

The Minnesota Lawyers International Human Rights Committee Report Series

**Justice Suspended:
the Failure of the Habeas Corpus System
in Guatemala**



October 1990

Minnesota Lawyers International Human Rights Committee

430 Marquette Avenue, Suite 402
Minneapolis, MN 55401

JUSTICE SUSPENDED:

The Failure of the Habeas Corpus System in Guatemala

A report of the
Minnesota Lawyers International Human Rights Committee
430 Marquette Avenue, Suite 402
Minneapolis, Minnesota 55401

October 1990

Cover photo: Guatemalan soldier poses in front of the plaza of Santa Cruz del Quiché.

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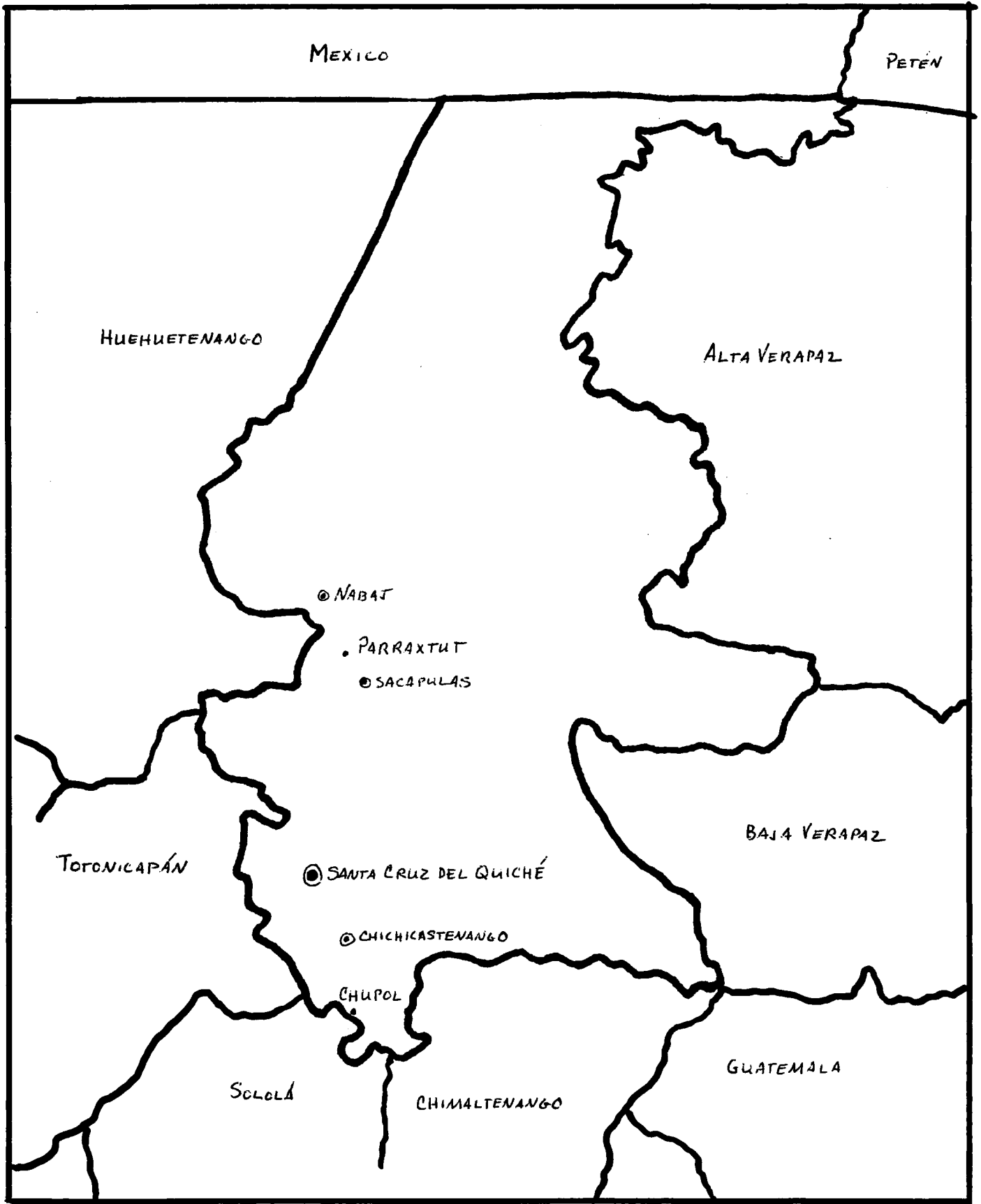
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MAP OF GUATEMALA





DEPARTMENT OF EL QUICHÉ

PREFACE

From September 1989 to May 1990, the country of Guatemala experienced what has been described by the Inter-American Commission on Human Rights as "the most serious increase in violence and human rights violations during the term of President Cerezo."¹ Hopes that the civilian government of President Vinicio Cerezo Arévalo would improve the human rights situation have eroded steadily throughout his term of office. The Guatemalan judiciary, too, has been disappointing in its lack of ability to resolve even the most obvious and egregious human rights cases.

The Minnesota Lawyers International Human Rights Committee ("Minnesota Lawyers Committee" or "Committee") issued a 1988 report, Expectations Denied: Habeas Corpus and the Search for Guatemala's Disappeared,² documenting the ineffectiveness of the habeas corpus system. The Minnesota Lawyers Committee returned to Guatemala again in 1990 to find that the habeas corpus procedure is even less effective now than it was two years ago. The Minnesota Lawyers Committee also finds in this report that the involuntary nature and the actions of the civil patrols are fundamentally in violation of Guatemala's Constitution and of international human rights norms to which Guatemala is obligated.

This second report is based primarily on information gathered by a Minnesota Lawyers Committee delegate during the first six months of 1990. The delegate, who is the primary author of this report, will not be identified for the person's own protection and the protection of the many Guatemalans who cooperated in this investigation.

¹ Annual Report of the Inter-American Commission on Human Rights 159 (1989-1990) OAS Doc. OEA/S.L/V/II.77 Doc. 7, rev. 1 (1990).

² Minnesota Lawyers International Human Rights Committee, Expectations Denied: Habeas Corpus and the Search for the Disappeared (hereinafter "Expectations Denied") (1988).

Assisting the delegate with the investigation and drafting of this report were Barbara Frey, Paul Fraser, and Nancy Graham of the Minnesota Lawyers Committee. The Committee also acknowledges the assistance of Jemera Rone, Ann Manuel, and Jean Marie Simon from Americas Watch, and Bonnie Tenneriello from the Washington Office on Latin America.

The Minnesota Lawyers Committee is grateful for the assistance and cooperation of officials of the Guatemalan government, including the office of the Procurator for Human Rights, and the President of the Supreme Court; the staff of CERJ; the staff of the GAM; the staff of CIEPRODH; and the dozens of other Guatemalan residents who provided invaluable help and insight but, for their own security, cannot be identified.

SUMMARY AND RECOMMENDATIONS

A. Summary of Findings and Conclusions

1. General

Political killings, kidnappings, and disappearances remain a grave problem in Guatemala after four years of civilian constitutional government. The army and armed civil patrols violate fundamental human rights of Guatemalan citizens with impunity. The current Guatemalan government bears responsibility for failing to investigate the crimes and for failing to put an end to the extra-legal activity of the armed groups that perpetrate these crimes. The government lacks the political will, as well as the capability, to guarantee the enjoyment of human rights to its citizens.

The judicial system remains an ineffective protector of civil and political rights, at least in part due to the continued intimidation of judges. The police do not adequately investigate crimes, especially politically motivated crimes. The Public Prosecutor's Department does not assist with investigations in a manner that would reduce the pressure from the judiciary to serve both as an investigator and adjudicator. The Interior Ministry and special commissions appointed by the government to investigate notorious political crimes suffer credibility problems that undermine their findings.

The Presidential Advisory Commission on Human Rights (COPADEH) has been entirely ineffective in resolving cases of disappearance under former military governments or under the current government. There is no reason to believe that COPADEH has ever seriously investigated disappearances.

The rural interior of Guatemala remains heavily militarized and the army, rather than civilian institutions such as the police and judiciary, performs the function of law enforcement. Armed

civil patrols are encouraged by the army to stamp out political dissent, especially targeting human rights groups and individuals who refuse to join their ranks.

Guatemala's Procurator for Human Rights demonstrates significant dedication to his position. By accepting the apology of the civil patrols for assaulting the Deputy Procurator in Parraxtut in March, however, the Procurator breached his public responsibility to examine the role of the army in human rights violations perpetrated by the civil patrols.

Nongovernmental human rights organizations have begun to operate more publicly, yet continue to suffer severe repression for their work. Leaders of nongovernmental human rights organizations are unanimous in their assessment of the weakness of civilian government in Guatemala. They are equally pessimistic in describing the lack of respect accorded to human rights by the military and other sectors. Since January 1990, several members of the Mutual Support Group (GAM), the Ethnic Communities Council "Ranujel Junam" (CERJ), and the National Coordinating Committee of Guatemalan Widows (CONAVIGUA) have been assassinated or disappeared.

In January 1990, the Catholic Church opened a legal assistance office in Guatemala City which serves persons who have suffered human rights violations. The Legal Office is Guatemala's first nongovernmental institution to offer legal assistance to victims of political violence and, despite ongoing threats, also represents the Church's most aggressive effort to address Guatemala's dismal human rights situation. Bishops in other parts of Guatemala are presently starting similar projects.

2. Habeas Corpus

In Guatemala, the habeas corpus procedure remains an ineffective medium for resolving cases of the disappeared. Judges simply do not use the procedure to locate persons illegally detained and order their release. In many cases, the courts do not even respond to petitions filed on behalf of the disappeared. The Minnesota Lawyers Committee received no response to five of the six petitions which it filed in early 1990. The sixth petition produced a negative response. Members of the GAM and other organizations reported that they rarely, if ever, receive any official response to their habeas corpus petitions.

Some Guatemalan judges are using a memorandum distributed by the Supreme Court President to circumvent their responsibility to search personally for illegally detained persons as required by Guatemala's habeas corpus laws. Many other judges are unwilling to assume the risks involved in searching aggressively for those who are illegally detained. Even though some judges, indeed, do comply with Guatemala's habeas corpus laws, the continued existence of clandestine prisons makes futile their search of public facilities for the disappeared.

Contributing to the weakness of the habeas corpus system is a judiciary which is limited by the pressures of the executive branch, the ruling Christian Democratic party, and the military. The judiciary and the police are especially passive in the countryside due to the omnipresent army and its extension, the civil patrols.

3. The Civil Patrols

The Guatemalan military maintains strict political control over indigenous communities, and the civil patrols are a tool for implementing and retaining this control. Any individual who desires to resign from a civil patrol, or who promotes any kind of social-political pluralism, risks harassment and even death.

The army's manipulation of civil patrollers to crush political activism was evident in two 1990 incidents in the villages of Chupol and Parraxtut. In Chupol, the Minnesota Lawyers Committee's investigation produced independent and reliable testimony that, on March 2, 1990, soldiers distributed drugs to 100 to 150 civil patrollers from Southern El Quiché and encouraged them to attack members of the GAM who had gathered in Chupol for a demonstration. In Parraxtut, the Minnesota Lawyers Committee heard testimony that, on March 27, 1990, soldiers from the Nebaj, El Quiché garrison incited local civil patrollers to attack Cesar Alvarez Guadamuz, Deputy Human Rights Procurator, and Amílcar Méndez Urizar, President of CERJ. Parraxtut has effectively been closed to the work of CERJ and other human rights organizations.

Neither the police nor the judiciary have resolved crimes that occurred in Chupol and Parraxtut. In general, no branch of government is willing to take on the investigations of the illegal activities of the army, the civil patrols, or military commissioners. Many attorneys are unwilling to assume the risks involved in bringing cases against the military or the civil patrols. Fear of repercussion operates as a chilling effect to deny legal assistance to the victims of such crimes.

Although the Guatemalan government describes the civil patrols as community organizations, in fact, the patrols operate as agents of the military. Thus, the patrollers commit human rights abuses under the aegis of the state of Guatemala.

B. Recommendations

1. Habeas Corpus

1. The Guatemalan judiciary should establish a system whereby all those who file habeas corpus petitions receive an official response from the court charged with processing the petition. A response is warranted whether it be positive, negative, or "*improcedente*" (i.e. without any result because the subject of the petition cannot be found). Guatemala's Supreme Court should clarify and expand its statistics concerning habeas corpus petitions submitted annually to

Guatemalan courts so as to provide a clear measure of the progress or weaknesses of the habeas corpus system.

2. Supreme Court President Dr. Vásquez Martínez should clarify his memoranda of August 11, 1989 and February 13, 1990 to ensure that the memoranda are not construed to direct judges to refrain from searching personally for the disappeared, or to impose unconstitutional formalities or limitations on the habeas corpus process. Dr. Vásquez Martínez should direct judges and court officials to comply with all provisions of the law of habeas corpus, especially Article 95 of the Law of Personal Exhibition requiring that the judge "go personally to look for the subject of the petition in the place where he or she is presumed to be found, be it in detention centers, jails, or any other place where it is suggested or suspected that the person may be held."

3. Despite the limitations described in the Minnesota Lawyers Committee's 1988 report, the Supreme Court President should reestablish and fully support the office of the Executor Judge to handle all petitions for habeas corpus on behalf of the disappeared. Such a central mechanism provides more efficient processing of these petitions and reduces the likelihood of differing judicial interpretations of their mandate under the Law of Personal Exhibition.

4. The Guatemalan government should reopen its investigation into the cases of the University of San Carlos student leaders who were kidnapped and murdered during 1989. The investigation should be guided by the U.N. Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions adopted by the U.N. Economic and Social Council in May 1989. President Cerezo Arévalo should appoint an independent commission of inquiry to carry out this investigation.

5. The independent commission appointed to investigate the University of San Carlos cases should also investigate the cases of those students who remain missing, and verify and report on the existence of clandestine prisons in Guatemala. This investigation should be carried out in conjunction with the Inter-American Commission on Human Rights and the U.N. Special Expert on Guatemala.

6. The work of the Commission formed by President Cerezo Arévalo to investigate the abduction and torture of Ursuline Sister Diana Mack Ortiz should be carefully scrutinized to ensure its thoroughness, competence and impartiality. Persons identified by the investigation as having participated in the crime should be promptly brought to justice.

7. The Supreme Court should move forward with legal proceedings under the habeas corpus laws based on the large body of evidence implicating the Guatemalan army in the 1986 kidnapping of Luis Fernando de la Roca Elías. Specifically, the Supreme Court should certify the case to the appropriate tribunal for prosecution of the respectable persons pursuant to Article 107 of the Law of Amparo, Personal Exhibition, and Constitutionality.

8. The newly-elected government of Guatemala, in conjunction with the Inter-American Commission on Human Rights and the U.N. Special Expert on Guatemala, should set forth a specific plan to ensure judicial independence and to protect the courts in their investigations into military involvement in human rights violations.

2. Civil Patrols

1. The Procurator for Human Rights and other appropriate civil authorities should coordinate an investigation into the March 2, 1990 attack on the GAM. Such an investigation should include a report on the army's distribution of drugs to civil patrollers from Chupol and the

surrounding area, and the army's incitement to violence by the same patrollers. Responsible members of the army and the civil patrol should be prosecuted for their actions in Chupol under domestic and international law.

2. The Director of the National Police in conjunction with the courts should take immediate action to see that four civil patrollers identified in a warrant by the *Juzgado Segundo de Primera Instancia de Instruccion del Ramo Penal* in Santa Cruz del Quiché are arrested and prosecuted for their actions.

3. The prosecution of military commissioners Domingo Castro Lux and Juan de León Pérez, who were identified by an eyewitness as suspects in the murder of María Mejía, should be reinstated immediately. Given the serious threat under which the family of María Mejía continues to live, the Public Prosecutor and the *Juzgado Segundo* have a serious obligation to seek justice in this case.

4. The Procurator for Human Rights should work with the National Police and the army to create a plan to ensure the security of nongovernmental organizations active in rural communities and specifically to ensure the safety of the refugees who were ultimately returned to the village of Parraxtut after the events of March 27, 1990.

5. The Guatemalan government should re-examine the need and justification for the civil patrols. At a minimum, the newly-elected government of Guatemala should take on the direct responsibility of protecting the rights of those individuals who choose not to serve in the civil patrols. The Minnesota Lawyers Committee recommends that U.N. Special Expert Christian Tomuschat specifically investigate the need for, the activities of, and the structure of the civil patrols in Guatemala as part of his mandate.

3. International Response

1. All military aid to Guatemala should be contingent upon the successful completion of the government and international investigations concerning the existence of clandestine prisons, the independence of the judiciary, and the civil patrols. (See Recommendations A-5, A-8, and B-5.)

2. Guatemala's Procurator for Human Rights demonstrates significant dedication to his position. The Minnesota Lawyers Committee recommends that foreign governments and international organizations as well as the Guatemalan government itself provide strong technical and other support to the Procurator's office.

3. The Catholic Church's efforts to establish a legal assistance office for victims of political violence is deserving of strong national and international support.

4. The Inter-American Commission on Human Rights and the United Nations Commission on Human Rights should pay particular attention to the status of human rights in Guatemala during the upcoming transitional phase of pre-election, election, and post-election periods in Guatemala.

SUMARIO Y RECOMENDACIONES

Sumario de Hallazgos y Conclusiones

A. General

Después de cuatro años de gobierno civil constitucional, las desapariciones, secuestros y asesinatos políticos siguen siendo un grave problema en Guatemala. El ejército y las patrullas de autodefensa civil violan los derechos humanos fundamentales de los ciudadanos con impunidad. El actual gobierno de Guatemala es el responsable por el fracaso en la investigación de los crímenes y por no poner fin a la existencia de los grupos armados que han perpetrado éstos. El gobierno carece de voluntad política así como de capacidad, para garantizar a los ciudadanos el disfrute de los más elementales derechos humanos.

El sistema judicial sigue siendo un inefectivo protector de los derechos civiles y políticos y esto se debe en parte a la continua intimidación de la que son objeto los jueces. La policía no investiga adecuadamente los crímenes, especialmente los crímenes políticos. El Ministerio Público no coopera en las investigaciones de una manera en que se pueda reducir la presión al Organismo Judicial para servir ambos como órganos investigador y adjudicador. El Ministerio de Gobernación así como otras comisiones designadas por el gobierno para llevar a cabo la investigación de notorios crímenes políticos, sufren problemas de credibilidad por sus logros indeterminados.

La comisión nombrada por el Presidente (COPADEH) para investigar las violaciones de derechos humanos ha sido ineficaz en la resolución de los casos de desaparecidos tanto bajo el régimen militar de gobiernos anteriores, como durante el actual gobierno; por lo que no hay razón para creer que la comisión COPADEH ha investigado en serio las desapariciones.

El interior de Guatemala sigue siendo fuertemente militarizado, a tal punto que son los militares quienes desempeñan las funciones de la ley y el orden en vez de las instituciones civiles como la policía y el Organismo Judicial. Los patrulleros de autodefensa civil son alentados por el ejército para suprimir los desacuerdos políticos, y especialmente su blanco han sido los grupos de derechos humanos y las personas individuales que se han rehusado a pertenecer a las patrullas.

El Procurador de Derechos Humanos ha demostrado una significativa dedicación en su puesto. Pero aceptando la disculpa de los patrulleros de autodefensa que atacaron al Procurador Adjunto de Derechos Humanos en la aldea Parraxtut en marzo de este año, ha incumplido con su responsabilidad pública de examinar el papel del ejército en las violaciones de derechos humanos perpetradas por los patrulleros de autodefensa civil.

Las organizaciones no gubernamentales pro derechos humanos han empezado a operar públicamente, pero por su trabajo aún continua sufriendo represión. La evaluación de los líderes de las organizaciones no gubernamentales coinciden en la debilidad del gobierno civil en Guatemala. Igualmente describen en forma pesimista la carencia de respeto a los derechos humanos acordada por el ejército y otros sectores. Desde el mes enero de 1990, han sido asesinatos o desaparecidos varios miembros del Grupo de Apoyo Mutuo (GAM), del Consejo de Comunidades Etnicas Rajunel Junam (CERJ) y del Comité Coordinador de Viudas de Guatemala (CONAVIGUA).

En el mes de enero de 1990, la Iglesia Católica abrió una oficina de asistencia legal en la ciudad capital, la cual sirve a personas que han sufrido violaciones de derechos humanos. Esta oficina legal es la primera institución no gubernamental en Guatemala que ofrece asistencia legal a las víctimas de la violencia política, y a pesar de las constantes amenazas, también representa el

proyecto más agresivo de la Iglesia en respuesta a la grave situación de derechos humanos que se vive en el país. En otras partes de Guatemala, los obispos han principiado proyectos similares.

B. Exhibición Personal

El proceso de exhibición personal en Guatemala sigue siendo un medio ineficáz para la resolución de los casos de los desaparecidos. Simplemente los jueces no utilizan el procedimiento legal establecido para localizar personas detenidas ilegalmente o en su caso para ordenar su libertad. El Comité de Abogados de Minnesota no ha recibido notificación alguna en cinco de las seis peticiones de exhibición personal presentadas al Organismo Judicial a principios de 1990. La sexta petición de exhibición personal produjo una resolución en sentido negativo. Miembros del GAM así como de otras organizaciones han reportado que muy pocas veces han recibido alguna notificación oficial en relación a sus peticiones de exhibición personal.

Algunos jueces en Guatemala están usando un memorandum del Presidente de la Corte Suprema de Justicia para evadir su responsabilidad legal de buscar personalmente a las personas ilegalmente detenidas conforme la Ley de Amparo, Exhibición Personal y de Constitucionalidad. Muchos otros jueces no tienen la voluntad para asumir los riesgos de buscar agresivamente a los que están detenidos ilegalmente. Aún cuando algunos jueces en verdad han cumplido con la Ley de Exhibición Personal, la existencia de cárceles clandestinas persiste, y esto hace que su esfuerzo en la búsqueda de desaparecidos en las prisiones públicas sea en vano.

Contribuyendo a la debilidad del sistema de exhibición personal el Organismo Judicial ha sido limitado por las presiones del Organismo Ejecutivo, de la Democracia Cristiana y del ejército. En el interior del país el Organismo Judicial y la Policía Nacional son especialmente pasivos y esto se debe a la omnipresencia del ejército y su extensión, las patrullas de autodefensa civil.

C. Las Patrullas de Autodefensa Civil

El ejército de Guatemala mantiene un estricto control político en todas las comunidades indígenas y las patrullas de autodefensa civil son el instrumento para implementar y retener este control. Cualquier persona que decida renunciar de la patrulla civil o que fomente cualquier tipo de pluralismo socio-político corre el riesgo de ser hostigada y aún muerta.

La manipulación del ejército sobre las patrullas de autodefensa civil, así como la presión ejercida sobre el activismo político, fue evidente durante dos incidentes ocurridos durante 1990 en las aldeas de Chupol y Parraxtut. En Chupol el Comité de Abogados de Minnesota recibió un testimonio independiente y digno de confianza según el cual con fecha 2 de marzo de 1990 soldados del ejército distribuyeron drogas a entre 100 y 150 patrulleros del sur de El Quiché y posteriormente los alenataron para atacar a los miembros del GAM, quienes se habían reunido para llevar a cabo una manifestación. Y en Parraxtut, el Comité de Abogados de Minnesota escuchó el testimonio en el que con fecha 27 de marzo de 1990 soldados de la comandancia del municipio de Nebaj del departamento de El Quiché incitaron a los patrulleros de esa comunidad para que atacaran al Procurador Adjunto de Derechos Humanos Licenciado César Alvarez Guadamúz y a Amilcar Méndez Urízar dirigente del CERJ. Por esa represión tanto el CERJ como otras organizaciones pro-derechos humanos ya no pueden trabajar efectivamente en la aldea Parraxtut.

Ni la Policía Nacional ni el Organismo Judicial han resuelto las acciones delictivas que ocurrieron en Chupol y Parraxtut. En general ninguna rama del gobierno tiene la voluntad de llevar a cabo las investigaciones de las actividades ilegales perpetradas por el ejército, por las patrullas de autodefensa civil y por los comisionados militares. Muchos abogados han perdido la voluntad de tomar los casos en contra de los militares o de los patrulleros, pues, el temor a la persecución constituye en sí un obstáculo que tiene como resultado la denegación de asistencia a las víctimas de tales acciones.

Aunque el Gobierno describe a las patrullas de autodefensa civil como organizaciones de la comunidad, de hecho las patrullas operan como agentes del ejército. Y hasta ahora los patrulleros cometen abusos de derechos humanos bajo el patrocinio del Estado de Guatemala.

Recomendaciones

A. Exhibiciones Personales

1. El Organismo Judicial deberá de establecer un sistema por medio del cual todos aquellos expedientes que se refieren a Exhibiciones Personales sean notificados por el órgano que tenga el caso a su cargo, ya sea tribunal, Sala o la propia Corte Suprema de Justicia; independientemente que la respuesta sea positiva, negativa o "improcedente" (que significa que la persona reportada como desaparecida no ha sido encontrada). La Corte Suprema de Justicia deberá preocuparse en desarrollar un sistema para clarificar sus estadísticas anuales, en relación a las peticiones y expedientes de Exhibición Personal sometidas a su conocimiento, para proveer una clara medida sobre el progreso o la debilidad del sistema empleado para resolver éstas.

2. El Presidente de la Corte Suprema de Justicia Doctor Vásquez Martínez deberá de clarificar los memorandums dirigidos a sus subalternos, de fechas 11 de agosto de 1989 y 13 de febrero de 1990, para asegurarse que estos no están siendo interpretados en el sentido de que los Jueces deberán de abstenerse de buscar personalmente a los desaparecidos. El Doctor Vásquez Martínez deberá dar instrucciones a los jueces y oficiales para que obren de acuerdo con todas las provisiones de la Ley de Amparo, Exhibición Personal y de Constitucionalidad y especialmente con el artículo 95 de esa ley que indica que: "(Personas plagiadas o desaparecidas). Cuando la exhibición se hubiera solicitado en favor de personas plagiadas o desaparecidas, el juez que haya ordenado la exhibición deberá comparecer por sí mismo a buscarlas en el lugar donde presuntamente se encuentren, ya sean centros de detención, cárceles o cualquier otro lugar señalado, sugerido o sospechado en donde pudieran encontrarse."

3. A pesar de las limitaciones del sistema de Exhibiciones Personales descritas por el Comité de Abogados de Minnesota en su reporte de 1988, el Presidente de la Corte Suprema de Justicia debería de nombrar nuevamente un Juez Ejecutor de Exhibiciones Personales con jurisdicción en toda la República y darle toda su colaboración y apoyo a efecto de que conozca de las peticiones de Exhibición Personal a favor de los desaparecidos. Ya que dicho nombramiento proveería de más eficiencia en el procedimiento de tales peticiones, y reduciría la probabilidad de interpretaciones judiciales incorrectas sobre la Ley de Amparo, Exhibición Personal y de Constitucionalidad.
4. El Gobierno de Guatemala debiera de reabrir la investigación de los casos de los dirigentes estudiantiles de la Universidad de San Carlos que fueron secuestrados y asesinados durante 1989. Dicha investigación deberá guiarse por los Principios de Naciones Unidas sobre la Efectiva Prevención e Investigación de las Ejecuciones Ilegales, Sumarias y Arbitrarias, adoptados por el Consejo Económico y Social de las Naciones Unidas en mayo de 1989. Conforme el documento relacionado el Presidente Cerezo deberá nombrar una comisión independiente que lleve a cabo las investigaciones correspondientes.
5. La comisión relacionada en el numeral anterior también deberá investigar sobre los casos de los estudiantes de la Universidad de San Carlos que fueron secuestrados en 1989 y que aún permanecen desaparecidos, asimismo deberá verificar y preparar un reporte sobre la existencia de cárceles clandestinas en Guatemala. Esta investigación deberá ser implementada en conjunto con la Comisión Interamericana de Derechos Humanos y el Experto Especial para Guatemala ante las Naciones Unidas.
6. El trabajo de la Comisión nombrada por el Presidente Vinicio Cerezo para llevar a cabo la investigación del secuestro y tortura de la monja ursulina Diana Ortíz, deberá ser cuidadosamente verificado, para asegurarse de que es veráz y objetivo. Que las personas que fueron identificadas

en la investigación como participantes en dichas acciones delictivas sean prontamente llevadas ante la justicia.

