking for him. He is said to have been detained by a group of unidentified heavily armed men while waiting for a bus to take him home to Amatitlán after attending a GAM meeting. CDHG reported that his body was found with marks of torture, without tongue or teeth. They were concerned with problems in obtaining a copy of the official autopsy report on his body and feared that he had been killed by strangulation.

70. Another version in the New Republic of 18 June 1985, written by Piero Gleijeses, refers to Hector Orlando "Nunez", who was kidnapped by four armed civilians at a bus stop on 30 March 1985. His body "was found the next day. He had been beaten to death, his chest and head crushed and his tongue cut out".

71. An autopsy report is, like everything else concerned with a criminal investigation, a public document after the 15 days in which the examining judge has to carry out his preliminary investigation. The Special Rapporteur was given a copy by the President of the Supreme Court. It is set out in appendix IV. The Special Rapporteur notes that there is no mention of Sr. Gómez' tongue and teeth being absent. The report does not indicate strangulation; there was a fracture to the base of the skull, but the cause of death was internal haemorrhage resulting from rupture of the liver. Nobody has been arrested for the crime.

72. The third setback is the departure from the country, reported in mid-June 1985 by the Guatemalan press, of the family of Sr. Adrian Gómez Calito. He, his wife and seven children left for Canada. The press reported a background of disappearances; Sr. Gomez' brother, Arnaldo, in 1981 and his sister, Carmen Yolanda, twice, in 1982 and 1984: she is said now to be in Toronto. The murder of his brother, Hector Orlando, is reported above. The family's departure was, the Special Rapporteur was told by the Government, dealt with on a normal basis by the authorities so far as concerns the formalities. CDHG said that his house in Amatitlán was virtually occupied by the security forces, who also frequented the family bakery openly showing their weapons.

73. On his visit in August 1985, the Special Rapporteur had hoped again to meet with the Group. He had been specifically invited to do so by Sra. Ruth Molina de Cuevas, the mother-in-law of Sra. Godoy de Cuevas; he had promised to seek a meeting. Despite all attempts to contact the Group, both before and during this visit, the Group was not willing to meet him. They published an antagonistic press release and made comments, reported on television and radio, indicating a lack of trust in the Special Rapporteur. Further comment is difficult. No copy of the press release was sent to the Special Rapporteur, and he was unable to see the incident on television. The only available press report does not make it clear what were the complaints. It is to be hoped that contact will be restored and these problems clarified.

74. In connection with relationships between the mutual support group and the Special Rapporteur, one unfortunate incident has occurred. Speaking at a meeting of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Father Patrick Rice, an Irish citizen, the representative of a non-governmental organization, Federación de Familiares de Detenidos Desaparecidos en América Latina, made in August 1985 serious accusations about the Special Rapporteur in relation to his attitude toward the Group. The Special Rapporteur does not suggest that this was done intentionally to mislead; the only other explanation, however, of the substantial inaccuracies must be that the speaker had not checked the facts. He referred to the murders of Group members Sr. Gómez Calito and Sra. Godoy de Cuevas (see paras. 68 and 69) and in July of Professor Leonil Rodríguez (see para. 75 (a)). He continued:

"The Special Rapporteur on Guatemala has maintained a notorious silence on these cases. Even during his visits to the country he has never sought to meet [GAM] to the extent that the families have had to interrupt him to be heard".

75. This is quite untrue on both counts.

(a) On 18 April 1985, the Special Rapporteur officially requested the Guatemalan Government to inform him about the progress of investigations into the first two murders mentioned above. He was also aware that Mr. Amos Wako, Special Rapporteur on Summary or Arbitrary Executions, requested in April 1985 information about these killings. The news of Professor Rodríguez' murder only reached the Special Rapporteur just before he left to visit Guatemala;

(b) Prior to his visit in January 1985, GAM had (not surprisingly since they probably did not know how to do it) made no contact with the Special Rapporteur. They sought a meeting at 8 a.m. on the morning after his late evening arrival in Guatemala; this, at about 9.15, led to a discussion and arrangements for a formal public meeting in the Cathedral, which took place. GAM, then were present in the gallery of the National Constituent Assembly when the Special Rapporteur visited it; they were equipped with banners and loud-speakers with which they were assisting the Assembly's proceedings. It was suggested by officials of the Assembly that a meeting with GAM might fruitfully occur immediately in the main entrance hall, and this took place. By mutual agreement a later meeting was then arranged in the same hall where the Special Rapporteur could listen to the

individual testimonies of many families whose relatives had disappeared. This, too, duly took place and the Special Rapporteur still retains detailed material submitted to him by the families.

76. As already explained, during his visit in August 1985, the Special Rapporteur, despite every effort, was not able to meet with the Group. He postponed his departure from Guatemala for half a day expressly in order to allow extra time in case they should agree to an interview or other meeting. He can only repeat his regret that this did not happen.

B. The Tripartite Commission

77. At the governmental level there has been one initiative in the human rights field. As previously reported, the problem of disappearances led the Government in 1984 to set up what is known in Guatemala and abroad as the Tripartite Commission to inquire into these cases. The three parties were the Attorney-General (Procurador General), the Minister of the Interior (Gobernación) and the Minister of Defence. The result of their activities was the chief topic discussed by the Special Rapporteur with the Minister of the Interior, whose appointment was less than two months old, at their meeting. The Tripartite Commission had in fact completed its work and had published its conclusions and recommendations, but no details whatsoever about any individual cases had been disclosed in August.

78. The Minister informed the Special Rapporteur about the Commission's methodology, which he had put into written form. It had undertaken a national investigation, ordering all elements of the country's security forces to co-operate. Army, police, immigration, customs, treasury police and prison authorities had been included as well as civilian authorities at all levels: persons in custody in local police cells in the interior are, in some cases, in the hands of the municipal authorities rather than the police.

79. The Commission ended the published part of its report thus:

"As soon as the Commission began its work, it requested assistance from the parties concerned. Specifically, it called on the representatives of the Mutual Support Group (GAM) to supply all possible information which might assist in the investigation of the various cases. Unfortunately, however, the information they provided in the document they described as proof was not sufficient for an effective investigation of the situation of the so-called disappeared, for which statements had to be taken from persons identified as witnesses to bolster the evidence. The lack of direct co-operation from the parties concerned made it impossible to complete the investigation.

"CONCLUSIONS:

"1. It was established from the investigations that the persons on the list provided by the Mutual Support Group are not being held in any Correctional Centre or preventive detention prison.

"2. The investigations yielded cases and circumstances which illustrated the complexity of the problem as, for example:

(a) The remanding of individuals to the courts on a date subsequent to that given as the date of their disappearance (folios 20, 21 and 22 of the report of the Ministry of the Interior); and

(b) The statement of a person in the underground that his photo and those of other people had appeared in the newspapers as having disappeared or been kidnapped, whereas their families did not know what had really happened to them. The statement was made to the media.

"3. The investigations should not be considered closed because, among other things, it has still not been possible to obtain a list of the Guatemalans who emigrated to Mexico and to determine whether it includes any of the persons on the list of disappeared, who might now be living in a camp.

"4. At the request of the parties concerned and in compliance with the law, the Department of the Public Prosecutor instituted criminal proceedings in the courts of the first instance and of peace of the Criminal Branch of the Departments of Petén, Guatemala City, Quetzaltenango and Zacapa based on complaints of abductions or kidnappings, and intervened in proceedings already in progress (actions and cases relating to the investigation referred to in the reports).

"5. During the investigations conducted in the various Departments of the country, there were no charges of the existence of detention places other than the Correctional Centres which were legally established for preventive detention and the serving of sentences. In one case cited in Guatemala City, the private house mentioned by the parties concerned could not be found because the address was incomplete (folio 2 of the Dossier).

"PREAMBLE OF THE RECOMMENDATIONS:

"This Commission carried out all aspects of an official investigation at the country level and exhausted all possible means and resources.

"The volume of material contained in this report is an indication of the personal efforts exerted by each member of the Commission and may be regarded as the beginning of a more intensive investigation of the problem of disappearances which the present Government is interested in resolving.

/...

"Since this is a completely new undertaking, it requires that a commission with a larger membership and sufficient time should be set up so that it can conduct its activities on the basis of a methodology of full co-operation not only with Government institutions, but also with the persons concerned.

"RECOMMENDATIONS

"1. That the investigation aimed at establishing the whereabouts of disappeared persons should be continued by constituting a specific commission for that purpose which can count on the support of the institutions of the State;

"2. That the new Commission to be established should exclude Government institutions or officials, and that it should be composed of members of parliament, professionals and representatives of private and religious organizations, account being taken also of the suggestions made on the subject by the parties concerned. So constituted, the Commission will achieve better co-ordination in pursuing the investigation and realizing its objectives and enjoy more co-operation from the families of the disappeared, which this Tripartite Commission did not have;

"3. That the parties concerned should provide the proposed Commission with the elements of proof which will enable it to complete its investigations with full co-operation;

"4. That the Attorney-General's Office of the Department of Public Prosecutor should promote investigation of the cases reported, receive further reports and any statements which will help in conducting a proper investigation;

"5. That all the cases reported should remain open so that both the State, through its competent organs, and the parties directly concerned, can take the steps they deem necessary."

80. There is some measure of agreement with those recommendations, even among the Government's critics. The Special Rapporteur does not, however, know to what extent, if any, the cases mentioned in paragraph 2 (a) and (b) of the "Conclusions" have been identified by the Ministry so that their families can check the facts.

81. In his interview with the Special Rapporteur, the Minister of the Interior explained the process of investigation set out above. He indicated that in certain cases (and he gave a few examples), there had been some clarification of what had occurred after the dates of a person's disappearance. The Special Rapporteur pointed out to him that the publication of partial information, relating even to a minimal number of cases, was likely to excite all the families with hopes that their own particular case might have been solved. The Minister said that hundreds of pages of documents had been compiled but that before publication of details further investigations by various central and local government agencies had to take place. He could not give an approximate date of publication of details, but he agreed that it should be done as soon as possible.

/...

82. No progress was made in the particular line of elucidation. Government sources have in the past suggested that some of the disappeared may in fact be among the refugees in Mexico. The Minister explained that the Government had not been supplied by the Office of the United Nations High Commissioner for Refugees (UNHCR) with a list of the names of the official refugees in Mexico, although it had been formally requested. Therefore no cross-check could be carried out between the list of disappeared persons submitted by the families or the Working Group on Enforced and Involuntary Disappearances and the names of the refugees in Mexico.

83. The Special Rapporteur said that he would recommend the provision by UNHCR to the Guatemalan Government of the list of names (see recommendation in para. 256).

C. The Commission for Peace

84. This was a private initiative, intended to examine the underlying reasons for violence in Guatemala and to recommend measures to ameliorate it. It had an inauspicious start. However, in April 1985 it published recommendations addressed to many official and unofficial bodies and to the public. Little response was reported in the press.

D. The Commission for Human Rights

85. No other private organizations, such as those working in El Salvador and Chile, have pursued or tried to deal with allegations of human rights violations in Guatemala. Thus the provision in the new Constitution of a Commission and a Procurador for Human Rights with extensive powers and duties (arts. 273, 274 and 275, set out in appendix III ...) is of great importance. It remains to be seen with what success these institutions will operate from 14 January 1986.

VI. PARTICULAR ALLEGATIONS OF VIOLATIONS

86. With the assistance of the regular publications referred to above and through his own investigations, the Special Rapporteur has sought to comply with the requirement of the Commission on Human Rights in paragraph 15 of its resolution 1985/36 "to assess in particular allegations of politically motivated killings, disappearances, acts of torture, extrajudicial executions and confinement in clandestine prisons".

87. There has been no shortage of allegations on those matters over the first eight months of 1985. It is important to recall that two of the phrases have acquired technical definitions in United Nations parlance. Enforced or involuntary disappearances are investigated by the Working Group specifically concerned with that phenomenon; its work is confined to disappearances where there is prima facie evidence that governmental agencies have been responsible. Extrajudicial executions are the concern of the Special Rapporteur who inquires into cases where a person has been summarily executed without trial at the instance prima facie of governmental authorities. Accordingly the Special Rapporteur considers the

instruction quoted above to be so confined. Criminal activities such as homicide, kidnapping or grievous bodily harm, if committed by anyone other than official authorities, are strictly matters for the National Police and outside the Special Rapporteur's mandate.

88. Such distinctions are not to be detected in many of the allegations.

89. The Committee for Justice and Peace (CJP) compiles monthly lists of alleged violations of human rights; it states that the lists are incomplete, but it provides all the details of each listed case that are available to it. The latest lists, for January-April 1985 inclusive, indicate, as is the Committee's custom, the persons said to be responsible for the crime. The numbers specifically attributed to the army or government authorities are as follows:

	<u>January</u>	<u>February a/</u>	<u>March</u>	<u>April</u>
Murders	51	2+	1	7
Woundings	0	0	5	0
Disappearances	0	4+	1	2

a/ The symbol "+" in February relates to a report in a newspaper that some evangelical pastors had been killed or kidnapped but neither their identity nor numbers was stated.

90. The numbers indicate victims, since more than one person may have been killed, wounded or kidnapped in one incident. In a few of the other cases a named person or persons are said to be responsible. All other cases are put down to "paramilitary bands" or "unknown".

91. This is, however, less than fair to the Committee. The expression "a heavily armed group of men in civilian clothes" can be used by those who wish to indicate the security forces (in any country) but do not think it wise to be explicit. Some, but by no means all, of the cases attributed to paramilitary bands contain information that a group of armed men was responsible. However, there are not enough details for more accurate figures to be prepared.

92. The Comisión de Derechos Humanos en Guatemala (CDHG) also publishes detailed accounts of human rights violations. Again, it is not easy to detect which allegations might reasonably be said to involve the security forces, but the Special Rapporteur in compiling the following table has included any incident where there is any such indication at all.

	<u>Extrajudicial execution</u>		<u>Disappearance</u>	<u>Wounding</u>
	<u>Individual</u>	<u>Group</u>		
January	6	46	17	3
February	1	4	14	3
March	5	8	7	2
April	2	132	16	1
May	2	-	9	1
June	2	25	26	1
July	2	-	4	2

93. These figures include all the alleged victims in the incidents described below, except the August incident at Malacatán.

94. CDHG also gave the Special Rapporteur their list of carefully researched cases of disappearances. The numbers are as follows:

January	8
February	11
March	10
April	16
May	11
June	11 (3 reappeared)
July	<u>7</u>
Total	74

95. Although to some extent the examination by the Special Rapporteur of the detailed events researched by CDHG led him to select names that also appear on the CDHG list of 74, in other cases the events contain nothing to implicate the security forces. However, the Special Rapporteur selected from published details names that are not among the 74 of CDHG. These two separate exercises demonstrate the difficulty of compiling reliable statistics of incidents that warrant the attention of the international community, as opposed to a set of internal criminal statistics.

96. According to the allegations, the major incidents appear to have occurred in 1985 at the following localities:

(a) Various villages in the municipality of Patzún, Chiumaltenango (see paras. 101-112 below);

(b) In and around Santiago Atitlán, Sololá (paras. 113-124);

/...

(c) Finca Santa Anita, Las Canoas, San Martín Jilotepeque, Chimaltenango (see paras. 125-130);

(d) Paraje Nil, El Asintal, Retalhuleu (see paras. 131-134);

(e) Utzumazate, Barbarena, Santa Rosa (see paras. 135-136);

(f) Nica de Malacatán, San Marcos (see paras. 137-141);

(g) Mazatenango, Suchitepéquez (see paras. 142-145).

