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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Situation of human rights and fundamental freedoms in El Salvador

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 and fundamental freedoms in El Salvador, prepared by Professor José Antonio Pastor Ridruejo, Special Representative of the Commission on Human Rights, in accordance with paragraph 10 of resolution 32 (XXXVII) of the Commission on Human Rights, of 11 March 1981.

ANNEX

Interim report on the situation of human rights and fundamental
freedoms in El Salvador prepared by the Special Representative
of the Commission on Human Rights

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I. INTRODUCTION

1. At its thirty-fifth session, the General Assembly adopted resolution 35/192 on the situation of human rights and fundamental freedoms in El Salvador on 15 December 1980. In this resolution, the General Assembly expressed deep concern at the grave violations of human rights and fundamental freedoms in El Salvador and deplored several aspects of the situation of human rights in that country. In addition, it requested the Commission on Human Rights to examine, at its thirty-seventh session, the situation of human rights in El Salvador. The text of the resolution is as follows:

"The General Assembly,

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

"Conscious of its responsibility to promote and encourage respect for human rights and fundamental freedoms for all,

"Noting that all Governments have an obligation to respect and promote human rights in accordance with the responsibilities they have undertaken under various international instruments,

"Bearing in mind resolution 19 adopted on 30 July 1980 by the World Conference of the United Nations Decade for Women,

"Dismayed by reports of human rights violations in El Salvador and especially by the death of thousands of persons and the climate of repression and insecurity prevailing in the country, which favours terrorism by paramilitary groups and enables it to be engaged in with impunity,

"Deeply shocked by the vile assassination of Archbishop Oscar Arnulfo Romero, a prestigious personality, outstanding for his defence of the human rights of the Salvadorian people, and by the persecution of Salvadorian figures such as Monsignor Arturo Rivera Damas, Apostolic Administrator of the Archdiocese of San Salvador,

"Gravely concerned about the unknown fate of many persons detained by the authorities,

"Profoundly indignant at the assassination of Mr. Enrique Alvarez Córdova, President of the Revolutionary Democratic Front of El Salvador, as well as of five other members of the Executive Committee of that Front, perpetrated on 27 November 1980 in San Salvador,

"Considering that the supply of arms and other military assistance will serve to aggravate the situation in that country,

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"1. Expresses its deep concern at the grave violations of human rights and fundamental freedoms in El Salvador;

"2. Deplores the murders, disappearances and other violations of human rights reported in El Salvador and requests the Salvadorian authorities to take prompt action to curb the reprehensible activities of paramilitary groups;

"3. Urges the Government of El Salvador to take the necessary steps to ensure full respect for human rights and fundamental freedoms in that country and to guarantee the safety of Monsignor Arturo Rivera Damas, Apostolic Administrator of the Archdiocese of San Salvador, whose life is in danger;

"4. Appeals for a cessation of violence and for the establishment of full respect for human rights in El Salvador;

"5. Calls upon Governments to refrain from the supply of arms and other military assistance in the current circumstances;

"6. Requests the Commission on Human Rights to examine, at its thirty-seventh session, the situation of human rights in El Salvador."

2. The situation in El Salvador was considered by the Commission on Human Rights at its thirty-seventh session under item 13 of the Commission's agenda, entitled "Question of the violation of human rights and fundamental freedoms in any part of the world, with particular reference to colonial and other dependent countries and territories". After the debate on this item, the Commission adopted resolution 32 (XXXVII) of 11 March 1981 on the violation of human rights in El Salvador. The text of the resolution is as follows:

"The Commission on Human Rights,

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

"Conscious of its responsibility to promote and encourage respect for human rights and fundamental freedoms for all,

"Noting that all Member States have an obligation to promote and protect human rights and to carry out responsibilities they have undertaken under various international human rights instruments,

"Recalling that in its resolution 35/192 of 15 December 1980, the General Assembly stated its deep concern about the serious violations of human rights and fundamental freedoms in El Salvador and requested the Commission on Human Rights to examine, at its thirty-seventh session, the situation of human rights in that country,

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"Deeply disturbed by the continuing reports about murders, abductions, disappearances, terrorist acts and all grave violations of human rights and fundamental freedoms in El Salvador,

"Deeply alarmed by the armed clashes in El Salvador and by the climate of violence and insecurity prevailing in the country,

"Mindful of the rules of international law, as contained in article 3 to the Geneva Convention of 12 August 1949, which are applicable to armed conflicts not of an international character and which requires the parties to the conflict to apply a minimum standard of protection of human rights and of humane treatment,

"1. Expresses its deep concern at the grave violations of human rights and fundamental freedoms in El Salvador;

"2. Deplores the murders, abductions, disappearances, terrorist acts and all grave violations of human rights and fundamental freedoms reported in El Salvador;

"3. Calls upon all parties to bring about a peaceful settlement and to seek an end to acts of violence in order to end the loss of lives and the suffering of the people of El Salvador;

"4. Recalls that in its resolution 35/192 of 15 December 1980 the General Assembly calls upon Governments to refrain from the supply of arms and other military assistance in the current circumstances;

"5. Urges the Government of El Salvador to take the necessary steps to ensure full respect for human rights and fundamental freedoms in the country;

"6. Emphasizes that the people of El Salvador have the right, as soon as appropriate conditions have been established, to establish a democratically elected Government, in an atmosphere free from intimidation and terror, and to determine their own political, economic and social future, free from outside interference;

"7. Requests its Chairman to appoint, after consultations within the Bureau, a Special Representative of the Commission whose mandate will be:

"(a) To investigate the reports about murders, abductions, disappearances, terrorist acts and all grave violations of human rights and fundamental freedoms which have taken place in El Salvador, based on information from all relevant sources;

"(b) To make recommendations as to what steps the Commission could take to help to secure the enjoyment of human rights and fundamental freedoms, including economic, social and cultural rights;

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"(c) To report on his findings to the Commission on Human Rights at its thirty-eighth session;

"8. Requests the Secretary-General to give all necessary assistance to the Special Representative of the Commission;

"9. Invites the Government of El Salvador as well as all other parties concerned to extend their co-operation to the Special Representative of the Commission;

"10. Requests the Special Representative of the Commission to submit an interim report to the General Assembly at its thirty-sixth session;

"11. Decides to continue the examination of the situation of human rights in El Salvador with high priority at its thirty-eighth session."

3. Resolution 32 (XXXVII) of the Commission on Human Rights was transmitted, in accordance with paragraph 9 of the resolution, to the Government of El Salvador by a note dated 22 May 1981 addressed to the Permanent Representative of El Salvador in Geneva. In the same note, the Government of El Salvador was informed of the appointment of the Special Representative.

4. For his analysis of the situation, the Special Representative used information received from Governments, specialized agencies, intergovernmental organizations and non-governmental organizations and any other important information concerning the situation of human rights in El Salvador. For the fulfilment of his mandate, the Special Representative considered that the co-operation of the Government of El Salvador would also be useful. To this end, on 4 June 1981, the Director of the United Nations Division of Human Rights wrote a letter to the Minister Counsellor of the Permanent Mission of El Salvador to the United Nations in Geneva, conveying the desire of the Special Representative to visit El Salvador. On 12 August 1981, the Ambassador of El Salvador to the United Nations Office in Geneva transmitted to the Special Representative the authorization for him to visit the country. The visit took place in the second week of September.

5. The Special Representative arrived in El Salvador in the evening of Monday, 7 September and stayed there until the morning of Thursday, 10 September. The Government of El Salvador extended to the Special Representative its full co-operation and allowed him complete freedom of action and of movement; in fact, however, because of obvious security reasons, and the inherent confidentiality and short duration of the visit necessitated by those reasons, most of the contacts were with the authorities of the country. Specifically, the Special Representative had an interview with President Duarte, Vice-President Colonel Gutiérrez and Junta member Mr. Avalos; an interview with the Defence Minister, Colonel García, who was accompanied by members of the General Staff and by the heads of the Salvadorian security forces; an interview with Mr. Morales Ehrlich, member of the Junta, in charge of agrarian reform; other interviews with judges of the Supreme Court, the Minister of Justice and Government

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Attorney; an interview with Mr. Chavez Mena, Minister for Foreign Affairs. The Special Representative also interviewed two prisoners detained in national police offices in San Salvador, visited a refugee centre in San Salvador called San José de la Montaña and held other talks with diplomatic representatives of other States and with Salvadorian private citizens.

6. After the visit to El Salvador, the Special Representative went to Mexico City, New York and Washington, and there was able to talk with the following people, among others: Mr. Hector Dada, former Junta member; Mr. Roberto Lara Velado, former Chairman of the Commission Investigating Political Accused and Missing Persons, established by the first Junta; Judge Atilio Ramírez, who conducted the preliminary inquiries into the assassination of Monsignor Romero; Mr. Guillermo Ungo, former Junta member and President of the Frente Democrático Revolucionario; Mr. Román Mayorga, former member of the first Junta; Mr. Carlos Federico Paredes, Deputy Minister for Economic Planning of El Salvador until January 1981; and Colonel Majano, one of the officials responsible for the coup d'état of 15 October 1979.

7. In Mexico City, the Special Representative also had an opportunity to interview Mr. Roberto Cuellar of Legal Aid, an office of the Archbishopric of San Salvador, and Mrs. García Villas, of the El Salvador Commission on Human Rights. Also in Mexico City, he heard statements and testimony from refugees concerning violations of their human rights or those of their families. Some of this testimony is reproduced elsewhere in this report.