7. Que la Corte Suprema de Justicia resuelva conforme el procedimiento establecido en la Ley de Amparo, Exhibición Personal y de Constitucionalidad y que basada en la inconfundible evidencia que implica al ejército de Guatemala en el secuestro y desaparición de Luis Fernando de la Roca Elías en el año de 1986, proceda conforme el artículo 107 de dicha ley, certificando lo conducente al tribunal correspondiente para el encausamiento de los responsables.

8. Que el nuevo gobierno de Guatemala, en conjunto con la Comisión Interamericana de Derechos Humanos y el Experto Especial para Guatemala ante las Naciones Unidas, deberán preparar un plan específico para asegurar la independencia del Organismo Judicial y para proteger sus investigaciones sobre la participación del ejército en las violaciones de Derechos Humanos.

B. Patrullas de Autodefensa Civil

1. El Procurador de Derechos Humanos y otras autoridades civiles deberán coordinar una investigación sobre el ataque a miembros del GAM, el 2 de marzo de 1990. Tal investigación deberá incluir un reporte sobre la distribución de drogas e incitación a la violencia por parte del ejército sobre los patrulleros de autodefensa civil en Chupol y áreas circunvecinas. Los miembros del ejército y los patrulleros de autodefensa civil que fueron responsables por estos hechos deberán ser juzgados bajo las leyes internas y a falta de aplicación de ésta, conforme las normas del Derecho Internacional.

2. El Director de la Policía Nacional en conjunto con el Organismo Judicial deberán tomar las medidas necesarias para cumplir con la citación librada por el Juzgado Segundo de Primera Instancia de Santa Cruz del Quiché, a efecto de que los cuatro patrulleros implicados en los hechos ocurridos en Chupol sean arrestados y juzgados.

3. Deberá ser reiniciado inmediatamente el encausamiento de los comisionados militares Domingo Castro Lux y Juan de León Pérez quienes fueron identificados por testigos como los sospechosos de la muerte de María Mejía. Debido a las serias amenazas de muerte que continua viviendo la familia de María Mejía el Procurador General de la Nación así como el Juzgado Segundo tienen una seria obligación de buscar que la justicia se aplique en este caso.

4. El Procurador de Derechos Humanos deberá trabajar conjuntamente con la Policía Nacional y el ejército para crear un plan que garantice la seguridad de las organizaciones no gubernamentales que se encuentran activas en las comunidades y áreas rurales, y específicamente que se garantice la seguridad de los refugiados que retornaron a la aldea Parraxtut, posteriormente a los hechos ocurridos el 27 de marzo de 1990.

5. El gobierno de Guatemala deberá reexaminar la necesidad y justificación de la existencia de las patrullas de autodefensa civil. Como mínimo el nuevo gobierno deberá tomar las medidas necesarias para asegurar directamente la protección de los derechos de aquellas personas que decidieron no pertenecer a las patrullas de autodefensa civil. El Comité de Abogados de Minnesota recomienda al Experto Especial para Guatemala ante las Naciones Unidas Christian Tomuschat investigar específicamente sobre la necesidad de la existencia, actividades y estructura de las patrullas de autodefensa civil, como parte de su mandato.

C. Respuesta Internacional

1. Toda la ayuda militar a Guatemala deberá ser condicionada al buen éxito y al cumplimiento de la investigación por parte del gobierno, así como la buena voluntad de éste en permitir la investigación internacional en relación a la existencia de cárceles clandestinas, la independencia del Organismo Judicial y de las patrullas de autodefensa civil.

(Ver Recomendaciones A-5, A-8 y B-5.)

2. El Procurador de Derechos Humanos ha demostrado una dedicación significativa en su puesto. El Comité de Abogados de Minnesota recomienda que la ayuda gubernamental así como la de otros gobiernos y organizaciones internacionales estén dirigidas a proveer apoyo y una fuerte ayuda técnica a la oficina del Procurador.

3. Los esfuerzos de la Iglesia Católica de Guatemala por establecer una oficina de asistencia legal a las víctimas de la violencia política es merecedora también de un fuerte apoyo tanto nacional como internacional.

4. Que la Comisión Interamericana de Derechos Humanos y la Comisión de Derechos Humanos de las Naciones Unidas presten particular atención a la situación de derechos humanos en Guatemala, durante el período pre-eleccionario, durante las elecciones, así como durante el período posterior a las mismas.

*Only he who fights
Has the right to win
Only he who wins
Has the right to live³*

I. INTRODUCTION

This report follows up Expectations Denied: Habeas Corpus and the Search for Guatemala's Disappeared, the Minnesota Lawyers Committee's 1988 study of human rights in Guatemala. In this second report, the Minnesota Lawyers Committee documents the human rights situation in Guatemala after four years under the civilian constitutional government of President Vinicio Cerezo Arévalo. The Committee examines the ability of the political and judicial systems to address human rights abuses. The report particularly focuses on the habeas corpus system, the criminal justice system, and the civil patrols.

The findings of this report are based on interviews with government officials, Church leaders, military officers, and members of the Guatemalan Bar and judiciary, as well as activists in a number of nongovernmental human rights organizations. These interviews took place both in Guatemala City and in the rural highlands, where the Minnesota Lawyers Committee's delegate investigated allegations of human rights violations. The report is also based on information from the Guatemalan press as well as from an extensive review of recent reports on Guatemala by other international organizations. Although sources are named whenever possible, the names of individuals have been omitted when necessary in order to protect their security.

Several terms require explanation. The "Procurator of Human Rights" is the person elected by Guatemala's Congress to defend the Guatemalan people against violations of their fundamental rights. He has an office and a large staff of lawyers, investigators, and educators in Guatemala

³ Message printed on entrance to army outpost at Sacapulas, El Quiché.

City, as well as regional offices in other parts of Guatemala. Thus, "Procurator" means one who defends or protects. The term *denuncia* may have several meanings. Literally translated as "denouncement" in English, a denuncia commonly is the initial stage of a court proceeding. The victim or aggrieved party submits a signed statement called a *denuncia* to a court, and the court must investigate the allegations contained in the *denuncia*. A *denuncia* may also be any formal written statement concerning a particular event or controversy which the aggrieved party might distribute to the press, governmental, or nongovernmental organizations. For instance, Guatemala's Procurator for Human Rights frequently receives *denuncias* alleging human rights abuses.

Guatemala's government institutions have made only limited democratic gains during the past four years. One newspaper columnist recently described the Guatemalan army as "the only institution with a real presence in the length and breadth of the republic,"⁴ observing that, "After four years of civilian and democratic government, the people remain at the margin of the important decisions."⁵ Any progress that has occurred on the road toward truly democratic government remains fragile. Ramiro de León Carpio, Guatemala's Procurator for Human Rights, claimed that his office presently enjoys absolute autonomy to perform its duties and investigate allegations of human rights violations but conceded that "tomorrow, who knows?"⁶

Political violence and disappearances⁷ continue to be commonplace in Guatemala. De León

⁴ Siglo Veintiuno, "The Army, the Power that does not Cease," May 13, 1990, p. 6.

⁵ Id at 7.

⁶ Interview, February 14, 1990.

⁷ The term *disappeared* is obviously a euphemism for the forced abduction, torture, and/or execution of persons and, therefore, is often accompanied by quotation marks. Because the word has become a term of art and, recognizing that it does not adequately express the horror of the experience being described, the authors have chosen to use the term *disappeared* and all its derivations without the use of quotation marks.

Carpio reported that in January and February 1990 alone, Guatemala suffered 54 extra-judicial executions and 52 disappearances.⁸ To maintain social and political control in isolated indigenous communities, the army is increasingly utilizing the rural civil patrols as agents for the commission of human rights abuses.

In the face of increasing abuses, the judiciary's independence and ability to protect the rights of citizens continue to decline. Guatemala no longer has an "Executor Judge" dedicated to resolving cases of the disappeared. Virtually no judge or attorney seems willing to confront the military concerning a human rights violation committed by members of the armed forces. The March 1990 incidents in Chupol and Parraxtut, El Quiché (discussed below), demonstrate the criminal justice system's impotence to redress human rights abuses.

In 1988, the Minnesota Lawyers Committee concluded that the Cerezo Arévalo government was unable to redress the human rights violations that occurred prior to the assumption of constitutional rule and that it held insufficient power to prevent the continuation of such abuses. Regrettably, two years later, this report also concludes that the civilian government continues to lack the capacity and the political will to resolve the crimes of political violence that plague Guatemala.

⁸ Prensa Libre, March 23, 1990, p. 59.

II. GUATEMALA'S LEGAL OBLIGATIONS CONCERNING DISAPPEARANCES⁹

A. The Problem of Disappearances

Guatemala, like many other Latin American countries, has endured a period of bitter internal struggle between the military power of the state, united with conservative economic forces, and those people who oppose both the state and current forms of economic organization. It was in Guatemala during the 1960s that the phenomenon labeled "disappearance" originated. The military and private right-wing elements undertook to destroy the opposition with a ruthless campaign of kidnappings, torture, and murder.

Even though disappearances and murders have been perpetrated in the name of national security, and frequently with the authority of the military and the police, no public record of these occurrences is available. Documented cases indicate that victims are forced into the custody of plain-clothed, heavily armed men. For all practical purposes, these victims have simply "disappeared." Victims of disappearances in Guatemala are reported to have been detained, interrogated, tortured, and often executed in clandestine prisons.¹⁰ The Minnesota Lawyers Committee has received testimony indicating that Guatemala military intelligence and security forces continue to maintain these clandestine prisons. The Guatemalan disappearances are remarkable both for their number and their duration; in no other country have disappearances occurred so regularly for such a long period of time.¹¹

The phenomenon of disappearances is not only an effort to eliminate the perceived enemies of

⁹ Portions of this background material are excerpted from Expectations Denied, pp. 3-17, for the convenience of the reader.

¹⁰ Americas Watch, Guatemala News in Brief (hereinafter "GNIB"), No. 1, p. 4 (Feb.-April 1986), citing La Hora, Jan. 30, 31 (1986); Former Interior Minister Juan Jose Rodil Peralta also acknowledged the existence of these "illegal detention centers." Id.

¹¹ Amnesty International/USA, "Disappearances," A Workbook 17 (1981).

the state. Unexplained disappearances also prevent the creation of public martyrs or political prisoners who might serve as a rallying point for the opposition. As the term disappearance itself implies, the question of responsibility for kidnapping and/or murder is evaded. Finally, the system of disappearances creates a climate of terror, preventing the formation of a balanced political process; there is no public framework defining or allowing opposition. Any dissent from the position of the military threatens the dissenter with arbitrary arrest and death.

Guatemala's counterinsurgency apparatus flourished in 1978 under General Romeo Lucas García, and continued under the ensuing military governments of Generals Efraín Ríos Montt and Oscar Humberto Mejía Victores. The persons who disappeared under these counterinsurgency efforts were Indian peasants from the western mountain regions of Guatemala, university professors and students, trade unionists, priests, nuns, catechists, lawyers, and many others perceived to have leadership potential. The precise number of victims is impossible to ascertain, but most reports estimate it to be in the tens of thousands. In 1984, the Guatemalan Supreme Court's Juvenile Division requested a census of the number of children who had lost parents to political violence since 1980, and the resulting findings indicated that between 100,000 and 200,000 children had lost at least one parent.¹² Based on these statistics, a Supreme Court official estimated that between 36,000 to 72,000 parents had been killed between 1981 and 1984.¹³ Monsignor Juan Pablo Urizar, former Catholic Church official in the Quiché province, stated in 1985 that 20,000 Indians were killed in the Quiché alone during the 1980s.¹⁴

The Guatemalan military has consistently maintained that guerrilla forces were responsible for

¹² Amnesty International, Guatemala: The Human Rights Record (hereinafter "AI 1989 Report") 7, (1989).

¹³ Black, George, NACLA Report on the Americas, Under the Gun, 10, 11 (Nov.-Dec. 1985).

¹⁴ Id.

the large number of Indian peasants killed in the western highland region, or that some were victims caught in crossfire between guerrillas and the army. Military governments in Guatemala similarly contended that extremist groups on the left and the right were responsible for the disappearances.

Amnesty International concluded, however, after studying thousands of cases that "most political abductions have been carried out by serving and reserve members of all branches of the Guatemalan military and the security forces, operating under the guise of so-called 'death squads' under the orders of their superior officers."¹⁵ According to Amnesty International, these 'death squads' have been a "convenient fiction of successive administrations who could claim that waves of 'disappearances' and extra-judicial executions of government opponents had been the work of 'extremist groups' which were beyond their control."¹⁶ Guatemalans with whom the Minnesota Lawyers Committee discussed the disappeared almost unanimously agreed that they have been victims of a highly centralized government and military effort carried on throughout several military administrations, and that of President Cerezo Arévalo.

B. International Legal Obligations

In theory, Guatemala's most recent Constitution guarantees a broad framework of human rights for all citizens. Article 46 establishes that all human rights treaties and conventions ratified by Guatemala have preeminence over internal law.

Guatemala is a party to a number of international instruments that address human rights issues,

¹⁵ AI 1987 Report, P. 8.

¹⁶ Id.

including the Convention on the Prevention and Punishment of the Crime of Genocide.¹⁷ In addition to these international treaties, Guatemala has ratified the American Convention on Human Rights¹⁸ and has recognized the jurisdiction of the Inter-American Court of Human Rights.¹⁹ Guatemala is not yet a party to the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights.

¹⁷ Convention on the Prevention and Punishment of the Crime of Genocide, *opened for signature* Dec. 9, 1948, 78 U.N.T.S. 277, *entered into force* Jan. 12, 1951. Guatemala has also ratified the following international human rights treaties: International Convention on the Elimination of All Forms of Racial Discrimination, GA Res. 2106A (XX), 20 UN GAOR Supp. (No. 14), U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969; Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* Dec. 18, 1979, GA Res. 34/180, U.N. Doc. A/REA/34/180 (1980), 19 I.L.M. 33 (1980), *entered into force* Sept. 3, 1981; Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, *signed* Sept. 7, 1956, 18 U.S.T. 3201, T.I.A.S. No. 6418, 226 U.N.T.S. 3, *entered into force* April 30, 1957; Convention Relating to the Status of Refugees, *opened for signature* July 28, 1951, 189 U.N.T.S. 137, *entered into force* April 22, 1954; International Labour Organization (ILO) Convention Concerning Freedom of Association and Protection of the Right to Organize (ILO No. 87), *adopted* July 11, 1947, *entered into force* July 1, 1953; ILO Convention Concerning the Application of the Principles of the Right to Organize and Bargain Collectively (ILO No. 98), *adopted* July 1, 1949, *entered into force* July 18, 1951; ILO Convention Concerning Discrimination in Respect of Employment and Occupation (ILO No. 111), *adopted* June 25, 1958, 362 U.N.T.S. 32, *entered into force* June 15, 1960. Guatemala has ratified over 45 ILO Conventions.

¹⁸ American Convention on Human Rights, *signed* Nov. 22, 1969, OAS Doc. OEA/Ser.L/V/II.65, doc. 6 (1985), *entered into force* July 18, 1978. (Guatemala ratified the American Convention on Human Rights on May 25, 1978.)

¹⁹ On 9 March, 1987, the Republic of Guatemala presented the General Secretariat of the OAS with Government Agreement No. 123-87 dated 20 February 1987 recognizing the jurisdiction of the Inter-American Court of Human Rights in the following terms:

(Article 1) To declare that it recognizes as binding, *ipso facto*, and not requiring special agreement, the jurisdiction of the Inter-American Court of Human Rights on all matters relating to the interpretation or application of the American Convention on Human Rights.

(Article 2) To accept the competence of the Inter-American Court of Human Rights for an indefinite period of time, such competence being general in nature, under terms of reciprocity and with the reservation that cases in which the competence of the Court is recognized are exclusively those that shall have taken place after the date that this declaration is presented to the Secretary General of the Organization of American States.

On April 26, 1990, President Cerezo Arévalo affirmed Guatemala's adherence to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Guatemala, however, stipulated two major reservations: 1) It would not recognize the competence of the Committee Against Torture. This Committee performs investigations to determine whether or not torture is being practiced systematically in countries that are party to the treaty or whether persons are subjected to cruel, inhumane, or degrading treatment; 2) Guatemala will not accept arbitration in connection with controversies arising between two or more parties regarding interpretation or application of the Convention when the controversies cannot be resolved throughout negotiation.²⁰ The Minnesota Lawyers Committee interprets these reservations as effectively vitiating Guatemala's obligations under the Convention Against Torture.

The United Nations General Assembly has adopted several resolutions expressing deep concern regarding the "confirmation of politically motivated violence, particularly killings and kidnappings, as well as enforced and involuntary disappearances and the lack of effective measures by the authorities in investigating such practices."²¹

The United Nations Commission on Human Rights issued numerous resolutions expressing profound concern,²² culminating in the appointment of a Special Rapporteur on Guatemala.²³ In

²⁰ Human Rights Update #17, Guatemala Human Rights Commission, May 9, 1990.

²¹ G.A. Res. 30/140, U.N. Doc. A/40/1007 at 501 (December 13, 1985). *See also* G.A. Res. 39/120, U.N. Doc. A/39/51 at 213 (December 14, 1984); G.A. Res. 38/100, U.N. Doc. A/38/47 at 203 (December 16, 1983); G.A. Res. 37/184, U.N. Doc. A/37/51 at 204 (December 17, 1982).

²² *See e.g.*, Report on the 38th Session of the Commission on Human Rights, U.N. Doc. E/1982/12/at 8, 149-5; Res. 1982/31; Report on the 37th Session of the Commission on Human Rights, U.N. Doc. E/1981/25 at 234-35; Report on the 36th Session of the Commission on Human Rights, U.N. Doc. E/1980/13 at 193-94; Report on the 35th Session of the Commission on Human Rights, U.N. Doc. E/1979/36 at 136.

1984, the Special Rapporteur presented a preliminary report following which the Commission expressed alarm at the continued political violence and urged the Guatemalan government to investigate and clarify the fate of disappeared persons.²⁴ In 1986, the Commission accepted the Special Rapporteur's final report, welcomed the election of a civilian government and its declared intention to promote respect for human rights, and expressed its "confidence that the appropriate authorities will investigate human rights violations reported to them, including those which occurred before the new government took office, and that they will, in particular, make all possible efforts to clarify the fate of the disappeared persons."²⁵

In 1987, the Commission on Human Rights, having terminated the mandate of the Special Rapporteur, appointed a Special Expert, Uruguayan Judge Héctor Gros Espiell to continue to receive evidence and evaluate the human rights situation in Guatemala.²⁶ After considering the first report of Mr. Gros Espiell, the Commission on Human Rights adopted a resolution providing advisory services to Guatemala in the field of human rights.²⁷ After the Special Expert's second report in 1989, 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."²⁸

²³ Report on the 39th Session of the Commission on Human Rights, U.N. Doc. E/1983/13 at 12, 168-69, Res. 1983/37.

²⁴ Report on the 40th Session of the Commission on Human Rights, U.N. Doc. E/1984/14 at 14, 90-92, Res. 1984/53.

²⁵ Report on the 42nd Session of the Commission on Human Rights, U.N. Doc. E/1986/22 at 11, 138-140, Res. 1986/62.

²⁶ Report on the 43rd Session of the Commission on Human Rights, U.N. Doc. E/1987/18 at 8, Res. 1987/53.

²⁷ Report on the 44th Session of the Commission on Human Rights, U.N. Doc. E/1988/12 at 114-15, Res. 1988/50.

²⁸ Report on the 45th Session of the Commission on Human Rights, U.N. Doc. E/1989/20 at 171, Res. 1989/74.

Mr. Gros Espiell issued his third and final report as U.N. Special Expert on Guatemala in 1990, noting that "[T]he most fundamental rights of Guatemalans are...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."²⁹ Special Expert Gros Espiell observed that it would not be possible to achieve any significant improvement in Guatemala's human rights situation in the short term:

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.³⁰

Mr. Gros Espiell recommended that the Commission continue to observe the situation of human rights in Guatemala, and that the U.N. continue to provide a broad program of assistance to help the democratic process.³¹

Following Mr. Gros Espiell's 1990 report, the Commission on Human Rights decided to request the appointment of another independent expert "to examine the human rights situation in Guatemala."³² The Commission postponed until its next session a decision on the agenda item under which Guatemala would be considered "in the light of the (expert's) report and of the situation of human rights and fundamental freedoms in Guatemala."³³ German law professor Christian Tomuschat was appointed as the U.N. Special Expert to Guatemala because of Mr. Gros

²⁹ Report by the Expert on Guatemala to the 46th Session of the Commission on Human Rights, U.N. Doc. E/CN.4/1990/45 at 13 (hereinafter 1990 Report of the U.N. Expert).

³⁰Id. at 23.

³¹ Id. at 20-21.

³² Report on the 46th Session of the Commission on Human Rights, U.N. Doc. E/1990/22 at 165-168, Res. 1990/80.

³³ Id.

Espiell's appointment as Foreign Minister of Uruguay.³⁴

The Inter-American Commission on Human Rights (IACHR) of the Organization of American States, in its annual reports to the General Assembly as well as in its 1981, 1983, and 1986 special reports on the situation on human rights in Guatemala, has expressed grave concern about continued forced disappearances, illegal executions, arbitrary arrests, torture and other crimes against human rights.³⁵ In September 1989, the IACHR conducted a two-week on-site visit to Guatemala at the invitation of the Guatemalan government. During the visit, the IACHR documented a disturbing pattern of kidnappings, disappearances, and summary executions carried out openly without any concern for eyewitnesses. "Nobody, and even less the police, does anything to prevent such acts. The investigations do not lead anywhere and the responsible organs blame each other for the failure of the investigation."³⁶

C. Guatemala's Legal System

The 1985 Guatemalan Constitution defines the country as a sovereign, democratic republic with three branches of government: legislative, executive, and judicial. Under the terms of the Constitution, legislative power is delegated to a national Congress of representatives elected every five years by popular vote. There is a Supreme Court of Justice which has jurisdiction over all courts of the country. A Constitutional Court exists to resolve questions concerning the interpretation of the new Constitution.

³⁴ La Hora, July 7, 1990, p. 8.

³⁵ See, e.g., Annual Report of the Inter-American Commission on Human Rights (hereinafter "IACHR Report") 159 (1989-90) OAS Doc. OEA/Ser.L/V/II.77, Doc. 7, rev. 1 (1990); IACHR Report 230 (1986-87) OAS Doc. OEA/Ser.L/V/II.71, Doc. 9, rev. 1 (1987); IACHR Report 156 (1985-86) OAS Doc. OEA/Ser.L/V/II.68, Doc. 8, rev. 1 (1986); IACHR Report 143 (1984-85) OAS Doc. OEA/Ser. L/V/II.66, Doc. 10, rev. 1 (1985).

³⁶ IACHR Report (1989-90), *supra* at note 22, at 154.

Guatemalan law is derived from the Napoleonic Code. Criminal matters and questions of habeas corpus are investigated by judges of the first instance or by magistrates who may be appointed by the Supreme Court for particular investigations. The magistrate seeks to unearth both exculpatory and incriminating facts. In an impartial manner, magistrates are supposed to perform the functions which, under the Anglo-American adversarial system, are carried out by the prosecution and by defense counsel. There is no provision for jury trial.

D. Investigation of Arbitrary and Summary Executions

The right to be free from extra-legal, arbitrary and summary executions is recognized as a fundamental norm in international human rights law. Article 3 of the Universal Declaration of Human Rights provides "everyone has the right to life, liberty, and the security of the person."³⁷ This right has been further interpreted by Article 6 of the International Covenant on Civil and Political Rights, "No one shall be arbitrarily deprived of his life."³⁸ Article 4(1) of the American Convention on Human Rights, to which Guatemala is a party,³⁹ provides "every person has the right to have his life respected. This right shall be protected by law. . . no one shall be arbitrarily deprived of his life."

To give meaning to the right to be free from arbitrary killings, safeguards have been developed to ensure an adequate investigation into deaths that are suspected to be politically motivated.

In May 1989, the U.N. Economic and Social Council adopted Principles on the Effective

³⁷ Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

³⁸ International Covenant on Civil and Political Rights, Dec. 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976.

³⁹ American Convention on Human Rights, *supra* at note 18.

Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.⁴⁰ In December 1989, the Principles were endorsed by the U.N. General Assembly.⁴¹ The Principles provide standards for governments to implement into their own national legislation and practices. The Principles are meant for use by law enforcement and criminal justice officials, military personnel, lawyers, members of the executive and legislative bodies of the government, and the public in general.⁴²

The investigative provisions of the Principles contain guidelines for adequate investigations into suspected arbitrary or political killings. The Principles call for the appointment of special commissions of inquiry in cases where current investigative procedures are inadequate.⁴³ They also contain guidelines concerning the impartiality of those conducting the investigation⁴⁴ and the protection of complainants, witnesses and investigators.⁴⁵

⁴⁰ Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, E.S.C. Res. 1989/65, U.N. Doc. E/1989/INF/7, at 129-34 (May 24, 1989). The Principles are attached as Appendix I.

⁴¹ G.A. Res. 44/159 of December 15, 1989; G.A. res. 44/162 of December 15, 1989.

⁴² See generally D. Weissbrodt and T. Rosen, "Principles Against Execution" 13 *Hamline Law Review* 3, at 579 (Summer 1990).

⁴³ See Principle 11, *supra* at note 40, and Appendix I.

⁴⁴ See Principle 14, *Id.*

⁴⁵ See Principle 15, *Id.*

III. THE FAILURE OF HUMAN RIGHTS PROTECTION: POINTS OF VIEW

In its 1988 report, Expectations Denied, the Minnesota Lawyers Committee concluded that political killings and disappearances continued under the civilian government, and that "[n]o meaningful progress had been made in resolving the past disappearances of tens of thousands of Guatemalans."⁴⁶ The Committee concluded that no Guatemalan institution was able to address the problem of disappearances.⁴⁷

Guatemala has suffered from a climate of violence and a resurgence of death-squad activity since the publication of Expectations Denied. A massacre of 22 persons occurred in November 1988 in El Aguacate, Chimaltenango. In 1989, a bomb severely damaged the office of the Mutual Support Group (GAM), the support organization for the families of the disappeared. Nine Quekchi Indians were killed in the province of Alta Verapaz, ostensibly due to an army unit's erroneous belief that they were leftist guerrillas. Since August 9, 1989, 14 members of the University of San Carlos community, at least ten of whom were former or current members of the University Students' Association, have been abducted. Three have been released, six were found dead, and five remain missing.⁴⁸ In November 1989, North American missionary Diana Mack Ortiz was kidnapped and tortured. In January 1990, Héctor Oqueli Colindres, a Salvadoran citizen, and Gilda Amparo Flores Arévalo, were kidnapped and executed by a group of heavily armed persons. On July 25, 1990 Congressman Otto Rolando Ruano Reyes, a member of the Union of the National Center (UCN) Party, was assassinated. These incidents of violence illustrate the pervasive pattern of human rights abuse directed toward individuals and groups perceived to oppose the authorities.

⁴⁶ Expectations Denied at 63.

⁴⁷ Id. at 64.

⁴⁸ Americas Watch, Messengers of Death: Human Rights in Guatemala (hereinafter "Messengers of Death") 15, March 1990.