97. The allegations come from CDHG, CJP, "Enfoprensa" and the Guatemala press, and are so indicated, with dates when available, in the following paragraphs.

98. CDHG and CJP have designated incidents (a), (c), (e) and (f) above as "massacres" or "collective extrajudicial executions". CJP has not yet published its report for June, which may include incident (d). "Enfoprensa" has reported all seven events, as has the Guatemalan press except for (f), although that may have appeared in issues not received in Geneva.

99. Incident (b) is mainly a denunciation about disappearances and had similarly wide coverage.

100. The extent to which the Government and its security forces are alleged to have been involved is to be inferred from the following accounts.

Patzún, Chimaltenango

101. This is a large municipality not far from the Pan-American highway, some 70 km west of the capital. The allegations within 1985 regarding abuses of human rights are as follows, all the villages mentioned are in the municipality:

(a) CJP, 30 January 1985, Chisiquiá, Marcelino and Juan Cocón. The two victims were accused by the military commissioner (as being subversives) and taken to the military detachment. Later the detachment denied having received any such accusation and said the men had gone home. Before reaching home they were surprised by armed men who tortured and then killed them.

(b) CDHG, 23 January 1985, Xeatzán Alto. Marcelino and Juan Cocón, Justo Morales Cano, Marcelo Jochalaj, Santos Cuy Cum and Rosalio Yoyaxuc. They were detained and disappeared following army action in their respective houses. Their bodies were later found with signs of torture, numerous bullet wounds and blows in a state of decomposition. The bodies of the (Chocóm) (sic.) brothers were found in Chisiquiá and the other four in Popabaj de Xepatal (sic.). The acts marked the beginning of a major campaign by the army against the villagers of this municipality.

(c) CJP, 30 January 1985, Xepatán. Marcelo Jochalaj, Justo Morales Chirix and two unidentified persons. After army units had detained them days before, they appeared assassinated. They had been decapitated and had multiple gun-shot wounds.

(d) CJP, January 1985, La Merced. Paulino Citán Miculax, the military commissioner. Because he did not obey the army's orders, soldiers kidnapped him in the night and the following day he was found dead 2 km from his house.

(e) 20 January 1985, Xeatzán. Rosalío Cos, Daniel Yos Ajú, Marcelo Espital, Santos Cuy, Lázaro Yaquí, Joaquín Yaquí, Mash Yaquí and three other unidentified men. On 20 January, 500 army troops arrived at the village and burnt a "galera", pulled Daniel (aged 8) from his house, beat him up and wounded him with knives. They collected the population and said they were going to keep them there for days. On 21 January, they again caught the boy they had tortured the day before and shut him and another eight villagers in the school, where they tortured them with "zogas", gouged out their eyes, castrated them and cut out their tongues. Then they brought gasoline and burnt five of them. Three bodies appeared at Xetzitzi. Three catechists were forcibly kidnapped, but it is said that they turned up in La Granja Penal de Pavón without knowing the reason for their arrest. Others say that these catechists were buried behind the school. (Special Rapporteur's note: 11 victims are claimed to have been killed, but the allegation only adds up to 10 persons.)

(f) CJP, 23 January 1985, Xeatzán Alto. Thirty unidentified persons under age 18. That day, 400 army troops occupied the village. They caught a boy 10 years old and tortured him to say who held meetings and where. They arrested 30 people, mostly under age 12 and killed them. In another incident they removed eight young people who have not been found.

(g) The International Association against Torture and Pax Christi (Swiss Branch) have also published allegations related to those two days in the two parts of Xeatzán village. The allegations came from CJP and the Committee for Campesino Unity (CUC) and include details of mutilations and people being burnt alive. Some 40 people are said to have been killed and the army is expressly said to have been responsible.

(h) Committee of Peasant Unity (CUC), 29 December 1984. The bodies of Marcelo Cocón and Juan Cocón were discovered, with signs of torture.

(i) 29 December 1984, Popabaj. Four bodies were found riddled with bullets: Justo Morales, Santos Cuy Cun, Marcelo Jocholaj, Rosalío Yac Chajú.

(j) A member of the West German Bundestag, Hans Ulrich Klose, protested on 13 February against the massacres committed by soldiers in January in the Patzún municipality.

(k) Agence France Presse (AFP) reported on 3 February 1985 that more than 800 villagers in the area were living in terror following the massacre of about 40 campesinos in Xeatzán village.

(l) CDHG, 28 January 1985, Patzún. Paulino Sitán Miculax. Attacked by unidentified men who shot him in front of his family.

(m) CDHG, February 1985, Patzún. Sinforoso Sipoc Tzuquen. Shot dead by unidentified men.

(n) Events in Patzún municipality and especially in Xeatzán were denounced by CDHG in February 1985 during the forty-first session of the Commission on Human Rights. The Guatemalan Government issued the following statement, which was circulated as document E/CN.4/1985/60:

"With reference to the events at Aldea Xeatzán, Patzún, Chimaltenango, the investigations undertaken have established the following:

"1. Subversive criminals of the self-styled F.A.R. have made their centre of operations the villages of Pachali, Xejabi and Chuatzunuj in the municipality of Tecpan, Guatemala, and the villages of Sabalpop, Zeatzán, Chipiacul, Popabaj and Zetzisi in the municipality of Patzún.

"2. Since December 1984, the subversive criminals of the F.A.R. have been intimidating the civilian self-defence patrols with the aim of preventing them from operating in their respective communities, trying to convince them that the Guatemalan army does not pay them for the operations they undertake.

"3. During a retreat by subversive elements of the F.A.R., these elements committed the following crimes:

11 (eleven) murders
9 (nine) abductions.

"4. Details of these crimes are given below:

On 18 January 1985, it was reported that a group of approximately 30 (thirty) subversive criminals were at a camp between the villages of Xejabi and Chuatzunuj; 4 (four) patrols were accordingly sent to arrest or subdue them. But the subversive criminals heard about this operation and fled to the south, trying to reach the mountains situated between Patzún and Pochuta. On 21 January 1985, they passed through the village of Xeatzán, where they abducted 8 (eight) members of civilian patrols in order to prevent these patrolmen from reporting them to the military patrols which were pursuing them.

On 25 January 1985, at El Pacayal farm they ambushed a patrol of the mobile military plice, killing 4 (four) members of the patrol. On 26 January 1985, they reached Santa Margarita farm, where they murdered Mr. Augusto Castillo Quiroa, the farm manager, and Román Guadalupe Rivera Santizo, the payroll clerk.

On 26 January 1985, Juan Cocón and Marcelino Cocón, civilian patrolmen, were abducted and murdered in the village of Chiquel de Patzún.

On 27 January 1985, the same subversive criminals reached Mercedes farm in the district of Patzún and murdered Paulino Sitan Miculax, the military commissioner.

On 9 February 1985, Maximiliano Chocoj Lopez and Custodio Morales, civilian patrolmen, were murdered in the village of Xejabi.

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On 11 February 1985, Florencio Ajmac, military commissioner, was abducted in the village of Xejabi; his whereabouts are so far unknown.

"5. The reports received concerning the above-mentioned murders are consistent in stating that all the persons involved were guerillas dressed in olive green and armed with type AR-15 and M-16 rifles (which are not included in the army's inventory).

"6. The security forces in the Chimaltenango area are making the greatest possible efforts to capture the group of subversive criminals responsible for murdering a number of members of the civilian self-defence patrols and military commissioners.

"7. Activities of this type have previously been used by the forces of subversion in order to level false accusations against the Guatemalan army, as part of the campaign of disparagement being conducted against our country."

(o) CDHG, 19-22 March 1985, Patzún. Lisandro Vásquez Siquajá was detained by unidentified men on 19 March. His body was found on 22 March on a Camino de Terracería.

(p) CDHG, 5 April 1985. Román Robaric Sipaez disappeared in unknown circumstances on his way to work. The place where he lived is not stated except as "Patzún".

(q) CJP, between 9 and 13 April 1985. Sebastián Coy, chairman of the indigenous community (in which village it is not stated), was forced into a pick-up truck in the outskirts of Patzún and has disappeared. "Various armed men" are said to have been responsible.

(r) CJP and CDHG, 14-15 April 1985. The wife of Benito Salvador Ajuchán denounced the disappearance of her husband at Cantón Poniente. Five heavily armed men in civilian clothes arrived at the house asking for José Salvador, but, failing to find him, took away Benito Salvador instead. The wife was threatened with a rifle. The army is expressly blamed. CDHG reported that the missing man's wife heard one of the men address another as "capitán".

(s) CDHG, 30 April 1985. Pedro Javier Cuxil, Pedro Sical, Lorenzo Coyote, Enrique Tiquirá, another man and two adolescents, all members of the civil patrol at Chiquel village, were taken from their houses by heavily armed men with blackened faces who were not identified. The four named men are on the CDHG list of disappearances, which they especially attribute to the security forces, as are the cases (p) and (r) above.

(t) Guatemalan press. The events at Chiquel were covered by articles in both newspapers. The names correspond, and it is clear that the reporters had interviewed people in the village and the military authorities. Three hats and a blue shirt belonging to the disappeared men were found on the edge of the local river.

(u) "Enfoprensa", 10-16 May 1985. The auxiliary mayor Buenaventura Sujpop is said to have reported that government forces violently kidnapped seven villagers from their homes, in front of the families and neighbours.

(v) "Enfoprensa", 10-16 May 1985. The voluntary fire brigade (who is called in to deal with dead bodies) received numerous reports on 9 May about the existence of a secret grave within the municipality. The search had to be called off because of bad weather, according to the local fire brigade chief. (The area concerned may have been Chiquel village, since the Guatemalan press carried on 9 May 1985 a photograph of a fire brigade vehicle there.)

(w) Guatemalan press, 19 May 1985, inside the boundaries of Patzún town. Mario Gilberto Melgar Juárez, commander of the civil patrol and destrozador de ganado, was murdered by two unidentified persons with firearms. He and his companions were grazing their animals in the early morning when the murderers appeared, forced them to lie on the ground, picked out the victim and shot him. They did not speak during the incident (report by National Police).

(x) CDHG, 18 May 1985, Patzún. Mario Gilberto Melgar Juárez, destrozador de ganado, was found at work in the early morning by various unidentified armed men who told all the workers to throw themselves on the ground and then shot Sr. Melgar, giving him a coup de grâce. He was the commander of the civil patrol.

(y) CDHG, 18 June 1985, Xeatzán Bajo. Twenty unidentified villagers of various ages were executed by members of the army. According to a denunciation in México by an eye-witness, brought forward by CUC, the 20 victims were dragged violently from their houses and "crucified" with nails through their arms and legs. The bodies were left by the soldiers in the village school.

(z) CDHG/"Enfoprensa", 18 June 1985, "Saquillá" and "Zaquila". Mariana Ajtzip Coyote and her daughters Florinda María and Isabel Yos Ajtzip were detained by heavily armed unidentified men who dragged them violently from their house. They were put into a military jeep in the hours of darkness and taken away to an unknown destination. "Enfoprensa" adds that about 40 persons were massacred in the village in February.

(aa) CDHG, 21 June 1985, Patzún. Eight unidentified persons. The Democracia Cristiana Guatemalteca Deputy for Chimaltenango, Andrés Coyote, denounced their disappearance at the hands of heavily armed unidentified men who took them away to an unknown destination in vehicles with no licence plates.

(bb) "Enfoprensa", 5-11 July 1985. According to the Sub-Commission on Human Rights in Guatemala, whose base is in Quetzaltenango, eight villagers were kidnapped in "Saquila" by members of the army. The names, published on 10 July, are Juan Pablo Toj, Eustaquio Toj, Santiago Toj, Encarnación Bay, Esteban Pérez, Juan Ajtzip Coyote, Florinda Yos and Isabela Yos.

(cc) CDHG/"Enfoprensa", 27 June 1985, "Saquila"/"Xaquila". Six villagers were kidnapped while on civil patrol guard duty.

(dd) CDHG, 2 July 1985, Patzún. Nicalás Ajcalón, military commissioner, and Julián Sinoe Ajbal disappeared on 26 June. Their bodies were found floating in a trough (pila de agua) behind the church.

(ee) Guatemalan press, 3 July 1985, Poniente. The story is confirmed as above, except that the military commissioner is named as Nicolás Ej Jolón Ansul, the other man as Julián Pimey Ajbal, and that there was a third body. All three had had their throats cut and had been beheaded.

(ff) The Special Rapporteur was told that later in July two people were attacked at the bridge on the departmental boundary with Sololá; one was killed and the other seriously wounded. A municipal employee, Mario René Cienfuegos, was also shot dead in front of the church in Patzún and in neither case had those responsible been detected.

102. This collection of denunciations and news reports indicates a number of incidents. The principal allegations appear to have been:

- (a) A major massacre in the two parts of Xeatzán village around 20-23 January;
- (b) End of December or end of January, Xepatán/Popabaj/Chisiquiá, four murders, including those of the two men called Cocón and two others or perhaps four others;
- (c) A number of disappearances in Chiquel in April;
- (d) Another massacre at Xeatzán Bajo in June;
- (e) Disappearances in a village that is actually called Saquiya, which is about 2 km from the centre of Patzún town. It is not thought that "Enfoprensa" is suggesting a massacre in Saquilá in February; the reference is probably to Xeatzán. There were probably other incidents of importance, but either the exact place is not indicated or the Special Rapporteur had insufficient time to make investigations. He did, however, spend a whole day in Patzún town, Saquiya, Xepatán, Xeatzán, a village called Chichoi and at a bridge on the departmental boundary between Chimaltenango and Sololá. The municipality covers 124 sq km; there is a high and extensive afforested mountain ridge stretching up to the western side. It lies to the west of the present Pan-American highway, but the old main road from the capital to the west of the country runs through the municipality and most of the villages referred to are situated along this road.

103. The situation should be put in perspective. Some three or four years ago much of the Department of Chimaltenango was under the guerrillas' control. Nobody dared to travel even along the Pan-American highway. It was on the verge of being declared a "liberated area". The Special Rapporteur reported on some of this in 1983 after his visit to Choatalún in the municipality of San Martín Jilotepeque (see E/CN.4/1984/30, para. 4.8). In the battles that led to the Government regaining control there were evidently many casualties among the civilian population. The armed group in Patzún in 1985 is probably the main remnant of the guerrilla forces. The local civilian population and even the authorities do not

know or prefer not to say who they are. However, Gregorio López, writing in "This Week" of 12 July 1985, described himself as an "ORPA leader" and "assesses guerrilla strength". Commenting on events in June he stated: "In the Patzún municipality of Chimaltenango - a FAR guerrilla stronghold - 16 people, including 10 civil patrol members, were kidnapped. Four turned up in a convent with their throats slashed".

104. Whoever the band may be, they have been operating in the municipality for at least three years. The army has been searching for them but without much success. One of the band's activities is to attack and rob people in cars and buses. A favourite place is the bridge mentioned above. It is an ideal place for an ambush and the local population passes that way in the buses on route to the large market at San Lucas Tolimán. Passengers have been robbed and so have the occupants of cars. On one occasion a car-load of frightened people, who had been held up by the band, went on to tell the military detachment at Godínez. The army found the band at the bridge, but the latter slipped away down the river. The bridge was the scene, in July 1985, of a young man being murdered and a girl seriously wounded. The bridge is decorated with "EGP", "FAR" and PGT" in various coloured paints.