8. This report is the interim report which the Special Representative is submitting to the General Assembly at its thirty-sixth session in accordance with the mandate entrusted to him by resolution 32 (XXXVII) of the Commission on Human Rights. In this interim report, the Special Representative considered it appropriate to include the following:

- (a) A description of the principal international and national legal rules currently in force in El Salvador concerning human rights and fundamental freedoms;
- (b) A description of the current political situation in the Republic of El Salvador;
- (c) An account of the situation with regard to the exercise of economic, social and cultural rights in El Salvador;
- (d) An account of the situation with regard to respect for civil and political rights in El Salvador;
- (e) An account of the situation of refugees and other displaced persons as a result of current events in El Salvador;

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- (f) An account of compliance with the international rules of humanitarian law applicable in the armed conflicts taking place in El Salvador;
- (g) Some conclusions.

II. INTERNATIONAL AND NATIONAL LEGAL RULES APPLICABLE IN EL SALVADOR IN THE MATTER OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

9. On 21 September 1967, the Republic of El Salvador signed the International Covenant on Economic, Social and Cultural Rights, which it ratified on 30 November 1979. On exactly the same dates, the Republic of El Salvador signed and ratified the International Covenant on Civil and Political Rights. El Salvador is thus a party to those instruments. In addition, El Salvador signed the American Convention on Human Rights (San José, Costa Rica, 22 November 1969) on 15 June 1978, and on 23 June that same year proceeded to deposit the instrument of ratification. El Salvador is thus a State party to that Convention. It should be noted, however, that in ratifying the San José Convention, El Salvador entered a reservation to the effect that its ratification was to be understood to be without prejudice to any provisions of the Convention which might conflict with specific precepts in the Constitution of the Republic.

10. Moreover, since 17 June 1953, El Salvador has been a party to the four Geneva Conventions of 12 August 1949: Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Convention relative to the Treatment of Prisoners of war; and Convention relative to the Protection of Civilian Persons in Time of War. It should be emphasized that article 3 of the four above-mentioned Conventions contains rules applicable to armed conflicts which are not of an international character, such as those requiring respect for the life of non-combatants and combatants who are hors de combat. Since 23 November 1978, El Salvador has also been a party to the Additional Protocols to the four 1949 Geneva Conventions: Additional Protocol to the Geneva Conventions of 12 August 1949 relating to the protection of victims of international armed conflicts; and Additional Protocol to the Geneva Conventions of 12 August 1949 relating to non-international armed conflicts.

11. With regard to national rules, reference should be made, firstly, to the Political Constitution of the Republic of El Salvador, promulgated on 8 January 1962. According to that Constitution, sovereignty is vested in the people (article 1) and the Government has three branches - legislative, executive and judicial - which must act independently within the limits of their powers. Legislative power is vested in the assembly (article 36). Executive power is exercised by the President of the Republic and by the Ministers and Under-Secretaries of State (article 29). Judicial power is exercised by the Supreme Court, the courts of second instance and any other courts established by subsidiary laws (article 81).

12. Titles X and XI of the Constitution set forth individual and social rights, and specify the procedures for guaranteeing the effectiveness of those rights.
13. The individual rights include the following: individual freedom and prohibition of servitude or any other status damaging to human dignity (article 51); right of any person to enter, leave and remain in the territory of the Republic, subject to statutory limitations (article 154); freedom to practise all religions, provided that clerics and laymen do not engage in political propaganda invoking religious grounds or taking advantage of the religious beliefs of the people (article 157); freedom of expression and thought, with prohibition of the dissemination of anarchic and anti-democratic doctrines (article 158); inviolability of correspondence (article 159); freedom of association and peaceful assembly, but prohibition of the establishment of conventual congregations and monastic institutions (article 160); right to the protection of the authorities (article 162); right to protection in the preservation and defence of life, honour, freedom, property, profession and employment (article 163); rights to justice and due process (articles 165 and 171); right to life, liberty and habeas corpus (articles 164 and 168); non-retroactivity of laws, except concerning public order and criminal matters whenever the new law would be favourable to the offender (article 172); and right freely to dispose of personal property and freely to enter into contracts (articles 173 and 174).
14. The social rights of the inhabitants of the Republic include the following: the family is entitled to protection from the State, which also protects the physical, mental and moral health of minors, who have the right to education and assistance (article 179); equal rights of all children born in and out of wedlock and of adopted children with regard to education, assistance and paternal protection (article 180); work is a social function which enjoys the protection of the State and is not regarded as a commodity (article 181); the living and working conditions and social security of workers are governed by the Labour Code (articles 182 to 195); the preservation, development and dissemination of culture are recognized as a primary obligation of the State (article 196); one of the aims of education should be to instil respect for human rights and obligations (articles 197 to 203); autonomy of the University in teaching, administrative and financial matters (article 204); duty of the State and of individuals to protect the health of the inhabitants of the Republic, which constitutes a public asset (article 205); obligation of the State to provide assistance without charge to the indigent sick (article 206); and a Higher Council for public health responsible for the health of the population (article 208).
15. The Constitution of El Salvador assigns responsibility for measures to protect constitutional rights to the Supreme Court and, in certain cases, to the courts of second instance. These measures consist of the remedy of habeas corpus when a person's freedoms are restricted by an authority or individual (article 164) and the right of amparo (enforcement of constitutional rights) before the Supreme Court for violation of the rights granted by the Constitution (article 221).

The Constitutional Procedure Act governs the exercise of these rights and the procedure for requiring the appearance of persons. The latter procedure is followed in cases of imprisonment, detention, custody or restriction not authorized by law or effected in a manner or to an extent not authorized by law, in which the aggrieved party is entitled to be protected by a writ for the appearance of persons.

16. The Constitution also deals with measures for the suspension of guarantees. Under article 175, in cases of war, invasion of the territory, rebellion, sedition, catastrophe, epidemic or other general calamity or serious breaches of the peace, the guarantees established in articles 154, 158 (1), 159 and 160 may be suspended in all or part of the territory of the Republic. The period of suspension must not exceed 30 days but may be renewed for a further 30 days, if the circumstances which necessitated it continue to exist. The National Assembly is responsible for decreeing the suspension of guarantees or, if it is in recess, the Executive Branch may provisionally adopt the measure and the Assembly must meet to endorse or disallow the measure within a period of 48 hours.

17. After the Government Revolutionary Council came to power on 15 October 1979, the following provisions affecting human rights and fundamental freedoms were promulgated: Decree No. 1 of 15 October 1979 declaring the legitimacy of the new Government and its assumption of legislative powers through law-ranking decrees. The right of insurrection, proclaimed in article 7 of the Constitution, was invoked in this connexion.

18. Decree No. 2 of 16 October 1979, on the basis of article 175 of the Constitution and for the purpose of maintaining public order, suspended the guarantees in articles 154 (right to enter, leave and remain in the territory), 158 (freedom of expression and dissemination of thought), 159 (inviolability of correspondence) and 160 (freedom of assembly and association). On 23 October 1979, the new Government lifted the state of siege, but on 5 March 1980, proclaimed it again for a period of 30 days, which has been extended up to the present time.

19. Decree No. 114 of 11 February 1980 confirmed the applicability of the 1962 Constitution and supplemented Decree No. 1, establishing the legal framework for the reforms to be undertaken, particularly agrarian reform.

20. Decree No. 43 of 21 August 1980 declared a state of emergency in the Republic, placing under military control the civil servants and employees of the principal autonomous agencies.

21. Decree No. 507 of 3 December 1980, containing the Special Act on procedures applicable to the offences referred to in article 177 of the Political Constitution (treason, espionage, rebellion, sedition and other offences against the independence of the State and against international law). The Decree specifies that the military courts have jurisdiction in such offences. The basic provisions of the Decree are as follows:

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(a) Auxiliary authorities which make an arrest must notify the military judges within 24 hours and must remand the accused within the next 15 days;

(b) After proceedings have been initiated, the examining military judge must order the release or detention of the accused, as appropriate, within the next 72 hours;

(c) If, at the end of the inquiry period, the judge finds no grounds for detaining the accused but, from a study of the case or by any other means, establishes the need to subject the accused to measures of security, he must so decide and order corrective detention for no more than 120 days, at his discretion (article 6);

(d) The examination phase must be secret and last no longer than 180 days, during which period there must be no intervention by the parties;

(e) The law applies only to persons over 16 years of age, but the corrective measures referred to in article 6 may possibly be applied to minors under that age.

III. CURRENT POLITICAL SITUATION IN THE REPUBLIC OF EL SALVADOR

22. As will be described in greater detail in Section V of this report, which contains data on the economic and social situation in El Salvador, the economy of the country is basically agricultural, and the inequitable distribution of land ownership has produced sharp differences in the income of the population.

23. Traditionally, only a small group of large landowners, who also control foreign trade and the banking system, has benefited from the country's wealth. In contrast to the privileged life-style of this elite, the large majority of the population lives in a state of economic, social and cultural under-development. It seems appropriate to recall here the words of the Ambassador and Permanent Representative of El Salvador to the Organization of American States, who, speaking on behalf of the Government Revolutionary Junta on 10 July 1980, said that the Junta was trying to put an end to "the infamous accumulation of wealth, culture and power", adding that "almost all the assets produced in El Salvador have been enjoyed and monopolized by a privileged group. However, this wealth has been flaunted before the middle and lower classes ... They have seen it, it was their labour that produced it, but they have not enjoyed it; as a result, they have become embittered and frustrated and have reacted vengefully". (E/CN.4/1453, pp. 137-138).

24. Only under an authoritarian political régime could such a situation have been maintained in recent decades. The Special Representative does not think it necessary in this report to recapitulate the political vicissitudes of the Republic of El Salvador prior to 1970; for the purposes of this report, it would seem sufficient to describe the political developments of the past and present decades.

