

INDIAN LAW RESOURCE CENTER

601 E STREET, SOUTHEAST, WASHINGTON, D.C. 20003 • (202) 547-2800

November 21, 1985

Dear Friends,

Latin America is also Indian America. Nowhere is that more evident than in Guatemala, a country where there are some four million Mayans, mostly poor peasant farmers who live in the highlands.

In Guatemala the Indian population is the majority population, yet the non-Indian minority, the Ladinos, have dominion. Ever since the Spanish conquest, the Indian nations of Guatemala have had no more than a token voice in their own government. Historically the Indians have been slaves and vassals in their own country. In recent years they have been subjected to the most brutal repression by a series of right-wing Guatemalan military leaders who have used all available means -- including genocidal slaughter of entire communities -- to control them. Adding further injury and suffering, leftist guerrilla forces badly abused them and killed many who would not go along with their program. They wanted the Indians to be the footsoldiers of their war.

In the words of some of the Indian leaders, the Indian people of Guatemala have been "caught between two fires."

The guerrillas were routed in the highlands and the Indian highlands were "pacified" by the Guatemalan army in the last few years. Having first been terrorized, the Indian people are now subjected to a system of military control which reaches every aspect of their lives. Some Indians continue to be "disappeared" for opposing government policies. Hundreds of thousands of Indian men are controlled and regimented through universal conscription into military patrol units which the government has established in almost every Indian village. Many thousands are in relocation and re-education camps called "model villages". Tens of thousands are still refugees in Mexico and the United States where they sought asylum during the worst of the violence in the early 1980's.

Ongoing Guatemalan elections give some hope that a new civilian government will grant relief to the Indian peoples, but it remains an open question whether real governmental power will be surrendered by the military to the elected officials.



Heartened by this "pacification", the Reagan Administration is pushing Congress for expanded aid to Guatemala, particularly military aid. Moreover, at this very time the Reagan Administration is asking the United States Courts to deny political asylum and to deport those Mayan refugees from Guatemala who have found a measure of temporary security in the United States.

In the midst of this tragedy, some human rights organizations have tried to provide the public with honest reports about the violations of human rights which the Indian and non-Indian peoples of Guatemala have been suffering. The OAS Inter-American Commission on Human Rights is one of the most respected of these human rights organizations. We urge you to read the Commission's latest report on Guatemala which appears in the Commission's Annual Report for 1984-1985.

We need to be informed because the Mayan peoples of Guatemala need our assistance and support.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert T. Coulter", written in a cursive style.

Robert T. Coulter
Executive Director

Special Report On The Status Of
HUMAN RIGHTS IN GUATEMALA
From The
Annual Report of the Inter-American Commission on Human Rights
Of The Organization Of American States
1984-1985

GUATEMALA

The Inter-American Commission on Human Rights decided at its 65th session to include in its annual report to the General Assembly of the Organization of American States a special chapter on the status of human rights in Guatemala. This chapter, which is based particularly on the on-site observation mission in May to that country, updates the Commission's previous reports on Guatemala, without prejudice to the preparation of a special report that will be sent to the Guatemalan Government for comment. To that end, a communication was sent on July 11, 1985, to the Guatemalan Government, requesting that it send promptly any supplementary or additional reports it felt should be included in this report. Unfortunately, the Commission has received no reply to that note.

The Commission has continued to follow carefully the development of the human rights situation in Guatemala for several years, because of the widespread violence that has been occurring in that country and the many and repeated complaints about human rights violations received by the Commission, which have been attributed to the authority and responsibility of the Guatemalan Government's agents themselves. To that end, the Commission has published two special reports on the status of human rights in Guatemala. The first (OEA/Ser.L/V/II.53 doc.21, rev.2), approved by the Commission on October 13, 1981, covers the status of human rights in Guatemala up to that date, and the second (OEA/Ser.L/II.61 doc.47), approved by the Commission on October 5, 1983, covers the status of human rights since March 23, 1982, when the coup occurred that made General Efraín Ríos Montt President.

After publication of the second special IACHR report on the situation of human rights in Guatemala, which, as indicated, covers the period from

March 23, 1982, to August 8, 1983, when General Ríos Montt was deposed and General Oscar Humberto Mejía Víctores took command of the government as Chief of State, the Commission submitted in late 1984, in its General Report to the General Assembly of the OAS on the situation of human rights in a number of countries, a report on the events that occurred on this field from September 1983 to September 1984 under the administration of the present Guatemalan Government.