105. The local populace too has tried to catch the band. About three years ago, the Special Rapporteur was told, the men of the area, machetes in hand, went into the mountains to search them out, but they too had no success. The pattern of attack is irregular; an incident occurs and everyone is frightened. Everything then calms down until it happens again. In this part of the report, the Special Rapporteur is quoting exclusively from what he was told at first hand; he avoids, however, disclosing the exact source of the information so far as possible since the villagers are nervous. Apart from the band's operations, there is an army detachment in Patzún town. In the early part of 1985 it was commanded by a "Captain Cabrera" - possibly a pseudonym, who has taken up a post elsewhere. The Special Rapporteur spoke to his successor. "Captain Cabrera" is thought by commentators outside Guatemala to have been a tough officer. The Special Rapporteur inquired among the local population whether the "band" could be the army detachment. There is a witness who can positively say that this is not so, from first-hand identification. A further element is a group of people distilling illicit alcohol in the mountains; two (one a woman) had been caught and held in the police station in Patzún until just before the Special Rapporteur's visit. Both by then had been fined and released. However, the villagers complain of the attempts by that group to extort money for their liquor and fear reprisals if anyone is thought to have informed on them. The civilian authorities in Patzún were sure they were not connected with the main criminal band. All the same they contribute to the general disquiet and fear. The Special Rapporteur was told "Once a denunciation is made, witnesses seem to evaporate".

106. On the specific denunciations referred to above, the Special Rapporteur was told as follows:

(a) Xepatán: Nobody was killed in January. The last major incident was four years ago when their health post was attacked and medicines stolen;

(b) Xeatzán Bajo: The village was visited in May 1985 by a team from Amnesty International. When the Special Rapporteur went there the main spokesman put forward by the other villagers was visibly frightened. It emerged that he had also informed Amnesty International of what had happened, identically, he said, to what he eventually told the Special Rapporteur. However, he was then severely reprimanded by the army. He required considerable reassurance before he would talk again, and the Special Rapporteur has taken steps to ensure that there is no repetition of that event. He said that nobody has been killed in the village, either on 21 January 1985 or at any other time. On that date, however, eight people disappeared at night and have not been seen again. The men responsible wore civilian clothes and carried a variety of firearms including Galil rifles (the army's weapon). They went straight to specific houses; they did not speak, nor ask for money.

107. A group of villagers spent some time in calculating exactly how many people in the village had disappeared. The total over the past three years was 22 men and 3 women.

108. The villagers asked the Special Rapporteur to request the National Reconstruction Committee for help in the form of a school, health centre and community centre.

Saquiya

109. The Special Rapporteur's quest was for information about the eight persons alleged to have disappeared in June. The villagers confirmed that this was true and that there were more such cases. However, some of them had reappeared, one of whom was brought from his fields. He said that he had been on duty at night with the civil patrol; the army came and took him away with five others; three of whom were still missing. He thought he had been taken to Patzún and then to the military headquarters in Chimaltenango, although he had been blindfolded with his hands tied. He said he had had no contact with the others. He was properly fed and did not remember being questioned. After 18 days he was returned to Patzún and freed under the amnesty. He had had no problems since.

110. The Special Rapporteur went to see the comandante in Chimaltenango, who had recently assumed this command. He had taken charge of the amnesty ceremony in the municipal buildings in Patzún when a group of people had in July 1985 been given their amnesty documents (see E/CN.4/1985/19, paras. 47-51, for a similar ceremony at San Ildefonso Ixtahuacán). It had not been a public occasion, but the families had been invited and had attended. He showed the Special Rapporteur a video of the event. The man to whom the Special Rapporteur had talked in Saquiya was clearly identifiable. The comandante said that the various people concerned, 11 in number, had been captured by the army detachment in operations against the band. He agreed that the Special Rapporteur's informant had been held at the military headquarters while his identity was established, but not for as long as 18 days.

111. The list of 11 names has been transmitted to the Working Group on Enforced or Involuntary Disappearances.

112. It is apparent from the above account that no simple explanation can be brought to answer the allegations. What happened at Xeatzán Bajo seems to have consisted of a significant abduction; there is no evidence for one, let alone two, massacres or any torture. At Saquiya there were disappearances. In neither case is an easy answer available to the question of who was responsible.

Santiago Atitlán

113. This town is situated on the south-west shore of the volcanic lake Atitlán in Sololá. It came to international attention when two letters, written in November 1984 by Fr. John E. Vesey, an American priest belonging to an order based in Oklahoma, were published by CDHG. He was at that time the parish priest, although by August 1985 the diocesan bishop had transferred him to another parish where the Special Rapporteur had too little time to visit him.

114. Fr. Vesey's specific comments relate to:

(a) The murder in 1981 of another American priest from the same order, Fr. Stanley Rother, locally known as Padre Francisco (clearly a man much revered in the area);

(b) Death threats to himself, including an occasion when his rectory was surrounded by the civilian authorities carrying arms;

(c) The army's stated intention to clean out the guerrillas in the area;

(d) A plan to move the population, or some of it, away to model villages.

115. The CDHG publication includes a forward to the letters giving details of the conflict in the area from 1980 to 1984. They identify the site of the model village as being "in the nearby municipality of Nahualá" and emphasize the tension in Santiago Atitlán.

116. There can be no question of the existence over the years of conflict in this municipality. CDHG mentioned that, because of its geographical location at the end of a pass between the volcanoes called Tolimán, Atitlán and San Pedro, it has, since long before the arrival of the Spanish, lain at a cross road of routes between the Altiplano and the coastal plain to the South. The traffic now, however, includes the bands of guerrillas who still use these traditional routes: guerrillas of the Organización Revolucionaria del Pueblo en Armes (ORPA) are active in the area, as their own publications announce. It seems most probable that it was the guerrillas who burnt the municipal buildings, the post office and other buildings in Santiago in January 1985.

117. The Special Rapporteur visited the municipality in August 1985. He found that, despite an article in El Gráfico in April carrying an army announcement of the gradual return to tranquillity and good order, the village had been overtaken by more violence. Disappearances and killings had occurred in June and July; one victim was a pharmacist murdered in his shop on 26 June 1985; in early August a bus-driver was killed in the centre of the town in broad daylight by an unidentified man who shot him and ran away.

118. Tension in the town and nearby villages was apparent. A sister at the church told the Special Rapporteur that, although it may especially have struck Fr. Vesey because he had newly arrived at the place, it was a usual phenomenon and continued unabated. There was very little rapport between the army detachment and the civilian population; the latter made comments, critical of the army, openly in the street to the Special Rapporteur's team, who were, of course, complete strangers.

119. There is no restriction on freedom of movement, although it is highly advisable to carry an identity card, and people are afraid to go out after dark. The civil patrols function but prefer not to carry even their machetes. People are arrested for questioning by the authorities and the evidence suggests that some are released and some are not.

120. Two things should be added in relation to Fr. Vesey's points: (a) he himself was, in August, safe; (b) there is no indication of any new settlement or model village at Nahualá; no such project has been heard of in that town, which the Special Rapporteur visited. It is three hours away from Santiago and situated on the opposite side of the Lake. It would, the Special Rapporteur believes, be an unsuitable place for the people of Santiago, not only because of the distance but also because of the different cultural backgrounds of the Tzutunil people of Santiago and the Cakchiqueles at Nahualá.

121. The Special Rapporteur investigated certain allegations of disappearances in the villages of Panabaj and Tzanchaj, just outside Santiago. He had a list of five names; the villagers confirmed that all these had indeed disappeared, and so had others. The Special Rapporteur spoke to the families of six disappeared persons. They were not easily persuaded to discuss the matter and the Special Rapporteur had to make it clear that he was not connected with the Government and to promise that he would not reveal the names of the families he interviewed. (The Special Rapporteur will discuss with the Working Group on Enforced or Involuntary Disappearances how this situation should be handled.) These disappearances occurred in March and April 1985; the pattern mostly was the same. The abductors arrived at night, in civilian clothes and (in one case) sports shoes; their arms were similar to the army's. There was one concerted incident when men and boys were taken simultaneously from two houses by men with their faces covered, who did not speak at all even though they beat up the men. Considering the labyrinth of paths between the close-packed little houses in the villages it is clear that those responsible must have known exactly whom they were seeking and where they lived to have been able to carry out such a silent raid in darkness.

122. One case was different. The man had told his wife that he was going to Guatemala City to buy clothes for the children. Subsequently she had not seen him and could not find anyone who could say whether he even reached the bus. The Special Rapporteur observed that the family is poor; there is a through bus to the capital; there are clothes shops in Santiago and 16 km down the road the large market at San Lucas Tolimán on the same bus route.

123. The Special Rapporteur has not put these cases to the military authorities either locally or in Sololá; indeed in view of his promise he cannot do so. He has set out all relevant information that he was able to collect but does not consider it sufficient to attribute responsibility for the disappearances.

124. Santiago Atitlán is the most tense and difficult area that the Special Rapporteur has encountered in all his visits to Guatemala.

Finca Santa Anita, Las Canoas, San Martín Jilotepeque, Chimaltenango

125. The following incident was reported:

(a) CDHG, April 1985. Some 125 unidentified men were shot and executed by the army.

(b) CJP, 14 April 1985. Some 125 men were kidnapped by armed men dressed in civilian clothes. They were taken to a deserted place where they were made to dig graves and shot and thrown in. Instead of burying the bodies, the graves were blown up with dynamite to inter the bodies. (No indication is given as to who witnessed these details.)

126. This estate (finca) is extremely remote; for the reasons given above the Special Rapporteur did not use a helicopter to investigate abuses of this sort and thus could not include a visit to the place. He spoke personally to a man who had been there at the end of April 1985 to see if the allegation was true. He was told of the detailed nature of that investigation. The villagers said that in 1982 people were killed in the conflict between the guerrillas and the army. Since then none had been killed. However, on the night of 18 March 1985, some 20 to 25 unidentified men in civilian clothes armed with automatic weapons entered the estate and robbed the owners of four houses of clothes, food and money; one of these houses had a small shop in it. A fifth house was burned when the owners put up resistance.

127. There was circumstantial as well as direct evidence to support this version of events, which had appeared in that form in the Guatemalan press in late March.

128. The area is very mountainous and remote. It would be difficult to disprove the existence in a "deserted place" of a dynamited mass grave covered with rocks.

129. The alleged massacre was reported in a Guatemalan newspaper on 20 April and two days later another newspaper published a statement by the Comandante of the Department denying that any such event took place.

130. Although not as sure as if he had made a personal visit, the Special Rapporteur is of the view that serious doubts exist whether this "massacre" actually occurred.

Paraje Nil, El Asintal, Retalhuleu

131. According to CDHG, 10 June 1985, Herminio Aguilar Oralle (68 years old), his daughters María Carolina (26) and Dora Aguilar García (22); Lorenzo Menchú López (42) and his son Roselino Menchú Bámaca (12 years old) were murdered. Sr. Menchú and his son were taking a load of "mangoes" to Retalhuleu market. They waited at the roadside for the country bus but it did not arrive. They asked the Aguilar family if they could spend the night in their house and start at dawn. According

to neighbours, the noise of several vehicles arriving was heard during the night but they were afraid to get up. In the morning they found the five bodies with their throats cut (degollados). CJP has not so far presented its denunciations for June 1985.

132. According to "Enfoprensa", 7-13 June 1985, a group of armed civilians, identified as government security agents, killed five persons, among them a minor, on 12 June. They also searched several houses in the El Asintal village. The victims were identified as Herminio Aguilar Ovalle, his daughters María Carolina and Dora Aguilar García and Lorenzo Manchú and his 11-year-old son Dioselino.

133. The Guatemalan press reported on 12 June that five persons had been murdered with machetes the previous morning. The victims were Herminio Aguilar Valle (55) and his daughters María Carolina (20) and Dora Noelia Aguilar García (22), Lorenzo Mencho López (42) and his daughter Rosalinda Mencho Bámaca (12). The facts coincide exactly with those reported by CDHG, except that among the bodies was found a five-year-old girl, alive, possibly spared by the murderers because of her age.

134. The Special Rapporteur had this incident on his itinerary in order to discover what facts might support "Enfoprensa's" positive identification of "government security agents". Unfortunately the place was too distant to reach in the time available.

Utzumazate, Barberena, Santa Rosa

135. This case involved five or six members of the Carmeño de la Cruz family. Both CJP and CDHG reported that they were attacked in their house by heavily armed men who drove up in a vehicle. There were two survivors. The others were shot with automatic rifles and shotguns of various calibres, and the men then left without saying anything and drove away in the vehicle. CJP adds that when the judge of the peace (the local official who has to deal with dead bodies and make a preliminary investigation) tried to get the rest of the family and the neighbours to help with his inquiries nobody would come. "One must emphasize" they say, "that in Guatemala when anyone has given evidence in such a case he later receives death-threats or other intimidation".

136. Neither organization claims this to have been the work of the security forces, but these forces are accused of being responsible in "Enfoprensa", 26 April-5 May 1985. The Guatemalan press reported that the justice of the peace, who is named, went to the scene immediately and stated that neighbours expressed the possibility of the murders being personal revenge, since the family had won a case concerning ownership of some land. The Special Rapporteur had no time to inquire into the case.

Nica de Malacatán, San Marcos

137. This case involves four members of the family Chávez Cax, the parents and two children aged four and two. CJP says that on 26 February a group of armed men came to their house, broke in violently and seized the husband; his wife followed them

out, asking them to do him no harm. All four were taken to the River Petacalapa in the Finca (Estate) Marylandia, where the father was shot and the other three thrown into the river where they drowned. Those three bodies were found down river next day, while that of the father was discovered in the Finca. "The facts had been made to look like an accident since all had been drowned", according to the allegations presented.

138. CDHG has a much abbreviated version of similar facts; the Special Rapporteur asked them to look up their records to see whether any of the evidence pointed to the security forces and to ascertain who could have told the story; presumably there must have been two witnesses at least, one at each site involved in the crime. CDHG obtains its information through a chain of informants and unfortunately could do no more than suggest that neighbours made the report. No facts incriminating the government forces could be provided. "Enfoprensa", however (1-5 March), reporting the matter under a slightly different family name, stated that the victims were kidnapped by government forces and that days later the bodies appeared in the river and showed signs of torture.

139. If the case appeared in the Guatemalan press the Special Rapporteur and the Centre has failed to note it. The Special Rapporteur did not seek to investigate the case since there is nothing in the recorded facts to implicate the Government.

140. CJP also denounced the disappearances of five other people in Malacatán municipality in late February, in three separate incidents, at the hands of "armed men".

141. Another incident in the same village was reported by "Enfoprensa" (16-22 August 1985) as having occurred on 18 August. Armed men identified as belonging to the army forced their way into a house, killed Sra. Cecilia Calderón Fuentes and Sr. Pedro Pablo Morales, wounded two minors and also abducted the brothers Carlos and Héctor López. The news agency does not indicate how the men were identified as belonging to the army.

Mazatenango, Suchitepéquez

142. One alleged abuse involving two murders was sufficiently striking for the Special Rapporteur to take it up directly with the National Police: the facts if true must have been susceptible to professional investigation. The allegation as published by "Enfoprensa", 11-17 January 1985, is that Luis Armando Pérez Lima and Neftali Morales de la Cruz, administrators respectively of the coffee estates called Monte de Oro and Monte Quina, the first in Sololá and the second in Suchitepéquez Department, were arrested by army troops. They were taken to a military detachment then based at an American-owned estate called Moca Grande and were tortured for hours until they died. The report is attributed to CDHG.

