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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS */

Report by the Expert, Mr. Héctor Gros Espiell, on Guatemala, prepared
in accordance with paragraph 9 of Commission resolution 1989/74

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*/ The addendum to this document (E/CN.4/1990/45/Add.1) describes in detail the activities carried out in 1988-1989 in the context of technical assistance provided by the Secretary-General to the Government of Guatemala aimed at organizing the infrastructure necessary to protect and promote human rights.

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- II. Programme of assistance provided by the Centre for Human Rights to the democratic Government of Guatemala in accordance with Commission on Human Rights resolutions 1988/50 and 1989/74.

I. INTRODUCTION

1. The Commission on Human Rights has been considering the situation of human rights in Guatemala since its thirty-fifth session, in 1979, and has taken a series of decisions in this regard (see E/CN.4/1988/42, paras. 1 to 11, for a detailed summary).
2. In 1983, the Chairman of the Commission, in accordance with resolution 1983/37 adopted by the Commission at its thirty-ninth session, appointed a Special Rapporteur for Guatemala. From 1984 to 1986, the Special Rapporteur submitted annual reports to the General Assembly and the Commission on Human Rights.
3. At the end of 1985, a process of democratization began in Guatemala after many years of military dictatorship. The people freely elected a civilian Government, which assumed power on 14 January 1986 at the same time as the new Constitution of the Republic entered into force.
4. In 1986, the Commission on Human Rights adopted resolution 1986/62, in which it decided to terminate the mandate of the Special Rapporteur and requested the Chairman of the Commission at its forty-second session to appoint a special representative, who submitted a report to the Commission at its forty-third session, in 1987. After considering that report, the Commission adopted resolution 1987/53 in which it decided to terminate the mandate of the Special Representative and requested the Secretary-General to appoint an expert to formulate recommendations to the Commission for the further restoration of human rights in Guatemala.
5. In accordance with resolution 1987/53, entitled "Situation of human rights in Guatemala", the Secretary-General appointed, on 24 June 1987, Mr. Héctor Gros Espiell as the Expert with a view to "assisting the Government of Guatemala, through direct contacts, in taking the necessary action for the further restoration of human rights".
6. In his first report to the Commission on Human Rights, the Expert stated (E/CN.4/1988/42, para. 16) that he took the view that his mandate was to continue providing the Commission with his personal appraisal on respect for human rights in that country.
7. Further, with a view to taking the necessary action for the further restoration of human rights, his report was required to deal with the possibility offered to the constitutional Government of Guatemala of requesting advisory services and other forms of assistance with a view to fostering advances in democracy and strengthening respect for human rights.
8. The Commission on Human Rights, after considering the report (E/CN.4/1988/42) of the Expert, adopted, at its forty-fourth session, resolution 1988/50 entitled "Assistance to Guatemala in the field of human rights", in which it noted with satisfaction that the Government of Guatemala was prepared "to guarantee the protection of human rights and fundamental freedoms in that country". It also welcomed with satisfaction "the interest shown by the Government of Guatemala in continuing its co-operation with the Commission".

9. In the same resolution, the Commission expressed the view that the obligation to promote and protect human rights and fundamental freedoms called not only for measures to guarantee their protection, but also for measures to prevent effectively any violation of those human rights. The Commission appealed to the Government of Guatemala to accord priority to the implementation of such measures.

10. The Commission requested the Secretary-General, in the same resolution, to provide "such advisory services and appropriate forms of assistance in the field of human rights as may be requested by the constitutional Government of Guatemala, with a view to fostering advances in democracy and strengthening the institutions responsible for ensuring respect for human rights in accordance with the recommendations contained in the Expert's report in the framework of the proposals contained in the report of the Secretary-General on the question (E/CN.4/1988/40 and Add.1)".

11. The Expert submitted his second report (E/CN.4/1989/39) to the Commission on Human Rights, at its forty-fifth session, in accordance with resolution 1988/50. After considering the report, the Commission adopted, on 8 March 1989, resolution 1989/74 entitled "Assistance to Guatemala in the field of human rights". In the resolution, the Commission expressed "its serious concern at the harmful conditions that still exist and place severe limitations on any genuine process of improving the human rights situation in Guatemala" and urged "the Government of Guatemala to intensify its efforts to ensure that all its authorities and security forces fully respect the human rights and fundamental freedoms of its citizens". In the same resolution, the Commission requested the Secretary-General to continue "to provide such advisory services and other appropriate forms of assistance in the field of human rights as may be requested by the constitutional Government of Guatemala, with a view to fostering advances in democracy and strengthening the institutions responsible for ensuring respect for human rights, in accordance with the recommendations contained in the Expert's report". The Commission also decided to request the Secretary-General to renew the mandate of the Expert for one year, and it requested the Expert to submit a report to the Commission at its forty-sixth session "taking into account the situation in the country".

12. The present report covers the period from March to December 1989, although other relevant information has been included when considered appropriate. The report is based partly on the data provided by the Guatemalan authorities, although they are obviously not the only source of information. In this respect, the Expert wishes to acknowledge the extensive co-operation he received at all times from those authorities. That co-operation made it easier to discharge the mandate assigned to him. The Expert has also taken into account the relevant information received through the United Nations Centre for Human Rights, and transmitted by non-governmental organizations, in particular: American Watch, Amnesty International, the Central American Association of Families of Missing Detainees (ACAFADE), the Human Rights Commission of Guatemala, Lawyers Committee for Human Rights, the World Organization Against Torture, the Guatemalan Justice and Peace Committee, the Guatemalan Catholic Church, the National Co-ordinating Committee of Guatemalan Widows (CONAVIGUA), the Centre for Human Rights Research, Study and Promotion (CIEPRODH), the International Federation of Human Rights (FIDH), the Mutual Support Group (GAM) and the Unitary Representation of the Guatemalan Opposition.

II. PRESENT LEGAL FRAMEWORK OF THE HUMAN RIGHTS SITUATION IN GUATEMALA

13. With respect to the applicable international law, it should be noted that, apart from the binding force of the Universal Declaration of Human Rights, as now recognized in doctrine and in international practice, under Guatemala's legislation the Declaration is given specific legal effect in internal law (art. 48 of Decree No. 54-86 of 10 October 1986, amended by Decree No. 32-87). These Decrees specify that the Procurator for Human Rights is a Commissioner of Congress for the defence of the human rights guaranteed by the Constitution, the Universal Declaration and the Treaties accepted and ratified by Guatemala.

14. It should also be noted that, in accordance with the provisions of article 46 of the Constitution, international treaties and conventions agreed and ratified by Guatemala prevail over domestic law. This constitutional principle is also embodied in article 3 of the Amparo, Habeas Corpus and Constitutionality Act (Decree No. 1-86 of the National Constituent Assembly of 8 January 1986).

15. Within the United Nations orbit, Guatemala is a party to the following human rights instruments (only those that are relevant in the light of Guatemala's experience and situation are cited):

(a) International Covenant on Economic, Social and Cultural Rights (Guatemala deposited the instrument of accession to this Covenant on 19 May 1988);

(b) Convention on the Prevention and Punishment of the Crime of Genocide;

(c) International Convention on the Elimination of All Forms of Racial Discrimination;

(d) Convention on the Elimination of All Forms of Discrimination Against Women;

(e) Convention Against Slavery and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery;

(f) Convention and Protocol relating to the Status of Refugees;

(g) International Labour Organisation (ILO) Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, 1948, ILO Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, 1949, and ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, 1958. Guatemala has ratified over 45 ILO Conventions.

16. In regional terms, Guatemala is a party to:

(a) The American Convention on Human Rights and has recognized the litigious jurisdiction of the Inter-American Court of Human Rights (Government Order No. 123-87, of 20 February 1987), provided for in article 62 of the Convention, although only in regard to events occurring after the declaration recognizing such jurisdiction. On 9 March 1987 Guatemala withdrew the reservation it had made on 25 May 1978, when it signed and ratified the American Convention;

(b) The Inter-American Convention to Prevent and Punish Torture. However, it entered the following reservation: "The Republic of Guatemala does not agree to the application, nor will it apply, the third paragraph of article 8 of the Inter-American Convention to Prevent and Punish Torture, for under its internal legal system, after remedies have been exhausted, a decision acquitting a person presumed to be guilty of the offence of torture is final and may not be submitted to an international forum". In the opinion of the Expert, this reservation is incompatible with the object and purpose of the Convention and at the same time is irreconcilable with Guatemala's recognition of the jurisdiction of the Inter-American Court of Human Rights. Paragraph 19 of the present report refers to this situation and to the representations made by the Expert for the withdrawal of this reservation which, however, have not been successful.