At its sixty-third session (September 27 to October 5, 1984), in which the IACHR approved the presentation of its 1983-1984 annual report to the General Assembly, it also decided to request the approval of the Guatemalan Government for a new on-site visit to that country, taking into consideration the following facts among others: the renewed outbreak of violence in urban areas and the reappearance of the death squads; the continuous kidnappings, murders, and disappearances of persons; the lack of information about the status of persons tried by the Special Courts, who had not been sentenced and therefore did not come under the amnesty law decreed by the Guatemalan Government; the ineffectiveness of habeas corpus remedies; and continual complaints about harassment of most of the Indian population in rural areas who are also now forced to establish residence outside their places of origin in the so-called model towns or development polls (Polos de Desarrollo) and who are forced to become an integral and active part of the Civil Defense Patrols to defend those towns and fight against subversion.

In response to the Commission's note sent October 3, 1984, and dated October 5, the Government of Guatemala invited the IACHR to make an on-site visit to Guatemala to determine reliably, according to the terms of the note, the progress being made in the human rights field by the administration of General Oscar Humberto Mejía Víctores.

At the end of that visit, which took place May 6-10, 1985, the Special Commission, composed of César Sepúlveda, Chairman; and members, Drs. Andrés Aguilar, Marco Gerardo Monroy Cabra and Mr. Bruce McCollm, submitted to the Chief of State, General Oscar Humberto Mejía Víctores, in the final interview with him at the Government House on Friday, May 10, a confidential document containing the preliminary recommendations made by the Commission as a result of its on-site visit.

In addition, the Special Commission had the opportunity during that interview to comment to the Chief of State on some of the points in the preliminary recommendations, and stressed its concern at the status of missing persons in Guatemala, and the need to designate a magistrate at the highest level to investigate the many acts of kidnapping and disappearances and to punish those responsible. The Special Commission also stressed its concern at the status of the Mutual Support Group and requested that special and priority attention and protection be accorded its members.

Since the IACHR will issue a special report on the status of human rights in Guatemala, this report will refer only to the most important

problems that have occurred from September 1984 to date. These problems are, in the Commission's opinion, the legal and political situation, the problem of disappearances, and the way the so-called "development polls," "Civil Defense Patrols," and the "Interinstitutional Coordinators," systems affect the Indian and rural population.

Legal and Political Situation in Guatemala

During the government of General Oscar Humberto Mejía Víctores, the political and legal situation in Guatemala has maintained the same legal structure established by the "Fundamental Government Statute" of General Efraín Ríos Montt, and thus will continue up to January 14, 1986, when the new Political Constitution of the Guatemalan Republic approved by the Constituent National Assembly on May 31, 1985, will enter into effect.

The new Guatemalan Constitution, approved by the Constituent National Assembly, has a different structure from the country's previous constitutions and reflects the real importance the legislatures have attached to human beings and individual rights in a new conception of the organization of the State and the political and normative system "affirming the primacy of human beings as the subject and purpose of social order," and the decision to "promote full respect for human rights in a stable, permanent and popular institutional order, where the governed and the governors are absolutely bound by the law." The Constitution consists of 7 titles and 281 articles that are part of the main text and one title, VIII, which consists of 22 articles containing temporary and final provisions.

The topic of human rights, their protection and defense, is fully dealt with in the new Guatemalan Constitution, primarily in Titles I, II and III. The individual rights that the Constitution specifies are the right to life; the right to liberty and equality of all human beings; the right to freedom of action; illegal or arbitrary arrests are forbidden; prisoners must be brought before a competent judge within six hours, and may not be subject to any other authority; every imprisoned person must be immediately notified of the reasons for his detention, the authority that ordered it and the place where he will be detained, and the person designated by him must be informed of these circumstances by the quickest means; the right of all prisoners to be assisted by a counsel who shall be present at all judicial and police proceedings, and the prisoner may not be compelled to testify except before a judge within a period not to exceed 24 hours; extrajudicial interrogations are not admissible as evidence; no one may be taken to places of detention, arrest or imprisonment other than those that are legally and publically designated for that purpose, and those who violate this rule shall be held responsible; persons arrested for offenses or violations must not be held if their identity can be established by documents, by the testimony of a known person, or by the authorities themselves; and no one may be sentenced or deprived of his rights without having been summoned, tried and convicted in a legal trial before a competent and pre-established judge or court.

The Guatemalan Constitution also forbids special or secret courts and procedures that are not legally pre-established; it also affirms the principle of presumed innocence, public trials, nonretroactive laws, no crime or penalty without a previous law, and no debtor prisons.

It provides that the death penalty may not be imposed on the basis of presumptive evidence, nor on women or persons older than 60 years of age, nor on those accused of political crimes or common crimes connected with politics, nor on accused persons whose extradition has been granted on the condition that these prohibitions will be respected. It also provides that the Congress may abolish the death penalty.

Regarding international relations, the new Guatemalan Constitution provides that Guatemala shall govern its relations with other States in accordance with international principles, rules and practices in order to contribute to the maintenance of peace, freedom and respect and defense of human rights, the strengthening of democratic processes and international institutions that ensure fair and mutual benefits between states.