143. American Watch in a September 1985 report refers to this allegation in an abbreviated form.

144. CDHG published documents give the names as Luis Armando Pérez Lima and Luis N. Yach; the estates have the above names but are both said to be at

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Santiago Atitlán, Sololá. The allegation is that they were detained by elements of the army dressed in civilian clothes, heavily armed and taken to the Moca estate in Suchitepéquez, belonging to an American citizen. There was a military detachment there in early January. They were savagely tortured and this led to their death. In the afternoon of 9 January 1985, their bodies were thrown from a civilian helicopter onto the football pitch in Mazatenango. Both bodies showed signs of torture and gunshot wounds. Sr. Pérez had been castrated and Sr. Yach had his skull fractured. CDHG discussed this case verbally with the Special Rapporteur in México City and said that the way in which the men were murdered and dropped from the helicopter gave rise to a strong presumption of army responsibility since bandits do not have helicopters.

145. The National Police said that they were aware of the case but that the above information was incorrect. The two men were not dead but wounded; they were picked up by a helicopter and lowered onto the football stadium at Mazaltenango with ropes. It was the only site to ensure their transfer to hospital. Police records will be provided and the Special Rapporteur will report further.

VII. DISAPPEARANCES

146. The Working Group on Enforced or Involuntary Disappearances has been concerned with disappearances in Guatemala since it began its work in 1980. Its Chairman informed the Special Rapporteur on 21 August 1985 of the figures: over the period 1980 to 1985, the Working Group has transmitted 1,709 cases, which have been carefully scrutinized by the Group in order to ensure that they conform to the criteria of admissibility. The Government has responded to 27 of those cases, and the response has clarified 15 of them. A further nine cases are considered by non-governmental sources to have been clarified. At its session in June 1985, the Group transmitted a number of cases, newly reported to it, which had occurred in 1983 and 1984. In July 1985, seven cases that had occurred in June 1985 were transmitted under the urgent action procedure.

147. It is not the task of the Special Rapporteur to present cases of disappearances to the Government (see E/CN.4/1985/NGO/26). That is done by the Working Group, which studies the denunciations and selects those that fulfil the criteria. The Special Rapporteur does not propose to publish a separate list; to do so would involve two executive parts of the United Nations in overlapping procedures. The Special Rapporteur has been supplied by CDHG with a list of cases that occurred in 1985. CDHG told the Special Rapporteur that it had tightened its own criteria to make certain that any case denounced possessed features that, prima facie, indicated that the Government's agencies might be responsible. The Special Rapporteur welcomes this refinement. The list of 74 names has been conveyed to the Working Group on Enforced or Involuntary Disappearances by CDHG.

148. The Guatemalan Government, when asked about such disappearances, has continued to ascribe them to:

- (a) Acts of common criminals;

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(b) Acts of guerrilla organizations that get rid of people who are no longer useful to them;

(c) Those who join the guerrilla forces without telling their families;

(d) Those who disappear in order to avoid the process of law;

(e) Those who go abroad to seek work without the necessary documentation;

(f) Those who, often in their teens, run away from home.

149. The National Police gave the Special Rapporteur a list of 37 persons who had been officially denounced as disappeared between January and June 1985 and who had subsequently reappeared. People of all ages are included although they were predominantly young; the longest period of disappearance was 28 days. The list will go to the Working Group on Enforced or Involuntary Disappearances in case any of the names are of persons on their files.

150. In fact, the Government does itself less than justice. The Special Rapporteur discovered that a number of persons whose disappearance had been denounced in the Patzún municipality subsequently reappeared, having taken advantage of the amnesty. Three are on the CDHG refined list. This information was available locally to the authorities, but evidently had not been collected centrally nor used to clarify the allegations.

151. Another such case was reported in El Gráfico in August 1985. Martín Guarchaj y Guarchaj was recruited to the guerrillas' ranks in the village of Xojolá, Nahualá, in the Department of Sololá, and participated in various activities under the pseudonym "Pedro". He was reported as having disappeared. He took advantage of the amnesty and came back into the community. It is not said how long he had been "missing".

152. Certain disappearances have in this fashion been clarified. It is not, however, possible for the Special Rapporteur personally to investigate such cases except as part of a larger incident. Only the Government has the resources and powers to do so.

153. While the National Police openly admits that members of the force have taken part in kidnappings, the Government otherwise remains adamant that the security forces are in no way responsible. There is no official information available on the cases presented by the Mutual Assistance Group and numerous other bodies and individuals.

154. In addition to the larger incidents described above there have in 1985 been other incidents. Examples are given below, not because the Special Rapporteur has any particular reason to attribute the causes to governmental agencies, but because the victims had affiliations with institutions in Guatemala that have for years suffered from attack. It is not suggested that the lists are in any way exhaustive. He hopes that some clarification may be made before he visits Guatemala again.

University of San Carlos

155. The Special Rapporteur went to see, for the second time, the Rector of this independent University. The main topic of discussion was the current violence. One problem arising out of the traditional independence of the University is that the National Police do not have authority within the precincts and the University has no security force of its own. Another is that certain University personnel who had disappeared have subsequently been released, a subject which was discussed on a previous occasion with the Rector. Evidently the pattern is consistent. The Rector has made personal appeals in a number of cases, where the victim was released he or she has generally left the country. They do not wish to talk about the incident or to identify, if they could, their abductors. Incidents include the following:

(a) Mayra Yaneth Mezy Soberanis, professor at the School of Psychology of the University, was kidnapped in September 1985 and found dead in Guatemala City in January 1985;

(b) Falvio José Quezada Zaldaña, Director of the Centre for Urban and Regional Studies of the University and teacher at the Faculty of Architecture. On 23 March 1985, he was shot down in front of his home in Guatemala City. His wife, Mayra Panencia de Quezada, and his young daughters witnessed his assassination;

(c) Carlos Enrique Cabrera García, civil engineer and member of the Governing Board of the Faculty of Engineering of the University and also candidate for the election of the new Dean of the same faculty. He was shot down a few blocks away from the University campus on 27 March 1985;

(d) "Enfoprensa" reported that on 4 June 1985 heavily armed men killed Edgar Enrique Leiva Santos, University professor and candidate for the presidency of the University, on the grounds of the campus. Professor Leiva Santos, a member of the University Council, was the University's representative on the Commission for Peace organized in 1984 to seek a reduction in the violence in the country;

(e) "Enfoprensa" alleged that, on 26 June 1985, men driving three official vehicles killed faculty worker Ambrosio Pérez Guzmán (32 years old) on the University campus. The Guatemalan press published a report that Mr. Pérez Guzmán was shot by unknown men while walking with another employee of the campus across the school of Communications Sciences (Prensa Libre, 27 June 1985);

(f) It was reported that Agustín Pos Ibay, aged 22, medical student at the University, was kidnapped on 29 April 1985;

(g) It was alleged that government security forces kidnapped student leader Wladimir Amado Hernández, secretary of the School of Economics' Student Association at the University, on 22 June 1985 ("Enfoprensa", 21-27 June 1985);

(h) It is alleged that armed men kidnapped law student Ovidio de Jesús Cartagena Cabrera, who gave free legal advice in the Popular Legal Service at the University, on 24 June 1985. According to witnesses, the men

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kidnapped Cartagena "with great brutality and complete impunity" in spite of the presence nearby of police agents ("Enfoprensa", 21-27 June 1985);

(i) The Guatemalan press reported (Prensa Libre, 27 July 1985) that Carlos Fernando Paredas Solórzano (16 years old) disappeared on his way to see his brother at the University.

Trade unions

156. The Special Rapporteur did not have a further opportunity in August 1985 to meet members of the trade union movements as he has previously done (see E/CN.4/1984/30, para. 75 and E/CN.4/1985/19, paras. 173-180). Evidently, however, members of trade unions have continued to be victims of violence. A delegation of trade unionists from the International Confederation of Free Trade Unions (ICFTU) visited Central America, including Guatemala, in early 1985. Their report was sent to the International Labour Organisation (ILO) and refers to a number of earlier cases individually presented to ILO. The report refers to allegations of murders and disappearances between 1980 and 1985, and the following are those reported in 1985 (evidently brought up to date to the presentation of the report in June 1985):

(a) 13 January 1985, Edgar Morales Arias and Mario Morales Morataya, trade unionists from "El Salto" sugar refinery, were kidnapped in the city of Escuintla;

(b) 17 January 1985, Carlos Humberto Carballo, trade unionist from the city of Amatitlán, was kidnapped on his way to Quetzaltenango. On the 19th, he was dumped by his kidnappers, bound, gagged and brutally beaten, near the border of El Salvador;

(c) 23 January 1985, Armando Ramirez Peña, Secretary for Inter-Union Relations of the Union of the Ray-O-Vac factory "SITRADUX" was kidnapped on his way from work to the union office where he was working on preparations for the anniversary of the Union. He was released the following morning and exhibited signs of having been tortured;

(d) 17 February 1985, Aurelio Coto Melgar, a trade unionist from CAVISA, was kidnapped on the way to work. His body was found on 14 March in 42nd Street at the end of Zone 12 in Guatemala City. He exhibited signs of cruel torture. ("Enfoprensa" also reported this case.);

(e) 12 April 1985, Celita Floridalma Lucer Lucero, member of the Honour and Justice Committee of the Trade Union of "Adams" Manufacturing was seized as he left his home on 5th Avenue and 4th Street in Zone 19, Colonia Santa Marta, and up to now, it has not been possible to establish his whereabouts;

(f) 23 May 1985, Sebastian Quino Guarcas, head of a peasant organization in El Quiché, was seriously wounded by shots fired by members of the Government security forces. The incident occurred in Guatemala City. He was taken to the hospital.

157. The Special Rapporteur notes that the Guatemalan press (El Grafico, 1 June 1985) refers to pressure on the Union of Agricultural Workers of San Tomas, Chichicastenango; two unidentified men followed Sr. Quino in the capital, called his name and then shot him.

158. CIOSL also reported in a telex of 3 September 1985 to ILO that the Secretary-General of the Confederación Unidad Sindical de Guatemala (CUSG), Francisco Alfaro Mijangos, had received death threats over the telephone.

Private sector

159. On 12 August 1985, Mr. Roberto Castañeda Felice, Chairman of the General Association of Farmers and its representative on the national forum on economic affairs, was murdered, according to the Government, by unidentified men with automatic weapons who shot him in his car in the capital. ("Enfoprensa", 9-15 August 1985) reported that the men were in a vehicle without license plates, "like those used by the government security forces in actions of this type". The Association had asked for an investigation. The guerrilla organization Guatemalan National Revolutionary Unity (URNG) issued a statement accusing the Government. Further to the ICFTU report, it is alleged that in May 1985 government security forces kidnapped labour leader Juan Carlos Alfaro Alvarez, son of the Secretary-General of CUSG. The labour organization reported the kidnapping on 9 May 1985. CUSG demanded that his life be respected and that he be arraigned in court in the event of being charged with some crime. A few days later, he was released ("Enfoprensa", 10-16 May 1985).

The Church

160. The Special Rapporteur had a discussion with a leading bishop during his visit in September 1985. The major recent incident that concerned the Roman Catholic church was the kidnapping of Brother Felipe Bolán Tomás of the Missionaries of Charity by what were alleged to be government security forces while he was holding a service in the village parish of Los Escobos, municipality of San Martín Jilotepeque, in Chimaltenango. This action was denounced by the archbishop of Guatemala, Monsignor Próspero Penados del Barrio, on 13 February 1985. The Government denied all knowledge of the incident ("Enfoprensa", 15-21 February 1985).

The Political Parties

161. The following cases involving the political parties were reported:

(a) The Christian Democratic Party (DCG) reported on 18 March 1985 that the day before eight armed men wearing uniforms kidnapped Abraham Cucul, Secretary-General of the DCG for the municipality of El Estor, in the northeastern Department of Izabal. The kidnapping took place in presence of Cucul's relatives and other witnesses ("Enfoprensa", 15-21 March 1985);

(b) The Movimiento de Liberación Nacional (MLN) reported that Edgar René Curumaco García, their representative in Morlia, Yepocapa, Chimaltenango, was kidnapped and brutally killed in early March 1985. He was taken

from his house on Sunday 10 March 1985 by a group of armed, unidentified men and his body was found two days later in the Department of Escuintla (Prensa Libre, 13 March 1985);

(c) Pedro Us Azafion was attacked and left for dead by seven civil patrol members at San Pedro Jacopilas, El Quiché, whom he later identified to the police. He was an activist in the Unión de Centro Nacional (UCN) and was collecting funds. They tied his hand and feet and beat him up, but he survived (El Grafico, 18 March 1985);

(d) Juan Quino y Quino, a UCN party worker and also connected with the Union of Independent Agricultural Workers of San Tomás, Chichicastenango, El Quiché, was kidnapped on 1 April 1985. "Enfoprensa" (26 April-2 May 1985) reported that this occurred before witnesses in Chichicastenango, and that members of the Police Department of Technical Investigation (DIT) were responsible. The Guatemalan Press (El Gráfico, 1 June 1985) reported that unidentified armed men had kidnapped him near the bus terminal in Guatemala City, Zone 4. CDHG alleged that it happened on 10 April 1985 in Chichicastenango and that members of DIT, well known to the family and neighbours, were responsible;

(e) Three DCG party members were kidnapped on 15 April 1985 in Huehuetenango Department, according to an allegation in "Enfoprensa" (26 April-2 May 1985). They are Guillermo López Péres, Domingo Cruz Jinon and Marcelino Castro López;

(f) A UCN Deputy of the Assembly, Lic. Antonio Arenales Forno, was wounded by unidentified men in the capital, who attacked him in his car with the apparent intention of robbery. He was shot in the head and taken to hospital in serious condition (El Grafico, 9 June 1985).

