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COMMISSION ON HUMAN RIGHTS  
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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, INCLUDING:

- (b) STUDY OF SITUATIONS WHICH APPEAR TO REVEAL A CONSISTENT  
PATTERN OF GROSS VIOLATIONS OF HUMAN RIGHTS AS PROVIDED FOR  
IN COMMISSION RESOLUTION 8 (XXIII) AND ECONOMIC AND SOCIAL  
COUNCIL RESOLUTION 1235 (XLII) AND 1503 (XLVIII): REPORT  
OF THE WORKING GROUP ON SITUATIONS ESTABLISHED BY ECONOMIC  
AND SOCIAL COUNCIL RESOLUTION 1990/41 OF 25 MAY 1990

Written statement submitted by Pax Romana, a non-governmental  
organization in special consultative status

The Secretary-General has received the following written statement,  
which is circulated in accordance with Economic and Social Council  
resolution 1296 (XLIV).

[24 March 1997]

1. The purpose of the present document is to review the situation with regard to certain persistent patterns of gross violation of human rights which Pax Romana has been denouncing for a number of years. All of them are closely connected with undeclared states of emergency and with the phenomenon of impunity. Consequently, we are referring not only to those situations in which there has been deliberate failure to prosecute direct violations of the human rights of the populations concerned, but also to other cases where, through deliberate and totally unjustified delay, the true facts have remained unclarified because of the excessive period of time that has elapsed between the commission of the offences and their investigation.

2. At the same time we take the opportunity to inform the members of the Commission of further facts of which we are reliably informed.

#### Guatemala

3. Despite the efforts made to secure the demobilizing of the PACs and the further dispatch of international observers on 3 March, threats are being made against students, leaders of political parties and trade union members. Some persons have been murdered solely for having lodged a complaint of corruption. Investigation of these matters which have been the subject of formal complaints has never produced evidence or indications of culpability, even where the facts complained of were matters of public knowledge. For example, Narciso Mata Perez and his daughter Cruz Mata Santos were assaulted on 13 November 1996 in the village of Sechul. They were able fully to identify their five attackers, but the latter were not questioned concerning their participation in the attack. Oddly enough, the persons assaulted are members of the Committee for the recovery of local lands and the attackers whom they identified are relatives of a farmer who claims ownership of land in Sechul.

4. Whenever the eviction of lawful owners of land takes place, at least one person is killed, a number are injured and illegal arrests take place. We refer to "illegal arrests" because the forcible entry into and expulsion from the lands was carried out by the official forces of law and order acting without any judicial authority. Again, those responsible for the massacre at Xaman still remain unpunished. On 5 October 1996, the anniversary of the massacre, there was still no certainty that the persons accused would incur penalties for the offences they were accused of committing. A report by the MINUGUA mission asserts that there is no evidence that the victims of the massacre were armed. There is clear evidence that the army wants the accused soldiers to benefit from an amnesty.

5. We should like to believe that, with the new peace process, all these cases may be properly investigated and that those responsible may be punished. The prosecution of offenders and a pardon or national reconciliation are not mutually exclusive. We believe in the processes of reconciliation and pardon, but only once the responsibilities of all concerned have been determined. If this is not done, those who have suffered attacks are not prepared to agree to a pardon. As a Christian organization, we believe that peace must be based on justice. <sup>1</sup>

#### Colombia

6. The agrarian struggles in Colombia have long given rise to flagrant violations of human rights that still go unpunished. A clear example of this is the violent evictions, with demolition and burning of dwellings and destruction of crops, that were carried out in the area of the Bellacruz estate, actions which are said to be the responsibility of the very powerful Marulanda family and to have been carried out by paramilitary patrols entirely financed by that family. We refer here to Carlos Arturo Marulanda Ramírez and his brother Francisco Alberto. An eviction operation carried out on this farm on 22 April 1996 resulted in the death of seven peasants who had previously complained of such attacks. These incidents have never been investigated. The various Governments have not only ignored these grave matters and the many

national and international complaints concerning them, but have entrusted those involved in them with important political and diplomatic responsibilities. Pax Romana hopes that diplomatic dismissals will be accompanied by judicial measures to determine responsibilities. <sup>2</sup>

#### Republic of Korea

7. In this country the violation of human rights does not take place in the same way as it does in the cases previously mentioned. Impunity, or semi-impunity, is cloaked in a mantle of legality. Torture, as an official method of investigation, is punishable under article 125 of the Penal Code by a maximum penalty of 5 years' imprisonment and 10' years deprivation of rights, the maximum level of these penalties being applicable only where the offences have resulted in injury or death. At the same time, the ordinary offence of causing bodily harm is punished by a maximum of 7 years' imprisonment and 10 years' deprivation of rights, punishments which exceed those applicable where this harm is caused by the practice of torture. These provisions are contrary to article 4, paragraph 2, of the Convention against Torture, which was signed by the Government of the Republic of Korea in 1995. As is well known, article 4 of the Convention provides that torture carried out by those responsible for public investigations shall be punishable by appropriate penalties which take into account the grave nature of the offences. This is not the situation in the Republic of Korea.