The following is a brief summary of the opinions of various Guatemalan officials regarding the current human rights situation in the country.

A. Procurator for Human Rights

The Procurator for Human Rights, Ramiro de León Carpio, took office in December 1989. He asserted that patience is needed until the new policies implemented by his office begin to show results. He acknowledged, however, that at present, "the democratic process of Guatemala is in danger."⁴⁹ He predicted that 1990 would be a very bad year in Guatemala since, due to the upcoming elections, all of the extremist forces are trying to destabilize the system. De León Carpio expressed concern to the Minnesota Lawyers Committee about whether the elections would actually take place and, if they do, whether the democratic system would survive afterwards.

Although the former Procurator, Gonzálo Menéndez de la Riva, was widely criticized as ineffective, de León Carpio appears determined to improve the image and productivity of the Procurator's office. He pledged to open provincial offices throughout Guatemala, and most recently opened an office in the city of Totonicapán.⁵⁰ He created an investigation department within the Procurator's office so that his staff can verify all allegations of human rights violations which it receives. In April 1990, de León Carpio publicly debated President Cerezo Arévalo over the President's economic policies and criticized the economic measures as violative of the people's social and economic rights.⁵¹ That same month, he publicly condemned the army's forced recruitment of young men for military service as a violation of their human

⁴⁹ Interview, February 14, 1990.

⁵⁰ La Hora, April 28, 1990, p. 6.

⁵¹ La Hora, April 21, 1990, p. 7.

rights.⁵²

Procurator de León Carpio is expanding his office's education department. His goal is to bring human rights education to the entire republic, especially to the indigenous population. De León Carpio opined that indigenous people have probably suffered the most from human rights violations and have been "marginalized and abandoned." The Procurator is negotiating with the Ministry of Education to implement a system whereby all persons trained as teachers at the "bachiller" level would attend a seminar on human rights before their graduation so that they can become human rights promoters. He believes that education is his office's most important function because Guatemalans have rarely lived in a democracy and, due to ignorance, have never respected human rights. De León Carpio's goal is that, one day, the people will understand their rights as well as the available mechanisms for realizing them, and will then demand the fulfillment of their rights.

B. The Courts

At least one prominent Guatemalan expressed mixed emotions regarding such wide-scale human rights education programs. Supreme Court President Dr. Edmundo Vásquez Martínez told the Minnesota Lawyers Committee that he did not believe lack of education to be the root of Guatemala's human rights problems. He observed that only the public authorities can violate the people's human rights. These authorities have grown accustomed to acting solely according to their will and not according to their responsibilities under the civil legal system. Thus, Vásquez Martínez feels that, rather than educating the general population regarding human rights, it is primarily the consciousness of the public authorities that must change.⁵³

Especially in rural, marginal areas, Vásquez Martínez believes that human rights education

⁵² *La Hora*, April 30, 1990, p. 5.

⁵³ Interview, March 12, 1990.

programs would create a cynical, frustrated population because the people would see that, in reality, their rights do not exist.⁵⁴ Thus, Vásquez Martínez asserted that the only valid human rights education program would be to teach the authorities themselves to protect and respect the people's rights.⁵⁵

Dr. Vásquez Martínez did acknowledge that Guatemala's current human rights situation is "notably better" than in the past. He told the Minnesota Lawyers Committee that today the people can more easily demand the fulfillment of their rights. Vásquez Martínez asserted that the Supreme Court presently has a greater desire to fulfill the law than it did during the early 1980s. For example, the Court is prosecuting General Benedicto Ortega, Commander of the Cuartel General in Guatemala City, for refusing to comply with a Supreme Court order to release a detainee. Vásquez Martínez noted that this is the first time that the Guatemalan courts have initiated a prosecution against an army commander and observed that they could never have done so in the past.⁵⁶

Despite these improvements, Dr. Vásquez Martínez stated that human rights violations persist. The army maintains a strong presence both in urban and rural areas, and he stated his belief that the army has not established an adequate sharing of power with the civil law system. "We

⁵⁴ Illustrating this view, one indigenous woman from the province of Alta Verapaz told the Minnesota Lawyers Committee: "Although the Constitution is great and we have all of these rights and laws on paper, the reality is that nothing happens, and we cannot do anything [in response to human rights abuses.]" Interview, January 20, 1990.

⁵⁵ Interview, March 12, 1990.

⁵⁶ *Id.* According to Vice Minister of Defense General Raul Molina Bedoya, the military continues to hold the detainee in question for his role in the May 1988 attempted coup. Although Bedoya acknowledged that, under the civil law, the release order was correct, the army asserts that this is a military matter and that, under military law, it is acting properly. Thus, Molina Bedoya predicted that the case will not progress in the courts. Interview, March 19, 1990.

have to rescue the civil law system,"⁵⁷ he said and stated his hope that, little by little, the courts and other institutions of government will accomplish the full institution of civil law.

Previous reports by international, regional, and nongovernmental organizations have discussed the Guatemalan judiciary's inability to protect the basic rights of Guatemalan citizens.⁵⁸ Oliverio García Rodas, President of Guatemala's Congressional Human Rights Commission, recently discussed his views of the judicial system's ineffectiveness with the Minnesota Lawyers Committee. García Rodas stated his belief that the weakest point in the enforcement of human rights lies at the investigative level of the legal system.⁵⁹ In many cases, he stated, evidence is not preserved nor presented to tribunals as a basis for prosecution.

It is Supreme Court President Vásquez Martínez's opinion, however, that much of the criticism of the judiciary is due to the confusion of the role of the courts with that of the police. He stated that the police, not the courts, have the responsibility to investigate crimes. Accordingly, when the police fail to do a proper investigation, judges, in defense of the rights of the accused, must order the liberty of the detained person. Vásquez Martínez described the police's poor record in this area as a major limitation to achieving prosecutions in Guatemala.⁶⁰ As prominent examples, he cited the recent kidnapping and murders of Dr. Héctor Oqueli

⁵⁷ Interview, March 12, 1990.

⁵⁸ See e.g., 1990 Report of the U.N. Expert, *supra* at note 29; IACHR Report (1989-90); Expectations Denied; International Human Rights Law Group, Maximizing Deniability: The Justice System and Human Rights in Guatemala (hereinafter Maximizing Deniability), July 1989; Washington Office on Latin America, The Administration of Injustice: Military Accountability in Guatemala (hereinafter Administration of Injustice), December 1989.

⁵⁹ Interview, February 26, 1990.

⁶⁰ Colonel Giovanni Valerio Cardenas, former Director General of the National Police, cited a study compiled by Dr. Vasquez Martinez in which, of three thousand criminal prosecutions initiated from January 1, 1989 through June 1989, only 125 (4.2%) arrived at a final result. Interview, April 26, 1990.

Colindres and Gilda Flores Arévalo, and the kidnapping of Dr. Carmen Valenzuela.⁶¹ "The police have not done an investigation, and they're not going to do it. Without anyone taking this responsibility, what can judges do?"⁶²

C. Public Prosecutor's Office

The 1990 Report of U.N. Special Expert Gros Espiell concerning the U.N.'s advisory services to Guatemala concluded that the criminal justice system will not be effective until the judiciary is relieved of its overall investigatory responsibility. "Everything could change," according to the U.N. Special Expert, "if the Public Prosecutor's Department were to assume its true function, that of prosecution, including the conducting of a preliminary investigation, with the help of the police, to find the culprit for submission to the court."⁶³ The Special Expert maintained that the efficiency of the process would be greatly improved if the judge were solely concerned with the work of adjudicating; their investigatory function should be limited to question and answer concerning the investigation undertaken by the Public Prosecutor and the police.⁶⁴

According to Mario Roberto Illescas Aguirre, General Procurator of Guatemala (the rough

⁶¹ Early in the morning of January 12, 1990, armed men kidnapped Salvadoran Socialist leader Hector Oqueli Colindres and Guatemalan attorney and Social Democrat Gilda Flores Amparo in Guatemala City. Their bodies were found later that same day. Messengers of Death, at 28-31. A commission headed by Minister of the Interior Carlos Morales Villatoro attributed the crime to "international commandos" operating within Guatemala. To date, the police have made no arrests in the case. Interview with National Police Director Colonel Giovanni Valerio Cardenas, April 26, 1990.

On February 10, 1990, armed men kidnapped prominent pediatrician and professor of medicine Carmen Valenzuela in front of a number of witnesses on a Guatemala City softball field. After extraordinary popular and international pressure, she was freed on February 18. Dr. Valenzuela left the country that same day without discussing her experience. Prensa Libre, February 11 and 19, 1990, p. 2.

⁶² Interview, March 12, 1990.

⁶³ 1990 Report of the U.N. Special Expert, U.N. Doc. E/CN.4/1990/45/Add. 1, at 8 (1990).

⁶⁴ Id.

equivalent of a national Attorney General) and head of the Public Prosecutor's Department, the criminal justice system's prosecutorial agency will soon heed the advice of the U.N. Special Expert and aggressively address the problem of poor police work. Illescas Aguirre admitted that a problem inherent to the administration of justice in Guatemala is that "the police don't deliver good information."⁶⁵ Therefore, to improve its technical capacity as well as its credibility, the Public Prosecutor's Department will soon create its own Institute of Criminal Investigations.⁶⁶ The Institute will focus on the development of scientific evidence (forensic, medical, and pharmacological) so that the Prosecutor's Department will have technical items of proof to present in court.

D. The National Police

Colonel Giovanni Valerio Cardenas, former Director General of the National Police, acknowledged that, in the past, the police frequently failed to investigate crimes but attributed much of the problem to a lack of communication between the police and the judiciary. He asserted that judges frequently failed to request investigations when they were warranted. As a result, the populace lost confidence in both institutions.⁶⁷

Colonel Valerio Cardenas placed great hope in foreign assistance such as that provided by the U.S. Department of Justice and by Harvard Law School's Center for Criminal Justice. The Harvard program currently assists six pilot courts in Guatemala City and three in the rural department of Totonicapán. Because judges and court officials are the managers of criminal investigations, the program's educational emphasis has focused on improving the investigative

⁶⁵ Interview, May 18, 1990.

⁶⁶ Government Agreement No. 393-90, *Diario de Centro America*, May 10, 1990, p. 1.

⁶⁷ For a thorough discussion of the police and judiciary's inability to combine their efforts, see Maximizing Deniability, at 15-20.

skills of court personnel.⁶⁸ But because forensic investigation is the responsibility of the police, the Harvard program is also working to foster coordination between the police, judicial, and prosecutorial institutions. For example, about 20 National Police investigators presently work in the pilot courts in Guatemala City, as do two prosecutors from the Public Ministry. Valerio Cardenas believes that with these more integrated efforts, the criminal justice system will function more effectively.

The Harvard program will soon cease its operations in Guatemala. Its three-year, U.S. A.I.D. contract expires at the end of 1990 and will not be renewed. According to Harvard Professor Philip Heymann, Director of the program, the program was cancelled when it became apparent that Guatemalan authorities had no intention of resolving crimes of political violence that were likely to involve members of the military, police, or extremist groups which the government did not want to challenge.

A wave of political violence took place in 1988 and 1989 that included the kidnapping of the judge who investigated the "*panel blanca*" murders, the El Aguacate massacre, the murders of student and labor leaders, and threats and violence against members of CERJ. The Harvard program proposed to the Ministers of Defense and Interior, and to the President, a series of specific steps to curb the violence. The suggestions included promotion of anonymous information gathering and the establishment of programs for the protection of witnesses and judges.

To Heymann's knowledge, the Guatemalan government implemented none of these measures and

⁶⁸ In February 1990, as part of the Harvard Law School program, three Manhattan district attorneys traveled to Guatemala where they gave a seminar to 60 judges and court personnel concerning the proper interrogation of witnesses and writing of declarations. Prensa Libre, February 20, 1990, p. 16.

made no serious investigation of any of these crimes. During the Harvard Program's three-year tenure in Guatemala, it was aware of only one serious investigation into a case of political violence. In 1988, six national police officers were arrested and convicted for the kidnappings and murders of Danilo Alvarado Mejía and René Leiva Cayax, who were abducted in Quezaltenango on October 17 and 19, 1989. Recently, even these convictions were overturned by the Court of Appeals for "lack of proof."⁶⁹ The Harvard Program decided to end its operations rather than support a criminal justice system where a significant segment of the population would be immune from its reach. The program notified President Cerezo Arévalo of its decision in November 1989.⁷⁰

Former National Police Director Valerio Cardenas alluded to abuses committed by members of the National Police in the past but expressed confidence that a recent reorganization will produce more qualified officers. The National Police's investigative unit, formerly known as BIEN, is now known as the Department of Criminal Investigation (DIC). The U.S. Department of Justice, under the International Criminal Investigation and Training Assistance Program (ICITAP) has given technical training to over nine hundred men who are part of this office.⁷¹ As a further means of improving professional conduct, the DIC selects each member individually. It is unclear what standards qualify those officers selected for special training or whether any were able to bribe their way into their positions.⁷²

⁶⁹ Prensa Libre, August 2, 1990, P. 16.

⁷⁰ Interviews, May 26 and 29, 1990.

⁷¹ Interview, April 26, 1990. Given the numerous reorganizations of the National Police during the past fifteen years, it is dubious that yet another name change for the investigative division will result in improvements in the Department's effectiveness.

⁷² One knowledgeable source stated that corruption within the National Police allows officers to purchase positions.

In spite of foreign technical assistance and organizational changes, former National Police Director Valerio Cardenas candidly admitted that the Guatemalan police have been "marginalized," and do not receive the resources they need to maintain order effectively. For instance, in Guatemala City with a population of over two million, only 1,200 officers are on duty each day. The standard monthly salary for a National Police officer is 425 Quetzales (less than \$100)⁷³. He explained that at this salary level, the majority of officers come from "the lower social strata," and are not well prepared for police work.⁷⁴ Many bring a "lack of culture" to their jobs and commit crimes.⁷⁵ Bribery is commonplace. For example, on one long-distance bus ride, the Minnesota Lawyers Committee's delegate observed the driver's assistant dropping Quetzal notes at each police check-point so as to avoid citations for carrying too many passengers.

During his term as National Police Director, Colonel Valerio Cardenas also presided over the Office of Professional Responsibility. This office receives and investigates *denuncias* of criminal conduct lodged against agents of the National Police. It employs 60 to 80 persons who investigate allegations. When the Office of Professional Responsibility received a *denuncia* alleging a human rights violation, Colonel Valerio Cardenas sent a copy to the Procurator of Human Rights. U.N. Special Expert Gros Espiell found that the Office of Professional Responsibility represented a serious effort by the government to adapt operations to the rule of law and respect for human rights by attempting to self-monitor and purge the criminal elements from the National Police.⁷⁶ Although the office ostensibly covers police abuses nationwide,

⁷³ The salary is the same for all officers nationwide, without regard to merit or experience. Maximum Deniability, at 14.

⁷⁴ Less than one percent of National Police officers hold university degrees. Id. at 14.

⁷⁵ Interview, April 26, 1990.

⁷⁶ 1990 Report of the U.N. Expert, U.N. Doc. E/CN.4/1990/45/Add. 1 at 9.

Valerio Cardenas stated that due to its small budget it must "set priorities" for its work. During the month of April 1990 alone, four police chiefs were dismissed and prosecutions initiated against 19 officers for murder, assault and robbery.⁷⁷

Although Colonel Valerio Cardenas is an army colonel, President Cerezo Arévalo appointed him to his position as head of the National Police. Colonel Valerio Cardenas asserted that the military wields no influence over the National Police, nor over its institutional overseer, the Ministry of the Interior. Nevertheless, on June 29, 1990, yet another military representative, army Colonel Julio Enrique Caballeros Seigné, replaced Cardenas as Director of the National Police. Colonel Caballeros previously served as National Police Director under former Interior Minister Juan José Rodil Peralta.⁷⁸

E. SIPROCI and the Interior Ministry

Under the "Civilian Protection System" (SIPROCI) program, the army, at a minimum, shares the police's role of maintaining law and order. In SIPROCI, three-person teams comprised of a National Police officer, a Guardia Hacienda officer,⁷⁹ and a military police representative act as a joint security force.

The Interior Ministry is responsible for maintaining security throughout the republic but, because the Ministry's annual budget is small (forty million Quetzales or roughly 7.2 million dollars), it cannot employ a sufficient number of police to provide security throughout the entire country.

⁷⁷ La Hora, April 25, 1990, p. 6. It is unclear whether any of these prosecutions resulted in convictions.

⁷⁸ Siglo Veintiuno, June 30, 1990, p. 12. Both Caballeros Seigné and Rodil Peralta were replaced in July 1988 after making public their investigation of a series of human rights violations and criminal activities known as the "*panel blanca*" cases.

⁷⁹ The Guardia Hacienda (Treasury Police) are responsible for customs and contraband operations. Id.

Vice Minister of the Interior González Rodas indicated that the economic pressures forced the Ministry of the Interior to cede a role to the army. According to González Rodas, the SIPROCI program is merely another crime prevention system but, in reality, it further obscures the division between the military and the civil law system. In the view of the U.N. Special Expert, a professional police organization should have the monopoly of preventing and suppressing crime, even though the SIPROCI can be justified as a temporary measure in view of the current defects.⁸⁰

Although González Rodas admitted that soldiers commonly commit abuses against the populace, his ministry has no input in the training of army participants in SIPROCI. "That's for the Ministry of Defense."⁸¹ González Rodas claimed that both ministries planned the activities of SIPROCI together, and that neither ministry asserts power over the other. "Now there's no more military"⁸² (i.e., as a dominating force in the government). Nevertheless, a former employee of the G-2, the army's intelligence service, told the Minnesota Lawyers Committee that the G-2 directs the National Police, the *Guardia Hacienda* (Treasury Police), and the military police, including SIPROCI.

Vice Minister González Rodas stated that the investigations into the murders of Dr. Héctor Oqueli Colindres and Gilda Flores Arévalo, as well as the kidnapping of Dr. Carmen Valenzuela, were continuing but that progress was "very slow."⁸³ He noted that, "These cases hurt us not only internationally but nationally as well, because people assume that we can't and/or won't do

⁸⁰ 1990 Report of the U.N. Expert, U.N. Doc. E/CN.4/1990/45/Add. 1 at 4.

⁸¹ Interview, February 23, 1990.

⁸² *Id.*

⁸³ *Id.* At least one commentator claims that the Guatemalan government has abandoned the investigation altogether. 9 *Mesoamerica* 7, at 2 (July 1990).

anything to keep the peace and to help them. So they weaken our credibility."⁸⁴

Other factors have also affected the credibility of the Ministry of the Interior. For example, in March 1990, referring to the November 1989 kidnapping and torture of U.S. Ursuline nun Sister Diana Mack Ortiz, Interior Minister Carlos Morales Villatoro announced that, "In accordance with the investigations realized, the government security forces take the position that the case of U.S. churchwoman Diana Mae(sic) Ortiz was a self-kidnapping."⁸⁵ Given evidence provided by Ortiz's examining physician of abrasions on her face and 111 cigarette burns on her back,⁸⁶ as well as similar testimony by Guatemalan Archbishop Prospero Penados del Barrio,⁸⁷ the Interior Ministry's credibility problem becomes quite clear.

The credibility of other governmental investigations is also at issue. In August 1989, soldiers killed nine members of the civil defense patrol from the village La Providencia, San Cristóbal, in the department of Alta Verapaz.⁸⁸ After investigating the incident, a special governmental commission issued a report declaring that the deaths were accidental because the soldiers, from a distance, mistook the group of civil patrollers for guerrillas. According to the report, the soldiers opened fire from a distance of five hundred meters.⁸⁹ However, the medical examiner

⁸⁴ Id.

⁸⁵ Diario de Centro America, Guatemala, March 12, 1990, p. 3. For a detailed account of this incident, see Messengers of Death, at 47-52.

⁸⁶ Statement of G.R. Gutierrez, M.D., November 8, 1989.

⁸⁷ Archbishop Penados del Barrio, who spoke to Ortiz and saw the marks of her torture shortly after her release, described Morales Villatoro's statement as "totally false." He accused the authorities of "covering up, like an unrewarding smokescreen, their acts of torture in order to make believe that they investigate these things." El Grafico, March 13, 1990, p. 5.

⁸⁸ El Gráfico, August 19, 1990, p. 6.

⁸⁹ Report of the Special Investigative Commission Concerning the Incident that Caused the Death of Nine Members of the Voluntary Civilian Defense Committee of La Providencia, San Cristóbal, Verapaz, Alta Verapaz on August 17, 1989.

in Cobán who examined the bodies told the Minnesota Lawyers Committee that at least two of the patrollers died as a result of a fragmentation grenade explosion.⁹⁰ It is highly unlikely that a soldier could throw a hand grenade five hundred meters (1500 feet). Thus, the Commission's conclusion that the soldiers opened fire out of confusion due to the great distance is subject to question.⁹¹ As of this writing, the army apparently has not initiated prosecutions against any of the soldiers involved.

F. Congressional Human Rights Commission

The Minnesota Lawyers Committee also spoke to Oliverio García Rodas, President of Guatemala's Congressional Human Rights Committee. The Congressional Human Rights Commission has several responsibilities: the drafting of legislation for the legal advancement of human rights in Guatemala, to study and prepare recommendations regarding the ratification of international human rights treaties, and the investigation of human rights problems. García Rodas described the office's budget as "ridiculously small." There are only two paid staff persons. Accordingly, to complete the Commission's work, García Rodas uses his staff from his private law office.

Commissioner García Rodas observed that the current level of political violence in Guatemala is much lower than during "the carnage of the early 1980s."⁹² Nevertheless, he stated that political killings, kidnappings, and disappearances are still a grave problem. Commissioner García Rodas acknowledged that, while the government may not be directly committing these crimes, the Cerezo administration bears much of the responsibility because it is not confronting the

⁹⁰ Interview, January 20, 1990. The forensic specialist arrived at this conclusion due to the number of shrapnel wounds on two of the bodies and the severity of these wounds.

⁹¹ An Americas Watch report indicated that the victims were shot from a distance of twenty to thirty meters. Moreover, a witness reported that one of the soldiers involved was drunk, and that the soldiers threw three hand grenades at the patrollers. Messengers of Death, at 70-71.

⁹² Interview, March 26, 1990.

illegal armed groups that continue to operate. Moreover, García Rodas believes that the deficiencies of the judicial system impede the government's ability to protect society.

Commissioner García Rodas sees the increased activities of popular human rights groups as a sign of improvement over the past. Formerly, he noted, few human rights organizations operated publicly, especially in the interior regions of Guatemala. Guatemalans now enjoy more liberty to publicize acts of political violence.⁹³

G. The Army

Vice Minister of Defense General Raúl Molina Bedoya asserted to the Minnesota Lawyers Committee that the military and other branches of government are independent powers, and that the army now respects the civil institutions.⁹⁴ He stated that the army acts in compliance with its responsibility to maintain the peace and security of the nation. "Military law is hard," he said, "but compatible with the civil law system. . . and works well to promote justice."⁹⁵ An army captain described the military as "the principal protector of human rights" in Guatemala.⁹⁶

General Molina Bedoya acknowledged that the army, and not the police, continues to maintain law and order in the rural interior of Guatemala because the National Police lacks the resources to do so. This added role for the army justifies the presence of a military base in each department. The heavy army presence also serves to support its anti-terrorist campaigns.

In contrast to the early 1980s, General Molina Bedoya asserted that "areas of conflict" between

⁹³ Interview, March 26, 1990.

⁹⁴ Interview, March 19, 1990.

⁹⁵ Id.

⁹⁶ Interview, March 11, 1990.

leftist guerrillas and the Guatemalan military no longer exist. General Molina Bedoya claimed that after thirty years of attempted destabilization, Guatemala enjoys a democratic system of government in which the guerrilla forces operate at the margin of the law.⁹⁷ General Molina Bedoya's remarks are curious given the fairly regular reports of guerrilla/army confrontations in the Guatemalan press. For example, eight soldiers died when guerrillas ambushed an army convoy in Huehuetenango in May 1990.⁹⁸ Heavy fighting, including aerial bombardment and artillery fire, occurred in late February 1990 near the tourist center of Antigua.⁹⁹ Moreover, Molina Bedoya's statement contradicts the army's repeated assertions that the present extensive civil patrol system in rural areas is necessary to protect communities from guerrilla incursions.

H. Conclusions

Most civic leaders in Guatemala acknowledge the grave human rights situation facing the country today. Although there is unanimity concerning the problems, there is little agreement about how to bring an end to the disappearances, torture, arbitrary detentions, and arbitrary killings, that are characteristic of Guatemala's human rights violations. Some officials assert that public education will improve respect for human rights. Other groups argue that investigation and prosecution of human rights crimes is the best approach to halt the violations. The various branches of government fault each other for the failure to protect the rights of Guatemala's

⁹⁷ In late March 1990, representatives of Guatemala's *Comisión Nacional de Reconciliación* (National Reconciliation Commission), an organization of civilian community leaders, met with representatives of the *Unión Revolucionaria Nacional Guatemalteca* (Guatemalan National Revolutionary Union), the coalition front of Guatemala's four insurgent groups, in Oslo, Norway, in order to explore possible solutions to the armed conflict. The two groups, as well as representatives of nine political parties, met again in May, and the insurgents agreed not to interfere with the general elections scheduled for November 1990. *Prensa Libre*, March 15, 1990, p. 4; *El Gráfico*, June 2, 1990, p. 4.

⁹⁸ *La Hora*, May 23, 1990, p. 4.

⁹⁹ *Denuncia* #4 of the Archbishop's Legal Office, March 1, 1990. See also *Denuncia* #3, February 21, 1990, describing fighting between army and guerrilla units in the departments of Esquintla and Sololá.

citizens.

The Minnesota Lawyers Committee finds that there is an absence of political will in Guatemala to investigate and prosecute thousands of political crimes. The police and courts are reluctant to investigate and prosecute politically motivated crimes, especially those involving members of the military or the civil patrols. While the initial years of the civilian administration created a slight opening for human rights investigation and advocacy, that door is closing daily on the activities of those who act to promote or protect human rights.

While the Minnesota Lawyers Committee is encouraged by some of the attempts being made to shore up Guatemala's investigative systems, such as the Institute of Criminal Investigations in the Public Prosecutor's Department and the Department of Criminal Investigation of the National Police, these initiatives will be irrelevant until there exists the political will to prosecute human rights violations in Guatemala. Just as the Harvard program found its good efforts ignored by political decision makers, so other programs will be subject to abuse in the current political/military climate in Guatemala.

IV. THE RESPONSE OF NONGOVERNMENTAL ORGANIZATIONS

A. The Catholic Church and its New Legal Office

Catholic Archbishop Prospero Penados del Barrio expressed to the Minnesota Lawyers Committee his belief that the military holds much more power in Guatemala today than either the executive or legislative branches. Important decisions are made either independently by the army, or by President Cerezo Arévalo, after consultation with the armed forces. Thus, after four years of a civilian president, the armed forces, and not the democratic system, still holds the balance of power.¹⁰⁰

Nevertheless, Archbishop Penados del Barrio sees some improvement in Guatemala's human rights position during the Cerezo Arévalo years. The Archbishop believes that more room now exists for criticism of the government, including the army. Although kidnappings, disappearances, and other political violence continue, the climate of fear is less intense than it was during the early 1980s. "We've made an advance because this government is not totally military."¹⁰¹

Archbishop Penados described the Church's responsibility in Guatemala as promoting the dignity and equality of persons. In January 1990, in response to the improved political atmosphere and in fulfillment of the Church's responsibility to promote social justice, Archbishop Penados del Barrio approved the opening of a Church-sponsored legal assistance office for persons who suffer human rights violations.

Although creation of this program has been discussed for a number of years,¹⁰² Archbishop Penados explained that the Church was afraid to open the Legal Office previously because of

¹⁰⁰ Interview, May 3, 1990.

¹⁰¹ Id.