162. Other cases include the following:

(a) It is alleged that Oscar Antonio de la Vega Molina, owner of a plantation in Taxisco, Santa Rosa, was killed on 18 May 1985 in his home in the "El Pensamiento" estate, Santa Rosa. According to information, some 10 men wearing army uniforms overcame the slight resistance offered by the victim's bodyguards, entered his home and opened fire at point-blank range. De la Vega was the brother of a high-ranking army officer and of another man described as a far right-wing politician. Political commentators did not dismiss the idea that the new act of violence could be the Government's reaction to economic and fiscal pressures from the private sector and, especially, from the agro-exporting sector ("Enfoprensa", 17-23 May 1985). However, El Gráfico, 19 May 1985, reported that suspected guerrillas broke into the estate "El Pensamiento" and killed the owner. According to the paper, Vega Molina, 40 years old, was recovering from an eye operation; he was lying in his bedroom when a group of armed men broke in. Three people living in the house were surprised while watching television. They defended themselves for 20 minutes until their bullets were exhausted. The criminals proceeded to shoot at the door lock of the room where Vega Molina was resting. One man hit him on the head before shooting him;

(b) Armed men, identified by neighbours as members of the security forces, shot and killed seven members of a family while they were sleeping in their house in the Buena Vista settlement in the Department of Jutiapa. The killing took place in the early morning of 30 June 1985. The victims were identified as Antolin Orellana, Lucinda Nájera, José, Augusto, Edy, Lubia and Hilda Orellana, aged 74, 67, 23, 18, 13, 18 and 30 respectively ("Enfoprensa", 28 June-4 July 1985). However, Prensa Libre reported that on 30 June 1985 the same persons had been killed by unknown men; security forces had sent in personnel to investigate the crime. According to this report, the investigating judge from Asunción Mita verified that the criminals had used machine guns which, in his view, could have originated in the neighbouring country of El Salvador (Prensa Libre, 30 June 1985);

(c) Monsignor Próspero Penados del Barrio, the Archbishop of Guatemala, on 15 June 1985 called for the immediate liberation, alive, of three indigenous social workers kidnapped on May 30. The kidnapping, the Archbishop said, "is added to the many kidnappings and disappearances that have overwhelmed this country with pain and uncertainty". The three social workers, employed in a cultural extension programme of the Catholic Rafael Landívar University in the capital, are Felipe García Colop, Lázaro Antonio Mucia Roquec and Carlos Sincal Ajuchár. The Archbishop held responsible "those who oppose an improvement in peasants' lives in order to keep them as easy objects of exploitation" ("Enfoprensa"; 14-20 June 1985). Prensa Libre reported on 20 June 1985 that judges in the capital were trying, as a follow-up measure to the habeas corpus proceedings presented to the Court by their relatives, to establish whether the persons were being held in the local prisons. According to El Gráfico, 19 June 1985, the Archbishop said that the three were intercepted by armed men when leaving a bank in the capital on 30 May. The case has been taken up with the Special Rapporteur by the Canadian Inter-Church Committee on Human Rights in Latin America;

(d) On 17 June 1985, government security forces shot and killed 18 year-old Jorge Illescas and an unidentified minor on the outskirts of the capital ("Enfoprensa", 14-20 June 1985). According to Prensa Libre of 18 June 1985, two young persons, one identified as Jorge Alberto Illescas López, were found dead in the village of Aguacate, El Mixco zone of the capital;

(e) While in Guatemala, the Special Rapporteur received through the post an affidavit denouncing the disappearance of Rolando Belarmino Guzman López on 22 April 1985 in Las Delicias, El Tumbador, San Marcos. The family evidently had tried every means of discovering him and turned to the Special Rapporteur for his help;

VIII. CLANDESTINE PRISONS AND CIVIL PATROLS

163. Numerous allegations have been made that people have been and are being held in secret prisons in Guatemala. A list of suspected sites has been given to the Special Rapporteur. It includes a number of military and police establishments in the Capital, the military headquarters in every Department and two estates identified only by the name of the Department in which they are situated.

164. On his visit in January the Special Rapporteur raised this problem with the Head of State. The Special Rapporteur was told that he was free to visit any such place, according to his choice. As previously reported he went to one police and three military establishments in January (see E/CN.4/1985/19, paras. 72-79). The Head of State, however, suggested that in future he should make such visits without any prior warning. On his visit in August 1985, the Special Rapporteur tested this offer. He went unannounced on the first day of his visits to a large military training area some 30 km from the capital; the officer in charge was undoubtedly taken by surprise, but he immediately offered to take the Special Rapporteur to any part of the area. The Special Rapporteur spent two hours on foot and in a jeep inspecting as much as possible the terrain. He was invited to stay overnight to continue his inspection on the following day. The experience indicated that the same would happen at any other government establishment. Orders had clearly been given that any such request should be instantly respected and that all doors should be opened. The allegation which was the reason for this investigation could not be proved or disproved, but every facility was granted.

165. It is the essence of secret prisons that they are secret. Such information as exists, from persons who have disappeared and subsequently been released and from those on incomunicado arrest in 1982-1983 on charges within the jurisdiction of the Tribunales de Fuero Especial (Special Tribunals, abolished in 1983), indicates that their detention occurred in ordinary houses, in the capital and elsewhere. Nobody has ever been able to tell the Special Rapporteur what were or are the locations. Some would say, moreover, that everyone knew of the Special Rapporteur's presence in the country and the possibility that he might suddenly appear at any base belonging to the army or security forces: it would be simple to ensure that he would find no clandestine prisoners, however thorough his search.

166. The Special Rapporteur did not on this occasion visit any of the establishments on the list. He discovered, however, from the President of the Supreme Court that he, the President, had personally seen the basement rooms at the Granja Penal de Pavón (see para. 53 above).

167. One alleged secret prison has been said to be in the basement of La Casa Crema, the official residence of the Minister of Defence in the capital. There is elsewhere an official Presidential residence. It appears to be widely thought outside Guatemala that the Head of State, who is also Minister of Defence, lives in the Presidential residence. This is not so. He was Minister of Defence under the Ríos Montt Government and has never moved from La Casa Crema. The Special Rapporteur told him that it was alleged that the cellars of his residence are used as a secret prison. He said that the Special Rapporteur was welcome to look for himself; however, he and members of his family, including his grandchildren, lived

there: it was not his idea how to treat his family properly to keep prisoners in the basement.

168. No conclusion can be drawn from this aspect of the Special Rapporteur's work, except that he would have been allowed immediate access anywhere. One observation arises, however, from what was said in the military headquarters in Chimaltenango (see para. 110). The comandante said that when people were caught by a military detachment or civil patrol and then wished to take advantage of the continuing amnesty, two problems arose. One, a person was sometimes reluctant to reveal his identity and place of residence. The comandante said that his policy was to keep such people at his headquarters for the minimum time, but that until they identified themselves it was difficult to send them home. In the particular case of the men from Saquiya he did not agree that they had been there for 18 days, but the process clearly takes time and necessarily involves detention without the person's family being able to be informed. Two, those who accepted the amnesty did not always return to their families, at least immediately, to resume a normal life. There were diverse reasons: fear of revenge from one side or another, shame, confusion or other motives.

169. It would be wrong to generalize from one particular set of facts, but it is not difficult to see how a report could truthfully be published that a person was held in a departmental army headquarters for a period without his family being informed. The question remains whether such a report contains the whole truth about the reason for the detention and its length.

170. The organization of the civil patrols is a policy that has been extensively criticized. In previous reports the Special Rapporteur has collected the details of service requirements, hours of duty and the attitude of patrol members to this obligation (see E/CN.4/1985/19, paras. 123-139). It is clear that this information misses the point. CDHG, for example, considers that this sort of service, which civilians are effectively required to undertake, constitutes an absolute violation of human rights, particularly freedom of association. The critics do not, however, maintain that military service in accordance with national laws is subject to the same complaint.

171. The Special Rapporteur accordingly does not propose again to catalogue the facts and opinions about civil patrol duty, village by village. The general attitude remains constant; where duties are arduous they obviously disrupt the man's work and freedom, but are normally considered worthwhile for the sense of security achieved. The women are keen supporters of this security. Even in areas where there has been no trouble in recent years a civil patrol keeps vigilance to the extent judged necessary.

172. The issue will have to be resolved under the new Constitution. This imposes, among other civic duties, the requirement to do military and social service in accordance with the law (art. 135 (g)). Article 34, however, recognizes the right of free association and provides that no one shall be required to join or be a member of a group or association established for self-defence or a similar purpose (except for professional associations). It seemed to follow that any continuation of the civil patrol system would need legislation consistent with those principles.

IX. DEVELOPMENT POLES AND MODEL VILLAGES

A. Introduction

173. The present Government has introduced a policy for rural development that has been much criticized. The strategy is to work in four areas on a complex plan for resettlement of the population in areas where the conflicts from about 1979 onwards have led to widescale displacement and destruction. The four areas are the Ixil Triangle, Playa Grande, Chisec (including Acamal) and Chacaj. Within each general area individual villages have been built or rebuilt which, confusingly, are themselves sometimes referred to as "development poles". Other individual new village projects outside those four areas nevertheless use much the same techniques, such as Yalijux in Alta Verapaz (see E/CN.4/1984/30, para. 7.3.6 (g)).

174. Of the four development poles proper, Chacaj is a single settlement next to the Mexican border in north-west Huehuetenango expressly designed for the returning refugees at least on a temporary basis (see E/CN.4/1985/19, paras. 213-216). The Playa Grande group runs south from the major road bridge over the Chixoy River at Playa Grande in Ixcán, northern Quiché. In the other two groups much has happened and the Special Rapporteur proposes to discuss them in turn.

175. First, however, it is necessary to set out the basis on which it is said that the entire system constitutes a violation of human rights. This criticism concentrates on the violation involved in any restriction requiring a civilian population to live in a particular place, or on their freedom to move and travel and to live exactly where they wish.

176. An extreme form of this criticism was presented to the Foreign Affairs Committee of the United States House of Representatives, Washington D.C., by Dr. Beatriz Manz in February 1985, who does not specify which areas were visited:

"The countryside is essentially under military occupation. A further component of this occupation are the model villages. These settlements are designed by the military to be strategic concentrations of peasants whose movements can be closely monitored and controlled. In addition, the army is seeking to transform the attitudes and living patterns of these indigenous people through 'reeducation'. The March 1984 report, commissioned by the United States Agency for International Development (AID) and carried out by the Programa de Ayuda para los Vecinos del Altiplano (PAVA), mentions the 'model village' of Chacaj, referred to above. This village is said to be inhabited by 38 families (167 inhabitants) and a large number of soldiers. A military base has been established here and families have been invited to settle in the region. ... None of the original population is living in this village.

"The army's plans for rural development now include 70 such 'model villages', encompassing an estimated 100,000 Indians. So far the pattern has often been similar. The original village is destroyed and its inhabitants are killed, dispersed by the army's terror, or flee as a result of fear. Before the new settlement becomes operational, the army sets up a military base with

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elite troops and a road is built or repaired if needed. In some instances, the roads are constructed by peasants themselves through the 'work-for-food program'. The inhabitants of the 'model villages' are peasants who had originally fled and now weak from disease and driven by extreme hunger give themselves up to the army. Others are rooted out of the surrounding mountains by army sweeps, frequently using civil patrols. Still others are brought in from different areas of the countryside."

177. Other observers would not seek thus to generalize, accepting that there is no universal pattern for the different villages. To this the Special Rapporteur would add that (a) restrictions in movement have undoubtedly been imposed by the army on the inhabitants of certain villages, but they have varied according to tactical military considerations, and (b) the situation in each pole and village evolves dynamically in many ways and cannot be fully assessed on the basis of a single visit to any village or area.

B. The Ixil Triangle

178. In 1983 this area consisted of little more than the three towns of Nebaj, Chajul and San Juan Cotzal, connected by a rough road leading east from Nebaj to Pulay where it branches towards Chajul and Cotzal. The Special Rapporteur visited these places in July 1983 in a jeep (see E/CN.4/1984/30, para. 7.3.6 (c)). Beyond the three towns the countryside was only accessible on foot apart from some very rough tracks and in any case was still in a state of conflict. Such of the population as were not refugees in Mexico or internally were largely congregated in the three towns.

179. Six months later the first new village was under construction at San Juan Acul (see E/CN.4/1984/30, para. 7.3.6 (f)). There was at that time an army detachment. By August 1985 it had been withdrawn.

180. A road was built to connect Acul to Nebaj, and a spur is still under construction to the north joining up the village at Tzalbal and the temporary village at Jalquil Grande, which was still not being further developed in August 1985 (see E/CN.4/1985/19, paras. 222-228).

181. Further to the east Pulay was rebuilt (see E/CN.4/1985/19, paras. 200-203). Other new villages in the area consisted in August 1985 of Rio Azul (between Nebaj and Pulay, completed August 1984), Juil (north of Chajul, completed August 1984), Xolcuay (adjoining Pulay, completed August 1984) and Ojo de Agua (south of Cotzal, completed December 1984). The Special Rapporteur has seen these four villages from the road or air but has not talked to the people there.

182. East of Cotzal have now been completed San Felipe Chenlá, inaugurated by the Head of State in June 1985, and Bichivalá, still further to the east along an improved road replacing the track that led to an estate called San Francisco.

183. Apart from a length of road under completion to Salquil Grande, all the original roads have been substantially improved or others newly built.

184. In August 1985 the Special Rapporteur went to San Felipe Chenlá. CDHG has reported that the families in that village have been concentrated and militarily controlled in violation of human rights. There is no military detachment there, so that the Special Rapporteur spoke only with the civilian population. It is essentially the same story as that of Pulay (see E/CN.4/1985/19, paras. 200-202). The villagers (including at least one family that had taken refuge in the capital) have returned to their own land which they are again cultivating. In fact, although the village itself was not ready, they had planted the crops for the 1985 harvest. There are vegetables and in addition there is a new crop for the future on some of the communal land, the site of the original village about 500 metres from the new settlement on the line of the road. The avocados have been tested by agricultural experts as being successful in that soil, climate and altitude. The villagers see the fruit as an important addition to the diet of them all, especially the children. Chickens, pigs and goats are kept. The next new crop will be wheat. There was electricity, running water, sewage, a health post (not yet manned), a church and a primary school. The community was very proud of the new village, which was an improvement on the old; they were cultivating their own land, but receiving assistance with new crops. This could lead in time to self-sufficiency, which would cure their remaining problem: the need for many to go as seasonal workers on the agro-export estates. This necessity leads to the one form of control over the population. There is, as in so many Guatemalan villages, a committee that takes most of the communal decisions and decides who may and who may not go to the estates. The village cannot be left deserted, nor the domestic crops untended.

185. The absence of the military is not an indication that the area is entirely free from guerrilla attacks. In early August 1985, a group of some 100 strong arrived at the neighbouring village of Xix. They outnumbered the civil patrol and were able to take food etc. from the villagers. "Enfoprensa" (9-15 August 1985) reports the Guerrilla Army of the Poor (EGP) as having done this. They assembled the population for a political meeting. There have been no similar incidents, however, at San Felipe Chenlá itself.

186. Accordingly, it is apparent that the situation does vary from place to place and time to time. The most restrictive régime seen by the Special Rapporteur was at Tz'albal in 1984 (see E/CN.4/1985/19, paras. 223 and 224). There was, however, a good military reason for the restraints in the population's absolute liberties. There is no dispute that the new settlements do have a military purpose and so do the roads. The conflict is now much decreased in the Ixil Triangle, and the Special Rapporteur has now described over a period of three years how the resettlement programme has advanced. In the north of the area there may still be a military presence and restrictions on civilians. In villages like Pulay and San Felipe Chenlá, however, the policy now seems to represent a purely civilian aspect, that of increasing the standard of living for the Ixil villagers in their own traditional villages. In terms of the basic criticism set out above, the people are living exactly where they want and where they have always lived, and they enjoy complete freedom to move and travel where they want, except for some self-imposed control over an efflux to the estates, which in any case they would avoid if they could earn sufficient income in their own communities.

187. The villages are not, in the Special Rapporteur's judgement, "concentration camps".

188. The other continuing allegation relates to internal refugees, who still exist in the Ixil Triangle. Two examples appeared in "Enfoprensa" (29 March-11 April 1985):

(a) The army captured the villagers of the Cotzol aldea (111 persons, including women and children) in the Department of El Quiché. The army claimed to have found an EGP camp in the village. The army confiscated 420 quintales (42,000 lbs.) of maize. (CDHG reported this event as having happened at "Nebaj". This incident was reported in Prensa Libre on 4 April 1985: According to a report by the army's public relations unit, a patrol from military zone No. 20, El Quiché, discovered 14 posts and a camp of the Guerrilla Army of the Poor (Ejército Guerrillero de los Pobres (EGP)) in the hamlet of Cotzol, only 11 kilometres north of Nebaj. In this action, 111 men, women and children were prepared to accept protection from the Army because, as they explained, they were under pressure from the rebels.