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25. In 1972, elections were held; they were actually won by José Napoleón Duarte, a member of the Partido Demócrata Cristiano, who had the support of other parties. However, election fraud prevented the popular will from being respected, and Mr. Duarte was obliged to seek refuge abroad. The authoritarian situation was perpetuated under the military régimes of Colonel Molina and General Romero. Under Colonel Molina, there were some attempts to initiate agrarian reform, but they never reached fulfilment. The situation remained as in the past, although there were mounting demands for political, economic and social change.

26. At the end of the decade, specifically on 15 October 1979, there was another successful military coup d'état. Its instigators - army officers Adolfo Arnoldo Majano and Jaime Abdul Gutiérrez - immediately set up a Junta composed of three civilians and themselves. The Junta at once issued a proclamation describing the objectives it was pursuing; these included, essentially the declaration of a general amnesty allowing political prisoners to be released and exiles to return, providing guarantees for political and trade-union activities, initiating agrarian reform with a view to equitable land distribution, reforming the financial and banking system, and all this with due respect for human rights. In this connexion, it should be noted that, on 19 October 1979, general amnesty was proclaimed for political prisoners and exiles and that, under Decree No. 12 of November 1979, the extreme right-wing paramilitary organization Orden was dissolved.

27. However, as will be seen, the hopes that these declarations and measures might have aroused were soon dashed. Actually, the Government Revolutionary Junta formed in October 1979 apparently encountered major difficulties in carrying out its government programme. There were primarily two reasons for this according to the information received by the Special Representative: in the first place, the strong opposition from powerful extreme right-wing groups and sectors, one of them organized militarily and having connexions with high-ranking military authorities; in the second place, the need to combat extreme left-wing guerrilla strongholds, which even controlled some parts of the national territory and which wanted to overthrow the Junta and seize power for themselves.

28. In the circumstances, the civilian members of the Junta and other senior government officials submitted their collective resignation on 3 January 1980. The military members of the Junta then invited important figures from the Partido Demócrata Cristiano - including Mr. Hector Dada - to join the Government; they agreed to join, provided that the declared reforms would be undertaken, that the system would become more democratic and that human rights would be respected. A few days later, several popular organizations merged to form the Co-ordinadora Revolucionaria de Masas. (The Communists, Socialists Independents and a few Christian Democrats formed an opposition political group the Frente Democrático Revolucionario, and the guerrilla groups joined together as the Frente de Liberación Nacional Farabundo Martí).

29. However, the general situation in the country not only did not improve; it deteriorated in an alarming manner. Violations of human rights increased in unprecedented proportions, according to the information contained in section IV of this report of the Special Representative.

30. At the beginning of March 1980, Mr. Hector Dada resigned his post in the Junta; his resignation was followed by that of other important members of the Partido Demócrata Cristiano. The Junta was then joined by Mr. José Napoleón Duarte, also a member of the Partido Demócrata Cristiano, who had been the real winner in the 1972 elections, as was indicated earlier. On 22 December 1980, another restructuring occurred: the progressive Colonel Adolfo Arnoldo Majano - one of the instigators of the coup d'état of 15 October 1975 - left the Government, and Mr. José Napoleón Duarte became President. Colonel Jaime Abdul Gutiérrez was appointed Vice-President of the Republic and Commander-in-Chief of the Armed Forces.

31. During 1981, according to information contained in other parts of this report, the violent conditions in the country did not change for the better. In January of this year, the leftist guerrillas launched a major offensive, which the regular army was able to contain. In the remaining months of 1981, a consistent pattern of gross violations of human rights also continued, as did the fighting between the army troops and the leftist guerrilla groups.

32. On 20 February 1981, the progressive Colonel Adolfo Arnoldo Majano was arrested and, later, newspaper items indicated that he was considered to be a deserter for refusing to accept the position of military attaché of El Salvador to the Embassy in Madrid. ^{1/} According to published reports, Colonel Majano was freed in March and left the country.

33. In 1981, a few attempts were apparently made to mediate between the Junta and the leftist opposition with a view to ending the bloodshed in the country. One such attempt was undertaken by the Governments of Mexico and Venezuela and another by the Socialist International but, according to the information received, they were not successful. It has been publicly announced that Mr. Duarte has promised to hold free and fair elections in El Salvador in March 1982 and, subsequently, to transfer power to the winners in those elections. Quite recently an Electoral Board was set up in El Salvador to prepare for the elections.

34. At the end of August 1981, the Governments of France and Mexico issued a joint declaration, recognizing that the alliance between the Frente de Liberación Nacional Farabundo Martí and the Frente Democrático Revolucionario is a representative political force and that, as such, it is entitled to take part in establishing the necessary machinery of rapprochement and negotiation directed towards finding a political solution to the crisis.

^{1/} International Herald Tribune, 23 February 1981, "Former member of Junta is arrested in El Salvador", and Le Monde, 24 February 1981, "Le Col. Adolfo Majano est arrêté".

That declaration was followed by another joint declaration from the Ministers for Foreign Affairs of Argentina, Bolivia, Chile, Colombia, the Dominican Republic, Guatemala, Honduras, Paraguay and Venezuela, which was transmitted to the Secretary-General of the United Nations on 4 September 1981; the latter declaration alleges that the Governments of Mexico and France intervened in the internal affairs of El Salvador and expresses surprise at such an attitude "which sets an extremely serious precedent" (see NV/31/28).

IV. SITUATION WITH REGARD TO THE EXERCISE OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN EL SALVADOR

35. El Salvador is a small country in Central America, with an area of 21,041 km² and a population estimated at 4.5 million in 1980. There is thus a high population density of 330 inhabitants per km².

36. The country's economy is basically agricultural and the pattern of land ownership is thus important to the exercise of economic and social rights. The distribution of ownership is, however, very unequal. According to information received by the Special Representative, before the agrarian reform, 60 per cent of the land was owned by 1.6 per cent of the population. Of the remaining land, 21 per cent belonged to 91 per cent of the inhabitants. Consequently, the distribution of the national income reveals gross inequalities. 2/ According to information received, 5 per cent of the population receives 21.4 per cent of the national income and the poorest half of the population 17.9 per cent. 3/

37. These figures speak for themselves, very eloquently. The living conditions of the majority of the inhabitants of El Salvador are not even minimally acceptable and are in flagrant contrast with the way of life of a privileged minority. In addition to enjoying ownership of the land, this majority has controlled and benefited from the banking system, processing industries and foreign trade.

38. In addition, the Economic Commission for Latin America (ECLA) informed the Special Representative that, according to official data, the national unemployment rate rose from about 7 per cent in 1979 to approximately 17 per cent in 1980. In the Commission's opinion, the figure for open unemployment would be even higher if the large number of workers who emigrated had remained in El Salvador. According to the same source, in 1980 the highest level of official unemployment was reached in March, when it was 48 per cent in the agricultural sector and 23 per cent for the economy as a whole; the lowest level was in June, when official unemployment in the agricultural sector was 25 per cent and the level for the whole nation was about 10 per cent (CEPAL/MEX/1045/Rev.1).

2/ Interchurch Committee on Human Rights in Latin America, Submission to the Canadian Ambassador to the thirty-seventh session of the Commission on Human Rights, 22 January 1981, "El Salvador", p. 48.

3/ United States Department of State, Country Reports on Human Rights Practices, Report submitted to the Committee on Foreign Relations of the United States Senate and the Committee on Foreign Affairs of the United States House of Representatives", 2 February 1981, "El Salvador", p. 430.

39. It should also be noted that the violence in El Salvador has been accompanied by a marked deterioration in the economic situation. According to ECLA, the economic consequences of that situation were a decline in production - with some exceptions in the agricultural sector, partly attributable to the start of the agrarian restructuring promoted by the Government - a drop in private investment and flights of capital, exodus of the entrepreneurial class and material damage to productive firms and to capital formation. Per capita income thus declined in real terms for the second consecutive year: a decline of 4.5 per cent in 1979 and of 10 per cent in 1980. According to the same source, the per capita domestic product, which was \$463 in 1978, dropped to \$442 in 1979 and to \$398 in 1980 (CEPAL/MEX/1045/Rev.1, p. 2).

40. The Junta which came to power on 15 October 1979 at once announced its intention of undertaking a series of reforms, including agrarian reform in order to achieve a fairer distribution of land in the Republic of El Salvador, nationalization of the banking system and nationalization of foreign trade. Because of its special importance, the Special Representative wishes to refer below to agrarian reform, which is to be implemented in several stages.

41. A preparatory measure to precede agrarian reform was enacted in Decree No. 43 of 8 December 1979, which imposes restrictions on the division and transfer of rural property, specifying that such transactions require the authorization of the Instituto Salvadoreño de Transformación Agraria in the case of holdings of 50 to 100 hectares. The purpose of these measures would be to prevent the big land holders from dividing land among their relatives in an attempt to evade the coming agrarian reform.

42. On 6 March 1980, the Junta promulgated two important Decrees. Decree No. 153 contains the Basic Agrarian Reform Act and Decree No. 154 refers to holdings of over 500 hectares.

43. Decree No. 154 governs the first phase of agrarian reform, providing for expropriation of holdings of over 500 hectares. The Act contained in Decree No. 153 provides for compensation of landholders with State bonds and allows them to retain holdings of less than 100 or 150 hectares, as appropriate. The holdings expropriated are given to rural co-operatives. According to the report by Simon and Stephens, published in 1981 by OXFAM America, ^{4/} this first phase of agrarian reform in El Salvador may affect 238 large holdings totalling 218,000 hectares or 15 per cent of the arable land. But this report is highly critical of the preparation and results of the first phase of agrarian reform. Some landholders apparently exerted pressure to recover their holdings and a commission was established for the return of land; apparently 68 holdings were returned. The rural population, for its part, reacted with feelings of insecurity and fear. The reform apparently really benefited some of the permanent staff on the holdings

^{4/} Simon, Lawrence R. and Stephens, James C. Jr., "El Salvador and Land Reform 1980-81", OXFAM America, p. 22.