¹⁰² See, e.g., Expectations Denied, at 54-55.

persecution against proponents.¹⁰³ He also acknowledged that his predecessor, Cardinal Mario Casariego, had close ties to the former military governments.¹⁰⁴

Security concerns continue to affect the work of the new Legal Office. In March 1990, staff persons received threats while attempting to investigate allegations of human rights abuses. In April 1990, a man carrying a grenade entered the office and terrorized several staff members before he finally departed.

The Legal Office (formally called the "Archbishop's Human Rights Office") has three integrated sections: an education department, a documentation center, and a legal defense department. The education section provides courses on human rights to religious communities, schools, and popular organizations. The documentation center maintains information on human rights abuses in Guatemala and publishes a monthly bulletin. The legal defense department offers formal legal services such as submission of habeas corpus petitions and other judicial procedures. It also provides less traditional forms of assistance such as international pressure obtained via the office's network of contacts in the United States, Canada, and Europe.

The Catholic Church's Legal Office is Guatemala's first nongovernmental legal assistance office designed to serve victims of human rights violations. It represents the Catholic Church's most assertive effort to improve Guatemala's tragic human rights history. Given the powerful position of the Catholic Church in Guatemalan society, the establishment of a Church-based human rights institution should increase the credibility of and respect for all human rights groups. Other dioceses in Guatemala, such as Sololá and Alta Verapaz, are initiating similar programs, which

¹⁰³ According to one priest, "[d]uring the 1980s we couldn't even dream about working for human rights. Today, the violence continues, but the people are speaking out about their dignity." Interview, April 27, 1990.

¹⁰⁴ Interview, May 3, 1990.

will coordinate with the Legal Office in Guatemala City.

B. The GAM

At the start of the Cerezo administration in 1986, the Mutual Support Group (GAM) was the only human rights organization to operate publicly in Guatemala. It fell under severe repression. Today, a number of other popular organizations work openly but under intense pressure for the advancement of social justice in Guatemala. "The space now achieved for human rights [work] was achieved by the popular groups that fought for them, not by the government," explained one Guatemala City labor leader. "But now this space is closing. People who work in popular movements are under severe police control."¹⁰⁵

Although the GAM began as an organization dedicated to resolving the cases of Guatemala's many disappeared, today it provides a number of other services. GAM operates a school for 180 adult indigenous people who are learning to read and write for the first time, a "tipico" cooperative, a medical clinic, and a scholarship fund which sends children of members to private schools so that "the children of the disappeared" have an opportunity to receive an education.

Leaders of the GAM suggested that the emergence of other human rights organizations during the past four years indicates that the people are now better organized, and that popular resistance to the repression has increased. Nevertheless, they painted a very pessimistic picture of the Cerezo Arévalo administration's accomplishments in the area of human rights. They noted that during the first few months of the new civilian government, the incidence of political

¹⁰⁵ Interview, March 16, 1990. For example, on May 3, 1990, Luis Miguel Solis Pajarito, a leader of the National Council of Displaced Persons of Guatemala (CONDEG), and a member of the GAM, disappeared and is believed to have been kidnapped. Armed men threatened Solis Pajarito on April 27, 1990. *El Grafico*, May 11, 1990, p. 4.

violence fell. In 1987, however, the violence began to increase "in quality and quantity."¹⁰⁶

During 1990, the GAM leaders expressed their concern that the death squads of several Central American nations may be collaborating (a theory raised initially in the case of murdered Salvadoran Dr. Héctor Oquelí Colindres). They are concerned that violence will be directed not only toward human rights organizations but towards political parties as extreme rightist groups attempt to create a climate of political instability that will justify a military coup.

Vice Minister of Defense General Molina Bedoya told the Minnesota Lawyers Committee that he believes GAM is part of the armed guerrilla movement active in Guatemala "because we're aware of their activities and their relations. They're only called 'GAM,' but are brothers, in spirit, in activities and intentions of the URNG."¹⁰⁷ General Bedoya charged that the GAM reports as disappeared those persons who go to Cuba for training as guerrillas. GAM, he asserted, has "an intimate relationship with the subversives."¹⁰⁸

Leaders of the GAM called Molina Bedoya's accusations "absurd defamations."¹⁰⁹ They charged that the army sees every clamor for justice as communism and marxist-leninism. The GAM, they asserted, is an independent, essentially politically-neutral organization caught in the middle of two combatants. It has no ties to any guerrilla group. They are working to create a free and democratic society, but they want Guatemala's problems to be resolved through political negotiations because "we are tired of this war."¹¹⁰

¹⁰⁶ Interview, February 20, 1990.

¹⁰⁷ The Guatemalan National Revolutionary Union. Interview, March 19, 1990.

¹⁰⁸ Id.

¹⁰⁹ Interview, March 21, 1990.

¹¹⁰ Interview, February 20, 1990.

C. The CERJ

In 1988, campesinos and Santa Cruz del Quiché schoolteacher Amílcar Méndez Urizar founded the Ethnic Communities Council "Ranujel Junam" (CERJ). Now claiming 10,000 members, CERJ works to challenge the validity of Guatemala's civil patrol system and to protect the human rights of campesinos in Guatemala's highlands. The civil patrols operate under army direction in many rural, indigenous communities. Usually, the patrols are comprised of campesinos armed with M-1 rifles or older models who regularly patrol their communities and surrounding territory, without pay, so as to protect the areas from "subversion."

Since its inception, CERJ members and their families have been the targets of violence. Méndez Urizar received death threats during the spring and summer of 1988,¹¹¹ and on July 30, 1990,¹¹² four CERJ members, Macario Puchi Balam, Luis Rui, Agapito Pérez Lucas, and Nicolás Mateo, were disappeared by armed men in April 1989. On March 17, 1990, María Mejía, mother of two CERJ activists, was shot to death allegedly by two military commissioners from the town of Parraxtut, El Quiché, who had previously been harassing the family. On April 10, 1990, CERJ activist José Vicente García was shot to death by two unknown assailants in La Montaña, El Quiché. On May 1, 1990, José María Ixcayat, a member of CERJ's "*Junta Directiva*" (Director's Group), was shot to death by three assailants outside his home in Caserío de la Fé, Sololá. Both García and Ixcayat previously received death threats for their involvement with CERJ.¹¹³

¹¹¹ Americas Watch, Closing the Space: Human Rights in Guatemala, May 1987 - October 1988 45-46, November 1988.

¹¹² *Denuncia* #16, of the Archbishop's Legal Office, August 3, 1990.

¹¹³ *Denuncias* #11 and #13 of the Archbishop's Legal Office, April 19 and May 3, 1990. In some areas, fear runs high that further violence will come. Residents of the town of Laguna Seca, El Quiché reported that soldiers threatened them that "[w]hen the government changes [in 1991], we'll get rid of the laws that the gringos brought (i.e., the 1985 Constitution), and we'll start killing the people who don't patrol." Two residents from Sololá reported that soldiers threatened the people with the message that "[w]hen the government changes, the massacres will begin." Interviews, April 21, 1990.

In spite of this repression, the CERJ continues to press actively for greater rights for Guatemala's campesino population. The group had two goals for 1990: the promotion of human rights, and a successful challenge to the constitutionality of Decree 19-86, the statute which legalized the civil patrol system. In February 1990, the CERJ presented Human Rights Procurator Ramiro de León Carpio with a petition charging that Decree 19-86 violated several articles of Guatemala's Constitution. First, the petition claimed that the statute violated Article 34 which provides in part: "No one is obligated to associate with nor form part of self-defense groups or associations. . .". CERJ members claimed that for many, if not all patrollers, service is obligatory because to decline to participate is to risk death threats and to be deemed a "subversive" by the remaining patrollers and the army.¹¹⁴

The petition also charged that the civil patrol system destroys the cultural identity of many of its members. Article 58 of the Guatemalan Constitution recognizes the right of individuals and communities to enjoy their cultural identity. Article 66 declares that the State recognizes, respects, and promotes the customs, traditions, and social organizations of Guatemala's ethnic groups. Since the patrols serve as a system of military control of indigenous populations, with the local patrol chiefs often wielding much power, the patrols effectively undermine the traditional community authority structure.¹¹⁵ The petition also asserted that the patrols divide the indigenous communities through distrust and psychological terror.¹¹⁶ It concluded that the civil patrol system perpetrates "ethnocide" in Guatemala.¹¹⁷ After studying the petition, Procurator de León Carpio declared Decree 19-86 to be constitutional because, on its face, it

¹¹⁴ Petition of CERJ to Guatemalan Human Rights Procurator, February 20, 1990.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

provides for voluntary service.¹¹⁸ He acknowledged that when men are forced to participate, their constitutional rights are violated. Each allegation of forced servitude, he stated, required individual evaluation.

Leaders of CERJ told the Minnesota Lawyers Committee that civil institutions have failed to establish their authority during the Cerezo Arévalo administration, especially in rural areas.

They declared that the army is "in control" throughout Guatemala. In rural communities, the army maintains the civil patrol system as a social and political extension of its control.

According to CERJ leaders, any form of pluralism, whether political, religious, or social is rejected as "subversive" because it threatens the military's authority over the population.¹¹⁹

They emphasized that Guatemala will never be a true democracy if the military continues to control so much power.

D. CONAVIGUA

The National Coordinating Committee of Guatemalan Widows (CONAVIGUA) is an organization of over 7,000 primarily indigenous widows of the violence of the 1980s. Its primary objectives are to meet the immediate survival needs of its members and to work for greater respect for the integrity and dignity of women in Guatemalan society. According to leaders of CONAVIGUA, the Cerezo Arévalo administration offered financial assistance to many widows during 1987-88, conditioned upon the women swearing that leftist guerrillas killed their husbands or pledging their loyalty to the ruling Christian Democratic party, and agreeing not to search for their disappeared husbands. In an effort to help themselves, these widows founded CONAVIGUA in 1988.

¹¹⁸ Public comments, March 15, 1990. Regarding the civil patrols, one longtime resident of a small community in El Quiché told the Minnesota Lawyers Committee: "Nothing is voluntary here."

¹¹⁹ Interview, March 3, 1990.

CONAVIGUA leaders observed that indigenous women are especially disadvantaged because they have not had formal education or training. Men often exclude indigenous women from public meetings in rural towns because the opinions of women are considered to be of little value. Most CONAVIGUA members do not know how to read, write, or even speak Spanish because they speak Mayan dialects as their first language. In a sense, they are thrice exploited as women, as indigenous persons, and as widows who lost their husbands to the political violence.¹²⁰

One of CONAVIGUA's primary concerns is the promotion of economic development for its members. Agricultural work is very difficult for widows and children due to the low pay and poor conditions endemic to that sector. Thus, a priority is the development of skills that facilitate a higher standard of living. CONAVIGUA also sponsors courses (taught in Spanish and in Mayan dialect) on health, hygiene, and the Constitution. CONAVIGUA leaders asserted that the "authorities" continue to commit many abuses against women, but charges are rarely brought due to army intimidation. "We respect the authorities, but they don't respect us."¹²¹ CONAVIGUA members are learning to denounce human rights violations as a means to promote the dignity of women.

E. CIEPRODH

Founded in 1987, the Center for the Investigation, Study, and Protection of Human Rights (CIEPRODH) provides documentation of human rights abuses as well as human rights education programs. The Center's primary activity is the compilation of information from the national press for its monthly, periodic, and annual reports on human rights in Guatemala. For example, CIEPRODH reported that 263 cases of extra-judicial executions occurred during the months of

¹²⁰ Interview, March 13, 1990.

¹²¹ *Id.*

January, February, and March 1990.¹²² Ninety percent of these assassinations were committed by "unknown persons."¹²³

CIEPRODH also provides human rights educational seminars to popular organizations, schools, unions and, on at least one occasion, a military base. It maintains an extensive data bank in its Guatemala City office which is presently being computerized. In June 1989, CIEPRODH opened a branch office in the volatile province of San Marcos. The San Marcos office is staffed by a coordinator and a small team of volunteers who assist him in the collection of information.

The CIEPRODH staff has been subject to periodic harassment. In January 1989, shots were fired at the office. Director Factor Méndez received a death threat on May 10, 1989. In February 1990, unidentified men arrived at the home of Antonio Méndez, brother of Factor Méndez and also a CIEPRODH staff member, and inquired about Factor Méndez's investigation of the El Aguacate massacre.¹²⁴

F. Conclusions

Several nongovernmental organizations are now active in Guatemala -- a significant change since the advent of civilian government in 1986. These groups, however, work under adverse conditions ranging from disrespect to threats to actual violence against their members. The leaders of these groups feel universal disappointment at the failure of the government to protect even the most fundamental rights guaranteed by Guatemalan law. There is general agreement that the military, and not the civilian government, holds the real power in Guatemala. This de facto control allows the military and its agents to violate human rights with impunity.

¹²² NOTIDATA Centroamericana, Period from April 1-15, 1990.

¹²³ Id.

¹²⁴ El Gráfico, February 7, 1990.

V. HABEAS CORPUS AND THE SEARCH FOR THE DISAPPEARED

A. Introduction

In Expectations Denied, the Minnesota Lawyers Committee concluded that the habeas corpus process was beset by severe limitations. Guatemala's judiciary was unable to obtain access to information kept by the military. Members of the Guatemalan Bar felt that it was too dangerous to represent families of the disappeared, so the vast majority of petitions were filed without the existence of counsel. No other Guatemalan institution, whether public, private or religious, was able to address the problem of disappearances. Of 41 habeas corpus petitions submitted by the Minnesota Lawyers Committee during 1986 and 1987, none of the disappeared persons were located in detention by the judge formerly charged with investigating these cases, although four people were located in military service and a fifth person with an identical name was found while the actual missing person remains disappeared.¹²⁵

B. Habeas Corpus Procedure and History

The 1985 Constitution and enactments of the Guatemalan Congress establish the law of habeas corpus (*exhibición personal*).¹²⁶ Habeas corpus law mandates the production before a court of a person detained or imprisoned for the purpose of determining the legality of his detention. The law recognizes the right of anyone illegally detained or otherwise threatened with loss of liberty to request their immediate exhibition before a court in order to regain their freedom.¹²⁷ The

¹²⁵ See Expectations Denied, pp. 24-28; one woman, Hilda Dora Martínez Salazar, reappeared around the same time that the Minnesota Lawyers Committee submitted a petition on her behalf. Thus, the Guatemalan court which received the petition never processed her case. Expectations Denied, at 91.

¹²⁶ Constitución Política de la República de Guatemala, May 31, 1985. Título VI, Capítulo I, Artículos 263, 264; Ley de Amparo, Exhibición Personal y de Constitucionalidad, Decreto No. 1-86 (January 8, 1986), Título III, Artículos 82-113 (hereinafter, "Law of Personal Exhibition").

¹²⁷ Law of Personal Exhibition, Article 32.

victim or any other person may exercise this right.¹²⁸ Petitioners may request relief from any court in writing, verbally, or by telephone.¹²⁹

Upon receiving the request, the court must immediately issue a writ or "decree of exhibition" ordering the production of the detained or aggrieved person within twenty-four hours and a detailed report from the responsible authority.¹³⁰ The judge is to search personally in every part of a detention center or anywhere else the aggrieved or disappeared person might be found.¹³¹ The judge may not suspend or terminate the habeas corpus process so long as the detained, aggrieved, or disappeared person has not been located.¹³² The court may subpoena witnesses or any other information considered necessary to clarify the facts and must make written findings declaring whether or not the detention has a legal basis.¹³³ If the aggrieved person is physically outside the court's jurisdiction, the case is referred to a special Executor Judge or, if none exists, the court may appoint an auxiliary or deputy to preside over the petition.¹³⁴

In May 1986, in response to pleas from the GAM, Supreme Court President Edmundo Vásquez Martínez appointed Guatemala City Judge Oligario Antonio Labbé Morales as Executor Judge in charge of processing habeas corpus petitions submitted on behalf of Guatemala's disappeared. Relatives of the disappeared, the GAM, and other human rights organizations filed a total of

¹²⁸ *Id.*, Article 85.

¹²⁹ *Id.*

¹³⁰ *Id.*, Articles 88, 89.

¹³¹ *Id.*, Articles 95, 103.

¹³² *Id.*, Article 110.

¹³³ *Id.*, Articles 98, 99.

¹³⁴ *Id.*, Articles 90, 91.

2,337 writs on behalf of 1,467 people with Judge Labbé's office.¹³⁵

Judge Labbé and his staff often traveled personally to detention centers in an effort to locate those reported as disappeared. Although Judge Labbé told the Minnesota Lawyers Committee that he always received cooperation from the military, his staff and other judges reportedly admitted that military and police units rarely responded to Judge Labbé's requests for information concerning disappeared people.¹³⁶

Judge Labbé claimed that his office located 120 persons during his tenure from May 1986 through May 1987. Most of those were found to have left Guatemala in search of better employment in Mexico, the United States, or Canada.¹³⁷ Judge Labbé did not report the location of a single person who had been disappeared by police or military authorities. Given the thousands of reports of kidnappings and illegal detentions in Guatemala over the past ten years, Judge Labbé's failure to attribute a single disappearance to the military or its agents is symptomatic of the general impotency of Guatemala's habeas corpus system to locate the disappeared.

Judge Labbé left his position as Executor Judge at the end of his one-year tenure, but Supreme Court President Vásquez Martínez failed to appoint a replacement. According to Labbé, because all judges are competent to perform habeas corpus procedures, Vásquez Martínez decided that it was more efficient for judges located in the areas of the alleged illegal detention to accept the writs. However, former members of Judge Labbé's staff suggested that Vásquez Martínez discontinued the post under pressure after Labbé compiled evidence inculcating the army in the

¹³⁵ Expectations Denied, at 19-20.

¹³⁶ Id.

¹³⁷ Interview, February 1, 1990.

celebrated kidnapping and disappearance of Luis Fernando de la Roca Elías.¹³⁸ License plates of two cars used in de la Roca Elías's abduction were traced to the Ministry of Defense and to the *Justo Rufino Barrios* military barracks in Guatemala City. Dr. Vásquez Martínez reportedly described the de la Roca Elías case as the "most advanced," but remarked that the case could not progress because it was not possible to act against the military.¹³⁹ The Minnesota Lawyers Committee urges the Supreme Court to take action based on the large body of evidence implicating the Guatemalan military in de la Roca Elías's kidnapping.

C. Recent Findings Concerning the Habeas Corpus Process

During the spring of 1990, the Minnesota Lawyers Committee reviewed the court files of ten of the petitions it had submitted in 1987 on behalf of the disappeared¹⁴⁰ to ascertain if any progress occurred during the intervening two years. In one case, that of Jorge Herrera, kidnapped on July 26, 1986, the file was missing, and court officials believed that it was unlikely that it would ever be found.¹⁴¹ All nine of the remaining cases were declared "[i]mprocedente," which means "open, but without result." Some of the files contained correspondence from government institutions during 1987, while in the others it appeared that all real efforts to locate the disappeared person had ceased during 1986. The Secretary of the *Juzgado Septimo de*

¹³⁸ Interview, April 5, 1990.

¹³⁹ AI 1987 Report, at 49.

¹⁴⁰ The ten cases included the following: Emilio Pérez Siana and Francisco Coxun Chen, Baltazar Quican Coche, Camilio García Luis, Jose Aj Pacajas and Martin Son Mazariego, José Herrera and María Elena Rodas Orellana, María Eugenia Monero and José Rigoberto Monroy Alevedo.

¹⁴¹ According to former court officials, it was common practice to make more than one copy of each file in habeas corpus cases. The fact that such a file would completely vanish, therefore, is extremely questionable.

Primera Instancia de Instrucción de Ramo Penal,¹⁴² which maintains the records, said that there was no chance of any news or new developments in these cases. "The reality is, in Guatemala, habeas corpus does not produce results."¹⁴³

A review of Supreme Court statistics concerning habeas corpus petitions demonstrated the veracity of this comment. During 1988, Guatemala's courts received a total of 733 habeas corpus petitions, 594 of which were actually processed. Four persons eventually appeared alive. None of the other cases produced a final result, which apparently means that none of the other cases were completely processed and, thus, none of the other disappeared persons were found.¹⁴⁴

In 1989, the Guatemalan courts received a total of 4,750 habeas corpus petitions, of which 4,685 were processed. Two hundred and seven persons eventually appeared alive. Final results were obtained in 1,195 cases, but this figure, according to a Supreme Court employee, apparently indicates those cases in which the courts performed a complete habeas corpus investigation but did not necessarily resolve the case.¹⁴⁵ Thus, this category apparently includes many cases where a disappeared person was never found and the file was declared "*improcedente*."¹⁴⁶ The term "apparently" is used because Supreme Court officials were unable to clearly define some of the statistical categories.

Most striking is the absence of a clear statistical category for cases where judges successfully

¹⁴² In Guatemalan courts, the judge's "Secretary" is a lawyer who operates as the tribunal's "second-in-command," and assists the judge in processing the caseload.

¹⁴³ Interview, April 6, 1990.

¹⁴⁴ Personal Exhibition Statistics of the Courts of the Republic of Guatemala, C.A., 1988.

¹⁴⁵ Secretary of the Supreme Court of Justice, Entries of Personal Exhibitions, Petitions of Amparo, and Filed Casaciones, 1989.

¹⁴⁶ Interview, July 6, 1990.

located and ordered the release of persons who were detained illegally, which is the fundamental purpose of the habeas corpus procedure. The Minnesota Lawyers Committee urges the Supreme Court to clarify and expand its habeas corpus statistics so that national and international organizations will be able to monitor the efficacy of the habeas corpus process in Guatemala.

It is also unclear what caused the great increase in the number of petitions filed between 1988 and 1989. Factor Méndez, director of CIEPRODH, theorized that one cause may be the systematic rise in the incidence of violence in Guatemala since 1987. As the political violence increased, so did the corresponding use of the habeas corpus procedure by the families and associates of the victims.¹⁴⁷

In February 1990, the Minnesota Lawyers Committee filed five more habeas corpus petitions with the Supreme Court of Guatemala. Four of these petitions concerned Ivan González Fuentes, Mario de León Méndez, Aaron Ubaldo Ochoa, and Carlos Contreras Conde, activists at the University of San Carlos in Guatemala City. The four men were kidnapped over the period of August 21 to 23, 1989 during a wave of violence that "disappeared" ten student activists and decimated the leadership of the University Student Association. The death squads "*La Dolorosa*" and "*Jaguar Justiciero*" threatened Ubaldo Ochoa and de León Méndez with death in February 1989.¹⁴⁸

Supreme Court officials explained to the Minnesota Lawyers Committee that telegrams were sent to judges throughout Guatemala concerning these cases, asking them to search local detention centers for the missing men. The judges responded with telegrams listing the jails and military facilities they visited and informing the Supreme Court that the searches proved fruitless. The

¹⁴⁷ Interview, June 1, 1990.

¹⁴⁸ Messengers of Death, at 19.

Supreme Court stated it would compile this information into a report which would be sent to the Minnesota Lawyers Committee. As of September 1, 1990, over six months after submission of the petitions, the Supreme Court had not issued a response. One court official explained the delay by stating that the court had a lot of work.¹⁴⁹

The Minnesota Lawyers Committee examined the files maintained by the GAM on all reports of disappearances which it receives. Many of the files, including those for two University of San Carlos students, de León Méndez and González Fuentes, contained copies of habeas corpus petitions submitted on behalf of the disappeared person. None of the examined files contained responses from the courts to petitions presented. GAM members explained that in the vast majority of cases, they received no response from the court regarding action taken on the four petitions. Neither the GAM petition submitted on behalf of González Fuentes on April 24, 1989 nor that submitted in favor of de León Méndez on August 26, 1989 (which contained a detailed history of Méndez's activities on the day he disappeared) received a response. The Minnesota Lawyers Committee is concerned by the Guatemala Supreme Court's failure even to give a minimal response to many habeas corpus petitions.

The family of one of the disappeared students, Carlos Contreras Conde, never came to the GAM to denounce his disappearance. GAM leaders explained that when a family member is kidnapped, many families are afraid to come forward and denounce the act and take legal recourse. This dilemma was borne out when the Minnesota Lawyers Committee attempted to meet with the brother of one of the disappeared student activists. Although the Minnesota Lawyers Committee delegate explained the purpose for studying these cases, the brother refused to meet with the delegate.

¹⁴⁹ Interview, May 24, 1990.

At this time, there appears to be no active habeas corpus investigation into the disappearance of the four student activists. According to the Guatemalan government's Report on the Investigation of Cases Linked to the Theme of Human Rights, January 1989-February 1990, relatives of Aaron Ubaldo Ochoa and Carlos Contreras Conde suggested that the wave of disappearances and violence was due to a dispute over alcohol, as well as "internal problem" among the students.¹⁵⁰ Although signs pinned to the bodies of other students kidnapped during the same period reportedly linked the killings to infighting among students, student leaders rejected this accusation and accused the government of placing the signs in an attempt to confuse the public.¹⁵¹ A former employee of the G-2 told the Minnesota Lawyers Committee that the G-2 ordered the kidnappings of the students so that they would stop "bothering" the army. Given the death squad threats against the student victims and Guatemala's historical repression of student activists, it is the position of the Minnesota Lawyers Committee that the government's explanation of these case is simply not credible.

The fifth petition presented by the Minnesota Lawyers Committee to the Guatemalan Supreme Court in February 1990 was on behalf of Eleodoro Sal Siquinajay. In the summer of 1989, the Guatemalan army and the civilian government accused Sal Siquinajay of participating, as a member of a guerrilla band, in a 1988 massacre of 22 campesinos in the village of El Aguacate, in the department of Chimaltenango.¹⁵² Although Sal Siquinajay originally made a public confession of his involvement in the crime, he subsequently testified that he confessed under the

¹⁵⁰ Report on the Investigation of Cases Linked to the Theme of Human Rights, pp. 15-18. This report is a compilation of information obtained during the National Police's investigations of human rights violations.

¹⁵¹ Messengers of Death, at 16-17.

¹⁵² Newsweek, July 10, 1989, p. 39; Case No. 2261-88, *Juzgado Primero de Primera Instancia*, Chimaltenango, File of the Ninth Court of Appeals in Antigua.

duress of torture committed by army officers.¹⁵³ Sal Siquinajay fell out of public view after retracting his confession. After submitting the habeas corpus petition to the Supreme Court, the Minnesota Lawyers Committee learned from court records and other sources that Sal Siquinajay had been found not guilty of genocide and kidnapping but was convicted of robbery and illegal possession of a firearm and sentenced to a two-year prison term in the penitentiary at Pavon.¹⁵⁴ Strangely, although officials at the *Juzgado Quinto de Primera Instancia de Instruccion del Ramo Penal* in Guatemala City which processed Sal Siquinajay's petition located him at Pavón in March 1990, as of September 1, 1990, the Supreme Court had not notified the Minnesota Lawyers Committee of his whereabouts.

Lawyers and activists brought several misapplications of Guatemalan habeas corpus law to the Minnesota Lawyers Committee's attention. On February 12, 1990, the parents of Dr. Carmen Valenzuela, who was kidnapped on February 10, requested the assistance of the Archbishop's Legal Office in securing their daughter's safe release. The Legal Office attempted to file a writ of habeas corpus on behalf of Dr. Valenzuela at the *Juzgado Septimo de Primera Instancia de Instrucción del Ramo Penal* (hereinafter "*Juzgado Septimo*"), in Guatemala City. The court refused to accept the petition, citing its lack of competence to do so. Court officials told the *Legal Office that an internal memorandum of the Supreme Court designated the office of the *Juzgado Treceavo de Paz Penal* (hereinafter *Juzgado Treceavo*) as the entity which had the function of receiving habeas corpus petitions.¹⁵⁵ Article 84 of the Law of Personal Exhibition, however, establishes that any court is competent to initiate a habeas corpus proceeding.