17. As far as international humanitarian law is concerned, Guatemala ratified, on 14 May 1952 the four 1949 Geneva Conventions and is also a party to the two 1977 Additional Protocols to the Geneva Conventions, which it ratified on 19 October 1987. Guatemala signed the Headquarters Agreement for the establishment in the country of an International Committee of the Red Cross (ICRC) office on 13 September 1989.

18. Guatemala's "status" vis-à-vis the human rights instruments shows, at the international and regional levels, the following deficiencies that should be remedied:

(a) Guatemala is still not a party to the United Nations International Covenant on Civil and Political Rights or the Optional Protocol thereto;

(b) Guatemala is still not a party to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(c) Guatemala maintains an unacceptable reservation to article 8 of the Inter-American Convention to Prevent and Punish Torture.

19. In his meetings, in the course of his mission in Guatemala from 22 October to 3 November 1989, with the Human Rights Commission of Congress and the Minister for Foreign Affairs, the Expert drew attention to these deficiencies and repeated that Guatemala should accede as soon as possible to the International Covenant on Civil and Political Rights and to the Optional Protocol thereto. In his opinion, Guatemala should also withdraw the reservation it had made to the Inter-American Convention to Prevent and Punish Torture.

20. He was informed that the instruments in question were being studied. The International Covenant on Civil and Political Rights, in particular, raised the problem of the right to self-determination (art. 1). The Expert pointed out that Guatemala was already a party to the other International Covenant which contained exactly the same article (art. 1), and he went on to say that there was no difficulty whatever from the legal viewpoint, but that there was nothing to prevent the Government from making a declaration at the time of accession if it wished to do so.

21. With regard to the applicable internal Guatemalan law, the Expert submitted an analysis to the Commission on Human Rights, in his earlier reports (E/CN.4/1988/42, paras. 24 to 28 and E/CN.4/1989/39, paras. 22 to 24), of the legislative framework adopted by Guatemala since 1985, to regulate and guarantee human rights in Guatemala, mainly: the 1985 Constitution; the Amparo, Habeas Corpus and Constitutionality Act (Decree No. 1-86 of the National Constituent Assembly); the Act on the Human Rights Commission of the Congress of the Republic and the Procurator for Human Rights and Reforms (Decrees Nos. 54-86 and 32-87). The reports also referred to the body of laws enacted or in the process of being adopted to promote economic and social development.

22. The following entities and institutions now in operation, arising out of the new Constitution or measures taken by the constitutional Government of Guatemala since 1986 to promote and protect human rights should be mentioned:

(a) The Constitutional Court, set up in April 1986, since when it has exercised the functions granted to it by the Constitution in respect of the defence of the constitutional order. It was established by articles 268-272 of the Constitution; it is fully operational and has already produced a substantial amount of case law;

(b) A new Supreme Court of Justice, comprising nine judges elected by Congress, established by articles 214-216 of the Constitution;

(c) The Human Rights Commission of Congress established by the Constitution made up of one deputy from each of the political parties represented in Congress. The Commission has drawn the attention of the Congress to the problem of enforced or involuntary disappearances, torture and extra-legal executions. On 12 September 1989, the political parties represented in the Commission, considering that the state of law had undergone "a marked deterioration since the most elementary human rights are being infringed day after day without the legal institutions established to safeguard them being able to do so", approved, with only one dissenting vote (the representative of the governmental party voting in favour) a resolution which states the following:

"1. Deplores and strongly condemns the abductions and extra-legal executions that have plunged into mourning and affected the popular, peasant, political and trade union sectors, organizations for the defence of human rights, business circles and more recently the university student sector.

2. Urges all sectors of the population to organize itself in a front against the violence and calls on the Government to elucidate immediately these acts and to punish the culprits.

3. Calls on friendly nations who show their solidarity in again negotiating within the United Nations agencies for the appointment of an impartial Special Rapporteur with powers to investigate serious human rights violations in Guatemala, with the assurance that Guatemala will continue to enjoy the international co-operation in the economic and technical fields thus far provided for the benefit of the Guatemalan population.

4. Transmits a copy of this resolution to the diplomatic missions accredited to Guatemala and to the international human rights agencies."

(d) The Procurator for Human Rights, an independent institution established by the Constitution for the defence of human rights, took up his duties on 19 August 1987. The Office of the Procurator opened its doors to the public two months later. In December 1987, the Procurator submitted his first report to the Congress, to which the Expert referred in his previous report. The report for 1989 will be submitted in January 1990. The Expert will refer to this report in the oral presentation he will give in the Commission. The Procurator has undertaken intensive promotion and protection activities and has opened eight offices in Guatemala. The Procurator appointed in August 1987 submitted his resignation, which was accepted by the Congress on 31 October 1989;

(e) The National Reconciliation Commission, established on 11 September 1987 by the President of the Republic in conformity with the procedure agreed by the Presidents of the Central American countries with a view to establishing a stable and enduring peace in Central America (Esquipulas II). The Commission is an entity for monitoring and establishing compliance with the agreements; it is also an intermediary between the Government and the guerrilla forces with a view to achieving an effective cease-fire. On 7 November 1988, the Commission made an appeal for national dialogue, as broad and democratic as possible, to permit the most representative groups of the country to hold an exchange of views in order to find solutions leading to a fairer and more united social co-existence for Guatemalans. The Commission adopted its rules of procedure and has undertaken intensive activities. It works through 15 committees. Some 600 delegates from the Government, the Catholic Church, other churches, governmental and opposition parties, non-governmental organizations and other prominent citizens are involved in the national dialogue. It should be pointed out, however, that neither the Armed Forces, as such, the "guerrilla", the Unitary Representation of the Guatemalan Opposition (RUOG), nor the Chamber of Agricultural, Commercial, Industrial and Financial Associations (CACIF) are taking part in the dialogue;

(f) The Ad Hoc Committee for Aid to Returnees (CEAR), established by Government Order No. 765-86 of 16 October 1986 is run by a Board of Directors, composed of representatives of various ministers and chaired by the Ministry of Foreign Affairs. The Committee's primary objective is to assume responsibility for "establishing conditions which permit the gradual return of refugees". The Committee has co-operation agreements with national and

foreign entities, and in particular with the Office of the United Nations High Commissioner for Refugees (UNHCR). Between January and October 1989, 905 persons (207 families) were repatriated under the CEAR-UNHCR programme. In 1988, 1,928 persons (402 families) were repatriated. Since the programme was launched in 1987, CEAR has assisted 3,507 returnees (802 families). In 1988 and 1989, CEAR also assisted 5,519 displaced persons (5,118 in 1988 and 401 in 1989) and 983 outside the programme (73 in 1987 and 910 in 1988), making an overall total of 10,309 returnees, displaced persons or persons outside the programme who were assisted by CEAR;

(g) The Advisory Commission on Human Rights Matters to the Office of the President of the Republic, established on 19 April 1988, by Government Order No. 244-88, in order to contribute to all those activities that are designed to ensure that citizens enjoy human rights, without prejudice to the functions and jurisdiction which the law assigns to other organs of the State to secure the application of these rights. The Commission began work on 15 May 1988. In the course of 1989, the Commission sponsored activities to secure better co-ordination between the executive and judicial branches. The Commission noted that communications between the two branches had improved, as a result of that co-ordination, for the investigation of any case that constitutes a criminal offence or human rights violation; the Office of the Government Attorney provides further assistance in respect of criminal actions, automatically expediting any cases of which it has knowledge. The Commission also reported on: the activities of the Judiciary and the Supreme Court of Justice in instructing presidents of courts, judges of courts of first instance and magistrates on the procedures to be followed in remedies of habeas corpus; the Central Register of Detainees and the obligation of all police forces to report on the detention of any person; a number of cases won in the courts; and on the promotion of human rights by means of courses and the dissemination of international humanitarian law and a series of programmes implemented and supported by the Ministry of Education;

(h) The Supreme Electoral Court established by Decree No. 1-85 of the National Constituent Assembly and amended by Decrees Nos. 51-87 and 74-87 of the Congress of the Republic, in conformity with the provisions of article 223 of the Constitution. The Expert mentioned the municipal elections held on 20 April 1988 in his previous report. The Supreme Electoral Court is currently preparing the pre-electoral process for the national elections to be held in November 1990. The current complex situation in respect of candidatures for the office of President of the Republic is made more difficult by the prohibitions arising from article 186 (a) and (c), and the question has been referred to the Constitutional Court.