The Army confiscated 420 quintales of maize and a back-pack containing all kinds of subversive literature.

(b) Also according to "Enfoprensa", between 16 and 26 March, 800 regular and special army troops (kaibiles) destroyed more than 400 hectares of maize in Tzalbal village, Nebaj municipality, the Committee of Peasant Unity (CUC) reported. CUC also reported the kaibiles had surrounded hundreds of peasants, mostly elderly people, women and children in the Bicoxo aldea who were in danger of being massacred. CDHG also reported the maize burning at "Nebaj".

189. The Special Rapporteur regrets that he was not able to visit Cotzol, Tzalbal or Bixoco in August 1985 personally to investigate these incidents. He is surprised at the area of maize allegedly burnt at Tzalbal.

190. Rather than impose his own perception, the Special Rapporteur would wish to point, by way of a parallel, to what he previously reported about the people from Pulay and a group from Parramos;

(a) Pulay: In Nebaj, on 1 July 1983, he met a group of 40 people from a hamlet called Pulay which, to judge by its appearance, had been burnt about a year before. The villagers expressed the desire to return there, but, like others in Nebahh, Chajul and Cotzol, recognized that that was neither feasible nor safe (E/CN.4/1984/30, para. 7.3.6 (c)). At the same time the Special Rapporteur also discussed their prospects with a group of Ixil widows and their children, who were also in Nebaj, hearing of their anxieties for the future. In August 1984 the Special Rapporteur saw them all again. Pulay had been completely rebuilt on the original site, the families were back on their land and they had accepted 25 of the widows and their children (who were not originally from Pulay) and two families from Nebaj (E/CN.4/1985/19, paras. 200 and 201);

(b) Parramos and Tuchavuc: The Committee for Justice and Peace issued a statement in August 1984 that the army had killed a number of people in two villages in the area - Parramos and Tuchavuc - and kidnapped others. Much light can be thrown on the situation at Parramos from which a number of people have also arrived. The Special Rapporteur met a small group who had come the previous day. They said that Parramos, a remote village in the mountains on the Quiché-Huehuetenango border, was in the hands of the Guerrilla Army of the Poor. About 300 inhabitants remained, and when an army patrol approached they all moved out into the mountains. One of the men in the group had been required to assist the guerrillas and had done so after two of his brothers had been shot for refusing to do so. He became a trainer, teaching literacy, weapon handling and general propaganda that nobody was to refer to God, and that the rich would be wiped out and the guerrillas would win the war. The people of Parramos were required to look after the guerrillas, grow food for them and make traps for the army. This man had a friend, who had come to Salquil, and had returned to fetch his family. He had explained that Salquil was safe and the present group had then escaped also. They were now going to be provided with clothes (they were dressed in rags) and a house (E/CN.4/1985/19, para. 228).

191. The Chisec development pole includes a number of flourishing new villages. In its early stages the Special Rapporteur went there in July 1983 (see E/CN.4/1984/30, para. 7.3.6 (b)) and it has not been criticized since that time, to the Special Rapporteur's knowledge, until an article published in El Gráfico on 25 August 1985. However the pole includes, many kilometres to the south, Acamal village (see paras. 193-198 below).

192. CDHG is among the outspoken critics of the policy and practice of creating development poles, and it drew to the Special Rapporteur's attention a report entitled "Without Security or Development: Guatemala Militarised" published in June 1985 by the Washington Office on Latin America and written by Chris Kreuger and Kjall Enge, both professional anthropologists. That report sets out the official policy for the development poles and refers particularly to the Ixil Triangle; however, the Special Rapporteur knows that there is no great variation in the basic policy except in the case of Chacaj. The report quotes the policy as follows, translating a government document:

"When the subversives initiated their strategy of kidnapping large population groups in order to terrorize them into joining their ranks, people in remote communities suffered the destruction of their homes and fields. The consequent insecurity produced massive migrations to larger settlements, especially the main town in Nebaj, where other displaced persons arrived more gradually.

"This situation prevailed at the outset of the current [Mejía Vítores] government and prompted the decision to carry out actions coordinated by the Army with participation by the public sector to confront the problem of displaced people by implementing actions to resettle them in their original places according to a policy of integrated rural development."

193. It is a long report, but among other matters it discusses the situation in Saraxoch and Acamal. The writers were prevented, presumably by the civil patrol that mans the entrance to the village, from entering Saraxoch, but they went to Acamal. Their factual description of what was happening in that village contains little with which the Special Rapporteur would wish to quarrel. Their conclusion, however, is this:

"Finally, there is the issue of human rights most blatantly violated in Saraxoch and Acamal.

"Others with whom we discussed Acamal said that in earlier stages of the model village program, other areas were similar, for example, Las Violetas near the town of Nebaj in the Ixil Triangle. We did not visit Las Violetas, so we cannot verify the comparison.

"Whether Acamal is unique or a remnant of an earlier period, we do not know. What we can say, however, is that Acamal and presumably Saraxoch are places where residents' civil rights have been completely suspended. They are prisoners having had no trial and no sentence. Furthermore, they are subject much more intensively to disciplinary work and political re-education than the residents of other villages we visited, although elements of the same (highly ideological) public meetings are present in the Ixil Triangle as well."

(Note: the Special Rapporteur has never heard of Las Violetas.)

194. This is the authors' perception of what is happening. The Special Rapporteur has, again, the advantage of continuity and wishes now to set out the facts as he has previously reported them and as seen in 1985.

195. He did not visit Acamal during August 1985 though he had done so twice before. He went, however, for the second time to Saraxoch where much progress had been made since he saw it in January 1985 (see E/CN.4/1985/19, paras. 211 and 212). He knows the leaders of the community quite well, having first met them, in Acamal, in August 1984 (see E/CN.4/1985/19, paras 206-210). The mayor is a former guerrilla, a man with evident leadership qualities. There are a few soldiers in the village, neither to protect nor to control, but to assist with the various projects. The community consists entirely of those who had originally lived in that village but had left it during the disturbances in the early 1980s. Back on their own land, they have worked prodigiously hard to rebuild a modern village. The community decided to run their affairs through two committees, one of men and another of women. It is those committees, not the army, that take all the decisions. There is indeed intensive work and the people do indeed attend a daily public meeting to lower the national flag in the evening. They were emphatic that the latter was their own idea and the former is not disciplinary, but is an effort to complete the village and raise their own standard of living. For example some men were at work laying a broad flight of concrete steps above the central square. Money for the cement had been earned entirely by sale of the rope woven by the women from fibre of the local mayit cactus. The experimental vegetable patch had proved successful, and more land was being prepared and protected against erosion for full-scale production of vegetables. Some will be for home consumption, but

there is a ready market for any surplus in central Alta Verapaz, which at present relies on the area round the Capital for its vegetable supply. Anyone may freely go to the local towns and many do. There is no pass system, and the road has been greatly improved. A meticulous record of the reconstruction of the village has been kept in a book and also in the form of a series of photographs of every stage, displayed on a large board in the communal meeting room. The people are proud of their achievements and enthusiastic about the future. The next projects are a plantation of coffee and a small fish-farm. Both will bring in cash, and the fish will augment the protein in the villagers' diet if they so wish. There is a school, a health centre, a little civic park and electricity; investigations are imminent for a water supply. The people had heard on the radio of the Special Rapporteur's arrival in the country and told him that they had hoped he would return to Saraxoch to see the progress for himself.

196. The Special Rapporteur has set this account out at length because he has seen this community advance from the reception centre stage to what amounts to the verge of prosperity for rural Guatemala. It is an attempt to provide detailed facts and the villagers' own views, so that readers may form their own perception.

197. The Special Rapporteur did not go to Acamal on this occasion since it is now confirmed in the role of a transit centre. A total of 108 people there had asked to leave for a variety of destinations; they were bound for the local towns, small settlements and estates within about a 10 kilometre radius. They would leave in early September and a farewell party was being arranged. Others planned to return to the Cahabón area, some 60 kilometres to the east, whence they originally came. Still more had already left and the Special Rapporteur saw them on the site of their original village, called Chituj and situated even farther up into the mountains beyond Saraxoch. That project is the same as the one now almost completed at Saraxoch, but in August 1985 was still at an early stage. The community was much reduced by the hardships of the early 1980s; but the survivors were now back on their own lands and beginning the reconstruction of their village. Like the inhabitants of other Kekchi villages, they had buried the communal treasures before they abandoned the place. At Chituj there had just been disinterred the two flat grinding stones and the community's wooden marimba (a sort of large xylophone), which was still thought capable of repair after three years underground. At Saraxoch the recovered prized possessions included the elementary iron mill for extracting juice from sugar cane, which is now back in operation.

198. The comandante in Cobán said that it was his ambition to get everyone out of Acamal so that they might return to their own villages, land or other destination of their choice.

X. OTHER PROJECTS CONCERNING SOCIAL AND ECONOMIC RIGHTS

Projects to improve the standard of living

199. Whatever may be said about the development poles, other projects are being pursued in Guatemala that are addressed to the relief of poverty, illiteracy, infant mortality and malnutrition, which are long-standing problems. Their incidence has been greatly exacerbated by the disturbances of recent years.

200. In earlier reports information has been given about the work of the National Reconstruction Committee (CRN). Three further projects initiated by them were investigated during the Special Rapporteur's August 1985 visit.

Settlements around the capital

201. Around Guatemala City and other urban areas there has grown up a series of improvised housing settlements. In the capital many are in the ravines that characterize the area; others are on more level land. Some have existed for decades; others are more recent. Many of the inhabitants have arrived because of the poverty and unemployment in the countryside; some have fled from the violence. Poverty and malnutrition are rife. A pilot scheme has now begun under the leadership of a doctor of medicine and public health on the staff of the CRN.

202. In order to lessen the malnutrition among the children, food (corn, dried milk and vegetable oil) is being distributed on a monthly basis to families in zones 7 and 12. The food comes through an international aid programme and a number of local charitable organizations also are assisting. The recipients are pregnant and nursing mothers and families with children under seven years of age. The terms on which the food is given are that the mothers should take part in a programme to train them how to combine the food into a balanced diet and should take their children regularly to a local health centre to be weighed, measured and medically checked. Social workers supervise the project, and other local people have been enlisted to help in the food distribution, thereby earning a portion of the food for themselves.

203. A form of cooking-stove has been made from baked clay and sand which maximizes the effectiveness of heat from firewood; some are available for a shared use. Families are being given, if they can provide a small enclosure, five hens and a cock, for eggs, chicks for sale and eventually meat. Unused land on the slopes of the ravines, which is owned by the State, is being terraced and planted with vegetables and fruit trees.

204. The Special Rapporteur went to several houses, at random, in both zones. The families carefully looked after their food supplies and understood the educational obligations involved. Before the scheme began, one family had sold almost all their possessions to buy food; in another a small boy been earning a few centavos looking after cars, cleaning windcreens and probably begging in the more prosperous areas of the city. For that reason he failed to go to the school which, for all of its enormous classes and lack of equipment, was available. For Q2.50 (currently \$0.82) per annum for each child the schools provide a midday meal. The payment is remitted for families who absolutely cannot afford even such a sum.

San José Poaquil, Chimaltenango

205. There appears to be no system of exemption in case of poverty from the Q2.50 for each child in this municipality. It forms part of the area (see para. 103) where in the early 1980s the conflict was severe between the army and the guerrillas. There remain, even in the town itself, many widows, most having numerous children. A group of them are being helped by the civilian affairs

officer of the military detachment and by the local community, which leased some of the common land to them. They organized themselves to grow basic foodstuffs and vegetables. CRN has begun another pilot scheme among a group of 68 and their children; it appears that there are 124 widows altogether in the town. The food supplied is corn, milk powder and cooking oil, as in the scheme mentioned above; they also receive beans and rice and instructions on how to use these foods to produce a healthy diet. They currently have 100 young chickens; they have adapted a building and showed the birds to the Special Rapporteur emphasizing that there had been no casualties. Next they hope for weaving equipment, fertilizers and instruction on how to repair their houses - a skill not traditionally possessed by women.

206. Many in this group could not afford to send their children to school. Even with the help currently given they remain abjectly poor. The other widows and children who are not part of the group must be in an even worse condition.

Northern Izabal

207. The Special Rapporteur has referred in previous reports to this large project. On his visit in August 1985 he went for himself to see the extent to which the elaborate plans had been put into practice. He found that the scheme was being realized in a row of villages along the line of the new road that was being built parallel to the road crossing the Franja Transversal del Norte, westwards from Modesto Méndez. With the fine bridge over the Rio Dulce the area is well connected into the national highway system and to the port at Santo Tomás, Izabal.

208. The villages are populated by people who, predominantly, speak only Kekchi. They came from further west in Alta Verapaz, where they had no or inadequate land, but have been in their new villages for a generation or more. In addition to the villages, there are smaller hamlets and individual houses in the mountainous countryside. The project is based entirely on existing settlements; people are not being grouped together with new villages, although some of the more remote population will be able to move to those small centres to take advantage of the facilities (but not of the profits from the new cash crops). Until now there has been little more than subsistence farming. One small enterprise at Chinacadenas to make and sell charcoal was in abeyance because only an insufficient price could be obtained. Since nobody in the villages has a truck, the entrepreneur is the truck-driver who comes in from the south of Izabal and bargains with the villagers. Even the road that allows for this is comparatively new, having been gradually extended westwards to reach Searranx about two years ago. As a result many people have migrated seasonally to harvest the agro-export crops on the large estates. Like others whom the Special Rapporteur knows in El Quiché, they would be pleased if this necessity were removed.

209. The CRN project consists at present of extending the road and supplying the plants that will produce new crops, together with training given by experts to the villages. The new crops are cocoa, achiote (which produces a red natural food colourant) and, at Arenales, oranges, and are grown at the villages, with proper land titles, on both individual plots and communal land. The new crops are planted on the latter, and a committee was formed to organize the work and to decide later

how much of the profit should go to each family according to the amount of work contributed.

210. At each village a health post is under construction, financed by the American charity CARE. For the moment diet is being supplemented by corn, milk powder and oil as mentioned above. In conjunction with this are lessons in dietary methods, hygiene and, if requested, family planning.

211. The object is to provide basic facilities for health, education and a supply of drinking water, and cash crops to make each village self-sufficient. For marketing the crops both transport and a purchasing system are required. Searranx is much further advanced in the process; the other villages are at an earlier stage of development. However, the points that the Special Rapporteur particularly noted were the following:

(a) The full and detailed preparation and research that CRN had carried out on the ground before the project started in any village;

(b) The large extent of consultation and involvement of the villagers in their own project;

(c) The logical use of national and, where available, international resources to ensure progress;

(d) The interest, knowledge and enthusiasm of the villagers about what is happening.

212. It appears to the Special Rapporteur that the Izabal project has had a good start. It has been well-researched and properly explained to and adapted for the local communities; it uses to good effect all resources available; it is positively understood by the people concerned as being directly intended to raise their standard of living, their health and education.

213. Members of other nearby communities were in Searranx when the Special Rapporteur visited the village, and they were eager for similar projects to be started in their own villages.

214. Those are only examples of projects already initiated. There are others, such as a scheme to assist 12,000 children, many of them orphans, in the Department of San Marcos. The idea originated among the judiciary in charge of minors who had been carrying out a census among the children. Their health, diet and education are to be attended to and monitored; foreign doctors and Guatemalan personnel are involved, with a Swiss and a Guatemalan charity as co-ordinators.