(such as managers, accountants, drivers, mechanics and other such staff) but not the farm workers or labourers, who are dominated in the co-operatives by the permanent staff and by other personnel such as officials of the Instituto Salvadoreño de Transformación Agraria. In all, over 60 per cent of the rural population is apparently excluded from the reform.

44. According to ECLA data, this phase of the agrarian reform affected 376 large holdings of 500 hectares or more, totalling 244,083 hectares owned by 244 landholders (CEPAL/MEX/1045/Rev.1, p. 10). Nevertheless, according to the same source, technical, operational and financial difficulties in fact slowed the implementation of the reform. Although expropriation did occur, holdings continued to be occupied by the Army and, after lengthy and complicated procedures, were transferred to some rural organizations, which did not always succeed in obtaining the necessary technical and financial assistance which would have enabled them to maintain output. ECLA adds that on some holdings, a certain amount of success was nevertheless achieved with the staple grain crops.

45. In any case, implementation of the first phase was apparently accompanied by repression of the rural inhabitants. The Junta again proclaimed the state of siege at the same time as it promulgated the two Decrees of 6 March 1980, and claimed that the purpose was to prevent forces opposed to agrarian reform from achieving their goal. According to complaints received by the Inter-American Commission on Human Rights, as a result of this measure the Armed Forces occupied some land affected by the reform, triggering certain acts of violence which affected quite a few rural inhabitants (E/CN.4/1453, p. 139).

46. The second phase of the agrarian reform, prescribed in Decree No. 153 which contains the Basic Agrarian Reform Act, affects holdings of over 100 or 150 hectares - depending on the quality of the land - and less than 500 hectares. Provision is made for expropriation of such holdings, which are handed over to co-operatives similar to those set up during the first phase, and for compensation of the landholders, partly in cash and partly in State bonds.

47. According to the above-mentioned report by Simon and Stephens, 5/ this phase concerns between 1,500 and 2,000 holdings, accounting for 70 per cent of the coffee crop and thus constituting the real core of Salvadorian agrarian reform. As noted in that report, however, there are good reasons for believing that the second phase will in fact never be implemented. In this connexion, it is said that on 14 May 1980 Colonel Jaime Abdul Gutiérrez announced that no more reforms would be carried out other than those in phase one and those envisaged in Decree No. 207, which will be considered below; this would halve the impact of the agrarian reform. The report of the United States Department of State 6/ notes that this second phase of reform is still under consideration. This is apart from other technical difficulties mentioned in the report by Simon and Stephens.

5/ Ibid., p. 19.

6/ United States Department of State, Country reports, op. cit., p. 431.

48. The third phase of the agrarian reform undertaken by the present Salvadorian Junta is set out in Decree No. 207 of 18 April 1980. Holdings of any size formed under a landleasing and sharecropping system would become the property of the tenants and sharecroppers, on the understanding that no person benefiting under the Decree could become the owner of holdings of more than seven hectares. Provision is also made for compensation of landholders.

49. The above-mentioned report by Simon and Stephens 7/ states that the Decree is open to serious criticisms and encountered considerable resistance, not only from the landholders affected, who are often poor, but also from the tenants and sharecroppers. It would exclude most of the rural inhabitants of El Salvador and apparently the title deeds have not actually been distributed and no special credit lines established; in addition, it seems that very few rural workers had ceased to be tenants.

50. In any case, the agrarian reform in El Salvador was established at the governmental level, and there is no indication that the sectors affected, particularly the rural population, were involved in the drafting of the legislation.

51. With regard to the health situation, the El Salvador Commission on Human Rights reports 8/ that there is one physician for every 3,650 inhabitants, one dentist for every 10,000 inhabitants and one nurse for every 3,500 inhabitants. According to the same source, 67 per cent of the physicians are practising in the capital, where 17 per cent of the population lives. The report of the United States Department of State notes that the departments in the Ministry of Health are over-staffed and badly administered. 9/ The same report adds that infant mortality in rural areas is more than 1 in 10 and that life expectancy is 54 in rural areas and 59 in the country as a whole. According to the report of the Toronto Interchurch Committee, 10/ El Salvador has the lowest per capita consumption of calories in Latin America. The El Salvador Commission on Human Rights states that the calorie deficit is 26 per cent and the protein deficit 47 per cent. 11/

7/ Simon and Stephens, op. cit., pp. 56-57.

8/ El Salvador Commission on Human Rights (CDHES), "Boletín Informativo," November 1980, No. 2, pp. 3-4.

9/ United States Department of State, Country reports, op. cit., p. 430.

10/ Interchurch Committee on Human Rights in Latin America, op. cit., p. 49.

11/ CDHES, "Boletín Informativo," November 1980, No. 2, p. 3.

52. On the subject of education in El Salvador, the El Salvador Commission on Human Rights gives the following information: 12/ the illiteracy rate is 40 per cent; the school enrolment rate is 44 per cent; 15 per cent of the teachers are in rural areas and 85 per cent in urban areas. According to the report of the United States Department of State, approximately 67 per cent of the adult population can read and write. 13/

V. SITUATION WITH REGARD TO RESPECT FOR CIVIL AND
POLITICAL RIGHTS IN EL SALVADOR

53. According to information received by the Special Representative, there has been a consistent pattern of gross violations of civil and political rights of all kinds over the past two years in the Republic of El Salvador, involving attempts on human life, cases of torture and cruel, inhuman and degrading treatment, arbitrary deprivation of freedom, arbitrary interference in individuals' private life, family, place of residence and correspondence, and violations of freedom of thought, conscience, religion, expression, peaceful assembly and association, etc. One characteristic of these violations is that they often ended tragically in the violation of the basic and primary right of the human person, the right to life. Apparently torture was very often followed by the death of the person tortured, and the same can be said of persons arbitrarily deprived of their freedom. People who are abducted disappear and rarely reappear alive. In addition, attempts to put an end to freedom of expression or assembly or association very frequently involved attempts against human life. All of this reportedly took place in an over-all context of inactivity and passivity on the part of the Salvadorian judiciary in which victims or their relatives were unable to get any action taken on their complaints.

54. In these circumstances, the Special Representative decided that it would be inappropriate to conduct a detailed review of information on human rights violations in the light of specific provisions of the domestic and international legal instruments which are binding on the Republic of El Salvador in this area. The nature of the violations mentioned above calls for a different approach. Since the greater part of the reported violations involved attempts against human life, the Special Representative decided that it would be preferable to base this part of his report on such attempts, adopting by way of exposition a classification which takes into account the actual circumstances in which these repeated attempts take place. This classification, which does not imply any rigid distinction between the various categories, is as follows: (a) murders; (b) abductions and disappearances; (c) other terrorist acts; and (d) other human rights violations. In this, the Special Representative is essentially using the categories of human rights violations given in paragraph 7(a) of resolution 32 (XXXVII) of the Commission on Human Rights, which also contains his mandate.

12/ Ibid.

13/ United States Department of State, Country reports, op. cit., p. 430.

A. Murders

55. According to Legal Aid 14/, an office run by the Archdiocese of San Salvador which works in situ on the basis of direct information and testimony, in 1979 the security forces murdered 1,030 people in El Salvador for political reasons.

56. According to the same source 15/, in 1980 there were 8,062 political murders. The 1980 report of the Inter-American Commission on Human Rights speaks of some 6,000 people killed during the first nine months of that year (E/CN.4/1453, p. 134), while the 1981 report of the United States Department of State 16/ puts the number of murders in 1980 at around 9,000 people. The report of the Toronto-based Interchurch Committee on Human Rights in Latin America 17/, gives the figure of 12,076 people murdered in 1980.

57. The number of murders so far reported for 1981 is even higher. Thus, according to information given to the Special Representative by Legal Aid 18/ on 13 May 1981, 7,799 people were murdered in January, February, March and April of this year.

58. According to the El Salvador Commission on Human Rights, 2,333 civilians were murdered in January 1981 and 1,402 in February 19/ and, according to information published in the International Herald Tribune on 25 March 1981, a spokesman for the Commission stated that 5,300 people had been murdered since 1 January. According to Legal Aid, in June 1981 the number of victims of government repression totalled 934, from which it could be assumed that about 9,250 people had been murdered in the first half of 1981. 20/

14/ Legal Aid service of the Archdiocese of San Salvador, El Salvador, One Year of Repression, Commission of the Churches on International Affairs, World Council of Churches, 1981, p. 32. Translated from: El Salvador: Del Genocidio de la Junta Militar a la Esperanza de la Justicia Insurreccional, written by Legal Aid.

15/ Ibid., p. 11.

16/ United States Department of State, Country Reports, op. cit., p. 428.

17/ Interchurch Committee on Human Rights in Latin America, op. cit., p. 39.

18/ Letter dated 13 May 1981 from Roberto Cuéllar, Executive Director of the Legal Aid Service of the Archdiocese of San Salvador, addressed to the Director of the Division of Human Rights.

19/ El Salvador Commission on Human Rights, Boletín Informativo, No. 6, April 1981, p. 4.

20/ Solidaridad, Legal Aid international bulletin, No. 27, 12 July 1981, p. 7.