23. Nevertheless, the major problem is to ensure that this new legislation does not remain at the level of intent. In order to maintain a State in which the rule of law prevails, and in order to defend democracy and its future and to respect human rights, these rules and principles have to be used and effectively applied in practice and, in their dealings, the Government and all public authorities have to implement a policy, every aspect of which applies the rules and principles relating to human rights.

24. As important as the applicable law is its actual influence as far as human rights are concerned. It is not enough to have appropriate legal rules and governmental implementing organs. The Government must have the firm political will to act in a thorough manner and to possess the real and effective capability to guarantee the enjoyment of human rights. It is not enough that the Government does not directly infringe human rights; it must prevent them from being infringed; it must use all the constitutional power at its command to prevent such violations and to have in hand the capability needed to guarantee peace and security in practice. And it has not managed to do this.

25. In addition to this fundamental shortcoming, there is the failure to introduce major changes in the negative material conditions in the economic and social fields and the survival of a society based on a culture of violence incompatible with harmoniously balanced right and duties for all. A human rights culture does not exist and despite the limited efforts of the Government, which is democratic, conditioned and powerless, the situation of human rights, apart from that of legislation, has not made notable progress. The Expert will address this situation, the partial but undeniable results achieved in the last few years, and the deterioration in recent months in this report.

III. VISITS TO GUATEMALA: MEETINGS AND ACTIVITIES

26. In order to make direct contact with the Guatemalan authorities and to assess the situation regarding human rights, in conformity with the mandate given by the Commission, the Expert carried out two missions in the course of 1989, the second of them with an official of the United Nations Centre for Human Rights. The first visit took place in May, followed by a second visit from 22 October to 3 November 1989.

27. During these visits, the Expert had meetings, at the official level, with Mr. Vinicio Cerezo Arévalo, the President of the Republic, General Héctor A. Gramajo, the Minister of Defence, Mr. Mario Palencia and Mr. Ariel Rivera, the successive Ministers for Foreign Affairs, Mr. Roberto Valle Valdizán and Mr. Carlos Morales Villator, the Ministers for the Interior, Mr. Julio Martini, the Deputy Minister for Foreign Affairs, Mr. Edmundo Vásquez, the President of the Supreme Court of Justice and the Judiciary, Mr. Gonzalo Menéndez de la Riva, the Procurator for Human Rights, the Human Rights Commission of Congress, the National Reconciliation Commission (as well as members of the Human Rights Commission in the national dialogue) and Mrs. Carmen Rosa de León Escribano, the Chairwoman of the Ad hoc Committee for Aid to Returnees (CEAR).

28. He also met the Metropolitan Archbishop, Monsignor Próspero Penados del Barrio, and had meetings with human rights promotion, defence and protection organizations, and trade union organizations of Guatemalan workers, particularly with Mrs. Nineth de García of the Mutual Support Group (GAM), representatives of the Federation of Rural Workers (CTC), representatives of the Guatemalan United Nations Association and Mr. Factor Méndez, the Director of the Centre for Human Rights Research, Study and Promotion (CIEPRODH).

29. In his previous report, the Commissioner alluded to a massacre perpetrated in November 1988 in which 21 peasants from the village of El Aguacate, in the administrative area of the municipality of San Andrés Itzapa, Department of Chimaltenango, were murdered (para. 32). During his visit to Guatemala in May 1989, the Expert collected considerable information from military and legal sources about that occurrence. It is not for him to make a detailed analysis nor is it within his mandate to attribute responsibilities. However, it should be pointed out that the confused and contradictory information does not provide evidence to show that those acts were the work of the "guerrilla", the Revolutionary Organization of the People in Arms (ORPA) as was stated in the communiqué published by the Secretariat for Public Relations of the Office of the President of the Republic on 27 November 1988.

30. The El Aguacate affair, which reflects the confused situation prevailing in Guatemala, has been studied by the Expert who had access to documentation produced by a variety of sources, governmental and non-governmental. It is not his function to identify those directly responsible, an undertaking which in any case would be quite impossible on the basis of the documentation at his disposal. However, he notes that it is an obvious example of the prevailing insecurity, the absence of guarantees and of how the right to life is at the mercy of those who feel like infringing it, without the public authorities being able to comply with their obligations in that regard. An independent and objective investigation of this case would be very worthwhile and the decision of the Inter-American Commission on Human Rights to undertake it and that of the Government of Guatemala to authorize the Commission's visit and to co-operate with it should be applauded. This initiative by the Inter-American Commission on Human Rights should be welcomed by the United Nations, in the view of the Expert, as an instance of the co-operation necessary at all times between universalism and regionalism for the protection and international promotion of human rights.

IV. PRESENT SITUATION OF HUMAN RIGHTS IN GUATEMALA

31. In his first two reports, the Expert indicated that the present constitutional Government of Guatemala has strengthened and developed the internal legal framework in order to secure the effective application of human rights and has adopted, since it was elected, a series of forward-looking legislative and administrative measures designed to strengthen the process of democratization in Guatemala. In this report, which covers the period from March to December 1989, the Expert wishes to stress the existence of gaps which the Government will have to fill. It would also need to assure improved operations and better co-ordination among the various organs responsible for the promotion and protection of human rights. He also wishes to point out that the real situation of human rights, although within the framework of a State in which the rule of law prevails, is basically determined by factors, conditions and situations that have harmful repercussions on the enjoyment of economic, social and cultural rights, as well as on the process of the consolidation of democracy in Guatemala, and which will have to be overcome.

32. Guatemala has a territory of 108,899 km and a population of more than 8 million inhabitants over 80 per cent of whom live in rural areas. According to different sources, the indigenous population ranges between 41 per cent and 65 per cent of the total population. More than 45 per cent of the population, indigenous and non-indigenous, is under 15 years of age.

The level of education is very low: only 1.6 per cent of the population goes on to university studies, 9.4 per cent to secondary education and more than 42 per cent of the population aged seven or over receives no education. Over half the population lives in dwellings that lack the most basic facilities. It is estimated that 85 per cent of the population lives in poverty, and that poverty affects the indigenous population in particular. Average life expectancy is the lowest in Central America (61 years). The infant mortality rate exceeds 60 per 1,000, one of the highest in the world. Unemployment affects more than 46 per cent of the adult population. 1/

33. The serious shortcoming in the enjoyment of economic, social and cultural rights produces situations conducive to violations of the civil and political rights of the Guatemalan people. The situation in Guatemala is shaped by the convulsions within society originating in the underdevelopment that keeps the country in an unjust social and economic structure. This structure shows major inequalities and continues to be determined by the heritage of the past, aggravated in part by the imbalances caused by the process of modernization on which the country is embarking. The crucial problem is that of the indigenous populations, traditionally discriminated against and disadvantaged, and having no genuine role in national life. In addition to this problem, there are the shortcomings in education, health and housing (the infant mortality and illiteracy rate are the highest in Central America and life expectancy is one of the lowest). These are all different facets of one and the same problem, namely, the de facto inequality which the indigenous populations of Guatemala, like other ethnic populations in Latin America, experience. A human rights policy needs to be implemented that rejects any form of discrimination on account of ethnic origin, because until this discrimination is eliminated, human rights cannot be applied fully. At the same time, the democratic process needs to continue in order to secure respect for human rights, since there can be no enjoyment of human rights without democracy, but neither can there be democracy without human rights.

34. With regard to the problem of refugees and displaced persons, it is estimated that at the present time there are some 35,000 Guatemalan refugees in the camps administered by the Office of the United Nations Commissioner for Refugees (UNHCR) in Mexico. Apart from these refugees, there are thought to be approximately 500,000 displaced persons who frequently swell the ranks of the inhabitants of the impoverished fringes of the capital, veritable breeding grounds for crime.

35. The number of returnees, as stated above in paragraph 22 (f), which had increased since the beginning of 1988 decreased noticeably in the course of 1989. One of the major problems confronting the refugees returning to Guatemala is that of land occupation for those who go back to their places of origin, but there is also the problem raised by the refugees who go to places other than those where they had lived previously.