Also noteworthy is the fact that in Title II, Chapter II, Third Section, the treatment given to the rights of Indians and Indian communities, whose right of cultural identity is recognized in accordance with their values, language and customs. The State declares that it recognizes, respects and promotes their way of life, customs, traditions, forms of social organization, the use of Indian dress, languages and dialects, and protects their cooperative and communal lands and their family property (patrimonio familias), and ensures that the system will be maintained, by providing for special promotion and development programs and measures to avoid discriminatory treatment in payment of their wages when they work outside their communities. It likewise calls for the enactment of a specific law to regulate all aspects of the protection and defense of such rights.

Title VI establishes the "Constitutional Guarantees and Defense of the Constitution Order". These guarantees include first the writ of habeas corpus, which can be filed by any one who is illegally arrested or deprived in any way of his individual freedom, or is mistreated even though his arrest was based on the law. If the person for whom the writ is filed cannot be found, the court must order that the case be investigated until the facts are fully determined. The Constitution also provides for the remedy of amparo to protect persons whose rights are threatened and to restore the observance of those rights when such violation has occurred.

Likewise, legal action may be brought to declare laws, regulations or general provisions that totally or partially violate the Constitution to be declared unconstitutional. The new Constitution establishes a standing Court or Constitutionality to defend the constitutional order, acting as a collegial court independent of other State agencies.

Particularly noteworthy is the fact that the Guatemalan Constitution also establishes a Human Rights Commission of the Congress to be composed of a deputy from each political party. This Commission will nominate three candidates for the election of a prosecutor (Procurador) who will have the qualifications of a Supreme Court justice. The law will regulate the powers of this Commission and of the Human Rights Prosecutor, who will act as a commissioner of this body to defend human rights and monitor public administration. He will serve for five years, and must submit annual reports to the plenary sessions of Congress, with which he is connected through the Human Rights Commission.

The duties of the Human Rights Prosecutor are as follows: a) promote the proper operation and streamline the administration of the government in human rights matters; b) investigate and bring charges regarding administrative actions that are injurious to the interests of persons; c) investigate all kinds of complaints of human rights violations; d) recommend changes in the administrative actions of officials against whom complaints are lodged; e) publically censure acts or behavior that violate constitutional rights; f) promote administrative or judicial remedies or actions when appropriate; and g) take any other actions assigned to him by the law. The Prosecutor is also responsible in cases of suspension of guarantees for seeing to it that all rights that have not been expressly restricted are fully guaranteed.

Regarding the status of human rights, the Commission has previously underscored the progress made in this area under the administration of General Oscar Humberto Mejía Víctores, and under the presidency of the Supreme Electoral Tribunal of Arturo Herbruger Asturias, which was given concrete implementation on August 1, 1984, with the completion of the first stage of the Political Cronogram (Cronograma Político), which consisted of installing the Constituent National Assembly to write the new Constitution of the Republic of Guatemala.

On May 21, 1985, the Chief of State announced that military personnel discharged from the army to take posts in the military government would return to their previous positions of military command in order to give the administration a more civilian image before the change of administration, so as to ensure that the Chief of State would be the only military officer remaining in the government until the change of administration. On May 31, when the new text of the Constitution was received for publication in the Official Gazette, the Chief of State announced that the army and the government would keep their promises not to support any group or candidate in the next elections.

The new Electoral Law for the general elections next November and December was enacted on June 3, and on the following day, the military governor of Guatemala scheduled presidential, legislative and municipal elections for November 3, and if an absolute majority was not obtained in the presidential election, the runoff election would be held on December 3. In the legislative elections, 100 deputies will be elected (75

district and 25 national). The electoral schedule provides that the president-elect will take office on January 14, 1986, and will serve for a five-year term. His election will mark the end of 14 years of military regimes.

The citizens' Electoral Register (Registro Electoral) indicates that 14 political parties will participate in the coming general elections, and all of them have met the requirements established by the current Political Organizations Law, including the submission of signatures of 4,000 members and having a party organization in 50 municipalities.