59. According to information handed over to the Special Representative by Legal Aid, a hundred people were murdered between 1 and 7 August 1981, 150 between 15 and 21 August, and 198 between 22 and 28 August, some of whose bodies were found mutilated and decapitated. 21/

60. As to those responsible for the murders, Legal Aid attributes the figures for 1980 and 1981 to the Army, military security forces and paramilitary organizations co-ordinated by the Armed Forces High Command and considers the murders to have been politically motivated. 22/ In the view of the Toronto Interchurch Committee, those murdered were the victims of officially approved repression. 23/ According to Amnesty International, there are reports of human rights violations committed by non-governmental opposition forces. However, Amnesty International goes on to say that analysis of all the available data would suggest that most of the reported violations, including torture, disappearances and murders in cold blood, were carried out by security forces and were directed against people who were not involved in guerrilla activities. 24/ The 1980 report of the Inter-American Commission on Human Rights talks of "terrorist assaults by armed groups of the extreme left and the extreme right" which in 1980 became increasingly frequent (E/CN.4/1453, p. 134). The report submitted to the Committee on Migrations, Refugees and Demography of the Council of Europe states in reference to recent developments that extreme right-wing military organizations and extreme left-wing revolutionary groups have stepped up their action, resorting increasingly to acts of violence, murder and torture. 25/ The report of the United States Department of State 26/ asserts that homicides and terrorist acts are the work of both the forces of the left-wing Frente Terrorista, which often claim responsibility for them, and of right-wing elements joined by a number of members of official security organizations, and adds that armed left-wingers have taken hostage or murdered many government officials, diplomats, landowners, members of right wing paramilitary groups and suspected informers. According to documentation provided to the United Nations Commission on Human Rights by the Head of the United States delegation (E/CN.4/1467) guerrilla fighters claim to have killed nearly 6,000 people in 1980.

21/ Legal Aid, INFORMA de las violaciones a los derechos humanos cometidas en El Salvador del 1° al 7 de agosto 1981, p. 1; INFORMA del 15 al 21 de agosto de 1981, p. 1; INFORMA del 22 al 28 de agosto, p. 1.

22/ Legal Aid, El Salvador, One Year of Repression, p. 9.

23/ Interchurch Committee on Human Rights in Latin America, op. cit., p. 40.

24/ Amnesty International, news release, 11 June 1981, p. 3.

25/ Council of Europe, Parliamentary Assembly, Report on Refugees from El Salvador, 7 April 1981, p. 2.

26/ United States Department of State, Country reports, op. cit., pp. 428 and 429.

61. The Special Representative wishes to refer to information on some especially blatant and illustrative cases of murder, such as mass killings of peasants and other individuals, attempts against Church leaders, priests and monks in a general climate of persecution of the Church, assassinations of political leaders and human rights advocates and murders of university and school teachers.

62. Among the information on mass killings of peasants, mention should be made of the incident on 14 May 1980 on the banks of the Sumpul River, which forms the border between El Salvador and Honduras, in the province of Chatanalengo in the north of El Salvador. According to information provided by Legal Aid 27/, the Salvadorian Army and other military forces, such as the National Guard and the Policía de Hacienda (Treasury police), accompanied by members of the paramilitary organization ORDEN, hounded the population throughout vast areas of the countryside, causing several hundred peasants to take refuge on the banks of the Sumpul River where they machine-gunned them. The forces in question were aided by two helicopters. Some peasants managed to cross the river but were turned back by Honduran troops and forced to return to El Salvadorian territory. In all, some 600 people, including women and children, lost their lives. The 1980 report of the Inter-American Commission on Human Rights gives an essentially similar account (E/CN.4/1453, pp. 132 and 133). According to this source, however, the Government of El Salvador denied all responsibility and, in view of the contradictory versions, the Inter-American Commission decided to open an investigation, the results of which have not as yet been transmitted to the Special Representative. In any event, the report on refugees from El Salvador prepared for the Committee on Migrations, Refugees and Demography of the Council of Europe 28/ refers to the testimony of an Amnesty International representative which would confirm Legal Aid's version of the Sumpul massacre. Amnesty International's version 29/ of the massacre coincides with that of Legal Aid and also indicates that the account was confirmed by eyewitnesses and Salvadorian human rights groups. It also reports that, on 19 June 1980, the Honduran diocese of Santa Rosa de Copan published a declaration condemning the massacre signed by 36 priests and monks. The declaration was published in The United Church Observer in October 1980.

63. Another mass killing of peasants reported by Legal Aid 30/ and Amnesty International 31/ was that perpetrated by members of the paramilitary

27/ Legal Aid, El Salvador, One Year of Repression, p. 13.

28/ Council of Europe, op. cit., p. 23.

29/ Amnesty International, Letter dated 6 May 1981 from the Secretary General of Amnesty International addressed to the United States Secretary of State (AI Index: AMR 29/31/81).

30/ Legal Aid, El Salvador, One Year of Repression, p. 15.

31/ Letter to the United States Secretary of State, p. 6.

organization ORDEN on 9 July 1980 against members of the Mojica-Santos family in the Mogotes canton of San Pablo Tacachico, in which ORDEN members were protected by Army troops. Thirty-one members of the family were killed, including 15 children under 10 years of age. The Legal Aid report gives the names and ages of the people murdered.

64. According to press reports, 32/ on 7 April 1981 in Monte Carmelos, a district of San Salvador, uniformed and non-uniformed individuals murdered seven people in their homes and dragged a further 23 out and killed them in the street. Two houses were also set ablaze by bazooka fire. According to the same sources, the Ministry of Defence stated that the deaths occurred when the police, having found out that guerrilla fighters were to hold an important meeting in Monte Carmelos, arrived on the scene and were attacked by 60 people. Many sources state that, according to one report, four soldiers were killed. The El Salvador Commission on Human Rights, for its part, reported by telex from Mexico 33/ that on 16 June 1981, in the Plan del Pino canton near San Salvador, six adolescents were murdered in an operation carried out by more than 200 members of the Policía de Hacienda backed up by two small tanks. The report gave the names of those murdered, who were aged between 14 and 20 years, and indicated that they were killed before their relatives' eyes.

65. The Special Representative also has information on murders committed in what appears to be a general climate of persecution of the Catholic Church, whose leaders, priests and members have courageously defended human rights. These murders include, notably, the assassination of the Archbishop of San Salvador, Monsignor Oscar Arnulfo Romero. The Special Representative was able to read the sermons of the assassinated prelate 34/, which courageously denounced human rights violations and advocated the need for social reforms and reconciliation among the country's various forces and sectors. In his sermon on the day before his assassination, Monsignor Romero appealed to members of the Army and security forces, saying that the murder of peasants was contrary to divine and human law and warning the Government that reforms were useless if they were accompanied by so much bloodshed. On 24 March, the Archbishop was shot dead while saying mass in a chapel in San Salvador. The Special Representative was able to hear the testimony of Mr. Jorge Pinto who was until recently editor of the San Salvador daily paper El Independiente. According to that testimony, at the time of the assassination, Msgr. Romero was saying mass for the soul of Mr. Pinto's mother and Mr. Pinto asserts that he heard someone who arrived late for the mass say that the assassins were protected by national police patrols stationed near the chapel. The Special Representative also heard the statement of Judge Atilio Ramírez who was responsible for the first judicial investigation into the Archbishop's assassination.

32/ International Herald Tribune, 8 and 9 April 1981; Le Monde, 9 and 11 April 1981, Time, 10 April 1981; Le Continent, 13 April 1981.

33/ Telex of 19 June 1981 from the El Salvador Commission on Human Rights (Mexico City), transmitting a communiqué.

34/ Romero, Monsignor Oscar A., Cese la Represión!, Editorial Popular, Madrid, 1980.

According to the judge, in the days immediately following the assassination, he received death threats at his home and subsequently two young men a little over 23 years of age entered his home armed with machine-guns, obviously intending to kill him. The judge was able to defend himself with a shotgun and a revolver and left the country as soon as possible. Legal Aid 35/ reports the murder of other priests and monks. According to such reports, seminarist José Otsmaro Cáceres was murdered on 25 July 1980 by members of the National Guard and ORDEN in Platanares canton. According to the same source, Italian priest Cosme Spezzotto was murdered in the department of La Paz, Father Manuel Antonio Reyes Monio was murdered on 6 October 1980 and Father Marcial Serrano on 28 November 1980. Amnesty International 36/ refers to these and other killings of priests and monks. To these reports we should add that of the murder on 2 December 1980 of three United States nuns and a woman lay missionary, whose bodies were found in Santiago Nonualco in the department of La Paz bearing signs of violence. According to the 1981 report of the United States Department of State, 37/ a United States mission reported, on the basis of circumstantial evidence, the possible implication of the security forces in these murders and, according to press reports, 38/ the El Salvadorian Minister of Defence, Colonel José Guillermo García, announced that six members of the armed forces had been arrested on 29 April 1981 as murder suspects.

66. The widespread persecution of opposition political leaders and Salvadorian human rights advocates has also frequently ended in murder. Thus, according to information provided by Legal Aid, 39/ on 27 November 1980, 25 police in civilian clothes entered the Legal Aid office which was surrounded by 200 police and soldiers, and captured six leaders of the Frente Democrático Revolucionario (FDR) who were there at the time: Enrique Alvarez Córdoba, President of the FDR, Manuel Franco, Juan Chacón, Humberto Mendoza, Enrique Escobar Barrera and Doroteo Hernández. The bodies of all these people were found later, bearing signs of strangulation, and mutilation and with various bullet holes in their skulls. Amnesty International 40/ gives a similar version of what happened. The Special Representative was able to read letters and telegrams denouncing these murders from private individuals and associations who of course had not actually witnessed them.

35/ Legal Aid, El Salvador, One Year of Repression, p. 24.

36/ Letter to the United States Secretary of State, p. 4.

37/ United States Department of State, Country reports, op. cit., p. 432.

38/ International Herald Tribune, 11 May 1981, "Six Soldiers Arrested in Deaths of Women, El Salvador Confirms"; The Guardian, 11 May 1981, "Salvador Confirms Murder Arrests".

39/ Legal Aid, El Salvador, One Year of Repression, p. 16.

40/ Letter to the United States Secretary of State, p. 3.