36. The Conference of Evangelical Churches of Guatemala has proposed to the national dialogue that the right of displaced persons and refugees to possession of the lands that legitimately belong to them should be acknowledged. Similarly, the Standing Assembly of Christian Groups proposed, in a report to the Human Rights Commission on the national dialogue, the formation of a committee to inspect in situ the combat areas in order to assess the human rights situation in respect of the displaced persons arrested

by the army in Ixil and Alta Verapaz. The National Council of Displaced Persons of Guatemala (CONADEG) was formed recently; its objectives are the right to organize freely; to secure the return of its members to their communities or places of origin; and to recover their land and join the mainstream of national productive life.

37. The International Conference on Central American Refugees convened by the Central American Governments and Mexico and organized by UNHCR took place in Guatemala from 29 to 31 May 1989. The Conference played a very important role in helping to resolve the painful problem of refugees and displaced persons which affects the region so seriously and which, in the case of Guatemala, has very serious repercussions. The return of the Guatemalan refugees, their free and voluntary repatriation and their resettlement is an issue bound up with human rights which the Government of Guatemala, through the CEAR has faced up to positively, but on which much still remains to be done. The Conference adopted a Declaration and Concerted Plan of Action in Favour of Central American Refugees, Returnees and Displaced Persons (document CIREFCA/89/14).

38. The document adopted by the Conference points out that some 2 million Central Americans have been uprooted in the region as a result of the crisis which has prevailed for the last decade. There are almost 150,000 assisted refugees and it is estimated that, apart from this number, displacement is a phenomenon affecting 1.8 million people in the countries of the region, either because they were compelled to cross an international boundary or because they left their homes while remaining in their own country.

39. The Governments of the States represented at the Conference recognized that "solutions to the problems of refugees, returnees and displaced persons form an integral part of the efforts for peace, democracy and development taking place in the region" and they approved a Concerted Plan of Action in Favour of Central American Refugees, Returnees and Displaced Persons, with mechanisms for follow-up and promotion, which they consider a promising initial framework for future activities and thus reaffirm "their commitment to contribute to the establishment of a firm and lasting peace in Central America".

40. In his previous report, in order to promote an understanding of the economic and social rights situation in Guatemala, the Expert quoted from the Collective Pastoral Letter of the Guatemalan Bishops, "The Clamour for the Land" of February 1988, which analyses the issue of the marginalization of and discrimination against the peasant and the indigenous communities. The document is so important that the Expert decided to include in this report the paragraphs reproduced at that time. The Bishops speak of the social injustice and the very structure of society:

"... Society is organized in disregard of the vast majority of Guatemalans and for the benefit of a minority.

"... The minimum legal wage of Q.4.50 is obviously not enough today, in view of the high cost of living.

"... The attitude adopted by some towards the peasants is so harsh that in order to increase their profits, they are gradually uprooting the 'mozo colono'. This kind of pre-capitalist, outdated and paternalistic concept, although unsatisfactory, gives the peasant who for generations has lived on a particular farm, a certain status which in turn gives him a measure of stability and some sort of right to work on that farm and even to cultivate certain plots of land for profit.

"... It is easier and less complicated to bring in work gangs at harvest time every year under a system which is hastening the impoverishment of the peasants.

"... The peasant's condition is made worse because of the difficulty of obtaining a title deed to the land he has worked for a long time. Often this land ends up in the possession of landholders who are economically and legally better equipped to obtain the legal title deeds. We note that much of the tension in the rural areas derives from the fact that when these persons acquire such estates unfairly but legally, in their zeal to throw the peasant off the land, they enlist the support of the forces of law and order who respond to their appeal for the defence of private ownership denied to those who were, in fact, the true owners even though not recognized as such by a law, which was enacted in effect behind the backs of the people for the benefit of a privileged class. It is a painful truth that there is no proper legislation to protect the peasant against these and other abuses."

41. The Guatemalan Bishops observe that with each day the peasants are becoming "increasingly aware of their rights and their dignity", that this is an irreversible step forward and that "despite the continual and brutal repression directed against them, there is a legitimate outcry and measures are being taken in defence of the land", but they also fear that "if the aspirations cannot be channelled fairly and if no machinery is established to give them a speedy and effective response, there may well be an outbreak of violence with unforeseeable consequences".

42. The economic difficulties and the high rate of unemployment experienced by Guatemala in 1989 weighed particularly heavily on the poorest sections of the population. As Monsignor Próspero Penados del Barrio indicated, poverty has been building up much frustration within the community. As in previous years, peasants organized to claim the right to work the land have occupied estates in various parts of the country. Similarly, peasants have gone on strike in order to secure fairer wages and pay increases. The strike in the cotton, coffee and sugar-cane plantations on the southern coast which mobilized some 50,000 workers who were calling for a wage increase estimated at Q.3.20 (approximately \$US 1.15) was particularly noteworthy. In the course of 1989 numerous strikes occurred not only in rural areas but also in State-run enterprises. Schoolteachers went on strike for about three months. At the same time, Post Office employees also went on strike because of pay disputes.

43. With regard to employment issues, whether in rural areas or in towns, many of the complaints and communications sent to the Expert allege violations of trade union rights, in particular, the right to organize and to form trade

unions. According to these allegations, when this happens, the employer dismisses the workers and in some cases the workers are threatened with death by unidentified persons presumably acting on the orders of the employer.

44. Numerous communications have also been received in which peasants allege that they have been threatened because, for purely economic reasons (working on a plot of land or migrating to do seasonal work in other regions), they are unwilling to take part in the "voluntary" Civilian Self-Defence Patrols (PAC).

45. In a report to the Commission on the national dialogue, the Standing Assembly of Christian Groups, basing itself on a very large number of testimonies by church members who worked in rural areas, called into question the "voluntary nature" of the participation by peasants in the PAC and took the view that substantive debate was needed in the national dialogue as well as on-the-spot inspection and monitoring. The members of the Ethnic Communities Council "Runujel Junam" (CERJ) who advocated the dissolution of the Civilian Self-Defence Patrols have been subjected to particularly persistent harassment and threats. The organization has reported the disappearance of a number of its members. Following the incident that occurred in August in the municipality of San Cristóbal (Alta Verapaz) in which the army mistook civilian patrollers associated with the PAC for insurgents and which resulted in the deaths of nine peasants and injury to three others, Guatemalan political leaders have once again begun to reiterate the demand that the Government should dissolve the PAC.

46. Apart from the massacre at El Aguacate which is mentioned in the report (paras. 29 to 30) and which has had world-wide repercussions, indiscriminate collective executions occurred in May in Sanquin de Patzicia (Chimaltenango) in which five people were killed; and in the village of El Jocotillo (Department of Guatemala) in which five people died and another was wounded; and in June in La Libertad (El Peten) when four peasants and one child died. The number of extra-legal executions which had been considerable in 1988, although not as many as in previous years appears to have reverted to numbers approaching, although still lower than, those of the past. The number of cases of enforced or involuntary disappearances was also considerable. In a large proportion of cases of disappearance, after a few days the victims are discovered dead usually showing marks of torture. These violations are directed mainly against peasants and members of popular organizations, although they have also occurred in respect of other social strata. Without undertaking a survey and detailed analysis of all the cases, attention should be drawn to the disappearance of 11 student leaders of the Association of the University Students (AEU) in August, the bodies of 5 of whom were discovered showing signs of torture. Students working with the Mutual Support Group (GAM) also disappeared in August. These deaths and disappearances followed the threats made by "death squads" (El Jaguar justiciero, La Dolorosa and El Ejercito Secreto Anticomunista) and received by many students. The most fundamental rights of Guatemalans are thus violated with impunity in a diabolic sequence that begins with enforced disappearance, continues with torture and concludes with the annihilation of the individual by summary and arbitrary execution.

47. Further, a number of peasants who were members of the Mutual Support Group (GAM) and the Ethnic Communities Council "Runujel Junam" (CERJ) were kidnapped and found dead some days later showing marks of torture. These

organizations as well as the National Co-ordinating Committee of Guatemalan Widows (CONAVIGUA) have been subjected to unceasing threats and intimidation. A bomb explosion partially destroyed the premises of GAM in Guatemala City where members of the International Peace Brigades were meeting. Following these and other violations such as the death of the former Guatemalan ambassador in Spain, Danilo Barillas and the businessman, Ramiro Castillo Love, the Chairman of the Banco Industrial, both of whom had progressive leanings, many people, including a large number of students, had to leave the country.

48. Habeas corpus proceedings are either inapplicable or inoperative in most cases. On the rare occasions when an investigation is attempted in order to be able to apply the law, the pressure is so great and the impunity of those who violate human rights is so great that the investigations have to be abandoned without the guilt of the presumed culprits being established. That was what happened to the magistrate Aníbal Trejo Duque who was abducted while investigating the "Panel Blanca" and to his assistant who was executed extra-legally, as well as to the lawyer Irma Esquivel de Lara, also executed extra-legally.