The eight candidates for the president and vice president of the Republic of Guatemala, registered by the August 15 deadline for filing of candidates are as follows:

Mario Solorzano Martínez and Luis Zurita Tablada, of the Social Democratic Party (PSD), who are running for the first time in an election; Lionel Sisniega Otero and Julio Benjamín Sultán, of the Anticommunist Unification Party (POA), the National Unity Front (FUN) and the Emerging Movement of Harmony (Movimiento Emergente de Concordia) (MEC); Jorge Elías Serrano and Mario Fuentes Pieruccini, of the Democratic Party of National Cooperation (PDCN) and the Revolutionary Party (PR); Mario Sandoval Alarcón and Jaime Cáceres Knox of the National Liberation Movement (MLN) and the Democratic Institutional Party (PID), they are also supported by the Popular Democratic Force (FDP) but that party did not register them officially; Alejandro Maldonado Aguirre and Mauricio Quixtan, of the National Renewal Party (PNR); Mario David García and Carlos Molina Mencos, of the Nationalistic Authentic Central Party (Central Auténtica Nacionalista) (CAN); Vinicio Cerezo Arévalo and Roberto Carpio Nicole, of the Guatemalan Christian Democratic Party (the Democratic Civic Front (FCD-5) also supported them but did not register them officially); Jorge Carpio Nicolle and Ramiro De León Carpio, of the Union of the National Center (UCN).

In addition, candidates were recorded for 100 seats (curules) in the National Congress and 327 for mayors and municipal corporations.

Forced Disappearance of Persons

Unfortunately, the forced disappearance of persons is nothing new in the gamut of human rights violations in the hemisphere, and precisely because of its extreme seriousness, it has been considered and condemned by the General Assembly of the Organization of American States as a crime against humanity (delito de lesa humanidad). However, although this crime has different characteristics in every country where it occurs, there appears to be a common denominator that typifies and characterizes this practice.

Analysis of the information in the possession of the Commission on the names, dates, data, ages, sex, professions or activities of victims, common characteristics of the attacks and other studies on the problem, it

is clear, without determining the exact number of missing persons, which under the administration of General Oscar Humberto Mejía Víctores is over 1,000, that the situation is extremely serious. This problem is dealt with fully and in detail in the special report submitted by the IACHR to the Government of Guatemala.

As a matter of fact, some of these cases of forced disappearance of persons took place during the on-site visit of the IACHR Special Commission to Guatemala. In fact, from May 3 when Executive Secretariat personnel began to arrive to May 10 when the visit was completed, Messrs. Oswaldo Rodríguez Cabrera, Jorge Humberto Granados Hernández and Juan Carlos Alfaro Alvarez were kidnapped and disappeared. Only the last of these persons reappeared, and he said that the Department of Technical Investigations (DIT) was the agency responsible for his apprehension.

Absence of Legal Measures for Protection

It is frequently true that, when illegal arrest, kidnapping and disappearance of persons not investigated or punished properly occur in a country, the remedy of habeas corpus is almost always an ineffective weapon to counteract this situation. That also seems to be the case in Guatemala, where for a number of years, the remedy of habeas corpus, the only legal guarantee provided for in the Government's Fundamental Statute to defend the freedom, security and life of human beings, has become ineffective and inoperative.

In view of the many complaints received about the inoperativeness of the habeas corpus remedy, the Commission has repeatedly requested the Government of General Oscar Humberto Mejía Víctores to take the necessary steps to make this important legal instrument for protection and defense of human rights fully effective.

In its last report to the General Assembly of the Organization of American States (1983-1984), the Commission pointed out in this connection:

The inefficacy of judicial institutions to protect the population from abuse by government authorities, such as the writ of habeas corpus, which the Commission's past reports strongly recommended be strengthened, has again become apparent under this government, which makes it necessary to emphasize the need to provide the Judiciary with the independence and appropriate means to enforce respect for the law and the reign of justice.

The Commission is aware that in the period covered by this report, hundreds of habeas corpus writs have been rejected by the courts, based entirely on the police reports that the missing persons were not held in any of the country's detention centers. The IACHR Special Commission found in its on-site visit that such fact finding had not been made at the national level and no real investigation had been made by the police, who

did no more than check the names of persons booked at the DIT local offices in Guatemala City, so that the efforts of the victims' families to find them were thwarted.

The Mutual Support Group Working for the Reappearance Alive of our Sons, Spouses, Parents and Sisters and Brothers (GAM)

There was no organization of parents or family members of missing detainees in Guatemala, and the first committees that were organized were broken up one after another by previous administrations until the appearance on June 4, 1984, of the GAM or "Grupo de Apoyo Mutuo por el reaparecimiento con Vida de Nuestros Hijo, Esposos, Padres y Hermanos," an organization set up under the right of freedom of association. Twelve months after it was established, the GAM membership consisted of 640 families with 538 cases of missing detainees from 1980 to 1985, who included: men from 18 to 40, usually workmen, trade unionists, students and professional workers; women 18 to 35, usually mothers who are pregnant and devoted to their homes, farm women, students, and women workers; and children from 6 to 16, mainly peasants and primary and secondary school students. Most are women, and almost 80% are of Indian origin.