67. According to reports from the El Salvador Commission on Human Rights 41/ and also the report of the Toronto Interchurch Committee on Human Rights in Latin America, 42/ on 3 October 1980 Mrs. Maria Magdalena Henriquez, press attaché for the El Salvador Commission on Human Rights, was abducted by two uniformed members of the police. Her body was found on 7 October with eight machine-gun wounds. The Special Representative read a photocopy, provided by Legal Aid, of the statement by a witness to the murder. Again, according to information from the El Salvador Commission on Human Rights 43/ and the Toronto Committee, as well as from Legal Aid, 44/ on 25 October 1980 the administrator of the El Salvador Commission on Human Rights, Mr. Ramón Valladares, was murdered. Regarding the killings of Mrs. Henriquez and Mr. Valladares, the Special Representative was able to read letters and telegrams from private associations and individuals who had not, however, witnessed what happened.

68. Furthermore, on 3 January 1981 Mr. José Rodolfo Viera, Director of the Instituto Salvadoreño de Transformación Agraria, and United States citizens Michael Hammer and Mark Pearlman, advisers on labour, were murdered in the Sheraton Hotel in San Salvador. Amnesty International 45/ indicates in reference to these murders that, according to published reports, the Government of El Salvador has made arrests in connexion with this case, an occurrence which, in Amnesty International's view, is an exception to the general rule.

69. The Special Representative also wishes to mention a number of reports on murders of secondary and primary school teachers. Thus, according to information provided by Legal Aid, 46/ the Asociación Nacional de Educadores Salvadoreños reported on 21 June 1980 that 136 schoolteachers had been killed since 1 January of that year.

70. In a communiqué of 20 August 1980, the same Association reported that in 1979 33 university teachers belonging to the Association had been murdered by military forces and officially backed paramilitary groups and that so far in 1980 84 secondary schoolteachers had been murdered.

41/ El Salvador Commission on Human Rights, January 1981, Boletín Informativo, No. 4, p. 6.

42/ Interchurch Committee on Human Rights in Latin America, op. cit., p. 45.

43/ El Salvador Commission on Human Rights, Boletín Informativo, No. 4, p. 11.

44/ Legal Aid, El Salvador, One Year of Repression, p. 19.

45/ Letter to the United States Secretary of State, p. 11.

46/ Legal Aid, El Salvador, One Year of Repression, p. 14.

71. Amnesty International, for its part, reports that 90 primary schoolteachers were murdered between January and October 1980. Legal Aid 47/ also refers to individual murders such as that of Bladimir Barrios, director of a school group in Tecapán, who was machine-gunned in front of his pupils by heavily armed individuals wearing bulletproof vests who identified themselves as members of the Death Squad, in an action co-ordinated by the National Guard; and that of the Rector of the National University, Félix Antonio Ulloa, and his driver, Francisco Antonio Cuellar Menendez, on 28 October 1980.

72. Furthermore, according to a telex communiqué from the El Salvador Commission on Human Rights, 48/ the Asociación Nacional de Educadores Salvadoreños reported the abduction and subsequent murder of 12 schoolteachers, including the headmistress of the Ahuachapan Rural School between 1 and 18 June 1981.

B. Abductions and disappearances

73. We are dealing here with a category of serious human rights violations which has much in common with the previous category of murders. In fact, many of those abducted lost their lives at the hands of their abductors, but only after some time. In addition, their bodies are not always found and if they are, they have been tortured, mutilated and disfigured to such an extent that they are often unrecognizable.

74. According to Legal Aid, 49/ under the military governments of Colonel Molina and General Romero (1972-1979), the office had records of 215 people who had been captured and later disappeared. The Working Group on Enforced or Involuntary Disappearances, established within the United Nations by resolution 20 (XXXVI) of the Commission on Human Rights, received reports of 104 cases of disappearances for the period January to October 1979 (E/CN.4/1435, para. 86).

75. On 6 November 1979, Decree No. 9 of the Government Revolutionary Junta of El Salvador established a Special Commission to Investigate Political Prisoners and the Disappeared. The Commission issued its final report on 3 January 1980, in which it stated: "In general terms, we can report that to date we have not found a single person of those who appear on the list of the disappeared; but on the other hand, we have proof of the capture of many of them by various official security forces, as of the detention of several of them in the barracks of the security forces." Since the Special Commission had not found any prisoners in any of those places, it added the following comment: "All this brings us to the conclusion that we can presume that all the disappeared are dead" (E/CN.4/1435, para. 91).

47/ Legal Aid, El Salvador, One Year of Repression, pp. 14 and 19.

48/ Telex dated 19 June 1981 from the El Salvador Commission on Human Rights (Mexico City), transmitting a communique.

49/ Legal Aid, El Salvador, One Year of Repression, p. 17.

76. With regard to 1980, Legal Aid 50/ has reported 211 cases of people who disappeared for political reasons between January and August inclusive of that year. According to that information, the individuals in question were captured by the Army and military security forces. The Working Group on Enforced or Involuntary Disappearances (E/CN.4/1435, para. 88), for its part, received 199 reports on disappearances in 1980. Of these, 19 related to trade unionists, 48 to students, and 45 to peasants, day labourers and casual workers. The Working Group also received reports of disappearances of teachers, industrial workers, two priests and one journalist.

77. According to the reports analysed by the Working Group, to which the Special Representative had access, the arrests usually occurred at the home of the missing person, in the street or in public places. Also according to those reports, most of the arrests were made by members of the Army, the National Guard, the Policía de Hacienda, the security forces or the paramilitary organization ORDEN. In some cases, it was reported that the national police and even the Air Force took part in the arrests. Several reports state that the subject's home was searched and ransacked by the persons making the arrest.

78. The Working Group itself states that, with regard to disappearances in 1980, little information has been received on the fate of disappeared persons or on places where they might be held. In a few cases, the body of the victim has been reported found, some time after his arrest. In addition to the information on the arrests, there is evidence that, prior to their deaths, these persons had been detained somewhere for a period: the bodies bore marks showing that their hands had been bound and that they had been tortured. Further, the Working Group says that it is aware of reports that numerous bodies have been found in El Salvador, often mutilated beyond recognition, which precluded their identification as missing persons.

79. In June 1981, the International Committee of the Red Cross 51/ reported that, on average, 40 people visit its office in El Salvador each day to report cases of persons presumed to have disappeared or to ask for news of disappeared relatives. Since June 1980, the ICRC office has opened some 1900 files on persons presumed missing and, through its efforts, has managed to find 438 of them, 76 of whom were found dead.

80. With regard to detentions, the International Committee of the Red Cross reports that, after it opened its office in El Salvador in June 1980, the authorities allowed staff of the office to visit all permanent or temporary, civilian or military detention centres without notice and to interview all the prisoners and assist them without any officials in attendance. According to the same source, staff of the office made 295 visits to 159 detention centres between

50/ Ibid.

51/ International Committee of the Red Cross, Acción del CICR en El Salvador, situation report No. 2, June 1981 (OP/AML/2e-81, 25/06/81).

1 January and 31 May 1981. Seven hundred and seventy five more people were detained during that period, but by making frequent visits, staff of the office were able to interview a total of 4,290 prisoners.

C. Other terrorist acts

81. The murders, abductions and disappearances reported in preceding pages are extreme manifestations of terrorist acts. We shall now turn to a number of other terrorist acts which were designed, on a massive and violent scale, to prevent the exercise of such human rights as freedom of opinion, expression and peaceful assembly, trade-union rights, etc., but on occasion also culminated in the tragic loss of human lives.

82. According to information supplied by Legal Aid, 52/ on 18 February 1980 the explosion of a charge of dynamite destroyed the radio station of the Archdiocese of San Salvador, YSAX, La Voz de la Verdad, which used to broadcast the sermons of Monsignor Romero. The 1980 report of the Inter-American Commission on Human Rights also reports this attempt, but gives the date as 19 February (E/CN.4/1453, p. 135).

83. Legal Aid also reports 53/ raids on trade-union premises, in particular the 15 March 1980 raid on the premises of the Federación Sindical Revolucionaria (Revolutionary Trade-Union Federation), in which a worker, Mauricio Barrera, was killed. According to information from the same source, as a result of the destruction of trade-union premises, since July 1980 Salvadorian workers have been unable to exercise their rights of association and assembly. The report of the Interchurch Committee on Human Rights in Latin America 54/ also refers to various attacks on trade unions.

84. According to information reproduced in the 1980 report of the Inter-American Commission on Human Rights, on 2 April 1980 two Dutch journalists were wounded by the police who fired on the vehicle in which they were riding despite the facts that they had identified themselves as reporters and the car had visible press signs (E/CN.4/1453, p. 137).

85. According to information in the same report, on 26 June 1980 some 300 people, including the leaders of the Comité Revolucionario de la Coordinadora de Masas (Revolutionary Committee for Mass Co-ordination) were trapped, together with national and foreign newsmen, in the basement of a building at the National University of El Salvador. Army and police forces surrounded the university for three hours and then entered it shooting. The result was 27 dead, 15 wounded and

52/ Legal Aid, El Salvador, One Year of Repression, pp. 19 and 20.

53/ Ibid., p. 18.

54/ Interchurch Committee on Human Rights in Latin America, op. cit., pp. 45 and 46.

200 arrested. Legal Aid also refers to this action, reporting that 23 students were killed, including a 14-year old. 55/

86. Again, on 5 July 1980 the Legal Aid offices 56/ were raided, according to a report by that organization. The Inter-American Commission on Human Rights also refers to this incident, which it reports took place on 3 July, indicating that the raid was carried out by 128 national security agents who made a complete search of the offices, confiscating records compiled since 1975 (E/CN.4/1453, p. 136). Amnesty International 57/ reports that Legal Aid's various offices had to close down temporarily in mid-December 1980 after they had been raided 17 times in one week by the National Police. Employees had tried to open the offices but the attacks had continued and many of them had been forced to go into hiding or to go into exile abroad.