49. The killings and violent deaths, that continue to occur in very large numbers, reflect the situation of uncontrolled violence and show that the law enforcement authorities, particularly the police, are failing to provide protection for citizens. Effective investigations are not being conducted of the crimes committed, the information needed to institute proceedings is not reaching the judicial authorities and the judicial apparatus is not functioning properly. In general, public opinion has no confidence in the police or in the criminal justice system. However, it should be noted that the Judiciary informed, by Circular No. 302-89, of 27 July 1989, presidents of courts, judges of courts of first instance and magistrates of the procedures to be followed in inquiries to establish responsibilities in habeas corpus proceedings, in accordance with the Amparo, habeas corpus and Constitutionality Act.

50. The Government has unquestionably endeavoured to rectify the shortcomings of the police. A process of reform and improvement has been undertaken. The efforts to provide the police with adequate means, to increase its numbers, to improve its training and the establishment of a Police College (opened in October 1989) are steps in the right direction. Some successes, such as the solution of Mr. Ramiro Castillo Love's murder, carried out within the framework of the law, after an arduous investigation, may be regarded as positive signs in the midst of a negative and critical situation.

51. The Expert referred to the problem of the traffic in children in paragraphs 50 to 54 of his previous report. He now draws attention to these paragraphs, pointing out that he has received no new information apart from the reports concerning the enforced recruitment of minors for military service, communicated by the Sub-Commission on Prevention of Discrimination and Protection of Minorities Working Group on Contemporary Forms of Slavery (E/CN.4/2/1989/39).

52. The present Government has taken steps to reduce the violence and human rights violations in Guatemala. The police is being reorganized so that it will act in accordance with the law and so that there will be improved supervision of the forces of law and order within the country. Nevertheless,

much remains to be done, especially on the matter of disappearances and extra-legal, summary and arbitrary executions. The setting up of a Police College, the introduction of instruction on human rights to members of the police and other measures adopted recently may yield meaningful results.

53. In his previous report, the Expert alluded to the attempted coup d'état on 11 May 1988 and its negative effects. There was a further attempted coup in May 1989. In October 1989, the ordinary system of justice sentenced two former members of the military implicated in the attempted coup and in November 1989 a military court passed sentence on the military personnel involved.

54. The incorporation of the armed forces in the democratic process and the recognition that they must be an instrument of the civil constitutional authority and should act only in accordance with the Constitution, to achieve the specific objectives laid down by the law in force are essential for the existence and continuity of democracy and for the enjoyment of human rights.

55. The teaching of international humanitarian law and human rights law has already begun and it must continue and spread, underlying all professional education and military training.

56. The establishment of the Strategic Studies Centre for National Stability (ESTNA), the inclusion of democratic thinking in military theory, the "national stability" based on new ideas which can unseat the outdated and mistaken ones of the past, may mark the beginning of an extremely difficult yet necessary process of change. The views expressed by Juan José Arévalo, in his inaugural address at the Strategic Studies Centre for National Stability (ESTNA), on 24 October 1989 hold out hope for the future.

57. It would seem that the continued violence, combined with the impunity enjoyed by many murders and disappearances in the absence of investigations or trials, and the lack of protection for citizens enable various anti-democratic elements, involving political and private violence, common crimes and political ones, economic repression and action by groups - which some think are "paramilitary" groups - to continue their activities and commit human rights violations. It should be pointed out that the Sub-Commission on Prevention of Discrimination and Protection of Minorities, disturbed by the information concerning numerous murders and disappearances, adopted, at its fortieth session, resolution 1988/14, which *inter alia* "urges the Government of Guatemala to intensify its efforts to ensure that all its authorities and security forces fully respect the human rights and fundamental freedoms of its citizens". The Sub-Commission also recommended that the Expert on Guatemala should "give particular attention to the obstacles encountered as a consequence of non-co-operation by certain elements of the military and security forces, and that he indicate ways in which this can be remedied through advisory services and other forms of assistance". In 1989, the Sub-Commission reverted to this question in its resolution 1989/7 entitled "The Human Rights Situation in Guatemala". In that resolution, the Sub-Commission recommended that the Expert "give particular attention to the existing obstacles in Guatemala to the full realization of human rights, and indicate ways in which this situation may be resolved".

58. The Expert wishes to state that: (a) an improvement in the short-, medium- and long-term of the situation of human rights in Guatemala is linked to the implementation of the Constitution and the maintenance and consolidation of the democratic process. That process should be reinforced and strengthened so that the present democratic régime may complete its mandate and that free elections may be held in 1990. There can, therefore, be no violations of human rights by State officials; (b) in the expert's opinion and although there are views to the contrary, the Government of Guatemala is not directly implicated in a policy of human rights violations. While this in itself is highly important, it is not enough, since no Government can feel satisfied if it merely refrains from directly violating human rights. It is also necessary, indeed indispensable, to have a positive policy to prevent human rights violations from occurring - that policy should guarantee the full enjoyment of all rights for all citizens. It should be noted that the Government has not done everything it could have done to control the serious human rights violations which took place in 1989. Those violations escaped the vigilance of the Government, which may mean that the latter has not succeeded in pursuing an effective policy in this area; (c) it is therefore necessary to work out a comprehensive short-, medium- and long-term policy to put an end to the violence and to democratize Guatemalan society on a basis of tolerance and to that end, a human rights culture has to be established; (d) the Government should wield its full institutional authority and show resolute political will, which it has not fully done so far, in order to secure and safeguard human rights fully.

59. This firm and positive political will has not been exercised with the requisite determination. Something has been done, despite the obvious limitations and obstacles, but the question of human rights has not been given the necessary priority that it should be accorded. The opportunities for action which existed when the Government took office were not grasped or turned to good account at the right time and in the right way. As a result, there has not been notable progress and some ground has even been lost during this Government's term of office.

60. Nevertheless, the democratic Government has embarked upon a path which can only be pursued by another constitutional and freely elected Government.

61. The guerrilla is still in existence. The Expert heard contradictory information about its importance, significance and size. However, there is no denying its existence and its impact on the situation in the country. The guerrilla has no part in the national dialogue and is not a member of the National Reconciliation Commission. The meeting in San José (Costa Rica) between the National Reconciliation Commission and the Guatemalan National Revolutionary United Front (URNG) in accordance with the procedure established in the Esquipulas II Agreement procedures, on 24 and 25 August 1988, following up the Madrid meeting of October 1987, yielded no positive and continuing results. There were no officially announced meetings in 1989.

62. The growing influence of factors stemming from the production, traffic and use of drugs has had a significant role in the deterioration of the human rights situation in 1989. The drug trade, the infiltration by drug traffickers, their links with the various types of crime and their impact on the mounting corruption which is being experienced in the country and is undermining the people's confidence, are extremely serious negative factors in the current human rights situation in Guatemala.

63. The expert is of the view that the activities pursued in 1988 and 1989 under the United Nations Centre for Human Rights technical co-operation project in the field of human rights are on the right track because they seek to encourage a human rights culture, non-existent in Guatemala, and to change attitudes. The project is encouraging co-ordination on human rights issues at the national level among the different ministries and institutions responsible for human rights, in addition to providing advisory and training services for Guatemalan officials, particularly law enforcement officials and officers of the armed forces. Those activities are rightly being directed towards trying to remove obstacles which may derive from the lack of co-operation of some elements of the military and security forces. Nevertheless, if this assistance and advice are to be effective, due priority must be given to the issue of human rights and all the institutions and mechanisms established by the constitutional Government at the national level to protect human rights must work well: all the laws and decrees on human rights must be clearly stated and put into effect. It is also necessary to be able to rely on the full support at the national level of a co-ordinating body which is not confined exclusively to activities promoted from outside, but which enjoys the political support of the Government and of all the institutions responsible for human rights and has a continuous and organic character so that it can plan and co-operate on a continuing basis, on the one hand with the national, governmental and non-governmental institutions and on the other, with international bodies such as the United Nations Centre for Human Rights.