To make its action effective, the GAM began in defiance of government authority to hold protest demonstrations. After peacefully taking over the building of the National Congress, the members of the GAM have been received on various occasions by the Chief of State and some of his cabinet ministers, who have heard their complaints about lack of attention to their appeals. They have been asked for proof and evidence of abuses, illegal arrests, kidnapping, torture and other acts committed against their loved ones and--as they have told the IACHR--knowing that they were turning over evidence that would jeopardize them personally and directly, at the risk of their own safety, they have given the names, description and characteristics of officials and other persons implicated in such actions. They explained that this information had been revealed to them secretly by friendly officials or family members that had seen the kidnapped persons alive in their secret places of imprisonment.

In the face of so much evidence made public, the Government of General Oscar Humberto Mejia Victores ordered the establishment of a high level commission to hear all of the complaints, testimony and declarations submitted. The Commission, known as the "Tripartite Commission" was composed of representatives of three sectors: the Ministry of Defense, the Ministry of the Interior and the Attorney General's office.

Several months after it was established, the Tripartite Commission informed the Chief of State of its findings. The GAM has publicly expressed its frustration, disappointment and disagreement with the findings in the Tripartite Commission's report, which denies the existence of secret prisons, rejects the charge that missing persons are imprisoned by the security forces, and claims that there is not enough information on Guatemalans who have emigrated to Mexico to determine whether the missing persons are among them. The GAM repeats its conviction that its loved

ones are imprisoned somewhere in the country, promises to continue its struggle until their family members reappear safe and sound, indignantly rejects the report, and asserts that the GAM has again been the victim of coverup, deceit and falsity. It denies the accusation that it has not cooperated with the government, and asserts that it has given every kind of confidential details, including the names of the kidnapers, the places of detention, identification of vehicles, and detailed descriptions in each case.

In an interview with the IACHR Special Commission during its on-site visit, the GAM, presided over by Ms. Nineth Montenegro de García, wife of the missing labor leader Edgar Fernando García, submitted a list of 457 missing persons, with respect to whom the IACHR has requested the Guatemalan Government to conduct a special investigation.

Regarding the document containing the findings of the investigation conducted by the Tripartite Commission, the IACHR, which recognizes the nature of the evidence provided by the GAM, considers that a genuine investigation has not been conducted, because if not all, at least some of the cases submitted could have been immediately cleared up, particularly those where the names of officers and identification numbers of official vehicles taking part in the kidnapping were submitted. Even when the complaints are about specific cases, the Tripartite Commission's report is vague. That explains why the Special Commission, aware of the nature of the report, recommended that the Chief of State assign that task to an ad hoc magistrate whose independence and reputation are above suspicion.

The GAM was carrying out its activities normally in spite of constant threats of death against its leaders until March 14, 1985, when in an official ceremony at the military base of the Department of Jutiapa, which was carried on television, the Chief of State, General Oscar Humberto Mejía Víctores, made certain allegations that the GAM was being manipulated by subversion and by an international group and that, in that context, its efforts to have the missing persons reappear alive was a subversive act and steps would be taken to counteract it.

Immediately after these statements, the GAM began to be seriously harassed. Its members began to be followed by State security agents. Death threats by telephone and in writing against its leaders increased. On the night of March 16, DIT members appeared at the home of Angel Edulfo Reyes to seize him, but they did not succeed because he was not there at the time. Two weeks after the statements of the Chief of State, the first extrajudicial execution of one of the GAM members occurred. On March 30, Hector Orlando Gómez Calito, a baker, was seized in public at the corner of Third Avenue and Twentieth Street in Zone 1 of the capital, as he was leaving a GAM meeting and was preparing to get on an out-of-town bus to Amatitlán where he lived. Two days later, his body was found bound hand and foot at kilometer 27 on the highway to the Pacific.

A few days later, on April 4, the disappearance of an entire family of a GAM leader was reported, and they were later found dead under strange

circumstances. In fact, at mid-day on Thursday the fourth, the day before Holy Friday, Professor María del Rosario Godoy Aldana de Cuevas, accompanied by her three year old son, and her twenty-one year old brother René Godoy Aldana, left their home in Zone 13 of Guatemala City in a stationwagon to buy food and supplies in the supermarket "Centro Comercial Montufar" in Zone 9. When they did not return and were not heard from, the family reported their disappearance to the DIT. On the following day, the bodies of the three were found at the bottom of a ravine at kilometer 19 of the highway to Villa Canales. The National Police called their death a traffic accident.

As a result of this campaign of violence against the GAM, the number of their leaders has been reduced by the deaths mentioned, and others, terrorized by the continuous threats, harassment and persecution, have chosen to flee abroad, so the Commission has requested special guarantees and protection for the organization's leaders.