87. According to information provided by Legal Aid, 58/ on 16 August 1980 the Army raided and searched a refugee centre authorized by the Archdiocese which was situated at Mejicanos, to the north of the capital, and housed more than 400 women and children who were fleeing government repression.

88. Again, according to the report of the Interchurch Committee on Human Rights in Latin America, 59/ on 19 November 1980 Army units together with a group of heavily armed civilians invaded the refugee centre behind the San Salvador diocesan offices and seminary. Firing into the area in order to terrorize more than 600 refugees, they searched and destroyed the small clinic next to the entrance to the refuge. According to the same source, on 12 December soldiers occupied the Soyopango church and refugee centre.

89. The Special Representative would also like to refer to attacks on the San Salvador newspaper El Independiente. According to testimony given by its former editor, Mr. Jorge Pinto, the newspaper's printing shop was bombed by members of the military one day in June 1980 and a few days later the home of the newspaper's owner was machine-gunned. According to the same testimony, on 15 January 1981 the API press agency, also headed by Mr. Pinto, was occupied and all its staff imprisoned. On 18 January 1981, the El Independiente offices were taken over by the military. The following day, Mr. Pinto went into exile.

90. With regard to the terrorism in general carried out by left wing opposition groups, the Special Representative wishes to recall the information given in

55/ Legal Aid, El Salvador, One Year of Repression, p. 18.

56/ Ibid.

57/ Letter to the United States Secretary of State, p. 3.

58/ Legal Aid, El Salvador, One Year of Repression, p. 3.

59/ Interchurch Committee on Human Rights in Latin America, op. cit., p. 47.

paragraphs 55 to 72, according to which reports from four sources also attribute terrorist acts to such groups. Furthermore, the Special Representative read reports in the El Salvador press of numerous terrorist acts, including murders and hostage-taking attributed to the guerrilla movements.

91. In this connexion, we should mention that, according to information published by the International Committee of the Red Cross (1979 and 1980), 60/ opposition groups occupied a number of buildings such as government offices and embassies, taking hostage civilians who happened to be there. On one occasion, the Ambassador of the Republic of South Africa was taken hostage. According to information which the Special Representative received from other sources, the Ambassador was later murdered. 61/

92. The Special Representative would also like to mention here the report on the burning of the home and the murder of Colonel Carlos Alfredo Choto, his wife and two children aged 15 and 11 years, which took place late on 16 November 1980 and, according to the file opened on the case by the El Salvador authorities, was the work of a militant of the Fuerzas Armadas de la Resistencia Nacional (FARN) (Armed Forces of the National Resistance).

93. The international press has also reported other acts attributed to the guerrilla forces. Thus, the 6 April 1981 issue of the International Herald Tribune reproduces statements by the El Salvador authorities blaming the guerrilla forces for attacks on the office of the International Harvester Company and the building of the conservative newspaper Diario Latino. In its 10 April and 25 May 1981 issues, the same newspaper reproduced statements by the El Salvador authorities blaming guerrilla forces for attempts to destroy electric power lines, bridges and means of transport in order to destroy the country's economy. According to the same report, such action had been followed by attempts to cut off the country's food supply. The International Herald Tribune likewise reported on 9 and 13 July 1981 that Army troops had been sent to fight guerrilla units who had surrounded a major power generating plant.

94. According to information handed over to the Special Representative by the El Salvador authorities, 62/ there were 780 cases of economic sabotage in 1980 and 681 cases in the first eight months of 1981. It should be said that neither the Frente de Liberación Nacional Farabundo Martí nor the Frente Democrático Revolucionario deny that such acts of economic sabotage were carried out, although

60/ International Committee of the Red Cross, Informe de actividades, 1979, p. 38, 1980, p. 32.

61/ Information provided by the Governments of El Salvador and the United States of America.

62/ Fuerza Armada de El Salvador, Policía Nacional, Resumen Estadístico sobre las Actividades de Organizaciones Terroristas, Tendientes a Destruir la Economía de la República de El Salvador, C.A.: September 1981.

in a document provided to the Special Representative 63/ such acts are presented by both organizations as being directed against the economic infrastructure of the oligarchy and never against the Salvadorian people.

D. Other human rights violations

95. The information received by the Special Representative on abductions and disappearances would indicate that people captured by the Army and other security forces are rarely handed over to the Salvadorian judiciary. This violates the right to a public and impartial trial.

96. The Special Representative also wishes to recall the provisions of Decree 507 reproduced in section II of this report, according to which judicial subsidiary organs and the judicial authorities themselves enjoy excessively broad discretionary powers to decree preventive measures involving deprivation of freedom and also corrective measures for long periods of time, during which the accused are not given an opportunity to present their defence. Corrective measures are even applied to persons under 16 years of age.

97. Such information also indicates that, in cases of murder, abduction and disappearance and other terrorist acts, the competent organs of the Republic of El Salvador did not take the requisite legal action to investigate the facts and punish those responsible. As the 1980 report of the Inter-American Commission on Human Rights indicates in relation to the murders in that year, the Commission has no knowledge "that government authorities, including the Attorney General and judicial branch, are conducting investigations with the promptness called for by such assassinations" (E/CN.4/1453, p. 134). The report of the United States Department of State 64/ indicates in this connexion that the judicial system's total inadequacy has prompted elements of the security forces to ignore the system and dispense their own justice. A report published in the International Herald Tribune on 7 May 1981 is illustrative in this connexion, according to which a diplomat posted to El Salvador had said that no one had been tried and sentenced for political crimes because no judge dared to try anyone, whether from the right-wing, the left-wing or the centre, since he knew that if he did so he would be murdered. And in the opinion of a Salvadorian lawyer published in the same source, the judicial system only functions in cases of trivial, non-political offences such as theft or petty larceny.

98. The Special Representative would like to refer here to the explanations given by the competent authorities of the Republic of El Salvador regarding the difficulties which prevent the normal functioning of justice in the present

63/ Frente Farabundo Martí para la Liberación Nacional, Frente Democrático Revolucionario, Informe sobre la Sistemática Violación de los Derechos Humanos en El Salvador, 30 July 1981.

64/ United States Department of State, Country reports, op. cit., p. 429.

situation of widespread violence. According to these explanations, the structure of the judiciary is not suited to the investigation and to the institution of criminal proceedings for the vast number of offences currently committed. In addition, in most murder cases, eyewitnesses are very reluctant to make depositions and will only say that the crimes were committed by masked people whom they cannot identify, so that it is impossible for justice to be done effectively and expeditiously.

99. None the less, there is information on some arrests made by the authorities. According to Amnesty International, ^{65/} reports have been published on the arrest by the Government of El Salvador of individuals involved in the January 1981 murder of two United States labour advisers together with José Rodolfo Viera, Director of the Instituto Salvadoreño de Transformación Agraria. In Amnesty International's view, however, this exception does not alter the already well-established rule that no steps are taken to prevent or punish human rights violations. Furthermore, it should be remembered that, according to press reports already mentioned in this report, the El Salvador Minister of Defence reported the arrest on 29 April 1981 of six members of the armed forces suspected of involvement in the 2 December 1980 murder of three United States nuns and a woman lay missionary.

100. The Special Representative also wishes to mention here the explanations given to him by the military authorities of the Republic of El Salvador to the effect that 610 members of the National Guard have been expelled for abuses of authority which did not warrant judicial proceedings, and 40 more handed over to the courts. President Duarte, for his part, has indicated in statements to the United States press that his Government had expelled 600 members of the National Guard and arrested a further 64 for crimes against Salvadorian civilians. ^{66/}

101. It is also obvious that the Salvadorian people do not exercise the political right of participation in public affairs. As already indicated in section II of this report, the Government Revolutionary Junta assumed legislative powers by Decree No. 1 of 15 October 1979 and in fact exercises such powers through law-ranking decrees. All the legislative measures adopted in El Salvador since that time, including those on the agrarian reform, are contained in decrees of this kind and the people have never been consulted in any way.

VI. SITUATION OF REFUGEES AND OTHER PERSONS DISPLACED AS THE RESULT OF CURRENT EVENTS IN EL SALVADOR

102. The events in El Salvador are forcing many people to leave their homes and normal places of residence and to move to other parts of the country or to seek refuge in neighbouring countries.

103. The report submitted to the Committee on Migrations, Refugees and Demography of the Council of Europe speaks of tens of thousands of displaced persons inside

^{65/} Letter to the United States Secretary of State, op. cit., p. 11.

^{66/} The New York Times, 22 September 1981, p. A 13.

the country. 67/ The report of the United States Department of State 68/ gives the figure of some 62,000 displaced persons. According to the report of the International Committee of the Red Cross of June 1981, 69/ the number of persons who have left their homes as a result of the fighting and insecurity is 150,000. The information received by the Special Representative indicates that some displaced persons are accommodated in shelters operated by the Church. Others are receiving assistance from the International Committee of the Red Cross in two ways: by the evacuation of civilians and wounded from combat zones and by the provision of medical and food aid in areas where fighting occurs.

104. The United Nations High Commissioner for Refugees 70/ reports that, since April 1980 many Salvadorians have been seeking refuge in other countries and that the number of refugees abroad is steadily rising. According to that information, on 31 May 1981 the number of Salvadorian refugees in neighbouring countries had grown to 180,000. Of them, 7,000 are in the territory of Belize; 10,000 in Costa Rica; 40,000 in Guatemala; 35,000 in Honduras; 70,000 in Mexico; 10,000 in Nicaragua; and 1,500 in Panama. Most of these refugees come from poor rural areas and the women and children represent a high percentage. In Mexico, however, there is a relatively high number of non-rural refugees.