The Legal Office proceeded to present its habeas corpus petition to the office of the *Juzgado*

¹⁵³ *Case No. 2261-88, p. 191-a.*

¹⁵⁴ *Case No. 2261-88, pp. 354-354a; Interview, March 12, 1990.*

¹⁵⁵ *Clamor, Bulletin of the Archbishop's Human Rights Program, February 1990.*

Treceavo which also refused to accept the petition. A court official told the Legal Office that by order of the Supreme Court, the *Juzgado Treceavo* was limited to the processing of deceased persons. The official explained that neither the judge nor his secretary were present, and that he would have to consult his superiors before taking any action.¹⁵⁶ The Minnesota Lawyers Committee believes that the court official's recalcitrance violated Article 90 of the Law of Personal Exhibition, which mandates that when a tribunal becomes aware of violations of an individual's right to liberty, it must initiate the habeas corpus process immediately. Under Article 90, court officials failing to act to find the missing person will be punished as accomplices to the crime.¹⁵⁷

Finally, the Legal Office presented the habeas corpus petition to the Secretary of the Supreme Court, which forwarded the petition to the office of the *Juzgado Sexto de Primera Instancia de Instrucción del Ramo Penal*. The judge of the *Juzgado Sexto* immediately initiated an investigation.¹⁵⁸

Another example of improper judicial procedure occurred on March 2, 1990 when Amílcar Méndez Urizar, President of CERJ, attempted to file a petition of habeas corpus with the *Juzgado Primero de Primera Instancia de Instrucción del Ramo Penal* in Santa Cruz del Quiché. The petition complained of death threats made by military commissioners and civil patrol chiefs in the town of Parraxtut against Domingo Tum Mejía and Diego Yat Us.¹⁵⁹ The court Secretary

¹⁵⁶ *Id.*

¹⁵⁷ Law of Personal Exhibition, Article 90.

¹⁵⁸ *Clamor*, February 1990.

¹⁵⁹ CERJ petition, March 2, 1990; *see pp. 98 to 114, infra.*

refused to accept the petition as written, claiming that it was improperly addressed.¹⁶⁰ The Minnesota Lawyers Committee believes that the Secretary's refusal violated Article 85 of the Law of Personal Exhibition, which decrees that petitions are not subject to any formalities.

On August 11, 1989, Supreme Court President Dr. Edmundo Vásquez Martínez sent a memo to all the judges of Guatemala. The memo provided in part that: "For the best compliance of [the law of] personal exhibition, you should order the authority, official, employee or person presumably responsible to present the offended person."¹⁶¹ The memo also stated "You should take into consideration in executing or carrying out the request for personal exhibition that the authenticity of the petition should be duly established and regard should be given to the source and legitimacy of the petition in relation to the official, employee, or person against whom it is directed." Such a directive by the court seems to modify the constitutional norm set forth in Article 85 that "Personal Exhibition may be requested . . . without the necessity of proof of any allegation and without any requirement of formality." The President of the Supreme Court's memorandum appears to impose limitations and formalities in the habeas corpus process that had been specifically prohibited in the constitutional mandate.

Continuing, the President's memo directed that:

In those cases in which the denounced acts constitute crimes such as: abduction or kidnapping or illegal detentions established in articles 201 and 204 of the Penal Code, you should proceed in the form indicated by the law, and initiate the respective penal process. In no case shall a judge or tribunal present itself to make warnings or precautionary measures.¹⁶² (emphasis added)

¹⁶⁰ Telegram from Amilcar Mendez to Supreme Court President Edmundo Vásquez Martínez, March 2, 1990.

¹⁶¹ Official Circular No. 001-EVM/mcpa, August 11, 1989.

¹⁶² *Id.* In the Spanish original, the emphasized sentence reads: "En ningun caso, podrá un juez o tribunal presentarse a hacer advertencias o prevenciones." President Vásquez Martínez distributed a circular with identical language on February 13, 1990. Official Circular No. 88-90

arguing that the entire circular must be read conjunctively, and that it instructs judges never personally to search detention centers.¹⁶⁶

The restrictive effect of the new procedure became clear when the Minnesota Lawyers Committee filed a habeas corpus petition in the *Juzgado Quinto de Primera Instancia de Instrucción del Ramo Penal* in Guatemala City on behalf of Luis Miguel Solis Pajarito. Pajarito, a GAM member and leader of the National Council of Displaced Persons of Guatemala (CONDEG) disappeared on May 3, 1990 after he left the CONDEG office in Zone One of Guatemala City.¹⁶⁷ Solis Pajarito, whose father and three brothers disappeared in the past, was reportedly the object of a kidnap attempt on April 27, 1989.¹⁶⁸

Solis Pajarito was reportedly detained in the headquarters of the *Guardia Hacienda* in Zone Six of Guatemala City, a charge contained in the petition submitted to the *Juzgado Quinto*. Rather than proceeding to the *Guardia Hacienda* headquarters for a personal search, however, the judge, pursuant to Dr. Vásquez Martínez's 1989 memo, merely sent a telegram to the director of the *Guardia Hacienda*, ordering him to present Solis Pajarito to the court on the following day (May 10). Neither Solis Pajarito nor any member of the *Guardia Hacienda* arrived at the court on May 10. On May 11, the court received a telegram from the Inspector General of the *Guardia Hacienda* stating that Solis Pajarito was not present, and the case was declared "*improcedente*."

The Minnesota Lawyers Committee is very concerned that such an interpretation of the habeas corpus procedure weakens an already deficient system for searching for Guatemala's disappeared. The Committee urges Dr. Vásquez Martínez to clarify his memorandum so that it is not

¹⁶⁶ Interview, May 28, 1990.

¹⁶⁷ *Denuncia* #14 of the Archbishop of Guatemala's Legal Office, May 7, 1990.

¹⁶⁸ *La Hora*, May 8, 1990, p. 32.

construed to vitiate Guatemala's habeas corpus laws.

Some judges continue to search personally for the disappeared, although rarely with results.

During April 1990, the Procurator for Human Rights filed four habeas corpus petitions as the *Juzgado de Paz De Turno* in Guatemala City. In the first case, Leónardo Herrera was allegedly kidnapped by members of the security forces on April 4, 1990 in Zone Eight of Guatemala City. Judge Romeo Ottoniel Gálvez Vargas personally searched Guatemala City's police detention centers and military bases but without success.¹⁶⁹ In the second case, Malvin Yobany León Pineda disappeared on April 9, 1990, and Judge Gálvez Vargas performed the same search in his behalf, again without success.¹⁷⁰ In the third case, Victor Manuel Paiz Lorenzana apparently disappeared in Guatemala City on March 28, 1990. After a similar search, Judge Gálvez Vargas reported that he was still missing.¹⁷¹

In the fourth case, Esteban Salanic, a law student at the University of San Carlos, was allegedly kidnapped by members of the security forces dressed in civilian clothes as he left bus number 21 in Guatemala City. Again, Judge Gálvez Vargas searched Guatemala's detention centers to no avail.¹⁷² Strangely, before his petition was filed, the newspaper *El Gráfico* reported that Salanic was found brutally beaten in a ravine in Zone 21 of Guatemala City.¹⁷³ It is unclear whether the subsequent habeas corpus petition was filed unnecessarily, or whether the man reportedly found in the ravine was wrongly identified as Salanic.

¹⁶⁹ Case No. 538/Srio, filed April 25, 1990.

¹⁷⁰ Case No. C-552/Srio, filed April 30, 1990.

¹⁷¹ Case No. 540/Srio, filed April 26, 1990.

¹⁷² Case No. C-538, filed April 24, 1990.

¹⁷³ *El Grafico*, April 17, 1990, p. 5.

At least one petition submitted to Judge Gálvez Vargas during the same period produced a successful result. In late April 1990, the army launched a forced conscription drive and hundreds of young men in rural and urban areas were taken away for military service by armed men dressed in civilian clothes. Human Rights Procurator Ramiro de León Carpio criticized the forced recruitment as amounting to illegal detentions because of the lack of any formal selection procedure followed by the army.¹⁷⁴ Although military service is mandatory for all males age 18 and over, military law provides the following exceptions to conscription:

- 1) Physical and mental infirmities.
- 2) Provision of support for one or more minor or incapacitated children.
- 3) Provision of support for one or more minor or incapacitated siblings.
- 4) To be the only son of a single woman, of incapacitated parents, or poor elderly persons, so that his labor is needed to support them.
- 5) When in the same family, one or more men are already performing military service.
- 6) Having been proclaimed a candidate for, or elected to public office.
- 7) To be a minister of any religion.¹⁷⁵

On April 28, 1990, a group of men dressed in civilian clothes grabbed 19-year-old Luis Enrique Hernández Alvarado in Zone 18 of Guatemala City and took him to the *Cuartel General Justo Rufino Barrios*, the capital's largest military barracks. On April 30, 1990, his wife, María del Carmen Guzmán Hermosillo, filed a petition of habeas corpus at the *Juzgado de Paz de Torno*. The petition claimed that Alvarado supported his wife and their young child, was employed at the Acba Factory, and studied at the *Colegio Lirio de los Valles*.¹⁷⁶ The petition contained letters of support from Alvarado's employer and from the director of the *Colegio*. Judge Gálvez Vargas went personally to the *Cuartel General*, located Alvarado, and ordered his release based on the exceptions provided to the conscription law.¹⁷⁷

¹⁷⁴ *La Hora*, April 30, 1990, p. 5; Interview, May 3, 1990.

¹⁷⁵ Component Law of the Army, Articles 70-72, November 1988.

¹⁷⁶ Case No. 553/390, filed April 30, 1990.

¹⁷⁷ *Id.*

Representatives of CERJ told the Minnesota Lawyers Committee that during the same period, CERJ filed habeas corpus petitions in the tribunals of Santa Cruz del Quiché on behalf of nine campesinos claimed to be victims of illegal conscription.¹⁷⁸ For instance, the father of José Jorge Tino of Chicabán II, El Quiché claimed that a group of soldiers grabbed his 21-year-old son on April 29, 1990 and took him to the military base in Sololá. José is the oldest child in his family and has three siblings ages two, five, and nine. The father testified that his son's help was needed to support the family.¹⁷⁹ As of early June 1990, CERJ has not received any responses to these petitions.¹⁸⁰

Human Rights Procurator de León Carpio candidly described the weakness of the habeas corpus system. In theory, as the Law of Personal Exhibition is written, he believes that it is a perfect system. In practice, de León Carpio feels that the process has improved somewhat because some judges now perform their duties more diligently. He asserted, however, that as long as there are illegal detentions and clandestine detention centers, the results of the habeas corpus process would never be positive. While theoretically and mechanically the system functions, "in terms of results, nothing has changed."¹⁸¹

A court official with a great deal of experience processing habeas corpus petitions described the difficulty of locating an illegally detained person. "They're (i.e. the authorities) interested in demonstrating that they're not guilty. So they let us into the public jails to look the place over; to see that the prisoners are not there. But they never keep them there -- in public

¹⁷⁸ Interview, June 2, 1990.

¹⁷⁹ Interview, May 2, 1990.

¹⁸⁰ Interview, June 2, 1990.

¹⁸¹ Interview, February 14, 1986; Prensa Libre, March 24, 1990, p. 18.

facilities -- because they have their clandestine jails."¹⁸² In September 1989, Arnaldo López Straub, attorney for a number of the military officers implicated in the May 1989 coup attempt, announced that his clients had testified about the existence of secret prisons where they were detained.¹⁸³ North American churchwoman Diana Mack Ortiz also described a clandestine prison where she was tortured and where she heard the screams of other persons.¹⁸⁴

The lack of judicial independence is a fundamental problem that limits the judiciary's effectiveness in all areas, including habeas corpus. According to one Guatemalan lawyer, "There's no real independence of powers. The army interferes a lot with the executive branch, and the judicial system is subservient to the executive."¹⁸⁵ The lawyer explained that in 1985, when Guatemala elected Vinicio Cerezo Arévalo, a member of the Christian Democratic Party, as president, the Christian Democrats also won a majority 51 seats out of a hundred in Congress. Pursuant to the Constitution, the Christian Democratic majority elected all nine members of the Supreme Court.¹⁸⁶ Thus, the Supreme Court justices must be sensitive to the pressures and the interests of the Christian Democratic Party, as well as to those of the army.¹⁸⁷

Another lawyer criticized Guatemalan judges for lacking the will to search aggressively for detainees. "They go to detention centers and military bases and they shout: 'Is this person here?' Obviously, they never find them. They (judges) never have the courage to say to the police or to the soldiers 'open that door!' because they know that they'll suffer the

¹⁸² Interview, May 11, 1990.

¹⁸³ Prensa Libre, September 29, 1989, p. 21.

¹⁸⁴ Affidavit of Sister Diana Mack Ortiz, January 3, 1990.

¹⁸⁵ Interview, May 16, 1990.

¹⁸⁶ Article 215 of the Political Constitution of Guatemala.

¹⁸⁷ Interview, May 16, 1990.

consequences later."¹⁸⁸ According to the lawyer's testimony, many judges act according to the letter but not the spirit of the law, being careful not to compromise themselves or their families. For example, a judge may send a telegram to chiefs of the National Police or commanders of military bases asking if they are detaining a particular person when it is obvious that the police and the soldiers will deny that the person is present.¹⁸⁹

In his discussion with the Minnesota Lawyers Committee, Supreme Court President Dr. Edmundo Vásquez Martínez candidly addressed the limitations of the habeas corpus system. Although "disappeared" persons are rarely held in public jails, Dr. Vásquez Martínez observed that habeas corpus petitions only produce results when the subject is detained illegally in a police or military facility. If the person is not detained by a public authority, the courts can only order the police to try to locate him. "Judges are not gods or angels who can search everywhere!"¹⁹⁰ Dr. Vásquez Martínez's remarks indicate that police, themselves, are the ones to bear the burden of searching for Guatemala's disappeared.

Procurator General Mario Roberto Illescas Aguirre explained that the Public Prosecutor's office has had virtually no role in resolving cases of the disappeared. Under Guatemalan law, the Public Prosecutor's Department becomes involved only upon the commencement of a criminal proceeding. Since only rarely, if ever, are criminal charges brought in connection with a disappearance, the Public Prosecutor rarely becomes involved.¹⁹¹

In 1987, President Cerezo Arévalo established the *Comisión Presidencial Asesora de Derechos Humanos* (Presidential Advisory Commission on Human Rights, hereinafter, COPADEH). Carmen

¹⁸⁸ Interview, May 16, 1990.

¹⁸⁹ *Id.*

¹⁹⁰ Interview, March 12, 1990.

¹⁹¹ Interview, May 18, 1990.

Rosa de León Escribano, a former COPADEH official, described the Commission's goals as twofold: 1) to resolve cases of disappearances which occurred during the Cerezo Arévalo administration, and 2) to resolve cases of disappearances which occurred during former military governments. Escribano asserted that only a small percentage of the reports of disappearances received by COPADEH were valid. Rather, the majority were nonpolitical cases such as husbands leaving their wives.

When COPADEH received a valid disappearance report, its job was to present its evidence to President Cerezo Arévalo so that he could request the intervention of the appropriate ministry. De León Escribano stated that it was "practically impossible" to resolve cases of disappearances which occurred under prior military governments because no records were kept of these cases.¹⁹² There is no evidence that COPADEH's work resolved any disappearances which took place during Cerezo's Arévalo's tenure. Based on the Minnesota Lawyers Committee's interviews with COPADEH officials in 1987 and 1990, there is no reason to believe that COPADEH ever seriously investigated disappearances.

In his 1990 report, the U.N. Special Expert found that, in practice, COPADEH's work stopped at the acknowledgment of a person's disappearance. If, for example, the death of the missing person is established, there was no attempt to investigate the cause of death because it was then outside the mandate of the Commission. If, in addition to a missing person, other persons were found to be murdered in the same operation, the cases of death would be referred to another unit for investigation. In the opinion of the U.N. Special Expert, there was no justification for separating the investigations deriving from a single criminal act and it was preferable to concentrate resources on one political crime investigation unit rather than both the COPADEH and the Missing Persons Section of the National Police. Summing up his scrutiny

¹⁹² Interview, July 9, 1990.

of the Commission's work, the Special Expert opined that, "Its contribution to the clarification of cases of enforced disappearance is minimal; it has done nothing about situations that occurred before the present Government took office." Overall, he summarized its achievements as "not very relevant."¹⁹³

D. Conclusions

The habeas corpus process in Guatemala remains an ineffective tool for investigating the fate of the disappeared. Supreme Court statistics regarding habeas corpus cases are not at all useful in their present form. In many cases, the Court has not even acknowledged the receipt of a habeas corpus petition. Some judges are avoiding their responsibility to search personally for subjects of habeas corpus petitions based on their interpretation of a memo circulated by the President of the Supreme Court. Judicial independence is compromised because of the judiciary's connections with the Christian Democratic Party.

The Minnesota Lawyers Committee recommends that the Supreme Court clarify and expand its statistics concerning habeas corpus petitions submitted annually to Guatemalan courts. The judiciary should respond to all habeas corpus petitions whether positive, negative, or "*improcedente*."

The Minnesota Lawyers Committee recommends that Supreme Court President Dr. Edmundo Vásquez Martínez clarify his memo of August 11, 1989 to ensure that it is not construed to direct judges to refrain from searching personally for the disappeared, or to impose unconstitutional formalities or limitations on the habeas corpus process.

The Minnesota Lawyers Committee recommends that the Guatemalan government reopen its investigation into the cases of the University of San Carlos student leaders who were kidnapped

¹⁹³ 1990 Report of U.N. Expert, *supra* at note 29, at 6.

and murdered during 1989. The investigation should be guided by the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions adopted by the U.N. Economic and Social Council in May 1989.¹⁹⁴ To carry out this investigation, President Cerezo Arévalo should appoint an independent commission of inquiry as provided in Principle 11.¹⁹⁵ An independent commission should also investigate the cases of those students who remain missing and should verify reports of the continued existence of clandestine prisons in Guatemala.

Finally, the Minnesota Lawyers Committee recommends that the Supreme Court renew its efforts to investigate the disappearance of Luis Fernando de la Roca Elías based on the large body of evidence implicating the Guatemalan army in this 1986 kidnapping.

¹⁹⁴ Death Investigation Principles, *supra* note 40; attached as Appendix II.

¹⁹⁵ *Id.* Principle 11 states:

In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter, or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence, and independence as individuals. In particular, they shall be independent of any institution, agency, or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these principles.

VI. THE CIVIL PATROLS: A CASE STUDY IN THE FAILURE OF HUMAN RIGHTS PROTECTION

A. Introduction

During the early 1980s, the Guatemalan army began to organize "*Patrullas de Autodefensa Civil*" (Civilian Self-Defense Patrols, hereinafter "civil patrols") in rural areas that were the scenes of conflict between the military and insurgent groups. In 1986, Congress formally codified the civil patrols as voluntary civilian organizations which may receive organizational assistance from the army.¹⁹⁶ According to former Minister of Defense General Héctor Gramajo, 450,000 men now participate in the patrols. Most are equipped with World War II vintage M-1 rifles, and the Minnesota Lawyers Committee received some reports of patrollers armed with Israeli-made Galil machine guns.¹⁹⁷

The civil patrols have been a controversial institution for several years. In 1988, the Episcopal Conference of Guatemalan Bishops described "the functioning -- forced in practice -- of the civilian self-defense patrols . . . which enormously limits the right of association of campesinos."¹⁹⁸ In 1990, residents of rural communities described to the Minnesota Lawyers Committee human rights abuses perpetrated by civil patrol members. For example, the residents of Chontala, El Quiché must obtain the permission of one of the patrol chiefs before they can leave the town.¹⁹⁹ In March 1990, civil patrol chiefs in the town of Lacama Primero, El Quiché, made death threats against, and attempted to rape, several women who reside in the town.²⁰⁰

¹⁹⁶ Decree No. 19-86 (1986).

¹⁹⁷ Interviews, March 31 and April 2, 1990.

¹⁹⁸ The Clamor for the Land, Collective Pastoral Letter of the Guatemalan Bishops' Conference, p. 19, February 1988.

¹⁹⁹ Interview, April 21, 1990.

²⁰⁰ *Denuncia*, March 9, 1990.

On March 15, 1990, Guatemala's Commission for National Reconciliation sponsored a public forum where community and government leaders discussed issues pertaining to the civil patrols. Human Rights Procurator Ramiro De León Carpio observed that Article 34 of the Guatemalan Constitution guaranteed the right to free association. He stated that, to comply with this constitutional guarantee, the service in the patrols merely had to be voluntary. De León Carpio expressed the view that the root of the problem concerning the civil patrols was the judicial system's failure to respond effectively to charges of human rights violations perpetrated by patrollers. Although his office receives *denuncias* of abuses committed by patrollers and, when warranted, passes the cases on to the appropriate tribunal, de León Carpio criticized the courts for failing to resolve these cases.

Two members of Congress, Edmond Mulet Lesieur and Oliverio García Rodas, expressed serious concerns at the public forum about civil patrols and human rights abuses. Mulet Lesieur stated that the patrols played a vital role in the reduction of guerrilla activity in Guatemala. He observed, however, that since the patrols are part of the state security apparatus, the increasing number of human rights violations committed by patrollers occur under the umbrella of the state. Mulet Lesieur also asserted that the majority of civil patrols have not been integrated voluntarily. If the patrols are to continue in the future, stated Mulet, some safeguards are necessary to insure that involuntary conscription does not continue.

García Rodas posed the question at the public forum: How will the patrollers avoid the commission of future human rights abuses? Although he stated his belief that some patrollers commit their "excesses" involuntarily and in good faith, other crimes occur intentionally. "Guatemala is the land of the perfect crime," he explained, "because . . . there is almost never anyone found responsible. And when someone is found responsible, the judicial system almost

never functions to prosecute them."²⁰¹

Former Defense Minister Héctor Gramajo spoke out in defense of the civil patrols as "a product of the will of the communities,"²⁰² which originally organized themselves to defend the towns against subversives. Gramajo explained that when a community organizes a new civil patrol, the members immediately receive a written code of conduct for civil patrollers. This code includes the duty to respect the laws and constitution of Guatemala.²⁰³ Gramajo insisted that, "We're speaking of supposed violations of human rights," and "supposed physical abuses."²⁰⁴ "I agree," he continued, "that there are probably psychological pressures to participate in the patrols, but these group pressures are normal in many communities." These pressures, he explained, were "part of life and human nature."²⁰⁵

Three civil patrollers participated in the forum. All three men praised the civil patrols as cornerstones of peace and security in their towns, and declared that service was strictly voluntary. "I invite you," said one, "to go to our communities and see the progress that we've made."²⁰⁶

Below are excerpts from the notes and diaries kept by the delegate of the Minnesota Lawyers

²⁰¹ Forum, March 15, 1990.

²⁰² *Id.*

²⁰³ Given the high rate of illiteracy in rural areas of Guatemala, it is unclear what proportion of new civil patrol members are actually able to read and comprehend their code of conduct. Moreover, the code establishes no special sanctions for patrollers who violate its requirements.

²⁰⁴ Forum, March 15, 1990.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

Committee, who investigated two cases of human rights abuse perpetrated by civil patrollers in El Quiché during March 1990.

B. Chupol

On Friday morning, March 2, 1990, members of GAM, the mutual support group for friends and family of the disappeared, gathered at the town of Chupol, about forty kilometers south of Chichicastenango in the Department of El Quiché. A contingent of GAM members from Guatemala City were to arrive later that morning to join GAM members from the communities of Sacpulup and Chunima in a peaceful march from Chupol to Sacpulup, a distance of several kilometers.

GAM leaders in Guatemala City organized the demonstration as a show of support for their members in Sacpulup and Chunima who had recently been subjected to harassment. In January 1990, the commander of the military outpost in Chunima threatened residents with reprisals should they stop performing civil patrol service.²⁰⁷ That same month, soldiers from the military outpost in Chupol told GAM members and other residents of Sacpulup that because they did not participate in the local civil patrol, they would not have any form of protection. On January 31, 1990, the ranchitos (i.e. small homes) of two GAM members were burned down. In early February 1990, shots were fired at the home of another local GAM member. Patrollers also allegedly robbed a communal store operated by local widows. According to one GAM leader, "we came [to Chupol] to demonstrate against these acts, not against the civil patrols."²⁰⁸

The first GAM members to arrive that morning were residents of Chupol who lived close to the starting point of the planned march. One resident arrived at 9:00 a.m. and was surprised to see

²⁰⁷ See *Denuncia*, March 2, 1990.

²⁰⁸ Interview, March 9, 1990.

many members of the local civil patrols gathered there as well. When she said good morning to these men, some did not respond to her, and others replied with "bad words." Sensing a problem, the GAM members moved about one hundred meters away from the patrollers.

At around 11:00 a.m., GAM members from Guatemala City arrived at Chupol and were joined by a number of their compatriots from the local communities. Approximately 150 GAM members were present, as well as several reporters, photographers, and members of the "GAM Brigade," a group of internationalists who accompany GAM members in order to provide security. Above them on top of a small knoll and blocking the road to Sacpulup stood 100 to 150 civil patrollers from Chupol and seventeen surrounding communities.

Two GAM members and two reporters walked up the knoll to talk to the patrollers. According to the GAM members, several patrollers tried to give them a document which they had apparently written. The document was "horrible," and accused the GAM of being murderers and leftist guerrillas. It was particularly slanderous against GAM leader Nineth de García. When the two GAM members refused to accept the document, the patrollers surrounded them in a circle and refused to let them leave.

When Nineth de García learned that the civil patrollers had "grabbed" the two GAM members, she and a few others also began to climb the hill in order to try to resolve the situation. When she came close to the circle of patrollers, they began to shout "Assassin!" "Guerrillas!" and "Go away communist!"²⁰⁹ The patrollers began to stone the members of GAM, who fled back down the hill to their vehicles.²¹⁰ Twenty persons were injured in the shower of rocks and

²⁰⁹ Interviews, March 9 and 21, 1990.

²¹⁰ One version of the incident received by the delegate related that a journalist or a "tall gringo" shouted "[T]his is not your land" to the patrollers, which enraged them. The only internationalist present denied making such a statement, and none of the GAM members

sticks, including García, who was struck in the head and leg by stones.²¹¹ The patrollers also partially destroyed one of their vehicles. A GAM member who was close to Nineth de García when the violence began told the delegate that he was struck by the anger that he saw on the faces of the patrollers as they began to stone the demonstrators.²¹²

In the confusion and panic precipitated by the violence, a number of the local GAM members fled in different directions and were initially listed as disappeared. Within the next two days, all of these persons returned to their homes. However, 140 demonstrators and residents of Sacpulup and Chunima were afraid to return to their communities and, instead, traveled to Guatemala City to request the protection of the Human Rights Procurator, Ramiro de León Carpio.²¹³ After most of the refugees spent the night at Guatemala City's Red Cross Office, De León Carpio accompanied the residents back to Sacpulup and Chunima on Saturday, March 3.²¹⁴ De León Carpio told the residents of Chunima: "I advise you to return to your homes as if nothing happened. . ." ²¹⁵ On the same day, De León Carpio told the press that Defense Minister General Héctor Gramajo had informed him that the army had not been involved in the

interviewed had any memory of such a statement during the incident. The delegate was unable to interview the journalists who were present at Chupol.

²¹¹ El Gráfico, March 3, 1990, p. 3.

²¹² Interview, March 21, 1990.

²¹³ La Hora, March 3, 1990, p. 7.

²¹⁴ Id. A Sacpulup resident reported that when de León Carpio arrived in Chunima on March 3 to drop off the residents, the chiefs of the civil patrol called the patrollers together and told them to get ready because the "commander of the guerrillas" had arrived. One of the chiefs told de León Carpio: "We know that these people are guerrillas." The patrollers blocked the road with large rocks, preventing de León Carpio's exit from the community. *Denuncia*, March 4, 1990; Interview, April 17, 1990. According to de León Carpio, when he left his vehicle to speak to the patrollers who were blocking the road and who carried guns, machetes and shovels, he told them: "I respect your right to patrol. But please respect the rights of other not to patrol, according to Article 34 of the Constitution." The patrollers permitted the vehicles to pass. Interview, May 3, 1990.