64. In his previous report, the Expert listed some of the legal, national and international measures that the Government of Guatemala had pledged to adopt. Some of these have been adopted and others are in the process of being adopted. The situation today is as follows:

(a) National level

- (i) Adoption of the bill on the possession of weapons (the bill has been passed and already there are a number of draft amendments to some of its articles); however, what is important is that it should be implemented;
- (ii) Adoption of the bill on the adoption of children (this bill was passed in first reading in the Congress);
- (iii) Compilation of all regional and international instruments relating to human rights to which Guatemala is a party (this is being done);

(b) Measures not yet taken at the regional and international levels

The following have not yet been done:

- (i) Accession to the International Covenant on Civil and Political Rights;
- (ii) Accession to the Optional Protocol to the International Covenant on Civil and Political Rights;
- (iii) Accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

- (iv) The withdrawal of Guatemala's reservation on article 8 of the Inter-American Convention to Prevent and Punish Torture;
- (v) Ratification of the Additional Protocol to the American Convention on Human Rights relating to Economic, Social and Cultural Rights;

(c) Measures taken

- (i) Accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- (ii) Signing of the Headquarters Agreement between the Government of Guatemala and the International Committee of the Red Cross (ICRC).

V. ASSISTANCE TO THE GOVERNMENT OF GUATEMALA IN THE
FIELD OF HUMAN RIGHTS

65. In accordance with paragraph 7 of Commission on Human Rights resolution 1988/50, which requests the Secretary-General to "provide such advisory services and other appropriate forms of assistance in the field of human rights as may be requested by the constitutional Government of Guatemala" and as a result of the request made by the Guatemalan authorities to the Centre for Human Rights in June 1988, a technical assistance programme to Guatemala on human rights questions was carried out in 1988 and 1989. The programme has been financed in its entirety (\$US 222,000) by the United Nations Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights. The Centre has received logistical support and co-operation from the Office of the United Nations Development Programme in Guatemala. The main aim of the programme, in the long term, was to provide timely assistance to the Government of Guatemala in taking the necessary measures with a view to fostering advances in democracy for the further restoration and strengthening of respect for human rights. The aim of the programme in the shorter term was to train persons who play a key role in various disciplines through courses and fellowships, with the expectation that this training will have a multiplier effect. By providing experts and useful material to the institutions responsible for protecting and promoting human rights in Guatemala, the programme has assisted the Government in organizing the infrastructure required to meet international human rights standards. The addendum to this document (E/CN.4/1990/45/Add.1) describes the activities undertaken under the programme of technical assistance to the Government of Guatemala.

VI. CONCLUSIONS

66. The general conclusions from the study of the human rights situation in Guatemala may be enumerated as follows:

(a) The development and progress in the legal framework for recognizing, guaranteeing and protecting human rights in Guatemala are undeniable;

(b) The Government's political will to ensure respect for these rights is definite. In the view of the Expert, its efforts in this regard cannot be doubted. But it lacked the firm and unrelenting determination to carry out a

human rights policy at the proper time and, most important, at present it has no possibility to act with all the constitutional and political authority that is needed to achieve the desired goals;

(c) Virtually nothing has been done either by the Government or by the judiciary to investigate and punish earlier human rights violations;

(d) Major de facto harmful conditions still exist and place severe limitations on any genuine process of improving the human rights situation in Guatemala;

(e) A climate of social violence continues to exist. What is more, it has grown and become worse. A human rights culture will have to be developed in which tolerance takes the place of the present contempt for pluralism and opposing views among many sections of the population;

(f) Violations of civil and political rights, especially deaths and disappearances, are still taking place and have increased in number. These are apparently the outcome not of government orders on policy but of factors, of acts committed by power circles and a persistent climate of violence that are still beyond effective government control. The Government has proved powerless and incapable of remedying this situation. Its scope for action has lessened as the violence and violations have increased;

(g) It is necessary to make sure that people are not compelled to join civilian self-defence patrols and do not suffer reprisals for not doing so;

(h) Serious deficiencies remain in the situation regarding respect for economic, social and cultural rights. Society as a whole is still conditioned by injustice and discrimination;

(i) The situation of the indigenous populations continues to be a crucial problem. The habitual discrimination and exploitation of these populations has been a constant source of human rights violations. The Government is aware of this difficult problem and an examination and comprehensive plan of the political, economic, social and cultural aspects of the question is under way (see the conclusions of consultant Willemsen Diaz, especially on the legislation which is being drafted);

(j) If the democratic process grows stronger and takes root and if it is maintained without any institutional breakdowns, the slow process of improvement initiated by the constitutional Government can be expected to continue;

(k) For this to happen, aside from the essential political will and the commitment that the Guatemalan people and their freely elected authorities alone can provide, continued international assistance and support are required;

(l) The dialogue for national reconciliation should be encouraged whole-heartedly and there should be no unjustified exclusions from it. The Government should participate actively, demonstrating total political will in continuing this dialogue;

(m) The technical capability and efficiency of the police should be upgraded in accordance with the conclusions of the report by the consultant, J. Maier;

(n) The operation of the Judiciary should be improved as recommended by the consultant, J. Maier, in his conclusions;

(o) The Procurator for Human Rights should be given greater support to enable him to continue, extend and complete the work he has begun. (In this connection, see the conclusions of the experts from the Parliamentary High Commissioner of Spain);

(p) More emphasis should be placed on training in civics and democracy, in an atmosphere of respect for human rights, for senior officers of the armed forces;

(q) The total subordination in matters of jurisdiction of members of the armed forces to the ordinary system of justice should be studied;

(r) With reference to the problem of refugees (paras. 34-39), since repatriation depends on political, economic, and social conditions and the level of violence, efforts must be continued to encourage, freely the speeding up of the repatriation process which has experienced some vicissitudes.

67. These conclusions coincide in general with those the Expert put forward in his previous reports to the Commission. Political difficulties, the continuing climate of violence and the influence of the negative factors referred to above have prevented the Government, in its weakened state, from ensuring full safeguards and respect for human rights.

68. Events have not justified the relative and cautious optimism felt in 1987 and 1988. This is serious, disturbing and unfortunate.

69. International assistance and co-operation are essential if this process is to continue, through the application of the provisions of the international instruments ratified by Guatemala and through the promotion of human rights in the manner indicated in paragraph 71 (c) and (d).

70. Only in a pluralistic and representative democracy, with a fully operative Constitution, with free elections and with everyone subject to a single and legitimate civil authority, can the future be contemplated and can there be an improvement in the human rights situation in Guatemala. The present constitutional Government, notwithstanding its shortcomings and omissions should, therefore, be supported, as should future democratic Governments.

VII. RECOMMENDATIONS

71. The recommendations the Expert ventures to make to the Commission, in keeping with his mandate under resolution 1987/53 and the terms of resolutions 1988/50 and 1989/74, are as follows:

(a) It is necessary for the Commission to continue to observe the situation of human rights in whatever way it deems appropriate, bearing in mind the present situation in Guatemala;

(b) Conclusions (1) to (p) should be borne in mind;

(c) It is essential to continue the broad programme of assistance to the Government to help the democratic process, since this institutional framework is a necessary but not the only prerequisite for the future improvement of the situation which is undeniably tied in with the maintenance of democracy;

(d) In keeping with what has already been done, this programme should, inter alia, continue to consist of:

- (i) Assistance to introduce human rights courses at all levels of education. This should include not only State education but also education in private schools, colleges and universities;
- (ii) Assistance for courses and seminars intended for judges and officials of the Judiciary;
- (iii) Assistance for courses and seminars intended for police officials. It must be ensured that human rights are included as a subject in the continuous training of senior police officials;
- (iv) Assistance for courses and seminars intended for officers in the armed forces. Human rights must be included at all times as a subject in the courses in the Military College and in the courses for officers on the General Staff. Such courses should not be confined to international humanitarian law but should cover the overall topic of human rights.

72. Without prejudice to these specific recommendations, the Expert would also like to draw the attention to the value of:

(a) Continuing to provide suitable advice and assistance for the organization and activities of the Office of the Procurator for Human Rights;

(b) Continuing to provide multidisciplinary and sectoral support to help in devising an overall policy on development, assistance and non-discrimination in regard to the indigenous populations;

(c) Supporting and complementing bilateral aid, already negotiated and in the process of being furnished, for technical reform and material improvement of the police force, so that it will become an effective democratic organization protecting and guaranteeing law and order and everyone's rights and freedoms.