105. The United Nations High Commissioner for Refugees has worked hard to protect the refugees and to provide material assistance. The World Food Programme is meeting most of the food requirements of the Salvadorian refugees, but the High Commissioner has had to appeal for international contributions to the assistance programme for Salvadorian refugees.

VII. SITUATION WITH REGARD TO COMPLIANCE WITH THE INTERNATIONAL RULES OF HUMANITARIAN LAW APPLICABLE IN ARMED CONFLICTS

106. The information reaching the Special Representatives states that the minimum rules of humanitarian law laid down in international instruments, to which El Salvador is a party and which are referred to section II of this report, are not always complied with in the armed conflicts taking place in that country between regular forces of the Army and groups of guerrillas.

67/ Council of Europe, op. cit., p. 7.

68/ United States Department of State, Country reports, op. cit., p. 428.

69/ International Committee of the Red Cross, "Acción del CICR al Salvador", p. 1.

70/ "Appeal for Humanitarian Assistance to Salvadorian Refugees in Central America, Mexico and Panama, 25 June 1981" by Mr. Poul Hartling, United Nations Commissioner for Refugees.

107. According to Amnesty International, 71/ both non-combatants and other persons have been taken out of hospitals and killed, apparently for the sole reason that they sought medical attention after being wounded in the civil conflict. It is further alleged that medical personnel have been abducted and murdered, apparently for having treated the wounded, including non-combatants. There are also reports of the abduction of emergency aid personnel when they tried to bring medical supplies to the victims of the hostilities.

108. Amnesty International 72/ provides miscellaneous information on the subject and the Special Representative deems it useful to summarize some of it. On 12 January 1981, troops apparently entered a clinic at Chatalenango where they killed five wounded patients and abducted five young women. On the same day, three Baptist emergency service assistants were reportedly killed when they tried to bring supplies to the Red Cross. On 5 February 1981, Dr. Alcides Ortega and Dr. Mauricio González were allegedly arrested in Chutitoto and their mutilated bodies were found two days later. On 19 February 1981, the medical student Carlos Alberto Vazquez Sánchez was reportedly arrested in Soyapando by members of the air force and his present whereabouts are unknown. On the same day, the medical student Luz América Vaquerana was apparently arrested in the capital by members of the National Police and her present whereabouts are unknown.

109. According to information from the Public Health Commission to El Salvador of July 1980, since the 1979 coup d'état death squads and uniformed forces have been repeatedly entering hospitals and clinics and firing on patients, doctors, nurses and medical students in cold blood. According to the same source these murders were often preceded by cruel forms of mutilation and brutality, at least nine doctors and seven medical students were murdered after the coup d'état and many other health workers have been victims of violence and harassment. 73/

110. Legal Aid reports that, between January and July 1980, at least 10 doctors were murdered, hospitals were invaded and some patients were taken and disappeared and others murdered. 74/

111. The report of the United States Department of State 75/ indicates that prisoners are seldom taken in the clashes between the army and security forces and

71/ Letter to the United States Secretary of State, op. cit., p. 5.

72/ Ibid.

73/ Committee for Health Rights in El Salvador, "Abuses of Medical Neutrality", report of the Public Health Commission to El Salvador, July 1980 (New York, N.Y., USA).

74/ Legal Aid, El Salvador, One Year of Repression, p. 15.

75/ United States Department of State, Country reports, op. cit., p. 5.

the guerrillas and this opinion has been confirmed in testimony heard by the Special Representative. According to its report, 76/ the International Committee of the Red Cross has been conducting an extensive campaign since November 1980 to propagate fundamental humanitarian principles. The purpose of this campaign, aimed at the general public and particularly at all those participating in the fighting, is to ensure, on the one hand, that the combatants respect the civilian population, the wounded and prisoners and, on the other hand, that they respect the insignia and personnel of the Red Cross.

VIII. CONCLUSIONS

112. After studying and evaluating the information recapitulated in the foregoing pages of this interim report, the Special Representative can formulate some conclusions.

113. First of all, it is obvious that the great majority of the Salvadorian people do not exercise economic, social and cultural rights of particular importance at acceptable minimum levels. The Special Representative is, of course, aware that El Salvador is a developing country with a low gross national product and low per capita income, but it is impossible to overlook the fact that the national wealth is unfairly and inequitably distributed and that the essential public services of the State, including educational and health services, are not sufficient to meet the requirements of the great majority of the inhabitants. Consequently, far-reaching administrative and social reforms are necessary in El Salvador, among which agrarian reform is paramount. With regard to agrarian reform, the measures taken by the Government Revolutionary Junta, the difficulties and resistance it has encountered and the criticisms levelled against it should be borne in mind.

114. As for civil and political rights, the information collected by the Special Representative has convinced him that, under the régime of the Government Revolutionary Junta which assumed power on 15 October 1979, there has been in El Salvador a consistent pattern of gross violations of these rights which, in many cases has culminated tragically in attempts on human life. Members of the State apparatus, and violent groups of the extreme right apparently acting in collusion with them and armed groups of the extreme left are both responsible for these violations. At present the Special Representative is not in a position to establish, even approximately, how much responsibility lies with one or the other sector, although he has to admit to having received more abundant, precise and detailed information concerning violations of human rights imputable to members of the State apparatus and violent groups of the extreme right.

115. The Special Representative is also convinced that the executive and judicial organs of the Republic of El Salvador have adopted a very widespread attitude of passivity and inactivity with regard to these violations of human rights.

76/ International Committee of the Red Cross, "Acción del CICR al Salvador", p. 5.

116. On the other hand, it is a fact that, under the 1962 Constitution and the international instruments binding on El Salvador in respect of human rights, the authorities of this country should not be denied the power to take exceptional measures to deal with the special circumstances of violence prevailing in the territory. But neither those instruments nor the most elementary moral obligations to respect the human person, which are inherent in any normal conscience, would in any case justify, in the guise of exceptional measures, the violation of fundamental and inderogable human rights including, first and foremost, the right of every person to life.

117. The Special Representative has also come to the conclusion that, as a result of the development of the armed clashes between regular forces of the Salvadorian Army and opposition guerilla groups, there have been serious violations of human rights which, in many cases, have culminated in the deaths of persons whose lives should have been respected by virtue of the moral obligations inherent in any normal human conscience and in accordance with international instruments binding on El Salvador. In this connexion, the Special Representative also finds it impossible at this time to establish even approximate percentages of the violations imputable to one sector or the other.

118. Finally, the Special Representative wishes to state that he has not the slightest doubt as regards the ultimate objective that should be sought in the Republic of El Salvador and as regards the future which its inhabitants deserve: a situation of peace and social justice in which human rights and fundamental freedoms are respected and in which the Salvadorian people is the sole master of its destiny without any form of outside interference. The attainment of this objective implies that democratic elections should be held in El Salvador in a manner to be later specified, whereby a fundamental political right of the Salvadorian people would be granted in accordance with article 21 of the Universal Declaration of Human Rights, article 25 of the International Covenant on Civil and Political Rights and article 23 of the American Convention on Human Rights.

119. The positions of the Government and of the opposition are, however, different at present as regards the possible holding of elections. So far as the Government is concerned, and as President Duarte said in his address to the United Nations General Assembly on 29 September 1981, the Government "considers that the solution of the present crisis in the country must be essentially political and democratic in nature" (see A/36/PV.17, p. 17), and in that connexion his plan is to hold elections in March 1982 for the formation of a constituent assembly which would have to draft a new constitution and elect a provisional president, in addition to calling for general elections. The position of the opposition movements regarding elections is more complex. According to a document delivered to the Special Representative by the Frente de Liberación Nacional Farabundo Martí-Frente Democrático Revolucionario (FLNM-FDR), elections are not per se a way out of the Salvadorian crisis and may even intensify it. Both political forces of the opposition, however, state that they are prepared to consider the elections "as part of a solution process and as an outcome of the conditions which an international mediation process may create". In any case, the FLNM-FDR take the view that "an electoral process makes sense as the expression of the people's will if the conditions and climate exist for the people to express its will freely".

/...

120. The Special Representative, for his part, regards this last point as crucial. The Government plan for holding elections is perfectly legitimate and acceptable if and when the electoral process takes place in a prevailing climate of peace in which the rights of free expression, association and assembly are fully respected, both de jure and de facto, a complete and genuine roll of voters is available and, lastly, the authenticity of the ballot and effective respect of the people's will are guaranteed. This is certainly the sense of paragraph 6 of resolution 32 (XXXVII) of the Commission on Human Rights, laying down the terms of reference of the Special Representative, in which the Commission:

"Emphasizes that the people of El Salvador have the right, as soon as appropriate conditions have been established, to establish a democratically elected Government, in an atmosphere free from intimidation and terror, and to determine their own political, economic and social future, free from outside interference."

121. Consequently, as a sine qua non for holding elections, the Government of El Salvador and the other parties concerned should take all necessary steps to end the serious violations of human rights occurring in the country, including steps to ensure compliance with the 1949 Geneva Conventions and the 1977 Protocols. The Special Representative is not in a position to specify, in this interim report, what these measures should be, although he thinks that some of them are obvious, such as the exercise of real control by the Government over all members and units of the armed and security forces and over all types of armed organizations and individuals committing these violations, and penalties for possible violations. But the Government of El Salvador should also show itself to be open and flexible as regards any other type of measures which might lead to pacification of the country, and dialogue with the opposition forces should not be excluded from the latter measures.

122. Once a climate of peace and effective respect for human rights and fundamental freedoms have been established in El Salvador, elections should be held so that the people can become the sole masters of their destiny. For that purpose, consideration should be given to the possibility that some international organization, such as the United Nations or the Organization of American States, might monitor the proper development of the electoral process along the lines described above.