²¹⁵ Videotape, March 3, 1990.

incident at Chupol, and that the problem was apparently between "civilian neighbors."²¹⁶

After the attack, the GAM members reported the incident to the Justice of the Peace (hereinafter the Judge) in Chichicastenango, the municipal center of the area. One witness reported that two men on a motorcycle, with their heads covered and carrying a video camera, followed them to the Judge's office.²¹⁷ On March 3, the day following the attack, I found the Judge in her office.

The judge (who is an attorney with prior experience as a Justice of the Peace) told me that she had just returned from Chupol. "Everything seems peaceful there today," she said.²¹⁸ The Judge had traveled to Chupol that morning to investigate the cases of the reported residents who had disappeared during the attack on the GAM. On March 2, Oscar Cifuentes, the Auxiliary Human Rights Procurator for the Department of El Quiché submitted habeas corpus petitions to her on behalf of eight persons listed as disappeared, so the Judge had gone to Chupol to try to locate them. Four of the eight had already reappeared, and the Chichicastenango police chief had unconfirmed reports that the other four also were in their homes. The lieutenant in charge of the Chupol military base told the Judge that the army "had not intervened" in the incident, and had not detained anyone.

The following day, I met with Oscar Cifuentes. According to Cifuentes, on March 2, after the attack on the GAM at Chupol, he asked the Judge to arrest 15 to 20 civil patrollers from Sacpulup and Chupol who had reportedly participated in the attack. I quickly returned to

²¹⁶ La Hora, March 3, 1990, p. 7.

²¹⁷ Interview, April 17, 1990.

²¹⁸ When asked who she thought was responsible for attacking the GAM, and why the attack occurred, the Judge replied: "I don't know. They say that some patrollers are aggressive."

Chichicastenango where the police chief told me that he had not received any arrest orders from the Judge. It was the GAM's responsibility to make denuncias against the perpetrators of the crime, explained the chief, after which the Judge could issue arrest orders to the police. The Chichicastenango substation is the closest police station to Chupol. The police, said the chief, had no theories as to who attacked the members of GAM.

After talking to the police chief, I returned to the office of the Judge. She admitted that following the incident, the members of GAM made individual denuncias against approximately ten members of the civil patrols of Sacpulup and other communities. She denied, however, that Oscar Cifuentes requested any arrests. Although she acknowledged that she had the power to order the arrests of persons who may have committed crimes, she explained that the case was in its 15-day "phase sumario" (i.e. its secret phase), during which time she could not discuss details such as whether she had ordered any arrests.²¹⁹ I asked her if, in a hypothetical case, she received the kind of denuncios which the GAM submitted after the attack, would that be sufficient proof for her to order the arrest of the accused civil patrollers? "Yes" replied the Judge.

Dr. Edmundo Vásquez Martínez, President of Guatemala's Supreme Court, subsequently provided one possible explanation regarding why the judge failed to order any arrests. After he heard my description of the conversation with the Judge in Chichicastenango, Dr. Vásquez Martínez responded that if the Judge received individual denuncias from the GAM members, she should have ordered the arrest of the patrollers named in the denuncias. "If she didn't do it, it must

²¹⁹ The Justice of the Peace has three days in which to investigate a crime, after which he or she submits a report to an investigative judge in the nearest municipality. Thus, three days after the attack at Chupol, the Judge sent her file to the "Juez Segundo de Primera Instancia" in Santa Cruz del Quiché. The investigative judge monitors the case for the remainder of the 15-day sumario period, which may be extended in order to provide time in which to obtain more evidence. The investigative judge eventually decides if the case merits trial. For a thorough discussion of this procedure, See Administration of Injustice, at 9-10.

be because she was afraid."²²⁰ He explained that some judges, "especially Justices of the Peace in the Interior," don't like to put themselves in a position where they might clash with the military. Threats against judges still occur in the interior of Guatemala, he explained, although some judges carry out their duties in spite of these threats.²²¹

I returned to Chichicastenango and met with the Judge again on April 2, 1990. When asked why she failed to issue arrest orders shortly after the incident, she explained that the injured members of GAM had left incomplete names with her office. Guatemalans usually use the surnames of both parents, which means that they use two last names. According to the Judge, the denuncias presented by the GAM contained only a single surname. Without the complete, exact names, the Judge felt that she could not issue arrest orders. Moreover, the Judge told me that the GAM did not leave any written testimony to support their denuncias.

On April 17, 1990, however, I spoke to a GAM member from Sacpulup who, on March 2, witnessed the attack at Chupol and, one and one half hours later, provided the Judge's office with a list of civil patrollers from Sacpulup who participated in the attack. The GAM member kept a copy of this list, which appears below:

Francisco Méndez Tecum
Martin Toj Saguic
Miguel Méndez Tzoc
Sebastian Perebal Mejía 3rd
Juan Perebal Toj
Juan Bocel Mejía
José Ninaja Xirrum
José Parebaj Mejía
Andres Bocel Mejía²²²

²²⁰ Interview, March 12, 1990.

²²¹ Id.

²²² Interview, April 17, 1990. A denuncia concerning the attack filed by two other residents of the area with the Human Rights Procurator contained five names which were identical to those on this list. *Denuncia*, March 2, 1990.

The GAM member told the court "official"²²³ that all of the above persons were civil patrollers from Sacpulup. He assured me that each name was complete and correct. Additionally, another GAM member, a resident of Chunima, left a similar list of Chunima civil patrollers who participated in the attack with the Judge's office.²²⁴ Moreover, GAM leaders who were present in the Judge's office after the incident told me that the Judge's official interviewed four members of GAM, and typed their testimony into a chronological statement of the events that transpired at Chupol. The official then said to one of the four, GAM leader Nineth de García: "Since you (i.e. the GAM) are the accuser, please ratify this denuncia."²²⁵ García read the statement to check its accuracy and signed it as a representative of GAM. Thus, serious doubts exist as to the Judge's assertion that the GAM left incomplete or inaccurate names and insufficient testimony on which to base an arrest order.

The Judge apparently felt sufficiently sanguine regarding the information given her to issue citations based on the names provided by the GAM. Citations were sent to the mayors of each of the communities, directing the individuals named to present themselves immediately before the Judge so that they could give a declaration. Each mayor bears the responsibility of delivering the citation(s) to the individual(s) residing in his community. According to the Judge, the mayors returned all of the citations, claiming that the names were either incomplete or incorrect. Even if the Judge rationally believed that the information given her was insufficient to form the basis for arrest orders, it seemed unrealistic for her to expect that the patrollers would voluntarily present themselves before her so as to admit their complicity in the attack on the GAM.

²²³ An "official" is an assistant to a Judge. Some officials have had legal training while others have not. The Justice of the Peace was absent from the office when the GAM members arrived following the incident at Chupol.

²²⁴ Interview, April 17, 1990.

²²⁵ Interview, April 17, 1990.

An anecdote told by the Judge during the April 2 conversation illustrates Dr. Vásquez Martínez's theory of judicial intimidation as an explanation for the Judge's passive approach to this investigation. On March 13, 1990, eleven days after the attack at Chupol, several thousand civil patrollers marched through the streets of Chichicastenango in a demonstration against the GAM and other human rights organizations because these groups, according to the patrollers, were requesting the dissolution of the civil patrols.²²⁶ When the marchers passed the Judge's office, the outer metal security door to the building was closed, and the Judge ordered her staff not to leave.²²⁷

I decided not to attempt a visit to Chupol on the weekend following the incident after a Chichicastenango resident warned me that I might have "problems" with the Chupol civil patrollers. The resident suggested that the patrollers might think that I was from Cuba or Nicaragua.²²⁸ I subsequently spoke to a reliable North American journalist who visited Sacpulup on March 4, two days after the attack. Members of the Sacpulup civil patrol told the journalist that the army ordered the patrollers to attack the GAM at Chupol.²²⁹ Two weeks later, on March 17, 1990, to confirm the journalist's report, I decided to travel by bus to Chupol and from there to walk to the town of Chunima, site of some of the recent tensions involving local GAM residents. When I disembarked in Chupol, I was almost immediately accosted by two men who asked me: "Where are you going? Why? Who are you going to talk to in Chunima?" and "Are you from Nicaragua?"

The two men also wanted to know if I was "from the GAM." GAM was not accepted in Chupol,

²²⁶ *Prensa Libre*, March 15, 1990, p. 96.

²²⁷ Interview, April 2, 1990.

²²⁸ Interview, March 4, 1990.

²²⁹ Interview, March 5, 1990.

they explained, because "the GAM is subversive."²³⁰ The men went on to say that the GAM began in 1981-1982 as the "EGP" (the Guerrilla Army of the Poor) but was presently known as the GAM. "Everyone knows this."²³¹ The GAM came to the area, they explained, to destroy the communities. After I successfully convinced them that I was not from Nicaragua, and not a threat to the security of the community, they permitted me to walk to Chunima. Before I left Chupol, several other persons questioned me as to my reasons for going to Chunima, and with whom I intended to speak.

The poverty of the area is evident from the 5 to 10-kilometer walk from Chupol to Chunima. A rough dirt road winds through the hills connecting the two towns. No vehicles make the trip from the highway at Chupol through the hills to Chunima on a regular basis. Most transportation is by foot. The homes are simple single-story structures of wood or adobe bricks, with roofs of tin sheets or thatch. They sit on small plots of maize and frijoles, which grow in very sandy soils. I saw no evidence of electricity or running water.

Approximately every kilometer during the walk, local residents stopped me and asked me where I was going, why, and especially, who was I going to talk to in Chunima.²³² These interrogations were apparently the residents' method of checking my political perspective, and I responded vaguely that I was going to Chunima "to talk to the people about the situation there." I concentrated very hard on not showing my nervousness, deciding that if I exhibited any fear I would arouse suspicion.

²³⁰ Interview, March 17, 1990.

²³¹ *Id.*

²³² The first language of the indigenous people who live in the area is Quiché, a Mayan dialect, but many of the residents also speak Spanish.

When I finally arrived at the entrance to Chunima, a resident asked me to wait until some members of the local civil patrol could talk to me. Eventually, about six men arrived, some of whom were present at Chupol when the patrollers attacked the GAM, and spent over an hour discussing the state of affairs in their community.

The patrollers referred to "the GAM and the human rights [groups]" as "subversive" organizations. Accordingly, to avoid greater risk to my security, I did not reveal my affiliation with the Minnesota Lawyers Committee. Instead, I explained that I was a North American attorney studying the Guatemalan legal system.²³³ "Bluff them," I thought. "Don't let them see that you're afraid."

The patrollers explained to me that many people suffered in the area during 1981-82 due to violence perpetrated by "guerrilla-subversives," and consequently the residents organized the first civil patrols at that time. They disbanded the patrol in May 1988, but revived it in May 1989 when "violence and subversion" flared up again in the region. The patrollers believed that the same Chunima residents who participated in subversion during the early 1980s are those who presently are active in the GAM and "the unions." Thus, the GAM and the unions bring in subversion and collaborate with the guerrillas, which is why the patrollers don't want them in the communities. "We only want to protect our town and our families and live in peace."²³⁴ Patrol duty involves 24 hours of service every 22 days. The patrollers assured me that participation was strictly voluntary.

The patrollers frankly described the divisions which exist in their community. Chunima is divided nearly evenly between those adult men who will participate in the civil patrol (about 145

²³³ Interview, March 17, 1990.

²³⁴ *Id.*

men), and those who will not (about 135 men). Neither group communicates with the other due to the social-political tensions. Accordingly, Chunima has "two comités de mejoramiento" (improvement committees) and two "alcaldes auxiliares" (auxiliary mayors). The patrollers admitted that under these conditions, any kind of community development is very difficult, if not impossible.²³⁵

When I inquired about the antecedents to the attack on the GAM at Chupol, the patrollers explained that prior to March 2, 1990, they heard over the radio and through the local grapevine that the GAM demonstration was coming.²³⁶ The patrollers did not want the GAM members to come to their community. The patrollers from Chunima, as well as the civil patrols from the rest of the seventeen towns around Chupol, organized themselves to meet at Chupol before the demonstration in order to stop the GAM marchers from entering the area. Accordingly, they gathered at Chupol at 7:00 a.m. on March 2.

The patrollers claimed that when the GAM marchers arrived at Chupol at approximately 11:00 a.m., the patrollers tried to present them with a document listing their community members who were killed, kidnapped or disappeared in the past. The patrollers explained that this writing was intended to demonstrate that they too have suffered human rights violations and were also concerned about them. Both the GAM members and a journalist present refused to accept the

²³⁵ Under these conditions, the administration of justice in rural communities like Chunima will also be problematic. Some of the civil patrollers implicated by the GAM in the stoning at Chupol were from Chunima. If the Chichicastenango Justice of the Peace wanted to send citations to these men, via the local auxiliary mayor, she would not know which mayor should be charged with distribution of the citations. It seems questionable to assume that a pro-civil patrol mayor would deliver citations to implicated patrollers. The Justice of the Peace told the delegate that she was new to the area, rarely traveled to the more isolated communities, and had little contact with the civil patrols. It is uncertain, therefore, whether she was even aware of the extent of the community divisions existent within her jurisdiction.

²³⁶ During this part of the conversation, the patrollers periodically switched from Spanish to Quiché, and I had the distinct impression that the men were getting their story straight.

document, according to the patrollers, and the journalist said something to the effect of "this is not your land." This statement enraged the patrollers, who then began to attack the assembled GAM members with stones.

The patrollers emphatically denied that the army was involved in the planning or the execution of the attack.

The army outpost at Chupol lies approximately four hundred meters above the spot where the incident took place. I asked the patrollers why, since the army is present at Chupol in order to maintain peace and security in the area, didn't the army intervene to stop the violence? One man laughed and replied: "Why would they intervene to stop us [from attacking the GAM]? We're on their side."²³⁷

When I finally wound up the conversation, I asked the patrollers if it would be dangerous for me to also talk with local GAM members. The patrollers replied that it would not be a problem for them because they knew me. Nevertheless, they cautioned against such a conversation because other Chunima civil patrollers who did not know me, and who were more aggressive, might learn of the meeting and kill me."²³⁸

Given this advice, I decided to forego discussions with local GAM members, and began to walk back up the road to Chupol. After walking about one kilometer, I encountered a man walking

²³⁷ *Id.*

²³⁸ Two days prior to this conversation, at the public forum on the civil patrols, former Defense Minister General Héctor Gramajo asserted that "the civil patrols are promoters of human rights." See also *Prensa Libre*, March 18, 1990, p. 2. Two days subsequent to my trip to Chunima, Vice Minister of Defense General Raúl Molina Bedoya told the Minnesota Lawyers Committee delegate that "it's only the civil patrollers [who] respect the lives of the people." Interview, March 19, 1990.

toward Chunima. The man eyed me suspiciously and asked me why I had gone to Chunima and, of course, to whom had I spoken? After some verbal fencing due to obvious nervousness on both our parts, and after I explained that I was a lawyer who had come to try to understand what was happening in the area, the man admitted that he was not a member of the local civil patrol. The man explained that many people, not because they support subversion but for economic reasons, choose not to patrol because they cannot afford to take the time away from their work. He said that those men who resign from the patrols suffer threats of reprisal from the remaining patrollers, who tell them that the guerrillas will return to the area if the men stop patrolling.

The man told me that prior to the attack, army representatives personally advised the patrols of each community that the GAM was coming to the area. He said that he had no direct knowledge that the army organized the attack on the GAM at Chupol, "but who else would have?"²³⁹

The man informed me that he was upset that groups like the GAM have such a bad image in the area. He asked me if I, as a lawyer, could do something so that their rights would receive more respect. The man was too frightened to tell me his name, explaining that it might fall into the wrong hands and he could get hurt. Similarly, given the counsel previously received from the civil patrollers, I was afraid to give the man my address in Guatemala City, as well as to spend a long period of time chatting with him by the side of the road.²⁴⁰ I felt increasingly tense and afraid, and the conversation ended abruptly when a group of persons appeared walking up the road toward us.

²³⁹ Interview, March 17, 1990.

²⁴⁰ The delegate subsequently learned from the leaders of GAM in Guatemala City that this man was a GAM member.

The following day, I visited the army outpost at Chupol. The 18-year-old soldier at the entrance to the base stopped me and challenged me with the question: "Are you against the GAM or against the army?"²⁴¹ The difficulty of remaining neutral in Chupol was clear: To support the GAM is to be an enemy of the army.

As I waited to speak to the commander of the outpost, I noticed a group of approximately a dozen men nearby who had also come to the outpost to meet with the commander. I subsequently learned that these men were local military commissioners from the surrounding communities. Many towns have a local military commissioner who is in charge of "military affairs" and who reports regularly to the army. One of the military commissioners approached me and asked: "Were you the guy who went to Chunima yesterday?" I had no memory of speaking to this man previously.

The lieutenant who commanded the outpost told me that he was not present in Chupol on the day of the attack because he had only recently arrived there.²⁴² He assured me that the army was not involved in the incident and did not learn of it until after the fact. The entire event, he explained, had been organized exclusively by the civil patrollers to prevent the GAM from entering their communities. It seemed specious to suggest that the military commissioners from Chupol and the surrounding communities would not have informed the army of the pending attack on the GAM. The lieutenant explained that the GAM was bringing subversive ideas into the area. Because the local residents opposed these ideas, they would not permit the GAM marchers to enter the area on March 2. The lieutenant also referred to "the GAM and the human rights [groups]" as "subversive."

²⁴¹ Interview, March 18, 1990.

²⁴² Besides the officer who commanded the Chupol outpost on March 2, 1990, at least a portion of the soldiers were also transferred soon after the incident, making investigation of the attack obviously more difficult.

Subsequently, I met with other residents of Chupol, Chunima and Sacpulup.²⁴³ According to these residents, army representatives from the Chupol and Chunima outposts organized the March 2 attack against the GAM. On the days preceding March 2, the chiefs of the civil patrols from Sacpulup and Chunima informed the army that the GAM was planning a demonstration in their communities. The commander of the Chupol outpost sent out an order for the patrol chiefs of all the surrounding communities to meet at the outpost on Thursday, March 1. At that meeting, the commander instructed the patrol leaders to bring all of the patrollers to Chupol on Friday morning, March 2. From Chupol, the patrollers would travel to Guatemala City where they would conduct their own demonstration.²⁴⁴

At 7:00 a.m. on March 2, 100 to 150 patrollers assembled in the "community room" at Chupol. The army had promised to provide lunch and transportation to Guatemala City for their demonstration. Just then, a platoon of soldiers arrived from the Chupol outpost, dressed in civilian clothes. The commander informed the assembled patrollers that instead of traveling to Guatemala City, they were actually going to attack the GAM members when they tried to march to Sacpulup.²⁴⁵ According to one account, the commander as well as one of the patrol chiefs from Chunima told the men that the GAM members were guerrillas and that the men should kill

²⁴³ They explained that a religious factor also played a role in the division of the communities between patrollers and non-patrollers. To some extent, the communities were also divided along Catholic and Evangelical-Protestant lines. Many of the Catholics have chosen not to patrol because they do not believe that the patrols serve a valid purpose and because, under the law, service is voluntary. "They've chosen a non-violent way" was how one resident described many Catholics, while the Evangelical-Protestants are more conformist and believe that all problems will be resolved after death "in the next world."

²⁴⁴ According to one account, on Thursday, March 1, the commander of the former military outpost at Chunima advised the chiefs of the civil patrols of all of the surrounding communities that the patrollers could not permit the GAM demonstrators to enter the area on the following day. Instead, the patrollers should attack the marchers. Interview, April 17, 1990.

²⁴⁵ Interviews, March 18 and 23, 1990, April 30, 1990.

them.²⁴⁶

Several men objected to these instructions for religious reasons and were allowed to return to their homes. To the remaining patrollers, the commander said: "Since you men are going to comply with our plan, and since you're going to be thirsty due to the heat, you should drink some fresco (i.e. a cold drink), so that you'll be ready without fear."²⁴⁷ The patrollers formed a line, and the soldiers gave each man a glass of fresco as well as a pill to swallow ("so that you won't be hungry"²⁴⁸). Although the residents did not know what kind of pill the patrollers consumed, witnesses reported that when the patrollers took the pills and fresco, they became "red-faced and drunk."²⁴⁹ Although the commander did not order the patrollers to take the drug, the obligation was assumed due to the commander's manner and tone of voice, and because "when the army tells you to do something, you do it."²⁵⁰ Although it is possible that not all of the assembled patrollers took the drug, the residents who spoke to me felt sure that at least those patrollers who stood close to the commander consumed the pill and fresco. After the distribution of the pills and fresco, the patrollers and soldiers went to the entrance of the road leading from Chupol to Sacpulup and waited for the marchers to arrive.²⁵¹

²⁴⁶ Interview, April 30, 1990.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ Interview, March 23, 1990. A civil patroller from Sacpulup who consumed the pill and fresco reportedly felt "braver" after taking them. Interview, April 30, 1990.

²⁵⁰ Interview, March 18, 1990.

²⁵¹ None of the Chupol, Chunima and Sacpulup residents who told the Committee's delegate this story of drug consumption actually witnessed the event. They received the story secondhand from civil patrollers who were present and other witnesses. During three separate interviews, residents described how the soldiers gave a glass of fresco and a pill to the assembled civil patrollers. Interviews, March 18, 1990, March 23, 1990, and April 30, 1990. Another resident's version suggested that the soldiers did not distribute pills, but instead gave the patrollers fresco which already contained a drug because the patrollers became drunk and more aggressive after drinking it. Interview, April 21, 1990.

Local residents theorized that the army gave the drugs to the civil patrollers so that they would act more aggressively when the GAM demonstrators arrived later that morning. Other sources buttressed this theory by describing the attack as out of character for indigenous people. A labor leader told me that when an indigenous person is offended, the worst response is usually a refusal to speak to the offender.

On a subsequent bus trip through El Quiché in late March 1990, I encountered a passenger who was a member of the Chunima civil patrol. This man acknowledged to me that the army organized the patrollers to attack the GAM on March 2. He explained that the chiefs of the patrols knew, as did the army, that the GAM was coming to their area. So the two groups worked together to prevent the GAM from entering their communities. The bus passenger described allegations of drug consumption by the patrollers as "pure lies."²⁵² However, he was in Guatemala City on March 2 and could not have witnessed the incident.

Oscar Cifuentes, Auxiliary Human Rights Procurator for El Quiché, described to me why it was in the interests of the civil patrol chiefs to prevent GAM activities in their areas. In the early to mid-1980s, the military organized the civil patrols, not only to stop subversion but also to establish army control over an area. During this process, the chiefs of the patrols acquired a great deal of power and committed many abuses against people in their communities. Because they are afraid of being "discovered," the patrol chiefs do not want groups like the GAM entering the communities and exposing their crimes.²⁵³

On the same trip through El Quiché, I ran into one of the civil patrollers with whom I spoke at Chunima on March 17. When I mentioned that I had heard allegations that the army gave pills

²⁵² Interview, March 31, 1990.

²⁵³ Interview, March 4, 1990.

and fresco to the patrollers at Chupol, the man nodded and said "Si" in acknowledgement.²⁵⁴ When I asked if the pills were intended to make the patrollers "más bravo" (i.e. more angry and aggressive), the man looked down at the ground with a sheepish smile on his face and said, "Si."²⁵⁵ He told me that he did not know what kind of pill the army gave to the patrollers. When I subsequently tried to encourage the man to reconfirm this information, he stopped, stared at me suspiciously for several seconds and said: "They didn't give us anything."²⁵⁶ The conversation ended at that point.

On March 9, 1990, a week after the attack at Chupol, nine members of the GAM executive board met with the staff of the Archbishop of Guatemala's Legal Office. The GAM leaders asked the Legal Office attorneys to act as their "acusador privado" (private prosecutor) to ensure competent prosecution of the case by the State. Although the Guatemalan Public Prosecutor has the responsibility of prosecuting the case with or without the assistance of a private prosecutor, the GAM wanted an attorney to work concurrently with the Ministry, developing evidence and maintaining pressure so that the Ministry would move forward with the prosecution.²⁵⁷ Commonly, if an accusing party fails to ratify its initial denuncias before the courts, the Public Ministry will drop the case.²⁵⁸ It was the first time in GAM's six-year history, said one GAM leader, that the GAM had sought legal assistance from Guatemalan

²⁵⁴ Interview, March 31, 1990.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ The GAM had eight-by-ten black and white photographs, some of which are included in this report, showing the civil patrollers stoning the demonstrators at Chupol, as well as the testimony of members who recognized a number of the men who participated in the attack.

²⁵⁸ Interview, March 21, 1990.

lawyers.²⁵⁹ *Lack of trust on the GAM's part and fear of involvement in human rights cases on the attorneys' part made such a request untenable in the past.*

The Legal Office was unable to assist the GAM. The Legal Office's mandate is to provide legal assistance to victims of human rights abuses within the Archdiocese of Guatemala City. The Catholic Church in Guatemala is divided into fourteen dioceses, and the bishop of each diocese controls Church affairs within his territory. The GAM's case against the civil patrollers would be prosecuted in the diocese of El Quiché and, thus, was technically beyond the Legal Office's jurisdiction. Accordingly, the Church hierarchy decided that it would be inappropriate for the Legal Office to assume the role of GAM's private prosecutor.²⁶⁰

Although it could not formally assume the role of private prosecutor, the Legal Office attempted to locate other counsel who would take the position. This effort as well was unsuccessful. One attorney who declined to take the case told me that "[i]n Guatemala, it's very hard to bring a legal process because the judges are not well prepared, and have a lot of fear."²⁶¹

"Frequently," he explained, "Justices of the Peace simply wash their hands of these kind of cases after [the first] three days."²⁶² The attorney felt that it would be very difficult to find witnesses who would actually testify against the accused civil patrollers. A former civil patrol chief in En Quiché confirmed this view. If the patrollers kill someone, witnesses don't inform

²⁵⁹ The Procurator for Human Rights was unable to perform the role of private prosecutor for the GAM. Once a party initiates a court proceeding, by law, the Procurator must suspend his involvement in the case. The Procurator may, however, still investigate "the general problems" raised in the proceeding. Decree 54-86, Article 32.

²⁶⁰ Other less bureaucratic factors also played a role in the Legal Office's decision not to accept the case. Acceptance of the role of private prosecutor would have placed the Legal Office on a collision course with the military less than two months after the Office's inception. Several staff members felt that the Office was not yet ready to take such a risk.

²⁶¹ Interview, March 12, 1990.

²⁶² *Id.*

the courts out of fear that they will suffer the same fate.²⁶³ The civil patrollers, as well as the army, often threaten the surviving family members with death if they report the crime.²⁶⁴ Thus, those patrollers who commit crimes are never punished.²⁶⁵

According to the attorney, "[o]bviously, the public powers are involved in this case. The repression is sharpening, and the powers are acting almost without shame."²⁶⁶ He felt that it would be very difficult for a private prosecutor to maintain sufficient pressure on the tribunal so as to keep the case moving. The attorney explained that in a normal court, the evidence available to the tribunal in Santa Cruz del Quiché would be sufficient to convict the patrollers, "but you're in Guatemala. . .²⁶⁷"

Another Guatemala City attorney provided me with more insight as to why it's so difficult to obtain legal assistance on human rights cases. "Basically, for fear,²⁶⁸" she explained. She graduated from law school in the late 1970s and many of her friends and peers, especially those classmates with leftist ideas, were killed, disappeared, or forced into exile. Judges suffered similar persecution. This experience, she explained, traumatized her generation of lawyers. Any attorney with links to a union, a campesino organization, or to a human rights group can expect to be persecuted by the army or other security forces. Those lawyers who work in human rights are labeled communists. Finally, she acknowledged that most human rights legal work does not pay very well, and the majority of attorneys are materialistic. Involvement in human

²⁶³ Interview, March 19, 1990.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ Interview, March 12, 1990.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

rights case implies a risk to life and social position that few Guatemalan lawyers are willing to bear.²⁶⁹

The GAM was left without legal assistance, and the case against the civil patrollers who attacked them at Chupol began to stagnate. In early April 1990, the judge in charge of the case at the "Juzgado Segundo de Primera Instancia" in Santa Cruz del Quiché told me that the court had asked the Justice of the Peace in Chichicastenango for more evidence before deciding how to proceed with the case. In May 1990, the Juzgado Segundo received additional evidence including photos of the incident. He issued arrest warrants for four civil patrollers allegedly involved in the attack on the GAM. No arrests were made. Three weeks later, the judge issued a second warrant for the four men. The Chichicastenango police have reported that the four men are in hiding and cannot be taken into custody.