Effects on the Indian Population of the Development Polls System, Interinstitutional Coordinators and Civil Defense Patrols Development Polls

The Development Polls, whose immediate predecessors were the so-called "Model Towns" created by the Government of General Efraín Ríos Montt, were legally instituted by the administration of General Oscar Humberto Mejía Víctores through Decree Law N° 65-84 of June 26, 1984.

The highest officers of the army are responsible for organizing and coordinating the Development Polls, and the program is under the Deputy Chief of State and Chief of Staff of National Defense. Monitoring of the programs is the responsibility of the Interinstitutional Coordinators, which are required to report to the Chief of Staff of National Defense.

The action plan of the Development Polls, known as the Highest Priority Action Plan, is contained in Government Agreement 801-84, a decree issued on September 12, 1984, establishing three stages of overall conduct of the program;

"First Stage: Basic Assistance for Displaced Persons.

- A. Census, identification and classification by ethnic group, dialect, place of origin and family group.
- B. Distribution of food supplies and cooking equipment and utensils.
- C. Preventive and curative medical care.
- D. Community organization.
- E. Social service to widown and orphans.
- F. Construction of temporary housing.
- G. Service infrastructure.

Second Stage: Follow-up.

Third Stage: Consolidation."

According to information gathered by the Commission, the schedule for the Development Polls, each of which groups together a number of Model Towns, has not been fully achieved, unlike the political schedule. The deadlines for the first stage have been partially met at the expense of great effort, and the second and third stages are far from even being attempted.

Although there is no specific official definition of the Development Polls, there is no doubt that the program involves resettlement of displaced Indian and rural populations in a group of "Model Towns" and these programs are being organized and financed under the development, protection and military security plans that have been assigned to them by the National Defense Staff, which exercises direct control, supervision and execution of them through the Interinstitutional Coordinators and the Civil Defense Patrols.

National System of Interinstitutional Coordination

The National System of Interinstitutional Coordination for Reconstruction and Development is provided for in Decree Law 111-84 of November 26, 1984. The objective of the system is to guide and coordinate actions of the public sector and nongovernmental organizations in programs for national, departmental, municipal and local reconstruction and development, through the establishment of an Interinstitutional Coordinator at each of these levels.

The Civil Defense Patrols

These patrols were set up under the administration of General Romeo Lucas García in 1981 and implemented later by the administrations of General Efraín Ríos Montt and General Oscar Humberto Mejía Víctores. They are regulated by various legal provisions, regulations and higher military orders.

Civil Defense Patrols are military organizations set up by the Guatemalan Army to establish and bring into operation within the civilian rural and Indian population of each country, small bodies organized militarily to carry out in their towns, mainly patrol, defense and control of guerrilla movements. Each of these groups is a Civil Defense Patrol, which is to say the system as a whole bears the name of its operating mechanism. Civil Defense does not operate in Guatemala City, and its activity in several Department capitals like Huehuetenango, Santa Cruz del Quiché and Cobán is limited. It mainly operates in the conflict areas as they are called, in the municipalities, small towns and the Development Polls.

The Civil Defense Organization, which strictly speaking is not a paramilitary entity, has been increasing in size and in importance, and is currently estimated to group together, control and direct about one million members. Guatemala now has a total estimated population of 8 million, of which 65% or 5,200,000, including men, women, old people and

children, live in rural areas. Consequently, if women, old people and children under 18 are not counted, the huge proportion of male Indian and rural population enlisted in these Civil Defense Patrols is clear.

The patrols operate under the control of the local military command and a responsible person known as the "Comisionado." Each of them also has a patrol chief designated in each locality by the military commander or the "Comisionado," who are required to report directly all events occurring in their jurisdiction.

All men from 18 to 60 must participate in the patrols. They are composed of peasants and other mestizos (ladinos) and Indians, who receive no financial remuneration or compensation for their services, because the work is considered to be a "voluntary service provided free of charge." The tasks to be carried out are ordered by the Patrol Chief. Patrol members are under his orders and are required to report on their missions.

Guard duty varies with each patrol. In some cases, members serve for two weeks, and in others a month, while in others they serve three to four days a week. Members of the Civil Defense Patrol cannot fail to carry out their commitment to participate nor to perform their periodic guard duties. To be excused from service or guard duty requires prior authorization from the Patrol Chief, and patrol members must in every case give reasons why they cannot perform the service. Usually, a member who cannot carry out a patrol duty must seek a replacement, and even, according to the reports, pay the replacement to service in his place.

Members of the Civil Defense Patrols receive continuous, although rudimentary military training. Mostly they are provided with machetes, and in some cases old rifles, but not modern weapons. Aside from their usefulness as a shock force to prevent surprise attacks or to counteract small insurgent assaults, their service is very useful to the government in providing regular reports on what goes on in their towns: the behavior of the population, daily events, the arrival of a stranger, novel or unusual occurrences, suspicious behavior of neighbors, and even jokes. They act as the eyes and ears of the army, reporting anything that might be useful or valuable.