73. These are the recommendations that the Expert wishes to make in his third and final report.

VIII. CONCLUDING REMARKS

74. In the course of monitoring the situation in Guatemala for almost four years, the Expert has ascertained that extensive sections of Guatemalan society have begun to understand the problem of human rights, its conception and the limitations and obligations involved. Previously, it was a problem

that did not impinge on the social conscience, one which was alien to a "culture", that had other components. But today, the start of a process of change can be glimpsed. It is a difficult and complex process and cannot be expected to come about automatically or rapidly. However, it is the only one that can bring about a legal situation, in the context of which the present and future democratic governments can work more effectively and efficiently than they have been able to do so far. This beginning of a change in thinking and a new awareness of the need to respect human rights - seen as deriving directly from the dignity of all human beings without any kind of discrimination - is perhaps the most important progress achieved in Guatemala in recent years and gives some ground for optimism about the future. Human rights violations are not confined to the Government or public officials acting in an official capacity. Human rights are also violated by terrorists and the guerrilla - especially in a democratic State, which, because it is pluralistic, guarantees the free expression of opposing political views by legitimate means - by armed fringe groups which act outside the control of the army or the police, or which are in the pay of private interests, by common criminals and by all who resort to violence in order to settle any kind of conflict or to express hatred, and to indicate the inability to conceive that there can be divergent views in freedom. But the many and varied causes of human rights violations in Guatemala as well as the injustice of placing the blame solely at the door of the Government must be borne in mind. It is equally true and should always be remembered that the Government has a legal, political and moral obligation both nationally and internationally, to guarantee the enjoyment of human rights to all persons under its jurisdiction.

75. For personal reasons, the Expert is unable to continue the mandate which the Commission had assigned him, and this report is therefore his last. He wishes to thank the Commission for the confidence shown him and the support which he received and to say that the case of Guatemala and the changes which occurred in the human rights situation during the years in which he was required to observe the process at first hand enabled him to study a complex and difficult situation, which raises serious doubts and questions.

76. First of all, there is an apparently insurmountable gulf between law and reality, between what should be and what is and between the rule and what is actually done. This is a particularly serious matter in Guatemala and has already been referred to by the Expert in other reports. Until this gulf is bridged, until this breach begins to close, the human rights situation will not improve. The traditional legal approach, the belief that problems can be solved because a rule, full of fine-sounding words exists, but is not applied is one of the worst obstacles to progress on human rights issues. However, one should not think that the law does not play an extremely important role in the overall process of improvement. Legal standards are absolutely essential. Without the law, there can be no progress in human rights but if the law is not applied and no serious attempt is made to enforce it, maintain it and keep it alive and effective it is of little use. The law should be applied and should serve as a means of forcing a change in the situation and it is one's bounden duty to use it and not keep it there as an ethereal, distant, unattainable realization, divorced from reality.

77. Second, if material, economic, social and cultural conditions do not change, if there is no movement away from a society of exploitation, of immutable privileges and of entrenched injustice towards a society which is supportive, tolerant and fair, human rights cannot become a living reality, available to all, the basis for peace and progress.

78. Third, without democracy, without free elections, without constitutional Governments, it is not possible to contemplate an improvement in the human rights situation. However, one must recognize that the democratic Governments in Latin America which have succeeded military dictatorships have managed to achieve very little. This is not due only to the economic and social situation but to other real factors of power. These factors, which are outside the government apparatus, but which sometimes infiltrate the Government, the police and the armed forces, have proven to be stronger than even the Government itself, which is unable to dominate them.

79. The Government itself may respect human rights, but it lacks the ability, power or authority to ensure that they are fully and freely exercised and is unable to punish violations and guarantee peace and order based on freedom. It lives in fear, a prisoner of forces which it cannot control. This is a tragedy, a formidable problem, which has not been solved and with no prospect of an immediate solution. It has a negative and decisive impact on the situation in Guatemala which cannot be understood or tackled if it is not taken into account.

80. It should be acknowledged, with modesty and relativism, that it will not be possible to achieve any significant improvement in the human rights situation in the short term. A strengthened democratic Government, which is a genuine source of authority, based on the Constitution, public order safeguarded by the law, illegal centres of power brought under control or eliminated outright, a society that believes and trusts in the law, violence eschewed and tolerance embraced, an understanding of the need for pluralism and co-existence for all ideologies in a context of freedom, an acceptance, intellectually and at the practical level of the "human rights culture" are the conditions that must be met in order to improve the human rights situation in what can only be a lengthy and arduous process.

81. In order to advance in this process, democracy must perforce continue, there must be elections and the Constitution must be maintained. If there is any interruption of this process, the Government would not even be able to do what it has done so far despite its shortcomings, limitations and adverse conditions, but with sincerity and conviction, and there would be a backsliding into a maelstrom of unconfined violence and the horror of widespread and continued human rights violations, perpetrated, fanned and encouraged by governmental authority. This would be unacceptable. The Expert, therefore, believes that the maintenance of constitutional democracy in Guatemala, despite its limitations, shortcomings and weaknesses, is vital in order to envisage the protection of human rights in the future.

82. The Expert wished to make these comments as this will be his last report to the Commission. He considered that it was his duty to state his views in complete frankness, and without reticence of any kind.

83. During these years of contacts with the situation in Guatemala he has come to love the country and its people as if they were his own. That is why he is confident that Guatemala is capable of overcoming the anti-democratic violence and of securing respect for human rights, based on a fully effective Constitution and on the far-reaching changes needed in the present economic and social situation.

Note

1/ National Statistics Institute, Encuesta Nacional Socio-Demográfica 1986-1987: Demografía, Total República, vol. 1, Guatemala, 1987;

Social Services Plan by the Archbishopric of Guatemala;

Report on the human rights situation in Guatemala, 1989, Human Rights Commission of Guatemala;

Special Report by the Centre for Human Rights, Research, Study and Promotion (CIEPRODH).

Annex I

PROGRAMME FOR THE SECOND HUMAN RIGHTS TRAINING COURSE ORGANIZED BY THE UNITED NATIONS CENTRE FOR HUMAN RIGHTS IN CO-OPERATION WITH THE MINISTRY OF FOREIGN AFFAIRS OF GUATEMALA AND WITH THE CONGRESS OF THE REPUBLIC OF GUATEMALA, THE MINISTRY OF THE INTERIOR, THE MINISTRY OF DEFENCE, THE SUPREME COURT OF JUSTICE, THE PROCURATOR FOR HUMAN RIGHTS AND THE CENTRE FOR DEMOCRACY

ANTIGUA
23 to 27 October 1989
(Ramada Hotel)

Monday, 23 October

Morning

9.00 - 10.30 a.m.
10.30 - 11.30 a.m.

Registration of participants
Opening of the course. Addresses by:

- Héctor Mayora Dawe, Chairman of the Human Rights Commission of the Congress of the Republic of Guatemala
- Julio Armando Martini Herrera, Deputy Minister for Foreign Affairs
- Héctor Gros Espiell, Expert of the United Nations Commission on Human Rights
- José Fernando Lobo Dubón, President of the Congress of the Republic of Guatemala

Break

12.00 to 12.30 p.m.

General information on the programme

Afternoon

3.00 - 4.00 p.m.

The dissemination and teaching of human rights at the primary, secondary and university levels

Héctor Gros Espiell, United Nations Human Rights Commission Expert on Guatemala

Break

4.45 - 6.30 p.m.

The dissemination and promotion of human rights through the information media

Marco Antonio Sagastume Gemmell, Adviser on Teaching Strategies

Tuesday, 24 October

Morning

9.00 - 9.45 a.m.

Dissemination and teaching of international humanitarian law and human rights to officers of the armed forces

Héctor Gros Espiell

Break

10.00 - 12.00

Round table on the dissemination and teaching of human rights in schools at special academic levels and through the information media with representatives of the: Guatemalan United Nations Association (José Fernando Mollinedo Castillo), San Carlos University (Erick Ovalle Martínez), Information Media (Zoila Reyes Illescas), Ministry of Education (Marco Vinicio Mejía), Rafael Landívar University (Jorge Cabrera Hurtarte)

Moderators: Héctor Gros Espiell

Marco Antonio Sagastume Gemmell

Afternoon

3.00 - 6.00 p.m.

Working Group I to prepare conclusions and recommendations on co-ordinated action to promote and protect the dissemination and teaching of human rights at the primary, secondary and university levels and through the information media

Wednesday, 25 October

Morning

9.00 to 10.30 a.m.

The dissemination and teaching of human rights to police and prison officers:

Manuel Nuñez Pedraza, Principal Police Commissioner for State Security, Ministry of the Interior of Spain

Break

10.45 a.m. - 1.00 p.m.