As of this writing, the prosecution of the civil patrollers who attacked the GAM remains in limbo. Judicial passivism, bureaucratic restrictions of the Catholic Church, fear within the legal community, as well as within the GAM itself, all combined to slow the progress of the case. One long-time Guatemalan resident observed that even if the case against the patrollers does move forward, the military manipulation of the patrollers and the reported distribution of drugs used to incite acts of violence against civilians will remain unpunished. Only indigenous people such as those who threw the stones at the GAM will be prosecuted. Consequently, more hatred, fighting, and divisions are likely to occur within the indigenous communities. This is the final tragedy of Chupol.

C. Findings and Conclusions: Chupol

Based on its investigation, the Minnesota Lawyers Committee finds that the Guatemalan army

²⁶⁹ Interview, March 20, 1990.

organized and encouraged members of the civil patrols from Chupol and the surrounding area to attack the GAM in Chupol on March 2, 1990. To encourage such an attack, the commander and soldiers of the Chupol army outpost distributed drugs to a group of 100-150 civil patrollers who were assembled in the community room in Chupol on the morning of March 2.

The attack by the civil patrols on the GAM illustrates the Draconian measures employed by the army to maintain political control in indigenous communities in Guatemala. The Minnesota Lawyers Committee finds that the civil patrols are agents of the Guatemalan military. Crimes perpetrated by the civil patrols are, therefore, violations of international human rights law.

The stoning of the GAM members violated Universal Declaration of Human Rights Article 3, guaranteeing the right to life, liberty, and security of the person. Other articles of the Declaration violated by this incident include Article 13(1), guaranteeing the right to freedom of movement within the borders of each State; Article 18, guaranteeing freedom of thought, conscience and religion; Article 19, guaranteeing freedom of opinion and expression; and Article 20(1), guaranteeing freedom of peaceful assembly and association.

The prosecution of the civil patrollers responsible for the attack on the GAM, like many other human rights cases in Guatemala, is stalled in the courts. The lack of redress available to the victims of the civil patrol's violence is an additional violation of Universal Declaration of Human Rights Article 8, which guarantees the right to an effective remedy by competent national tribunals for acts which violate fundamental rights granted citizens by the Constitution or by the law.

The actions of the civil patrol in Chupol are also violations of the following Articles of the American Convention on Human Rights of which Guatemala is a party: Article 5(1) - Right to

Physical Integrity; Article 12 - Freedom of Conscience and Religion; Article 13 - Freedom of Thought and Expression; Article 15 - Right of Assembly; Article 16 - Freedom of Association; Article 22 - Freedom of Movement and Residence; Article 25 - Right to Judicial Protection.

The Minnesota Lawyers Committee recommends that the Director of the National Police oversee further investigations into the attack by the civil patrol on GAM members in the village of Chupol. The National Police should take action to see that the four civil patrollers identified in the warrant by the *Juzgado Segundo* in Santa Cruz del Quiché are arrested and prosecuted for their crimes.

The Minnesota Lawyers Committee further recommends that the Office of the Procurator for Human Rights and the Public Prosecutor's Department coordinate an investigation into the distribution of drugs and incitement to violence by the Guatemalan army on March 2 in Chupol. Members of the army and civil patrols found to be responsible for inciting the civil patrols to violence should be prosecuted for their violations of domestic and international law.

D. Parraxtut

On March 17, 1990, while I retreated from the tensions of Chunima and Chupol, another incident occurred in the town of Parraxtut, in Northern El Quiché. At 7:30 p.m., María Mejía (a member of CONAVIGUA) and her husband Pedro Castro Tojin were eating supper in their home when two armed men arrived. As the couple stood in the doorway, Pedro shined his lantern on the faces of the two intruders standing in their patio. He recognized them as Domingo Castro Lux and Juan de León Pérez, both local military commissioners. When the couple asked the two men who they were looking for, the men shouted: "We're members of the EGP (Guerrilla Army of the Poor), and we're going to kill you!"²⁷⁰ Next, they fired their weapons into the air, and

²⁷⁰ Interview, March 31, 1990.

then shot María and Pedro. When the couple fell wounded into their home, the assailants entered the home and shot them again. María Mejía died from her wounds, but Pedro survived and identified Castro Lux and Juan de León Pérez as the assailants.²⁷¹

This attack was the most severe, but not the first human rights violation suffered by María Mejía and Pedro Castro Tojín. One of María Mejía's sons, Juan Tum Mejía, is a CERJ activist. Neither Juan nor her other son, Domingo Tum Mejía, nor the other men in María's family participate in Parraxtut's civil patrol. On February 12, 1990, Pedro filed a denuncia with the Auxiliary Human Rights Procurator in Santa Cruz del Quiché against Parraxtut military commissioner Juan de León Pérez. The denuncia claimed that Pérez prohibited the owners of "nixtamal mills" in Parraxtut from receiving maize from Pedro Castro Tojín's family, as well as from two other families.²⁷² Moreover, the denuncia claimed that the families had been subjected to threats and intimidations. All of this harassment was the result of the families' refusal to participate in the local civil patrol.²⁷³

Two days following the murder of María Mejía, on March 19, 1990, Parraxtut military

²⁷¹ After the attack, army spokesperson Colonel Luis Arturo Isaacs Rodríguez announced that if it is established that the two military commissioners committed the crime, they will be tried by a military court. "The army," he said, "will not permit anyone who forms part of its ranks to commit a crime. And in this case, it will strictly comply with the law." *El Gráfico*, March 22, 1990. This murder was not the first incident of political violence in Parraxtut. During the early 1980s, many area residents died at the hands of both the army and guerrilla units. Americas Watch, Guatemala: Army Campaign Against Rights Activists Intensifies (hereinafter "Army Campaign Against Rights Activists Intensifies") 8-12, May 1990.

²⁷² *Denuncia*, February 12, 1990. Nixtamal is the tortilla base made from processed maize which the residents of Parraxtut depend on as a staple of their diet.

²⁷³ Interview, March 31, 1990. On March 2, 1990, the CERJ filed a petition for habeas corpus with the "*Juez Primero de Primera Instancia Departamental*" in Santa Cruz de Quiché, alleging that on February 28, the Parraxtut military commissioners and civil patrol chiefs made death threats against Domingo Tum Mejía and Diego Yat Us. On the same day, the CERJ filed a denuncia with the Auxiliary Human Rights Procurator for El Quiché, charging Domingo Castro Lux and Juan de León Pérez with more threats and intimidations. Petition for personal exhibition, March 2, 1990; *Denuncia*, March 2, 1990.

commissioners Domingo Castro Lux and Juan de León Pérez told Domingo Tum Mejía, Abelardo Ixcotoyac Tum, and Diego Yat Us that they would kill all of their family members within the next ten days. The three family leaders went to the Justice of the Peace in Sacapulas, the municipal center for Parraxtut, to denounce these threats. While they were present, the Justice invited the commander of the Sacapulas military outpost to his office. The commander told the men that he had heard that Maria Mejía had been killed because she was collaborating with leftist guerrillas. He offered to resolve the problem in Parraxtut upon the condition that the families promise to have no further relations with human rights organization, such as the CERJ, because these groups are not wanted in the community.²⁷⁴ Dissatisfied with this offer, and afraid for their lives, the three men and sixteen members of their families, seven of them children under age ten, subsequently sought refuge in the CERJ office in Santa Cruz del Quiché, approximately four hours by vehicle from their homes in Parraxtut.

On March 27, 1990, a three-vehicle caravan drove from Santa Cruz del Quiché to Parraxtut in order to escort the refugees home. CERJ President Amílcar Méndez Urizar was in the first car, along with CERJ activist Juan Tum Mejía, son of the late María Mejía, and several of the refugees from Parraxtut. The second car contained César Alvarez Guadamuz, deputy to Human Rights Procurator Ramiro de León Carpio; Oscar Cifuentes, Auxiliary Human Rights Procurator for El Quiché; two uniformed members of the National Police who carried an order for the arrest of Domingo Castro Lux and Juan de León Pérez, and two soldiers from the army base dressed in civilian clothes.²⁷⁵ The third vehicle contained the remainder of the refugees.

²⁷⁴ *Denuncia*, March 23, 1990. Interview, April 2, 1990.

²⁷⁵ When Alvarez Guadamuz asked the soldiers why they were not in uniform, they replied that there were lots of guerrillas around. They felt that, dressed in civilian clothes, they would not be recognized as the army. The commander of the military base in Santa Cruz del Quiché subsequently told Alvarez Guadamuz that there were no guerrillas in the Parraxtut area. Interview, April 4, 1990.

Shortly after 4:00 p.m., when the caravan entered Parraxtut, the cars were surrounded by 50 to 100 armed civil patrollers who held the occupants at gunpoint and attempted to note the license plate numbers. When Amílcar Méndez objected and gave his name, the patrollers responded: "Ah, Amílcar Méndez, the chief of the guerrillas. We have orders to kill you."²⁷⁶ When Guadamuz shouted to the patrollers: "Respect me, because I'm the Procurator for Human Rights! I'm here to bring these nineteen relatives of María Mejía back to Parraxtut," the patrollers responded, "Oh, you're the Procurator. We're going to bring you to the plaza to ascertain whether you're a guerrilla."²⁷⁷ The patrollers took Alvarez Guadamuz's credential from his hand and threw it to the ground. From a distance other persons shouted "Kill them!"²⁷⁸

At this point, Amílcar Méndez Urizar decided to bring the refugees back to Santa Cruz del Quiché. The first and third cars turned around and began to drive out of Parraxtut. As the vehicles were leaving the area, some of the patrollers fired shots at the cars from a distance of 200 to 300 meters. Although no one was injured, several shots struck the ground close to the vehicles. Méndez Urizar stopped at the office of the Justice of the Peace in Sacapulas and presented a writ of habeas corpus on behalf of the persons fleeing back to Santa Cruz del Quiché.²⁷⁹

The patrollers marched the remaining Procurators, policemen and soldiers to the central plaza of Parraxtut amidst shouts of "Son of a bitch!" and "Human rights communists!" Approximately 700

²⁷⁶ Interview, March 31, 1990.

²⁷⁷ Interviews, March 31, 1990, April 4, 1990.

²⁷⁸ El Gráfico, March 29, 1990.

²⁷⁹ According to Article 82 of the law of Habeas Corpus, whoever is illegally detained or otherwise inhibited in his enjoyment of liberty, or threatened with the loss of liberty, or who is mistreated while legally detained, has the right to request his immediate exhibition before a court of justice, with the goal that his rights be guaranteed or restored, and that the mistreatment cease.

to 800 men, women and children filled the square. About 400 of the men carried guns, and the women and children carried shovels and machetes. The crowd shouted "Guerrillas!" "We don't want guerrillas or communists!" and "Viva the army!" When Alvarez Guadamuz attempted to speak, he was shouted down and insulted. Residents beat Alvarez Guadamuz with shovels on the back, arms and hands.²⁸⁰ Finally, after about one half hour of this treatment, the men were allowed to leave.²⁸¹

Following the incident the office of the Human Rights Procurator issued a statement criticizing the military commissioners and civil patrol members of Parraxtut for their "irresponsible and illegal attitude."²⁸² The statement observed that the civil patrols, while coordinated by the Ministry of Defense, are not properly controlled.²⁸³ The Procurator placed the responsibility for the incident in Parraxtut with the Ministry of Defense and called on the Ministry to take corrective measures, such as a human rights education program for civil patrol chiefs.

On April 1, 1990, I traveled to El Quiché in order to investigate the attack at Parraxtut. An official in the Sacapulas Justice of the Peace's office reported that on March 27, 1990, after Amilcar Méndez presented his writ of habeas corpus, the judge "suspended the process for security reasons."²⁸⁴ Given what had just occurred in Parraxtut, the Justice knew that he could not enter the community at that time, and it was becoming late in the day by the time the

²⁸⁰ Interviews, April 2, 1990, April 4, 1990. El Gráfico, March 29, 1990, p. 7.

²⁸¹ When the trouble began, the two soldiers present did nothing to intervene. Instead, they took notes and mingled with the crowd. When Alvarez Guadamuz subsequently asked them why they did nothing, the soldiers responded: "We knew that nothing would happen to you." Interview, April 4, 1990.

²⁸² Statement of the Procurator for Human Rights, March 27, 1990.

²⁸³ Id.

²⁸⁴ Interview, April 1, 1990.

*Justice received the petition. However, on the following day, March 28, the Justice attempted to go to Parraxtut to investigate the allegations contained in the petition. The civil patrollers refused to permit the Justice to enter Parraxtut, forcing him to suspend the process for a second time.*²⁸⁵

*Before the incident on March 27, "el Juez Segundo de Primera Instancia" in Santa Cruz del Quiché issued orders for the arrest of Domingo Castro Lux and Juan de León Pérez to the police in Santa Cruz del Quiché and in Sacapulas.*²⁸⁶ *On April 1, a National Police officer in Sacapulas told me that the police "were waiting for the right opportunity to go [to Parraxtut] and find the suspects."*²⁸⁷ *The officer criticized the Adjunct Procurator for entering Parraxtut as he did because he was unknown there, which was why the people rejected him. Alvarez Guadamuz "should have handled it more slowly and calmly and, besides, the two murder suspects were not there."*²⁸⁸ *The officer explained that the police did not know where the men who beat Alvarez Guadamuz were located. They had not gone to Parraxtut since the incident, he explained, because "we've been too busy."*²⁸⁹

Geographic and financial barriers may partly explain the passivity of the Sacapulas police force. Parraxtut is a difficult hour and fifteen-minute drive through the mountains from Sacapulas, and the National Police substation in Sacapulas has no vehicles with which to patrol the region of

²⁸⁵ *Id.*

²⁸⁶ CERJ leaders told the Committee's delegate that the judge issued the arrest orders only under pressure of Adjunct Procurator Alvarez Guadamuz. However, the Judge asserted that he issued the order prior to Alvarez Guadamuz' arrival in El Quiché. "Now the problem of finding the men and making the arrest is in the hands of the police," he said. "The court has done its job and has fulfilled its responsibility." Interview, April 2, 1990.

²⁸⁷ Interview, April 1, 1990.

²⁸⁸ *Id.*

²⁸⁹ *Id.*

22,437 inhabitants. The police have to borrow a vehicle from one of the local residents to travel to one of the outlying communities. The Sacapulas substation contains only eight officers who must support themselves and their families on the standard net monthly salary of Q425.00, or less than \$100.00.²⁹⁰ It is unlikely that under these conditions, the eight officers would confront several hundred armed men in Parraxtut.

I also spoke to the commander of the military outpost in Sacapulas. The commander explained that Sacapulas is a very conflictive area, with many guerrillas, which is why communities like Parraxtut have civil patrols. He said that, although civil patrol service is voluntary, some residents (i.e. María Mejía's family) are CERJ activists. These people live far from the community and accuse the civil patrollers of forcing them to serve and of making threats against them. The commander did not believe the accusations that two Parraxtut military commissioners killed María Mejía. The guerrillas knew of the conflict between the residents, he explained, and took advantage of the situation to kill María Mejía and place the blame on the military commissioners.²⁹¹

The commander denied the allegations that on March 19, he told María Mejía's relatives that he would resolve the problem in Parraxtut if they agreed not to participate in human rights organizations. He said that he did not try to pressure the residents to restrict their associations or activities. "If they're involved in CERJ, that's their criteria, right, and their ideology."²⁹² He then asked: "Who told you that I came to the office? The judge?"²⁹³

²⁹⁰ *Id.*

²⁹¹ Interview, April 1, 1990. Although the commander blamed the murder on guerrillas, both Parraxtut residents and army spokesperson Colonel Luis Arturo Isaacs Rodríguez reportedly stated that combat has virtually ceased in the area around Parraxtut. Army Campaign Against Rights Activists Intensifies, at 8.

²⁹² Interview, April 1, 1990.

The commander told me that the army was not involved in the attack on the Adjunct Procurator on March 26. "The patrollers are very united," he explained, "and a number of them were at a birthday party on March 26 when they heard over the radio that Amilcar Méndez Urizar was coming to Parraxtut with the refugees on the following day."²⁹⁴ The patrollers do not like Amilcar Méndez Urizar and were angry with him because of Méndez Urizar's "false accusations" against them. He said that the patrollers were unaware that the Adjunct Procurator for Human Rights also planned to come. The commander asserted that the patrollers did not know that the man who they beat was the Adjunct Procurator and that some patrollers subsequently tried to apologize to Alvarez Guadamuz because they are in favor of human rights. When I asked why the 19 refugees did not remain in Parraxtut on March 27, he replied that perhaps the same guerrillas (who he believed killed María Mejía) had made threats against them.

Later on April 1, I hitched a ride south to Santa Cruz del Quiché in the back of a truck loaded with 100-pound sacks of garlic, bound for market in Guatemala City. During the three-hour drive through the mountains, I began to brood over the fact that, due to the recent violence, I had been unable to travel to Parraxtut to talk to the residents there. In an effort to stop sulking, I began to chat with the half dozen men who were riding with me amongst the garlic. "Where are you guys from?" I asked, "from Sacapulas?" "Oh, no," responded one of the men, "we're from Parraxtut."²⁹⁵

Two of the men acknowledged that they were present during the incident in Parraxtut on March 27. They said that the army did not organize the community's response to the arrival of the convoy. Instead, they explained that the vehicles arrived at about 4:00 p.m., when most of the

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ Interview, April 1, 1990.

men were arriving home from their work. When the patrollers on duty saw the cars entering the town, they sent out an alert, and all the men assembled with their arms. According to their version, the problems began when, as was their custom, they tried to note down the license plate number of Amílcar Méndez Urizar's car. Méndez Urizar refused to permit them to do so, which angered the patrollers.

The men were especially fervent about the vital role which they believe the civil patrols perform. They patrol in order to protect their town and their families from the guerrillas who are frequently in the area. Three to four years ago, guerrillas entered Parraxtut and killed the mayor, two military commissioners, and the chief of the civil patrol. At present, they said, "everyone patrols," although service is voluntary, and those who don't patrol are left alone.²⁹⁶

The patrollers described the families who do not serve in the Parraxtut patrol as "outside of town," and these families actually live several kilometers outside of the center of the community in an area called Parraxtut Segundo Centro (Second Center). The patrollers indicated that they were speaking in more than geographic terms. These families are socially and politically isolated from the rest of the community because they refuse to participate in the defense of the town. Those who patrol believe that if residents stop participating in the civil patrols, the guerrillas will return to Parraxtut.

The patrollers asserted that "the human rights [groups] are fucking them"²⁹⁷ because they are against the civil patrols. The patrollers believe that by taking this position, human rights organizations assist the guerrillas and perhaps are guerrillas themselves. That was why, they explained, they refused to permit the CERJ members or the refugees to enter Parraxtut on

²⁹⁶ *Id.*

²⁹⁷ *Id.*

March 27.

The patrollers had the same antagonism toward the Adjunct Procurator for Human Rights who accompanied the refugees. Contrary to the Sacapulas army commander's explanation, they reasoned that if Guadamuz was a representative of "human rights," then he was also against the civil patrols and thus perhaps a guerrilla and their enemy. So they threw him out as well.²⁹⁸

The patrollers were also indignant about accusations of murder lodged against Parraxtut military commissioners Domingo Castro Lux and Juan de León Pérez. They believed that since María Mejía lived outside of the community, it is possible that the guerrillas shot María and her husband. They felt that it was unjust to accuse the military commissioners of the crime. The men claimed that Domingo Castro Lux was in Sacapulas on Saturday, March 17 and, therefore, was not involved in the murder.²⁹⁹

The men described themselves as uninterested in politics and as poor campesinos who worry about their crops and the protection of their community. They left the impression that the residents believed that they were performing their civic duty when they threw the CERJ members and the Adjunct Procurator out of Parraxtut. Since they equate "human rights" with anti-civil patrol sentiments, all human rights organizations are seen as a threat to their security and possibly as allies to the guerrillas.³⁰⁰

The following day, April 2, 1990, I spoke with members of María Mejía's family. When asked why they stopped participating in the civil patrol, one son, Juan Tum Mejía, explained the

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

oppressive time commitment which their service required. Although the men who reside in the center of Parraxtut must provide 24 hours of service every 15 days, those who resided in Parraxtut Segundo Centro had to patrol every five days because fewer men live in that area. Twenty-four hours every five days is a great deal of time away from their work, they explained, and sometimes the army sent them into the mountains to search for guerrillas for two or three days at a time. They never found any guerrillas. Since the Constitution said that their membership in the patrols was voluntary, they decided that it was better to resign.³⁰¹

On the same day, I also spoke to two sisters who reside in Parraxtut, Rosa Tiù Tojin and Victoria Tiù Tojin. Both women are widows and members of the CONAVIGUA, the widows' support organization. They were present in Parraxtut on March 27 and said that at 6:00 a.m., two officers and four soldiers from the military outpost in Nebaj, El Quiché arrived in the town. The military commissioners got together all of the townspeople, and they held a large meeting. Although both sisters were initially present, the military commissioners accused Victoria of being a guerrilla due to her CONAVIGUA activity and threw her out of the meeting.

Rosa remained at the meeting. According to her version, the soldiers told the people that they have to get ready because the Procurator of Human Rights is coming. "You're good people because you don't respect human rights groups or representatives, because they're savages."³⁰² The soldiers told the women to come prepared with their shovels and machetes.

All four of Parraxtut's military commissioners were present at this morning meeting, including accused murderers Domingo Castro Lux and Juan de León Pérez. Domingo Castro Lux addressed

³⁰¹ Interview, April 2, 1990.

³⁰² Interview, April 2, 1990.

*the assembled residents and said: "Men, women and children have to prepare with their machetes and shovels in hand because the Procurator of Human Rights and the refugees of Juan Tum Mejía and Miguel Ixco Toyac are coming, and we're not going to let them enter [Parraxtut]. When they arrive, we must kill these people, and Amilcar Méndez as well because he is a guerrilla."*³⁰³

*According to Rosa, after the residents threw the refugees and the commission which accompanied them out of Parraxtut, the residents held a second meeting late that afternoon. The same soldiers were present and one of them said: "An applause for the people because you had your guns, shovels and machetes in hand. It's good what you did, and we (i.e. the army) are going to support you. You did what we told you to do."*³⁰⁴ *The residents gave themselves a round of applause. The soldiers left Parraxtut after the second meeting.*³⁰⁵ *This incident vividly demonstrates the army's role in discouraging human rights work in El Quiché.*

*On April 2, 1990, army spokesperson Colonel Luis Arturo Isaacs Rodríguez met with Human Rights Procurator de León Carpio. De León Carpio observed that "the army understands that the members of the Parraxtut civil patrol committed errors and abuses by assaulting the Adjunct Procurator."*³⁰⁶ *Colonel Isaacs Rodríguez and de León Carpio agreed that the Procurator's office would design an educational program for the members of the civil patrols and for the*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ During the later meeting, one of the military commissioners accused Victoria Tiu Tojin of being an "ear" for the guerrillas and suggested that they send her to the mountains. "That's good," responded the crowd, "let's break her." Early in the morning of March 31, several of the military commissioners tried unsuccessfully to break into Victoria's home and threatened to kill her and her children. She fled Parraxtut on April 1. *Id.*

³⁰⁶ *Prensa Libre*, April 3, 1990, p. 53.

members of the army as well.³⁰⁷ Victoria Tojín provided her account of the incident at Parraxtut to Adjunct Procurator César Alvarez Guadamuz on April 3, 1990.³⁰⁸ Neither Alvarez Guadamuz nor de León Carpio made any public statement questioning or condemning the army for its alleged catalytic role in the affair.

On April 4, 1990, army representatives brought the three chiefs of the Parraxtut civil patrol to de León Carpio's office. The three men told de León Carpio: "We are very sorry for the bad treatment given to the Adjunct Procurator and we've come to request forgiveness for our lack of education, but we did not know whether what we were doing with the man and with the persons who accompanied him was right or wrong."³⁰⁹ The men expressed the civil patrol's desire to receive education regarding basic human rights. Finally, the three civil patrol chiefs told de León Carpio that they did not want Amílcar Méndez Urizar to return to their community because Méndez Urizar has defamed the civil patrols.³¹⁰ Procurator de León Carpio acknowledged his satisfaction for the attitude assumed by the patrollers, as well as for the army's acceptance "of its share of the responsibility" for the incident."³¹¹

Procurator de León Carpio subsequently explained to me that when he made the above comment, he was unaware of Victoria Tiù Tojín's testimony regarding the army's incitement of violence at Parraxtut. "If it's true, the army would be directly responsible."³¹² De León Carpio said that he was outside of the capitol on the day that Victoria Tojín gave her testimony to Alvarez

³⁰⁷ *Id.*

³⁰⁸ *Prensa Libre*, April 4, 1990.

³⁰⁹ *Prensa Libre*, April 5, 1990.

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² Interview, May 3, 1990.

Guadamuz. Nevertheless, it seems highly unlikely that Alvarez Guadamuz did not provide this crucial information to his boss, or that de León Carpio would have missed Victoria Tiù Tojin's accusations on page two of the April 4, 1990 edition of *Prensa Libre*.

The "apology" given to the Procurator for Human Rights appeared to be only another act of army manipulation. Procurator de León Carpio acknowledged that he knew that the army sent the Parraxtut civil patrol chiefs to him to make their apology. The army ordered the men to apologize "in order to calm the waters."³¹³ When I asked him whether, if the army was involved in the incidents at Chupol and Parraxtut, there was any chance that the guilty would be prosecuted, de León Carpio responded: "I doubt it, because there is insufficient evidence."³¹⁴

After the incident on March 27, Adjunct Human Rights Procurator Alvarez Guadamuz began working on plans for another attempt to "repatriate" the refugees from Parraxtut. Alvarez Guadamuz attempted to form another commission, this time including the commander of the military base from Santa Cruz del Quiché, as well as Bishop of Quiché, Julio Cabrera. When I asked him how he could guarantee that the refugees would not be harassed in Parraxtut in the future, Alvarez Guadamuz responded: "We'll have to talk to the army in Santa Cruz del Quiché about that."³¹⁵ Given the army's recent alleged role in inciting violence in the area, it seemed an unlikely protector of the citizens returning to Parraxtut.

Alvarez Guadamuz traveled to Santa Cruz del Quiché on April 5. He met with some members of the Parraxtut civil patrol who told him that they could only be responsible for the refugee's security if, upon their return, they lived in the center of the town. If the families moved back

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ Interview, April 5, 1990.

to their "ranchitos" in Parraxtut Segundo Centro, where they previously lived two to three kilometers outside of the community, the patrollers could not guarantee their safety.³¹⁶ Some of the refugees also owned homes closer to the center of Parraxtut. The families told Alvarez Guadamuz that they only wanted to return to Parraxtut if they could live in Parraxtut Segundo Centro, that is, outside the main community.³¹⁷ Given this impasse, Alvarez Guadamuz did not want to leave the refugees in their "ranchitos."