215. The new Constitution, in article 13 of the Transitional and Final Provisions (Title VIII), provides that 1 per cent of the General State Revenue Budget shall be allocated to the anti-illiteracy campaign with the aim of eliminating illiteracy in the working population during the first three Governments under the Constitution. There is to be (art. 14) a National Committee for the Elimination of Illiteracy to administer this money and a law to be passed by July 1986 to implement this.

216. Infant mortality, malnutrition and illiteracy have been the curse of Guatemala; human rights commentators have continuously remarked upon those problems, and Guatemalans themselves are well aware of them. The Special Rapporteur has mentioned in previous reports measures designed to combat them. In the present report he has set out more examples of well-prepared schemes under expert multidisciplinary supervision and combined with training and instruction, which are now in the course of implementation among the most deprived sectors of the community. Food from abroad, given through assistance programmes, is reaching the people and they know how to use it to produce a healthy diet. The new Congress will have specific tasks, whoever wins the election.

217. It is all at risk because of the country's economic collapses and bleak prospects. The economic situation is not within the Special Rapporteur's mandate, but its effect on human rights is undoubted.

XI. THE ELECTORAL PROCESS AND THE NEW CONSTITUTION

A. Electoral process

218. Unless something has gone wrong - and the Head of State was adamant in August 1985 that the elections would proceed on schedule - there will be in Guatemala, when this report is delivered, an elected Congress and municipal authorities. The President and Vice-President will be chosen on 8 December 1985 if there are no clear winners on the first contest.

219. The question will then arise as to whether the elections were free and fair, which will largely be answered by the opinions of the observers. The Minister of Foreign Affairs said that those invited were from the Organization of American States and the European Economic Community and included the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. They would, if they so wished, have their living expenses paid for and transportation, including that by air, provided. Hundreds of members of the press were expected and private observers too. All would be welcome. The Special Rapporteur declined an invitation in view of the full representation of the international community already assured.

220. The Supreme Electoral Tribunal, which organized the preliminary elections for the national Constituent Assembly in July 1984, is still operating and has remained free from criticism. It has continued the process of registering citizens so that they may vote. This was to continue up to 3 September 1985 by which time the Tribunal thought that nearly 3 million citizens would have registered.

221. The safeguards for free and fair elections were:

(a) The electoral law itself was prepared by the Tribunal and presented to the Head of State for enactment, as Decree-Law 47-85;

(b) The qualifications for any party or committee wishing to participate at national or municipal level was most carefully scrutinized;

/...

(c) Supervising juntas, four in number, were selected for each Department and their names published. Under their control another 16,500 citizens were established as local juntas to oversee the electoral process and ratify the results together with the tellers from the political parties;

(d) The juntas, which constitute the polling-station staff, were given training by the Tribunal in the lay-out and conduct of a polling station;

(e) The ballot papers were, as in 1984, printed on watermarked paper manufactured abroad. In 1985 this was presented by the United States of America through the AID programme because of the shortage of foreign exchange in Guatemala. The ballot papers bore the names and symbols of each party running in the area where the polling station was situated;

(f) About 6,000 polling stations were to be provided to facilitate voting for everyone registered.

222. At the closing date of 30 July 1985, 14 parties had successfully been formed and registered. They ranged from the right wing through the centre to the moderate left. Eight candidates for the presidency had emerged, some running with a vice-presidential candidate from a different political party. The same political spectrum was represented.

223. The elections themselves were to take place on 3 November 1985 for President and Vice-President, Deputies for Congress and members of municipal councils. Since the President must command an absolute majority, a second round would be held on 8 December 1985 if necessary. The Deputies were to be 92 in number, 23 on a national list and the rest at the Departmental level, where the range of contending parties could vary. The Hondt system of proportional representation was to be used in order to give seats to minorities. The President, Vice-President and Deputies would be elected for five years. Successful candidates in municipalities where 10,000 or more citizens were registered would hold office for five years, for two and a half years otherwise. Voting would be compulsory for the literate, optional for the illiterate.

224. The Tribunal told the Special Rapporteur that there had been no problems in the registration of citizens. The press carried news of a few minor irregularities in the process of forming the parties, but they were resolved satisfactorily by the Tribunal.

225. The election is intended to lead to a transfer of power on 14 January 1986. The whole schedule had slipped by about a month from that originally envisaged. The Special Rapporteur, however, received the impression that the new time-table would be adhered to, according to the following indications:

(a) The Head of State said that he was determined that it should be so. Members of the Tribunal were unanimous in emphasizing the importance of carrying the process through and were confident that the arrangements would be ready;

(b) On 1 June 1985, the Government appointed civilians to almost all leading positions, previously held by military personnel, including the positions of Director-General of the National Police, the heads of the Immigration Service, Treasury Police (Customs and Excise), the national communications system and others. The only military personnel still in post outside the armed forces were the Head of State himself, the spokesman for the Chief of State's office and the Minister for Mines and Oil (who had high qualifications in his own right for that office);

(c) The Amnesty had been continued until 13 January 1986 (Decree-Law 18-85);

(d) There had been no promotions this year of senior military officers. This, the Head of State explained, was specifically intended to leave such decisions to the new Government without pre-empting their choice;

(e) The Government said that it was unable to invite the Special Rapporteur to visit the country again in late January: this would be a matter for the new Government;

(f) In one vital respect the Government was positively preparing for the transfer. The comandantes of the Military Zones, which broadly correspond to the Departments, would indeed, the Head of State said, hand over their tasks as co-ordinators of the institutions of Government in the Departments (see E/CN.4/1985/19, para. 22). These are key positions in the hierarchy of Government and have provided the army with very great power. The Special Rapporteur discussed with one comandante the forthcoming transfer; there was no doubt that preparations were being made, but the Colonel explained that he could not finalize the details, particularly for the transitional period, until it was clear who had won the election; since the various parties had different policies for the future pattern of institutional co-ordination.

226. One matter deserves a more critical comment. Education in the political process has not been the subject of any thorough campaign. This is important because in the 1984 elections there were substantial numbers of spoilt or blank ballot papers, which led to all sorts of speculation as to the reasons and was the main ground for impugning the success of that election.

227. The Tribunal said that political education was certainly not within its duties: there might be accusations of partiality. The task could perhaps have been taken on more fully by the political parties themselves, although their finances were very far from equal and that too could be less than satisfactory. The indigenous population has not, traditionally, played much part in Guatemalan politics or elections. Many did vote in 1984 and even more have been registered since. The parties have evidently made some attempt to raise political awareness, but it has fallen to a private organization to carry out an educational campaign to teach people the process of voting.

228. In order to exercise the human rights of self-determination and participation in the Government of a person's country, he or she must know how it is to be done. It would be regrettable if, once more, abstentions and spoilt or blank papers were

to be interpreted as constituting a protest vote, unless the voters are seen to be well enough informed to have been capable of conveying their political opinions in that manner.

229. That point must be one of the issues that interest the observers. Another issue will no doubt be the extent to which fear or the effect of violence vitiates the freedom to express a genuine political choice. CDHG is particularly concerned over this, and it can only be judged locally since violence is not equally distributed throughout the country. In paragraph 13 of its resolution 1985/36 the Commission on Human Rights addressed all parties in its appeal to create for the election a climate free from intimidation and terror.

230. The Special Rapporteur has previously emphasized that in order to allow full exercise by Guatemalans of the right of self-determination the maximum plurality of electoral choice should be open to them (see E/CN.4/1985/19, para. 256 (a)). Attention has been drawn to the repeal of Decree-Law 9-63, and also to the continued existence of article 396 of the Penal Code (see E/CN.4/1985/19, paras. 183 and 166). The latter has not been repealed. The article reads:

"Artículo 396 (Asociaciones ilícitas): Quienes promovieren la organización o funcionamiento de asociaciones que actúen de acuerdo o en subordinación a entidades internacionales que propugnen la ideología comunista o cualquier otro sistema totalitario, o destinadas a cometer delitos, o tomaren parte en ellas, serán sancionados con prisión de dos a seis años."

231. The Special Rapporteur asked the President of the Supreme Court about that article, in the context of freedom of association for the elections. He was provided with a detailed explanation. Examination of the Constitutions of 1956 and 1965 revealed a restriction on that freedom where the association was concerned with communist or totalitarian ideology (1956 Constitution, art. 54; 1965 Constitution, art. 64). The current Penal Code was enacted by Decree-Law 17-73 under the 1965 Constitution. The Fundamental Statute of Government (Decree-Law 24-82) contains restrictions on "totalitarian" association (art. 23 (6)).

232. Internally, therefore, article 396 is correctly argued to be constitutional. There is, however, no provision in the new Constitution to the equivalent effect.

233. The Special Rapporteur has no evidence that article 396 of the Criminal Code has actually deterred any party from running in the 1985 elections or that it would have been invoked against, for example, an extreme left party. However its existence is a blemish on what otherwise has been careful exercise in preparing for the elections.

234. The Tribunal has been participating in conferences of autonomous electoral tribunals and councils for Central America and the Caribbean. The first conference was held in Panama in June 1985 and was attended by delegates from El Salvador, Honduras, Nicaragua, Costa Rica, Panama, Belize, the Dominican Republic, Jamaica, Antigua and Barbuda and Saint Lucia, as well as those from Guatemala; the Guatemalan Tribunal was to act as host to a second, to be held in Guatemala City in

late September. The conferences were held under the aegis of the Inter-american Institute of Human Rights, and the agenda provided for the exchange and discussion of information and experience of electoral organization and processes. The 1984 election in Guatemala and the election planned for 1985 were discussed, and the 1984 event was analysed.

B. The new Constitution

235. Certain provisions of this major legal document are the subject of comment elsewhere in the report. The Constitution is to come into force on 14 January 1986. Certain transitional provisions, including the legal requirement for the elections, are stated to have come into force on 1 June 1985, although the Special Rapporteur perceives some conflict with the Fundamental Statute of Government and its amendments (introduced after the coup d'état under which the Ríos Montt Government acceded to power in March 1982): the Constitution validates that Statute as between 1 June 1985 and 14 January 1986 but the Statute does not authorize the national Constituent Assembly to legislate. It does not, however, appear that these niceties will affect the new Constitution's validity; the legal basis for the elections has been safeguarded by an express Decree-Law; so there should be no challenge to their legality.

236. The Special Rapporteur does not propose to examine precisely many of the articles of the new Constitution. It begins with two Titles directly concerned with the individual and his human rights; the first 46 articles are in line with the Universal Declaration of Human Rights and the two international conventions on human rights, although there are additional guarantees and refinements. After those basic concepts many more rights, such as those of the family, culture, education, health, employment and economic rights, are considered in some detail. The independence of the judiciary is established in principle but will have to be reinforced by further legislation. The judges will have complete authority in the exercise of the constitutional guarantees of habeas corpus and amparo. As stated in paragraph 85, there will be a separate and independent Commission and Procurador for human rights.

237. Those provisions appear satisfactory, but their effectiveness can only be proved by events over the course of time. Of immediate interest, however, is the process whereby the Constitution was put together. Nobody has claimed that its contents are perfect, but it is at least the result of an unprecedented exercise in consultation among the widest cross-section of the population, all of which has been chronicled in the press. The Special Rapporteur will give one example relating to the proper recognition of the culture of the indigenous population with their Mayan origins - a topic much discussed in international human rights circles. Culture and the protection and development of indigeneous communities are the subject of articles 57 to 70, which recognize, among other things, the right to use the various indigenous languages. A long debate occurred over article 143, which now reads "The official language of Guatemala is Spanish. The vernacular languages are part of the cultural heritage of the Nation". There had been a strong claim to give official status to some of the vernacular languages. It emerged, however, that, rather than there being about 22 such languages, the true figure is over 50, and it was decided that the resultant problems would be

insuperable. However, article 18 of the Transitory and Final Provisions in Title VIII requires the wide dissemination of the Constitution, within the year 1986, in the Quiché, Mam, Cakchiquel and Kekchí languages.

238. The Assembly, having completed its tasks, will install newly-elected Deputies of Congress on 14 January 1986 and will then itself be dissolved.

XII. GUATEMALAN REFUGEES IN MEXICO

239. The Special Rapporteur requested directives last year, both from the General Assembly and from the Human Rights Commission, on his future function in relation to the refugees outside Guatemala. He pointed out that such functions all fall within the jurisdiction of UNHCR and that there would be merit in avoiding duplication of the functions of different United Nations agencies. The resolutions of neither the Assembly nor the Commission included in the Special Rapporteur's mandate any role in connection with the refugees.

240. There remains a concern for them if they wish to return to Guatemala. At the time of preparing the present interim report, the Special Rapporteur has not been able to up-date the available information except to note that:

(a) Refugees, both official and "economic" (those who had gone to Mexico and found work, so that they fell outside the UNHCR remit) have been returning. The Minister of the Interior put the number at 1,300 in August 1985;

(b) The Special "development pole" at Chacaj, Huehuetenango, is still functioning in the way previously described by the Special Rapporteur after his visit there (see E/CN.4/1985/19, para. 219);

(c) The Guatemalan press carries some reports of refugees re-entering the country from Mexico;

(d) Although the Special Rapporteur asked villagers in northern Izabal whether they knew about Guatemalans taking refuge in southern Belize, they said that the border was too far away for them to have any information. The Special Rapporteur accepts this. The communities operate on a very local basis, and the distances are indeed considerable.

XIII. OTHER MATTERS

241. The present interim report was written in September 1985 and will not be discussed in the General Assembly until late November or early December. The Special Rapporteur accordingly wishes to point out:

(a) That the situation in Guatemala is complex and continuously changing. The report reflects events up to mid-September and will have to be brought up-to-date by a verbal introduction;

(b) That there has been omitted from the report any detailed discussion of the platforms put forward by the various political parties competing in the election; nor did the Special Rapporteur seek out political leaders during his visit (although he met one by chance). The reason is that if the time-table is followed the membership of congress and the municipal authorities will have been decided on 3 November 1985 by the election. The Presidential election will also have taken place, but unless there is an outright winner, which seems unlikely, the second round will be held on 8 December. It will, therefore, be more appropriate to refer verbally to the likely policies of the new Government when its political complexion is known.

242. While the Special Rapporteur was in the country a series of violent demonstrations occurred in the capital against a rise in bus fares, which were subsequently cancelled. The press inside Guatemala sought to obtain the Special Rapporteur's opinion on the behaviour of both demonstrators and police. Telex messages were also sent to the Centre for Human Rights by organizations such as CDHG, a body called Comité Nacional de Unidad Sindical en el Exterior and the World Federation of Trade Unions urging the Special Rapporteur to stay in Guatemala and present various protests and requests. The events were fully covered in the press and on television at the time, and the Special Rapporteur read and watched. He also inquired extensively of the authorities about the tactics adopted by the police and the way in which those arrested were being dealt with by the courts; many were minors. He concluded and expressed this opinion to the press and television that these were internal matters and not properly the subject of his investigation.

243. In the course of the same incident, units of the army occupied the campus of the University of San Carlos. The Rector strongly protested, pointing out that no such thing had occurred since 1944. Article 42 of the Fundamental Statute of Government (Decree-Law 24-82) provides for its autonomous status. Again, the Special Rapporteur considers that this is an internal issue.

XIV. CONCLUSIONS

244. The Special Rapporteur does not wish to speculate about the forthcoming election, on prospects of a genuine transition to civilian Government or on that Government's adherence to human rights principles. Those matters will be elucidated in due time, as events unroll. The process itself continues in a satisfactory way.