Round table on the dissemination and teaching of human rights to police and prison officers with representatives of the: Ministry of the Interior (María Consuelo Porrás), Directorate-General

of Prisons (Javier Antonio Rendón), Rural Police Department (José Rubén Carias) and the Police College (Magdaleno Pineda)

Moderators: Manuel Nuñez Pedraza

Julio Maier

Afternoon

3.00 - 6.00 p.m.

Working Group II to prepare the conclusions and recommendations on joint action to promote and protect the dissemination and teaching of human rights to police and prison offices

Thursday, 26 October

Morning

9.00 - 10.00 a.m.

The incorporation and application of international human rights standards in Guatemalan internal law

Eduardo Jiménez de Aréchaga, former President of the International Court of Justice

Break

10.15 a.m. - 1.00 p.m.

Round table on the promotion of the application of international human rights standards in Guatemalan internal law, with representatives of the: Constitutional Court (Edgar Balsells Tojo), Office of the Procurator for Human Rights (Angel Alfredo Figueroa), Supreme Court of Justice (Olga Choc Jolomná and Miguel Angel Villatoro Schunimann) and Héctor Gros Espiell

Moderator: Eduardo Jiménez de Aréchaga

Afternoon

3.00 - 6.00 p.m.

Working Group III to prepare the conclusions and recommendations on co-ordinated action to promote and protect the incorporation and application of international human rights rules in Guatemalan internal law.

Friday, 27 October

Morning

9.00 - 9.45 a.m.

The dissemination and teaching of international humanitarian law and human rights to officers of the armed forces

Jean-Pierre Givel, representative of the International Committee of the Red Cross

9.45 - 11 a.m.

Round table on the dissemination and teaching of international humanitarian law and human rights to officers of the armed forces, with the following representatives:

Director of the Centre for Military Studies (General Jaime Rabanales Reyes), Director of the Polytechnic School (Colonel Mario René Enríquez), Head of the Army Information Unit (Colonel Luis Arturo Isaacs Rodriguez)

Moderator: Jean-Pierre Givel

Break

11.15 a.m. - 1 p.m.

Working Group IV to prepare conclusions and recommendations on co-ordinated action to promote and protect human rights by the dissemination and teaching of international humanitarian law to officers of the armed forces

Afternoon

4 - 5 p.m.

Distribution of course evaluation questionnaires

Submission of the conclusions and recommendations of the Working Groups to the plenary meeting

5 - 6 p.m.

Award of certificates

Address delivered by José L. Gomez del Prado on behalf of Mr. Jan Martenson, the United Nations Under-Secretary-General for Human Rights

Closure of the course by Mr. Ariel Rivera Irías, Minister for Foreign Affairs of Guatemala

6 p.m.

Official reception given by the Minister for Foreign Affairs (Ramada Hotel)

Annex II

PROGRAMME OF ASSISTANCE PROVIDED BY THE CENTRE FOR HUMAN RIGHTS TO THE
DEMOCRATIC GOVERNMENT OF GUATEMALA IN ACCORDANCE WITH COMMISSION ON
HUMAN RIGHTS RESOLUTIONS 1988/50 AND 1989/74

Ministry of the Interior and the Judiciary

February–April 1989. The services of Mr. Alejandro González Poblete, Head of the Legal Department, Vicaría de la Solidaridad, Archbishopric of Santiago, Chile, were made available to advise and assist the Guatemalan authorities with a view to protecting human rights especially in matters of enforced or involuntary disappearances. Mr. González Poblete mainly advised police officials but he also gave advice to the Advisory Commission on Human Rights Matters to the Office of the President of the Republic (COPADEF).

4–14 October 1988: Two fellowships for police officials: Mr. Enrique Cifuentes de la Cruz, Commissioner of Police, Head of the Office of Professional Conduct and Mr. Jose Alberto Estaban Lopez Coronado, Office of the Legal Adviser to the National Police to enable them to attend the XIth specialized course for police officers organized by the International Centre for Sociological, Criminal and Prison Research and Studies in Messina, Italy.

3–14 October 1989: Two scholarships for police officials: Mr. Luís Arturo Paniagua Galicia, Commissioner of Police, Head of the 5th National Police Corps and Mr. Francisco Flores Sandoval, Head of the Legal Department of the National Police Force to enable them to attend the XIIth specialized course for police officers organized by the International Centre for Sociological, Criminal and Prison Research and Studies in Messina, Italy.

18 October–17 November 1989: The services of Mr. Julio Maier, Resident Professor of Criminal and Procedural Law, University of Buenos Aires, Argentina, were provided to advise and train police officers and prison staff in the protection of human rights, the preparation of dossiers for legal proceedings and in making impartial inquiries into cases which occur in suspicious circumstances.

Office of the Procurator for Human Rights

1989. Books and documents were provided for a basic human rights reference library.

20 November–22 December 1988. Fellowship for Mr. Jorge Cabrera Hurtarte, General Secretary of the Office of the Procurator to study the organization and operation of the Office of the Parliamentary High Commissioner of Spain and to make the appropriate recommendations with a view to introducing the systems studied in the Office of the Procurator for Human Rights of Guatemala.

1989. Office equipment was provided for the Office of the Procurator.

20 September–5 October 1989. The services of Miss Beatriz Rueda Muñoz and Mr. Rafael García Ormaechea of the Office of the Parliamentary High Commissioner of Spain were made available to advise the Office of the Procurator for Human Rights of Guatemala.

Ministry of Education

January-December 1989. During the year the services of Mr. Marco Antonio Sagastume Gemell, a local adviser on education and teaching strategies were made available to train a team of teachers from the Ministry in human rights instruction at the primary and secondary levels and to popularize human rights texts.

3-8 July 1989. Two fellowships for Mrs. Lidia Mercedes Rabanales Pinot, an urban primary school teacher, and Mrs. Olga Evelyn Amado Jacobo, Director of the Sectoral Advisory Unit of the Ministry of Education to attend the seventh international training course on human rights and peace, organized by the International Centre on Human Rights and Peace Training in Geneva (Switzerland).

August 1989. (The two fellowships projected for university professors to attend the Inter-American Institute of Human Rights course in San José were not utilized.)

Ministry of Defence

June 1989. (The two fellowships projected for officers of the armed forces to attend the course on international humanitarian law in San Remo (Italy) were not utilized.)

Advisory Commission on Human Rights Matters to the Office of the President of the Republic (COPADEF)

1989. Books and documents were provided for a basic human rights reference library.

Ministry of Foreign Affairs

1989. Books and documents were provided for a basic human rights reference library.

30 January-11 May 1989. Two fellowships for Ministry of Foreign Affairs officials, Miss Araceli Phefunchal and Mr. Juan Carlos Cuestas Galvez to familiarize themselves, in Geneva, with international procedures and the work of various United Nations bodies in the field of human rights (Commission on Human Rights, Human Rights Committee) as well as with the operation of the Centre for Human Rights and of international agencies, such as the ILO, UNHCR and the ICRC, in order to secure better co-ordination between the Centre and the Government of Guatemala.

Indigenous Communities

1989. From 13 February to 31 March 1989 and from 15 November to 20 December 1989, the services of Mr. Augusto Willemsen Díaz, a former official of the Centre and expert on indigenous populations were made available to advise the Guatemalan authorities on matters relating to the

advancement and protection of the indigenous communities. On his first visit, Mr. Willemsen Díaz provided training on the topic to staff from the Ministries of Urban and Rural Development, Education, Culture and Public Health, the Advisory Commission on Human Rights matters to the Office of the President and to the Congressional Commission on Indigenous Communities.

On his second visit, he concentrated primarily on advising the members of the Congressional Commission on Indigenous Communities on drafting a bill on indigenous communities that would expand the relevant article of the Constitution. It is anticipated that a third advisory mission of about two and a half months will be needed in 1990 to finish drafting the bill.

Human Rights training

The Centre for Human Rights together with the Government of Guatemala organized the first human rights training course from 14 to 18 November 1988 in Guatemala City. The course was attended by 60 persons (judges, magistrates, State officials, teachers, police officers, officers of the armed forces, deputies, members of the Office of the Procurator for Human Rights and of the Congressional Commission and the Advisory Commission to the Office of the President, and representatives of non-governmental organizations).

From 23 to 27 October 1989 the second training course was held in Antigua (Guatemala) as a follow-up to the first with approximately the same kind of attendance. Participants drafted a series of recommendations to be studied by the Guatemalan authorities and which could provide elements for a co-ordinated policy to promote and protect human rights by disseminating and teaching them in schools and universities and to law enforcement officials, judges, and the armed forces.