While the government gives assurances that participation in the Civil Defense Patrols is free and voluntary, anybody who refuses to join or to take an active part in them is immediately segregated, investigated, harassed and even worse, accused of being an alleged sympathizer of subversion or an undercover subversive.

The three institutions whose legal structure has been described above constitute the base of the military administrative pyramid of the joint project. At the top, as maximum authority responsible for direction, coordination, control and execution is the Chief of Staff of National Defense. The programs for development, security and military defense, which constitute its objective, affect the lifestyles, safety and human rights of the persons for whose protection and help they are supposed to

be designed. In the opinion of the Inter-American Commission on Human Rights, a program that is presented as a solution is instead part of the problem.

How these programs affect the Indian and rural population

The following are the general features that show how the overall system affects basic human rights:

The compulsory nature of the program makes it a military emergency plan in which the group for which it is designed is not consulted, instead the program is imposed on them;

Although the program is intended to be a comprehensive system for protection and defense of the rural and Indian population in order to restore their lost peace and security, the plan instead jeopardizes their peace and security and directly involves them in the armed conflict;

By virtue of its military emergency nature, which is characteristic of states of emergency, the program directly or indirectly curtails, restricts, and in some cases deprives those it seeks to benefit of their basic human rights.

The legal framework serving as the context of the program, the concentration of power in the leadership of all levels of the military administrative apparatus, especially lower echelon officers operating in the most remote places in the municipalities and towns, and the fact that local judges are appointed by the military authorities gives rise to uncontrollable cases of abuse of power, most of which are attributable to the army and the Civil Defense Patrols, and the population affected does not have the means to defend itself because of the lack of proper legal remedies and the or lack of authority of officials called upon to investigate and punish such actions.

Right to Life, Humane Treatment, Security and Personal Freedom

According to information in the possession of the Commission, the rights to life, humane treatment, security and personal freedom, set forth in Articles 4, 5 and 6 of the American Convention on Human Rights, are unquestionably those that are most affected by the abuses and excesses of power in the rural and Indian areas.

Right of Freedom of Movement and Residence

The Commission has received complaints that the rights of freedom of movement and residence, set forth in Articles 22 and 24 of the American Convention, are restricted and curtailed in practice, because the population groups located in the Development Polls and subject to civic and military service of the Civil Defense Patrols do not fully enjoy the legitimate right of freedom of movement throughout the territory of their country and of deciding on their place of residence. It is a well known

fact that entry into and departure from the Development Polls is controlled by the army and the Civil Defense Patrols, and to leave or enter the perimeter of these Polls people must apply for and obtain special authorization, which is not always granted. Entry and departure of residents of the Acamal Poll is almost entirely prohibited.

Likewise, this right is affected by the continuous and close supervision and control exercised on the roads by members of the Civil Defense Patrols, who wield an almost uncontrolled power in a threatening manner. They are armed and sometimes drunk, and frequently detain passersby to search their belongings and ask them where they are going and the reasons for their travel. Aside from the fright such practices cause rural people, the Commission has knowledge that not infrequently irremediable tragedies have nearly occurred in these routine inspections when international officials, journalists or foreign tourists have been detained by illiterate patrols who were unable to determine the identity of these persons by their documents or to communicate with them because the patrol members did not know Spanish.

The degree of security under which certain Development Polls are maintained in the conflict areas resembles--according to some of their residents--concentration camps more than refugee camps.

Rights of Assembly and Association

The right of assembly and freedom of association, considered in Articles 15 and 16 of the American Convention, are also restricted and curtailed, because existing security measures in the Development Polls and the strict supervision of the Civil Defense Patrols inhibit residents from taking part in any social, ideological, cultural or other assemblies or associations. All such meetings, when they do occur, are subject to surveillance, supervision and control by the authorities, so they do not enjoy the freedom implied by such rights.

Rights to Due Process of Law and Judicial Guarantees

The rights to guarantees of due process and judicial protection, provided for in Articles 8 and 25 of the American Convention, are not effective or enforced according to reports. This is mainly due to the fact that those who exercise the judicial function are selected and appointed by the same local military authorities against whom complaints and denunciations are filed for violation of human rights, so the same lack of protection and of the remedy of habeas corpus, indicated as one of the serious deficiencies of the Guatemalan judicial system when the status of persons who have used this measure in the capital of the country were considered, prevails also in the rural, peasant and Indian areas, in cases of acts of abuse by the Civil Defense Patrols and members of the Guatemalan Armed Forces.