8. It is necessary to add that, according to calculations by humanitarian organizations operating in the country, only one tenth of the cases of torture reported give rise to judicial proceedings, and 90 per cent of such proceedings are terminated for lack of evidence. The prescription which applies in the other cases is due to deliberate delays in the investigation of the charges or to procedural delays in dealing with 90 per cent of the reported cases of torture, which therefore remain unpunished. <sup>3</sup>

#### Tibet

9. There has been a continuation of the illegal arrests, disappearances, acts of torture and, generally, persecution, in violation of the Universal Declaration of Human Rights, of opponents of the unconditional annexation of Tibet by the People's Republic of China. Unlawful arrests and the practice of torture by government forces continue to be allowed. We believe that, with the recent changes that have taken place in the approach to dealing with the governance of the People's Republic of China itself and the observance of civil and political rights, all such acts contrary to the ideals of the United Nations will not only cease to exist but will cease to enjoy the impunity from which they currently benefit. <sup>4</sup>

#### Kosova

10. The frequently denounced violation of human rights in this small republic, currently a province of Serbia, must be regarded as constituting a consistent pattern of gross violation of rights. Certain cases may be cited as examples. Mr. Nait Hasani is currently at an unidentified location "thanks" to action by the Serbian police which, on 31 January 1997, after

having brought him to the hospital in Prishtina for two days, then released him without communicating his new whereabouts. The Serbian administration has refused to give any information concerning him to his lawyer.

11. Four lawyers reported that 55 Kosova Albanians were imprisoned, 49 of them being released after 10 days. All the prisoners had been brutally tortured for the purpose of making them sign confessions. A delegation of the European Parliament which met members of the Parliament of the Republic of Kosova in Prishtina commented that they found it "incredible that, in the late twentieth century, in the very centre of Europe, such medieval torture should be practised in Kosova". It was so medieval that Besnik Restelica died as a result of the torture inflicted upon him, although his father was told that he had committed suicide in his cell. This demonstrates that even the security forces of Serbia seek to evade their responsibility, knowing that their acts are unlawful. <sup>5</sup>

12. Pax Romana believes that the most flagrant patterns of consistent and gross violation of human rights occur under undeclared states of exception involving martial law with grave limitations on the guarantee of exercise of rights. Consequently, Pax Romana recommends to the Commission the adoption of the following measures:

- (i) Adoption of a resolution approving the appointment of a special rapporteur on undeclared states of emergency, since violations of human rights continue to be the most neglected matter in these situations; or, alternatively, extension of the mandate of Mr. Leandro Despouy to cover such states of emergency;
- (ii) Adoption of a resolution urging States to establish juridical machinery and institutions to protect human rights against the plague of impunity, in implementation of General Assembly resolution 48/134 of 20 December 1993 and Commission resolution 1996/50.
- (iii) Ensuring that removal of Mr. Carlos Arturo Marulanda Rodriguez from membership of the Colombian diplomatic delegation to the European Union is not merely a symbolic act, but marks the beginning of juridical measures to combat impunity in Colombia.

#### Notes

1. See E/CN.4/1997/34, paras. 162 and 163, and General Assembly resolution 51/198. See also E/CN.4/1997/7/Add.1, paras. 174 et seq., which report on cases of torture from October 1994 to June 1996.

2. It is no coincidence that the Working Group on Enforced or Involuntary Disappearances received reports of 16 further disappearances in Colombia. See E/CN.4/1997/34, paras. 121 and 122; the recommendations of the Special Rapporteur on torture in document E/CN.4/1997/7, para. 64, and decision 32/1996 of the Working Group on Arbitrary Detention (E/CN.4/1997/4/Add.1).

3. See the report of the Special Rapporteur on torture, E/CN.4/1997/7/Add.1, paras. 400 et seq. and decisions 49/1995 and 25/1996 of the Working Group on Arbitrary Detention (E/CN.4/1997/4/Add.1).

4. See the recommendations of various United Nations bodies: decision 19/1996 of the Working Group on Arbitrary Detention (E/CN.4/1997/4/Add.1); E/CN.4/1997/7, para. 61, and also the six new cases of enforced disappearance in 1996 referred to in the report E/CN.4/1997/34, particularly paragraphs 109 and 110. See also the forcefulness of the latest resolution (20 February 1997) of the European Parliament condemning China's occupation of Tibet (DOC RC/320/320475).

5. See resolution 51/111 of the General Assembly of the United Nations, adopted in December 1996.

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