245. Major issues on human rights have been starkly emphasized. The opposing views on the development poles and the civil patrol system are clear. In this and previous reports the Special Rapporteur has attempted to present facts, based on first-hand experiences and gained over a period of three years, that may assist the international community in forming a judgement.

246. There is agreement on violence and disappearances to the extent that they are still a serious problem in 1985 and utterly to be deplored. The police have demonstrated a considerable degree of success in detection of such crimes but not

in relation to many of the cases that excite so much international condemnation. There is impatience and frustration over the delay in publication by the Government of the result of their investigations into the numerous denunciations of disappearances; without such publication it is impossible to see how next to proceed. There is no escape from the conclusion that the system of criminal justice is not equipped to bring to trial many persons accused of the most controversial offences, especially if they are prepared for a vigorous legal defence. This in no way impugns the presumption of innocence, but it has a cumulative effect in destroying public confidence in the rule of law and negating the deterrent effect of the criminal code. It is no wonder that people feel free to resort to violence.

247. No effective answer has been given to allegations that the security forces are involved in the violence (other than in their military activities against the guerrillas). That is denied by the Government, but the Special Rapporteur has only obtained limited explanations. Even where a solution is known, it is frequently not made available so that those who originated the allegations may be informed.

248. Some of the most serious allegations about massacres are almost certainly untrue, and in other such cases the denunciations do not appear to correspond to the facts. However, as amply illustrated in the present report, the situation of human rights and, in particular, in regard to the right to life and physical integrity continues to give cause of serious concern. The Special Rapporteur is sensitive to the suffering and anguish that such a situation causes to innocent civilians.

249. Important initiatives to enhance the social, cultural and economic rights of the population have been taken that deserve proper notice and commendation.

250. The Special Rapporteur has received every possible facility and co-operation from the Government and everyone else in the further execution of his mandate.

XV. RECOMMENDATIONS

251. The Governments addressed are either the existing or the new. It may be that at this stage the existing Government will not wish to make policy decisions that might fetter the incoming administration.

252. The international community should consider the provision of technical assistance and advice to the judiciary and police to enable them more effectively to bring to justice and to trial those responsible for serious crimes.

253. All efforts, including where necessary a new attempt to gain the co-operation of the public, should be made to clear up the serious unsolved crimes such as those referred to in the body of the present report.

254. Consideration should be given to methods whereby bodies concerned with human rights may safely operate inside Guatemala.

255. Consideration should urgently be given to an invitation to the International Committee of the Red Cross (ICRC) to establish a presence in Guatemala. This invitation would not tend to categorize the current conflict either as an internal war or in any other way; the Geneva Conventions apply however the confrontations may be described (see art. 3 of the Geneva Conventions of 1949). Nor would it do anything to oust the operations of the Guatemalan Red Cross, whether in connection with refugees in surrounding countries or at all. There are numerous examples where the ICRC has negotiated with Governments and other bodies, including national Red Cross or Red Crescent associations, a separate and effective role within its own jurisdiction.

256. UNHCR should send to the Guatemalan Government a list of the names of the refugees in Mexico, Honduras and Belize officially within its jurisdiction. That list should be compared with the list of disappearances in the Government's hands as a result of the work of the Tripartite Commission and the allegations presented by the Mutual Support Group and others.

257. The Government should urgently publish in full the results of the Tripartite Commission's investigation into disappearances.

258. Recognition should be made of the various projects that are proceeding to improve the standards of living, health, nutrition and education for the poorest sectors of the population.

259. The new Government should reconsider the general policy of the civil patrols in the light of the criticism that such an obligation placed upon the population as civilians constitutes in itself a violation of the right of freedom of association. Reconsideration of the matter will probably be necessary in any case because of the terms of article 34 of the new Constitution.

APPENDIX I

Commission on Human Rights resolution 1985/36

The Commission on Human Rights,

Guided by the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights,

Recalling its resolutions 1983/37 of 8 March 1983 and 1984/53 of 14 March 1984, in which it expressed its concern about the massive violations of human rights in Guatemala,

Recalling also General Assembly resolutions 38/100 of 16 December 1983 and 39/120 of 14 December 1984, in which the Assembly reiterated its deep concern at the continuing grave and widespread violations of human rights in Guatemala,

Mindful of resolution 1984/23 of 29 August 1984 of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, in which the Sub-Commission recognized that in Guatemala there existed an armed conflict of a non-international character, which stemmed from economic, social and political factors of a structural nature,

Welcoming the elections of the Constituent Assembly held in July 1984, which marked the first step of the process for the return of democracy and the institution of a new constitutional government, now scheduled for January 1986, and welcoming the invitation of the Government of Guatemala to political exiles to return to their country and take part in the electoral process with guarantees of full and open participation,

Affirming the importance of creating conditions in which the electoral process can be pursued in a climate free from intimidation and terror,

Appreciating the co-operation of the Government of Guatemala with the Special Rapporteur in the fulfilment of his mandate and noting with satisfaction that a list of cases dealt with by the special tribunals has been given to the Special Rapporteur,

Also appreciating the invitation by the Government of Guatemala to certain international human rights groups to visit Guatemala and assess the situation of human rights there,

Having carefully examined the report of the Special Rapporteur and other reliable information and reports, which reveal that, although improvements have been noted in some areas, serious and systematic violations of human rights continue to occur in Guatemala,

Alarmed at the continuation of politically motivated violence, particularly killings and kidnappings, and at the fact that many persons continue to disappear,

1. Takes note of the final report of the Special Rapporteur and welcomes the recommendations contained therein;

2. Expresses once more its deep concern at the continuing serious and systematic violation of human rights in Guatemala, particularly the acts of violence against non-combatants, the disappearances, killings, acts of torture and the extrajudicial executions;

3. Further expresses its profound concern at restrictive measures which limit the freedoms of rural and indigenous populations, notably their displacement and relocation in development centres and forced participation in civilian patrols, organized and controlled by the armed forces;

4. Urges the Government of Guatemala to take effective measures to ensure that all its authorities and agencies, including its security forces, fully respect human rights and fundamental freedoms, and also urges all other parties concerned fully to respect human rights and fundamental freedoms;

5. Reiterates its appeal to all parties concerned in Guatemala to ensure the application of the relevant norms of international humanitarian law applicable in armed conflicts of a non-international character;

6. Urges once again the Government of Guatemala to establish the necessary conditions to ensure the independence of the judiciary and to enable it to uphold the rule of law, including the right of habeas corpus, and to prosecute and punish speedily and effectively those, including members of the military and security forces, found responsible for violations of human rights;

7. Reiterates its appeal to the Government of Guatemala to allow an independent and impartial body to function in the country to monitor and investigate alleged human rights violations;

8. Appeals once again to the Government of Guatemala to allow international humanitarian organizations to render their assistance in investigating the fate of persons who have disappeared with a view to informing their relatives of their whereabouts, to visit detainees or prisoners and to bring assistance to the civilian population in areas of conflict;

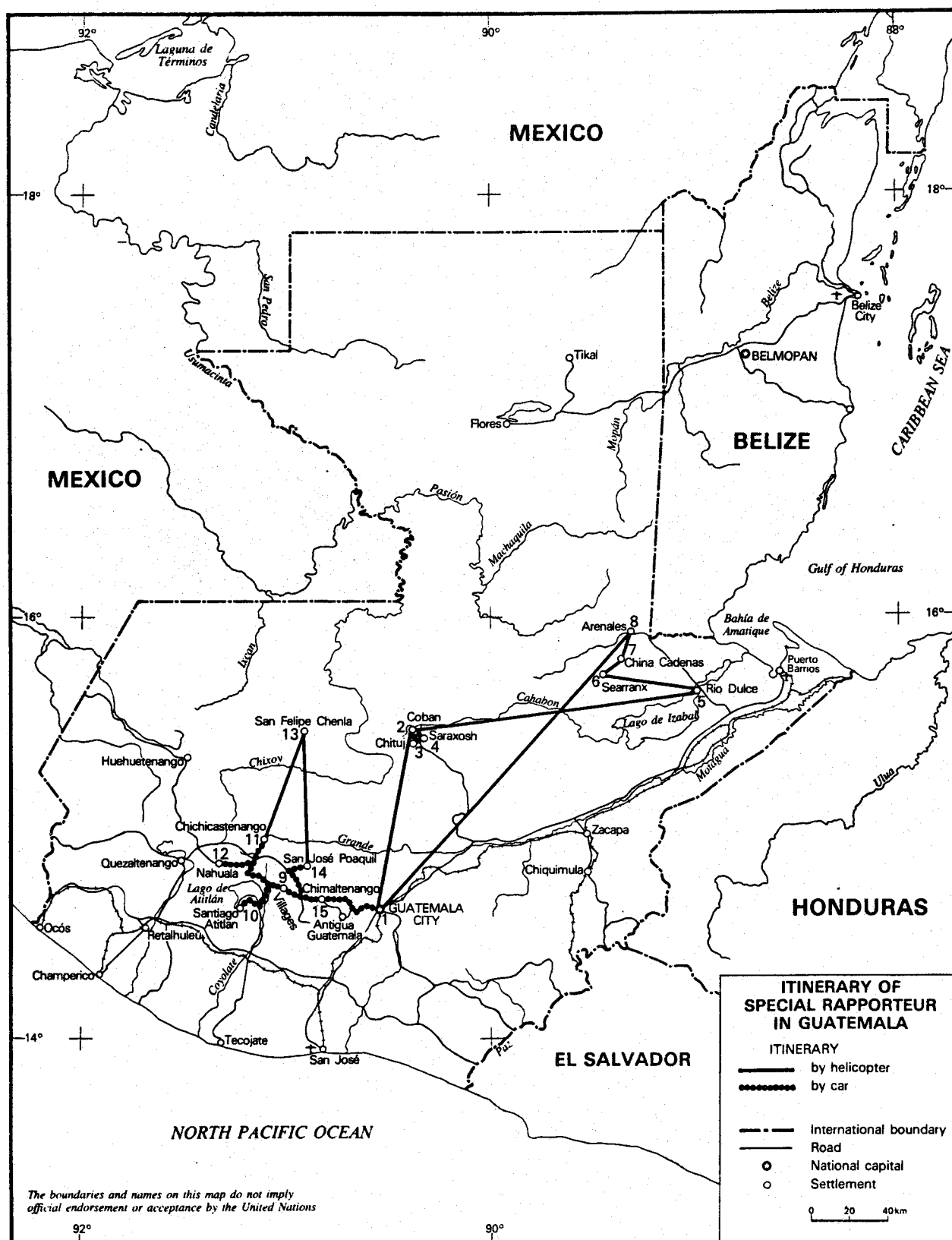
9. Welcomes the dialogue between the Government of Guatemala and the Mutual Support Group of the families of the disappeared, and the subsequent establishment of a commission to investigate and clarify the fate of persons who have been subjected to involuntary or forced disappearance and are still unaccounted for;

10. Urges the commission referred to in paragraph 9 above to act with vigour and expediency in its investigation of disappearances and calls upon all parties, particularly the police and army, to co-operate fully with that commission;

11. Requests the Government of Guatemala to publish the list of cases which fell within the jurisdiction of the special tribunals and to indicate the outcome of each case;
12. Requests all States to refrain from intervening in any way in the internal situation of Guatemala which could prolong or worsen the conflict and the situation of human rights violations in that country;
13. Appeals to the Government of Guatemala to adhere to its new timetable for the return to democracy and to ensure conditions which would allow the full participation of all in the political process, and also appeals to all parties in the conflict to create a climate free from intimidation and terror;
14. Decides to extend the mandate of the Special Rapporteur for another year to enable him to continue his thorough study of the human rights situation in Guatemala and requests him to submit an interim report of the General Assembly at its fortieth session and a final report to the Commission at its forty-second session;
15. Further requests the Special Rapporteur, in preparing his report, to continue to take into account information from all reliable sources, to assess in particular allegations of politically motivated killings, disappearances, acts of torture, extrajudicial executions and confinement in clandestine prisons, to draw conclusions from his findings and to make further recommendations designed to help bring about improvements in the situation of human rights in Guatemala;
16. Invites the Government of Guatemala and other parties concerned to extend their full co-operation to the Special Rapporteur of the Commission;
17. Requests the Secretary-General to give all necessary assistance to the Special Rapporteur;
18. Decides to continue its consideration of human rights and fundamental freedoms in Guatemala at its forty-second session.

APPENDIX II

Map of the itinerary of the Special Rapporteur in Guatemala



APPENDIX III

Articles in the Constitution

CHAPTER V

Human Rights Commission and Attorney

Article 273. Human Rights Commission and Attorney. The Congress of the Republic shall appoint a Human Rights Commission consisting of one deputy from each political party represented in the Congress. The Commission shall propose to the Congress three candidates for the election of an attorney, who shall possess the same qualifications as a magistrate of the Supreme Court of Justice and shall enjoy the same immunities and prerogatives as deputies in the Congress. The law shall regulate the functions of the Commission and of the Attorney to whom this article refers.

Article 274. Attorney for Human Rights. The Attorney for Human Rights is a commissioner of the Congress of the Republic for the defence of human rights guaranteed by the Constitution. He shall be empowered to supervise the administration; he shall serve a period of five years and shall make an annual report to the plenary congress through the Commission of Human Rights.

Article 275. Functions of the Attorney for Human Rights. The Attorney for Human Rights shall have the following functions:

- (a) To promote the good working and flexibility of governmental administrative proceedings relating to human rights;
- (b) To investigate and report administrative behaviour prejudicial to the interests of person;
- (c) To investigate any complaints concerning any person with regard to violations of human rights;
- (d) To recommend privately or publicly to officials modification of administrative behaviour to which objection has been made;
- (e) To publicly censure acts or behaviour contrary to constitutional rights;
- (f) To institute proceedings or appeals, whether judicial or administrative, in cases in which they are appropriate; and
- (g) Such other functions and attributions as may be assigned to him by law.

The Attorney for Human Rights shall of his own motion or at the request of a party act with due diligence to ensure that during a period of emergency, human fundamental rights are fully safeguarded other than those which are explicitly restricted. He shall be available to exercise his functions ~~seven days a week~~ and at any time of the day or night.

APPENDIX IV

Autopsy report

"Dr. Arturo Carrillo"
FORENSIC MEDICINE DIVISION
JUDICIAL BODY
Republic of Guatemala

FORENSIC MEDICAL REPORT

A U T O P S Y

Date: 31 March 1985

Name: HECTOR ORLANDO GOMEZ CALITO. 32 years old, native and resident of Amatitlán, occupation: baker.

Judge's report: "Found on the shoulder of Pacific Highway, kilometre 26, at 9.25 a.m. Object: to establish as the cause of death possible fracture of the base of the skull.

External examination: Body in good condition. Rigor mortis established. Multiple contusions and lacerations on the face; on the lower third of the forearms: black-and-blue circles.

Internal examination: Fracture of the base of the skull. Cerebrum and cerebellum normal. Thorax normal. Cervical-thoracic organs normal. Heart normal. Lungs normal.

Abdomen: Intraperitoneal haemorrhage. Stomach normal. Intestines normal. Liver: rupture in right lobe. Bile ducts normal. Spleen normal. Kidneys normal. Genitals normal.

Cause of death: Internal haemorrhage due to ruptured liver.

(Signed) Dr. Orlando Quiroz
Forensic Medicine
AMATITLAN