Rights of Children

In addition, the Commission has received complaints of violations of the rights of children, who are protected by Article 18 of the American Convention. According to these complaints, many minors have been affected. In some cases they have been wounded severely and in others they have been killed in connection with their compulsory participation in the Civil Defense Patrols. There have also been many cases of fatal accidents because of minors' inexperience or lack of skill in handling machetes and firearms, and there have been other complaints about abuses of various kinds by adults against minors in the collective participation on patrol activities in the rural areas. The Commission has likewise been informed that in many localities Indian children under 18 who, because of deficiencies in the civil records cannot prove they are under the legal minimum age, are enrolled in patrol activities despite the protests of their parents.

Rights to Equal Protection Before the Law

Another right considered in the American Convention on Human Rights, which is also affected, is the right to equal protection before the law (Article 24). Most of the population of the country, which consists of mestizos (ladinos) and Indians living in the rural areas of Guatemala, state that they are discriminated against before the law and are not given the same protection, guarantees, and rights as those living in urban areas, especially in Guatemala city.

The Guatemalan indian population, according to some of their leaders, has historically demanded recognition of their identity that is essentially different from the Spanish culture that shaped the Republic of Guatemala. They assert that there has always existed, and in fact still exists a linguistic, racial, social and cultural difference that, because it has not been taken into consideration, constitutes a problem hampering the process of integration in the country and in practice causing the discriminatory treatment complained of by the Indians.

In addition to the human rights limitations mentioned, members of the Indian rural population in Guatemala say that in practice exercise of the following rights are being curtailed among them: freedom of conscience and religion (Article 12 of the American Convention) because of harassment of catechists and destruction or takeover of Catholic churches where the people met to pray, many of which are still used as barracks, freedom of thought and expression (Article 13 of the American Convention); the right to protection of the family (Article 17 of the Convention), which is seriously affected by the forced enrollment of males in the Civil Defense Patrols; and the right to progressive development and preservation of their ethnic identity (Article 26 of the American Convention), because the atmosphere of terror existing in rural areas has had adverse effects and has virtually paralyzed the conduct of development and social promotion activities of nongovernment and religious organizations.

Conclusions and Recommendations

- a. Regarding political rights, it is a cause of special satisfaction for the Commission to note that, despite the many difficulties that have occurred, the political schedule of the government of General Oscar Humberto Mejia Victores is being carried out, and political associations, public institutions and the general public are participating in re-establishing the democratic and constitutional regime in the country, and in so doing are ensuring respect for human rights;
- b. During the period covered by this report, the main problem confronting Guatemala in the human rights area continues to be the forced disappearance of persons, who were previously victims of illegal seizure and detention attributable in almost all cases to the government security forces. This situation, as stated in the last IACHR Annual Report, deserves more attention from the Guatemalan Government because of the climate of fear, insecurity and anguish generated in the population, and should be thoroughly investigated. Also, because of its magnitude, all the urgent measures required by this situation should be taken immediately to put a final end to the problem, and those responsible should be tried and punished;
- c. As already indicated by the Commission, the problem of missing persons affects the right of freedom and personal safety, in addition to the right to life, so if such rights were not violated by illegal arrests and kidnapping, disappearance of persons would be difficult. Consequently, the Government of Guatemala is again urged to see to it that, where such actions are warranted, arrests of persons shall be carried out in strict accordance to the laws, prisoners shall be held in official detention centers, and the fact of their imprisonment shall not be withheld from their families;
- d. The inoperativeness of the habeas corpus remedy, whose strengthening was particularly recommended in the Commission's previous reports, was still in evidence during this observation period, so it is necessary to stress again the need to set up a national central control registry of prisoners and to take any other measures needed to see that it is used effectively in human rights cases;
- e. The Commission cannot evaluate the overall results attained by the government programs known as "Development Polls," Interinstitutional Coordinators and Civil Defense Patrols, in terms of their achievements in development, security and military defense, but must confine itself to the human rights area. In that regard, the Commission is concerned about the way these programs directly and indirectly affect the Indian and rural population for which they are designed, especially with regard to the right to life; integrity, security and personal freedom; the right to freedom of movement and residence; the right to assembly and association; the rights of children and the family; and in the context, the Commission regrets that these programs cause serious and severe violations to these guarantees, freedoms and rights.

f. The Commission recommends that the legal personality of organizations representing Indians be recognized, and that conditions be provided so their members will be protected when they freely report on the needs and aspirations of the Indian populations and that they be given the opportunity to express, without fear of reprisal, their opinions to international agencies involved in promoting and protecting human rights.

g. the IACHR repeats the recommendations it made in its last report to the OAS General Assembly in 1984, especially with regard to the need to investigate and punish with the full force of the law those responsible for illegal executions, disappearances, arbitrary arrests and torture, and it regrets that the Guatemalan Government has not provided the information expressly requested of it in a note of July 11, 1985, to include, in this report, its own views about the human rights situation in that country.