Finally, on April 18, 1990, a commission composed of Alvarez Guadamuz, Major Eric Guzmán, the second-in-command of the military base in Santa Cruz del Quiché, Auxiliary Human Rights Procurator Oscar Cifuentes, a CERJ representative, several reporters, three uniformed National Police officers and forty heavily armed soldiers accompanied the refugees back to Parraxtut for a second time.³¹⁸ Guadamuz refused to permit Amílcar Méndez to return, observing that: "If he had gone, they [the civil patrollers] could have killed him."³¹⁹ The returning residents carried white flags. When they arrived, several patrollers asked them, in lowered voices: "Why did you bring white flags? Why not red flags?"³²⁰ The army officer told the patrollers to keep quiet. The patrollers also greeted the returning women with "vulgar words."³²¹

The army officer, Guadamuz and Cifuentes each spoke to the group of approximately 150 civil patrol members that were present and asked them to respect the rights of the returning residents. Next, several patrollers spoke out against Amílcar Méndez. "It pains the patrollers

³¹⁶ Interview, April 6, 1990.

³¹⁷ *Id.*

³¹⁸ Several of the refugees stayed behind in Santa Cruz de Quiché due to illness.

³¹⁹ Interview, April 24, 1990.

³²⁰ Interview, April 24, 1990. Red flags are a guerrilla symbol.

³²¹ *Id.*

that Méndez wants to do away with the civil patrols," one said, "for us, the civil patrols are peace and liberty."³²² The patrollers apologized for attacking Guadamuz on March 27, saying that because they're only "ignorant campesinos," they did not realize that he was the Procurator for Human Rights. They attacked him, they explained, because he arrived with "the subversive Amílcar Méndez, who came to bring subversion to the community."³²³

Guadamuz, the army officer, the CERJ representative and the chief of the civil patrol all signed a document which said that Guadamuz would examine the condition of the property left behind by the refugees when they fled Parraxtut, and that he would return in two weeks to check on their condition. The document also provided for the presence of three National Police officers in Parraxtut. The returning families insisted on the police presence as a condition to their remaining in Parraxtut. The assembled patrollers had a meeting to discuss this issue. Finally, in a vivid demonstration of the weakness of the rule of civil law in rural Guatemala, the patrollers gave their permission to the three police officers to remain in the town.³²⁴

Alvarez Guadamuz informed the returning families that the three officers did not have sufficient funds with which to feed themselves while living in Parraxtut. He argued that the families should feed them during their stay in the town. The families eventually agreed to feed the police officers for 15 days, a significant burden for campesino families even during the best of times. Subsequently, the mayor of Parraxtut arranged for more of the townspeople to share the cost.

Finally, the commission left the returned families in Parraxtut, but in their residences in the

³²² Interview, April 21, 1990.

³²³ Interview, May 1, 1990.

³²⁴ Interview, April 24, 1990.

center of town, not in their "ranchitos" in Parraxtut Segundo Centro.³²⁸ Alvarez Guadamuz subsequently told me that "I checked the area (Segundo Centro) and it's very dangerous due to the subversives."³²⁹ When reminded that the commander of the military base at Santa Cruz del Quiché told him on April 5 that there were no guerrillas in the Parraxtut area, Alvarez Guadamuz responded that now there are guerrillas in Parraxtut, according to the second-in-command of the same military base. He explained that the returning families understood that it was dangerous for them to live "in the mountains," and agreed to live in the town.³³⁰

On May 19, 1990, the Guatemalan press reported that soldiers from the Santa Cruz del Quiché military base captured Parraxtut military commissioners Domingo Castro Lux and Juan de León Pérez.³³¹ According to North American journalists, the army lured the two suspects to the base in Santa Cruz del Quiché, ostensibly for a meeting, where they were placed under arrest.³³² The army delivered the two men to the authority of the Juzgado Segundo, the court in Santa Cruz del Quiché which issued the original arrest orders.³³³ Pedro Castro Tojín would act as the "private accuser" of the two military commissioners, while the Public Prosecutor's Department would serve as prosecutor for the state.³³⁴ CERJ leaders and the press subsequently reported that on May 31, 1990, due to "insufficient evidence" in the case of the murder of María Mejía, the judge at the Juzgado Segundo ordered the release of Castro Lux and

³²⁸ *Prensa Libre*, April 24, 1990, p. 26.

³²⁹ Interview, April 24, 1990. According to journalists who were present, Alvarez Guadamuz made a very perfunctory inspection of the families' abandoned "ranchitos," and then returned to the center of Parraxtut. Interview, May 1, 1990.

³³⁰ *Id.*

³³¹ *El Gráfico*, May 19, 1990.

³³² Interview, May 24, 1990.

³³³ *Id.*

³³⁴ *Prensa Libre*, May 19, 1990.

de León Pérez.³³⁵ The judge told Amílcar Méndez that because Pedro Castro Tojín's wounds were "minor," they did not merit a trial, such as for assault or attempted murder.³³⁶ Pedro suffered two bullet wounds during the attack, for which he was hospitalized. The dismissal of the charges against the two military commissioners is being appealed to the appellate court in Quetzaltenango.

E. Conclusions and Recommendations: Chupol and Parraxtut

Based on its investigation, the Minnesota Lawyers Committee finds that the army organized and encouraged members of the Parraxtut civil patrols to oppose the return of the refugee family members along with Amílcar Méndez Urizar of the CERJ and César Alvarez Guadamuz, the Adjunct Procurator of Human Rights. A member of the Procurator's staff videotaped the entire March 27 incident. The videotape shows that not just the men, but the women of Parraxtut were waiting with shovels, sticks, and machetes for the caravan to arrive.

The Minnesota Lawyers Committee finds that the attack on the caravan on March 27, 1990 violates Universal Declaration of Human Rights Article 3, guaranteeing the right to life, liberty and security of the person; Article 13(1), guaranteeing the right to freedom of movement and residence within the borders of each State; Article 18, guaranteeing freedom of thought, conscience and religion; Article 19, guaranteeing freedom of expression; and Article 20(1), guaranteeing freedom of peaceful assembly and association. These actions also violate the American Convention on Human Rights Articles 5(1), Right to Physical Integrity; Article 12, Freedom of Conscience and Religion; Article 13, Freedom of Thought and Expression; Article 15, Right of Assembly; Article 16, Freedom of Association; Article 22, Freedom of Movement and Residence; and Article 25, Right to Judicial Protection.

³³⁵ Interview, June 2, 1990; El Gráfico, June 3, 1990, p. 7.

³³⁶ Interview, June 2, 1990.

The rural control of the army and the civil patrols circumscribes the independence of the judiciary in these areas of Guatemala. Despite clear violations of domestic and international law by the army and the civil patrol in Parraxtut, the judicial system has been unable to advance prosecutions against the civil patrollers in this case.

While the Minnesota Lawyers Committee applauds the courage and perseverance exhibited by members of the Procurator's office in attempting to resolve the crisis at Parraxtut, it is concerned that, by agreeing to the demand of the Parraxtut civil patrollers that the returning families live in the center of the community, the Procurator has allowed the violation of these families' right to freedom of movement and residence under Universal Declaration of Human Rights Article 13(1) and American Convention on Human Rights Article 22. In addition, the Minnesota Lawyers Committee is concerned that, by accepting the apology of the civil patrol in Parraxtut in place of a full investigation into the assault on the refugee caravan on March 27, the Procurator for Human Rights was in breach of the Office's public responsibility to examine the role of the army in human rights violations in regions dominated by the civil patrol.

The Minnesota Lawyers Committee is also concerned that the army's control of the actions of the civil patrol has effectively eliminated the participation of any human rights organizations in the local affairs in Parraxtut. Such actions constitute a denial of the right to freedom of association under Article 20 of the Universal Declaration of Human Rights and Article 16 of the American Convention on Human Rights.

The Minnesota Lawyers Committee recommends that the prosecution of military commissioners Domingo Castro Lux and Juan de León Pérez be reinstated immediately. The Minnesota Lawyers Committee does not consider murder and attempted murder to be minor charges. Given the eyewitness testimony of Pedro Castro Tojin and the serious threat under which he and his

family continue to live, the public prosecutor and the *Juzgado Segundo* have an obligation to seek justice in this case.

The Minnesota Lawyers Committee recommends that the Procurator for Human Rights work with the National Police and the army to create a plan to ensure the security of nongovernmental organizations active in rural communities and, specifically, to ensure the safety of the refugees who were ultimately returned to the village of Parraxtut.

The Minnesota Lawyers Committee recommends that the newly-elected government in Guatemala re-examine the need to arm civilians. At a minimum, the newly-elected government should take on the direct responsibility of protecting the rights of those individuals who choose not to serve in the civil patrols of Guatemala. The Minnesota Lawyers Committee recommends that U.N. Special Expert Christian Tomuschat specifically investigate the need for, the activities of, and the structure of the civil patrols in Guatemala as part of his mandate.

The Minnesota Lawyers Committee recommends that the newly-elected government in conjunction with the Inter-American Commission on Human Rights and the U.N. Special Expert to Guatemala set out a specific plan to ensure judicial independence and protect the courts in their investigations into military involvement in human rights violations.

Finally, the Minnesota Lawyers Committee recommends that all foreign aid to Guatemala should be contingent upon the successful completion of government and international investigations concerning the civil patrols, the independence of the judiciary, and the existence of clandestine prisons in Guatemala.

PRINCIPLES ON THE EFFECTIVE PREVENTION AND INVESTIGATION OF EXTRA-LEGAL,
ARBITRARY AND SUMMARY EXECUTIONS

Adopted by the Economic and Social Council by its resolution 1989/65 of 24 May 1989, on the recommendation of the Committee on Crime Prevention and Control at its tenth session (Vienna 1988).

Prevention

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offenses under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offenses. Exceptional circumstances, including a state of war or threat of war, internal political instability or any other public emergency, may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity, or a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.
2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for the apprehension, arrest, detention, custody and imprisonment as well as those officials authorized by law to use force and firearms.
3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.
4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.
5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.
6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.
7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions, and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall co-operate fully in international investigations on the subject.

Investigation

9. There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any adequate autopsy, the collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summons to witnesses including the officials allegedly involved, and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed color photographs of the deceased shall be included in the autopsy report in order to document

and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased, including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased immediately informed. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred, and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

Legal Proceedings

18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary and summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or co-operate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to Principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary and summary executions shall be entitled to fair and adequate compensation, within a reasonable period of time.

II. PRINCIPIOS RELATIVOS A UNA EFICAZ PREVENCIÓN E
INVESTIGACIÓN DE LAS EJECUCIONES EXTRALEGALES,
ARBITRARIAS O SUMARIAS

Aprobados por el Consejo Económico y Social en su resolución 1989/65, de 24 de mayo de 1989, por recomendación del Comité de Prevención del Delito y Lucha contra la Delincuencia en su décimo período de sesiones (celebrado en Viena en 1988).

Prevención

33. Los gobiernos prohibirán por ley todas las ejecuciones extralegales, arbitrarias o sumarias y velarán por que todas esas ejecuciones se tipifiquen como delitos en su derecho penal, y sean sancionables con penas adecuadas que tengan en cuenta la gravedad de tales delitos. No podrán invocarse para justificar esas ejecuciones circunstancias excepcionales, como por ejemplo, el estado de guerra o de riesgo de guerra, la inestabilidad política interna ni ninguna otra emergencia pública. Esas ejecuciones no se llevarán a cabo en ninguna circunstancia, ni siquiera en situaciones de conflicto armado interno, abuso o uso ilegal de la fuerza por parte de un funcionario público o de otra persona que actúe con carácter oficial o de una persona que obre a instigación, o con el consentimiento o la aquiescencia de aquélla, ni tampoco en situaciones en las que la muerte se produzca en prisión. Esta prohibición prevalecerá sobre los decretos promulgados por la autoridad ejecutiva.

34. Con el fin de evitar las ejecuciones extralegales, arbitrarias o sumarias, los

gobiernos garantizarán un control estricto, con una jerarquía de mando claramente determinada, de todos los funcionarios responsables de la captura, detención, arresto, custodia y encarcelamiento, así como de todos los funcionarios autorizados por la ley para usar la fuerza y las armas de fuego.

35. Los gobiernos prohibirán a los funcionarios superiores o autoridades públicas que den órdenes en las que autoricen o inciten a otras personas a llevar a cabo cualquier ejecución extralegal, arbitraria o sumaria. Toda persona tendrá el derecho y el deber de negarse a cumplir esas órdenes. En la formación de esos funcionarios encargados de hacer cumplir la ley deberá hacerse hincapié en las disposiciones expuestas.

36. Se garantizará una protección eficaz, judicial o de otro tipo, a los particulares y grupos que estén en peligro de ejecución extralegal, arbitraria o sumaria, en particular a aquellos que reciban amenazas de muerte.

37. No se obligará a ninguna persona a regresar ni se la extraditará a un país en donde haya motivos fundados para creer que puede ser víctima de una ejecución extralegal, arbitraria o sumaria.

38. Los gobiernos velarán por que se mantenga a las personas privadas de libertad en lugares de reclusión públicamente reconocidos, y por que se proporcione inmediatamente a sus familiares y letrados u otras personas de confianza información exacta sobre su detención y paradero, incluidos los traslados.

39. Inspectores especialmente capacitados, incluido personal médico, o una autoridad independiente análoga, efectuarán periódicamente inspecciones de los

lugares de reclusión, y estarán facultados para realizar inspecciones sin previo aviso por su propia iniciativa, con plenas garantías de independencia en el ejercicio de esa función. Los inspectores tendrán libre acceso a todas las personas que se encuentren en dichos lugares de reclusión, así como a todos sus antecedentes.

40. Los gobiernos harán cuanto esté a su alcance para evitar las ejecuciones extralegales, arbitrarias o sumarias recurriendo, por ejemplo, a la intercesión diplomática, facilitando el acceso de los demandantes a los órganos intergubernamentales y judiciales y haciendo denuncias públicas. Se utilizarán los mecanismos intergubernamentales para estudiar los informes de cada una de esas ejecuciones y adoptar medidas eficaces contra tales prácticas. Los gobiernos, incluidos los de los países en los que se sospeche fundadamente que se producen ejecuciones extralegales, arbitrarias o sumarias, cooperarán plenamente en las investigaciones internacionales al respecto.

Investigación

41. Se procederá a una investigación exhaustiva, inmediata e imparcial de todos los casos en que haya sospecha de ejecuciones extralegales, arbitrarias o sumarias, incluidos aquéllos en los que las quejas de parientes u otros informes fiables hagan pensar que se produjo una muerte no debida a causas naturales en las circunstancias referidas. Los gobiernos mantendrán órganos y procedimientos de investigación para realizar esas indagaciones. La investigación tendrá como objetivo determinar la causa, la forma y el momento de la muerte, la persona responsable y el procedimiento o práctica que pudiera haberla provocado. Durante la

investigación se realizará una autopsia adecuada, se recopilarán y analizarán todas las pruebas materiales y documentales y se recogerán las declaraciones de los testigos. La investigación distinguirá entre la muerte por causas naturales, la muerte por accidente, el suicidio y el homicidio.

42. La autoridad investigadora tendrá poderes para obtener toda la información necesaria para la investigación. Las personas que dirijan la investigación dispondrán de todos los recursos presupuestarios y técnicos necesarios para una investigación eficaz, y tendrán también facultades para obligar a los funcionarios supuestamente implicados en esas ejecuciones a comparecer y dar testimonio. Lo mismo regirá para los testigos. A tal fin, podrán citar a testigos, inclusive a los funcionarios supuestamente implicados, y ordenar la presentación de pruebas.

43. En los casos en los que los procedimientos de investigación establecidos resulten insuficientes debido a la falta de competencia o de imparcialidad, a la importancia del asunto o a los indicios de existencia de una conducta habitual abusiva, así como en aquellos en los que se produzcan quejas de la familia por esas insuficiencias o haya otros motivos sustanciales para ello, los gobiernos llevarán a cabo investigaciones por conducto de una comisión de encuesta independiente o por otro procedimiento análogo. Los miembros de esa comisión serán elegidos en función de su acreditada imparcialidad, competencia e independencia personal. En particular, deberán ser independientes de cualquier institución, dependencia o persona que pueda ser objeto de la investigación. La comisión estará facultada para obtener toda la información necesaria para la

investigación y la llevará a cabo conforme a lo establecido en estos Principios.

44. No podrá procederse a la inhumación, incineración, etc., del cuerpo de la persona fallecida hasta que un médico, a ser posible experto en medicina forense, haya realizado una autopsia adecuada. Quienes realicen la autopsia tendrán acceso a todos los datos de la investigación, al lugar donde fue descubierto el cuerpo, y a aquél en el que se suponga que se produjo la muerte. Si después de haber sido enterrado el cuerpo resulta necesaria una investigación, se exhumará el cuerpo sin demora y de forma adecuada para realizar una autopsia. En caso de que se descubran restos óseos, deberá procederse a desenterrarlos con las precauciones necesarias y a estudiarlos conforme a técnicas antropológicas sistemáticas.

45. El cuerpo de la persona fallecida deberá estar a disposición de quienes realicen la autopsia durante un período suficiente con objeto de que se pueda llevar a cabo una investigación minuciosa. En la autopsia se deberá intentar determinar, al menos, la identidad de la persona fallecida y la causa y forma de la muerte. En la medida de lo posible, deberán precisarse también el momento y el lugar en que ésta se produjo. Deberán incluirse en el informe de la autopsia fotografías detalladas en color de la persona fallecida, con el fin de documentar y corroborar las conclusiones de la investigación. El informe de la autopsia deberá describir todas y cada una de las lesiones que presente la persona fallecida e incluir cualquier indicio de tortura.

46. Con el fin de garantizar la objetividad de los resultados, es necesario que quienes realicen la autopsia puedan actuar imparcialmente y con independencia de

cualesquiera personas, organizaciones o entidades potencialmente implicadas.

47. Los querellantes, los testigos, quienes realicen la investigación y sus familias serán protegidos de actos o amenazas de violencia o de cualquier otra forma de intimidación. Quienes estén supuestamente implicados en ejecuciones extralegales, arbitrarias o sumarias serán apartados de todos los puestos que entrañen un control o poder directo o indirecto sobre los querellantes, los testigos y sus familias, así como sobre quienes practiquen las investigaciones.

48. Los familiares de la persona fallecida y sus representantes legales serán informados de las audiencias que se celebren, a las que tendrán acceso, así como a toda la información pertinente a la investigación, y tendrán derecho a presentar otras pruebas. La familia del fallecido tendrá derecho a insistir en que un médico u otro representante suyo calificado esté presente en la autopsia. Una vez determinada la identidad del fallecido, se anunciará públicamente su fallecimiento, y se notificará inmediatamente a la familia o parientes. El cuerpo de la persona fallecida será devuelto a sus familiares después de completada la investigación.

49. Se redactará en un plazo razonable un informe por escrito sobre los métodos y las conclusiones de las investigaciones. El informe se publicará inmediatamente y en él se expondrán el alcance de la investigación, los procedimientos y métodos utilizados para evaluar las pruebas, y las conclusiones y recomendaciones basadas en los resultados de hecho y en la legislación aplicable. El informe expondrá también detalladamente los hechos concretos ocurridos, de acuerdo con los resultados de las investigaciones, así como las pruebas en que se

basen esas conclusiones, y enumerará los nombres de los testigos que hayan prestado testimonio, a excepción de aquéllos cuya identidad se mantenga reservada por razones de protección. El gobierno responderá en un plazo razonable al informe de la investigación, o indicará las medidas que se adoptarán a consecuencia de ella.

Procedimientos judiciales

50. Los gobiernos velarán por que sean juzgadas las personas que la investigación haya identificado como participantes en ejecuciones extralegales, arbitrarias o sumarias, en cualquier territorio bajo su jurisdicción. Los gobiernos harán comparecer a esas personas ante la justicia o colaborarán para extraditarlas a otros países que se propongan someterlas a juicio. Este principio se aplicará con independencia de quienes sean los perpetradores o las víctimas, del lugar en que se encuentren, de su nacionalidad, y del lugar en el que se cometió el delito.

51. Sin perjuicio de lo establecido en el Principio 3 supra, no podrá invocarse una orden de un funcionario superior o de una autoridad pública como justificación de ejecuciones extralegales, arbitrarias o sumarias. Los funcionarios superiores, oficiales u otros funcionarios públicos podrán ser considerados responsables de los actos cometidos por funcionarios sometidos a su autoridad jerárquica si tuvieron una posibilidad razonable de evitar dichos actos. En ninguna circunstancia, ni siquiera en estado de guerra, de sitio o en otra emergencia pública, se otorgará inmunidad general previa de procesamiento a las personas supuestamente implicadas en ejecuciones extralegales, arbitrarias o sumarias.

52. Las familias y las personas que estén a cargo de las víctimas de ejecuciones extralegales, arbitrarias o sumarias tendrán derecho a recibir, dentro de un plazo razonable, una compensación justa y suficiente.

PRESIDENCIA DEL ORGANISMO JUDICIAL
Y DE LA CORTE SUPREMA DE JUSTICIA

REPUBLICA DE GUATEMALA

NUMERO

OFICIO CIRCULAR No. 88-90 EVM/mcpa
Guatemala, 13 de febrero de 1990

A: SEÑORES PRESIDENTES DE SALAS
JUECES DE PRIMERA INSTANCIA Y
DE PAZ, DE TODA LA REPUBLICA

Por medio de la presente le reitero, que de conformidad con la Constitución Política de la República y la Ley de Amparo, Exhibición Personal y de Constitucionalidad, las exhibiciones personales, como garantía, únicamente proceden en los casos, formas y modo que señala la ley de la materia.

La finalidad de la exhibición personal es la de restituir o garantizar la libertad, hacer cesar vejámenes o terminar coacciones, provenientes de alguna autoridad.

Para el mejor cumplimiento de la exhibición personal debe ordenarse a la AUTORIDAD, FUNCIONARIO, EMPLEADO o PERSONA, presuntamente responsables, que presenten al ofendido.

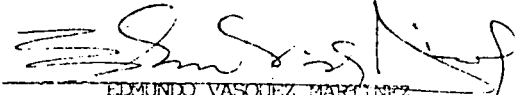
El Juez o Tribunal, con base en los antecedentes o informes que rinda la autoridad o empleado que ordenó la detención, establecerá los hechos de la detención, si se han cometido vejámenes o coacciones contra la persona, así como todo lo relativo a la orden que motivó la detención, con el objeto de establecer las responsabilidades consiguientes.

Debe tomarse en cuenta que para la ejecución o diligenciamiento de la exhibición personal debe establecerse fehacientemente que la misma se encuentre debidamente planteada, respetando los casos de procedencia y su legitimación en relación al Funcionario, empleado o persona, contra quien se plantea. Debe cumplirse con los artículos: 263 de la Constitución Política de la República y, 82,83,85,87,88,90,91,92,94,95,99,101,107,109, de la Ley de Amparo, Exhibición Personal y de Constitucionalidad.

En los casos en que los hechos que se denunciaren constituyeren figuras delictivas como por ejemplo: plagio o secuestro, o detenciones ilegales establecidas en los artículos 201 y 204 del Código Penal, deberá procederse en la forma que señala la ley, a instruir el proceso penal respectivo. En ningún caso, podrá un Juez o tribunal presentarse a hacer advertencias o prevenciones.

Sin otro particular, me suscribo de ustedes atentamente,

ACUSE RECIBO


EDMUNDO VASQUEZ MARTINEZ
Presidente del Organismo Judicial
y de la Corte Suprema de Justicia.



ENGLISH TRANSLATION OF VASQUEZ MARTINEZ MEMORANDUM

Guatemala, February 13, 1990

TO: Presidents of Halls
Judges of First Instance and
of Peace, of all the Republic

By means of this memorandum, I reiterate that, in conformity with the Political Constitution of the Republic and the Law of Amparo, Personal Exhibition [habeas corpus] and of Constitutionality, requests of personal exhibition as a guarantee only proceed in the cases, forms and manner indicated by the law on the matter.

The purpose of the law of personal exhibition is to restore or guarantee personal liberty and to cease interference or end coercion on the part of some authority.

For the best compliance of [the law of] personal exhibition, you should order the AUTHORITY, OFFICIAL, EMPLOYEE or PERSON presumably responsible to present the offended person.

The judge or tribunal, on the basis of the background or reports yielded by the authority or employee that ordered the detention, shall establish the facts of the detention, whether interference or coercion has been committed against the person, as well as everything that relates to the order which led to the detention, with the object of establishing the resulting responsibilities.

You should take into consideration in executing or carrying out the request for personal exhibition that the authenticity of the petition should be duly established and regard should be given to the source and legitimacy of the petition in relation to the official, employee or person against whom it is directed. You should comply with the articles: 263 of the Political Constitution of the Republic and 82, 83, 85, 87, 88, 90, 91, 92, 94, 95, 99, 101, 107, 109 of the Law of Amparo, Personal Exhibition and of Constitutionality.

In the case in which the denounced acts constitute crimes such as: abduction or kidnapping or illegal detentions established in articles 201 and 204 of the Penal Code, you should proceed in the form indicated by the law, and initiate the respective penal process. In no case shall a judge or tribunal present itself to make warnings or precautionary measures.

In the absence of another matter, I respectfully submit to you,

EDMUNDO VASQUEZ MARTINEZ
President of the Judicial Organism
and of the Supreme Court of Justice

**POLITICAL CONSTITUTION OF
THE REPUBLIC OF GUATEMALA**

**Approved May 31, 1985
Effective January 14, 1986**

**TITLE II
Human Rights**

Chapter I Individual Rights

Article 46. Preeminence of International Law. It is established as a general principal that in regard to human rights the treaties and conventions accepted and ratified by Guatemala have preeminence over internal law.

**TITLE VI
Constitutional Guarantees and Defense of the Constitutional Order**

Chapter I Habeas Corpus (*Exhibicion personal*)

Article 263. Right to Habeas Corpus. Whoever finds himself illegally imprisoned, detained, or restrained in any other way in the enjoyment of his individual freedom, who is threatened with the loss of same, or suffers ill-treatment, even when his imprisonment or detention is based on the law, has the right to petition for an immediate hearing before the courts of justice for the purpose of retrieving his liberty, guaranteeing him his release, bringing his ill-treatment to an end, or terminating the constraint to which he has been subjected.

Should the court decree the freeing of the individual illegally confined, the latter will be released at the same hearing and place.

When it is so petitioned or the judge or court deems it pertinent, the requested habeas corpus will occur at the location where the detained person is being held, without previous warning or notification.

The habeas corpus of the detainee in whose favor it may have been requested is unavoidable.

Article 264. Responsibilities of the Violators. The authorities which order the concealment of the prisoner or which refuse to present him at the appropriate court or which in any form evade this guarantee as well as the executive agents will be guilty of the offense of abduction and will be sanctioned in accordance with the law.

If as a result of the proceedings pursued the individual benefiting from habeas corpus cannot be located, the court having jurisdiction will order immediately an investigation of the case until it is totally cleared up.

Chapter V Commission and Procurator of Human Rights

Article 273. Human Rights Commission and Procurator of the Commission. The Congress of the Republic will appoint a Commission of Human Rights made up of a deputy for each political party represented during its term. The Commission will propose to the Congress three candidates for the election of the Procurator who will have to meet the requirement of a judge of the Supreme Court of Justice and will enjoy the same immunities and privileges as the deputies to Congress. The law will regulate the powers of the Commission of Human Rights and of the Procurator as they pertain to this article.

Article 274. Procurator of Human Rights. The Procurator of Human Rights is a commissioner of the Congress of the Republic for the defense of Human Rights guaranteed by the Constitution. He will have the powers to supervise the administration, will have a term of five years, and will make an annual report to the full Congress with which he will have dealings through the commission of Human Rights.

Article 275. Powers of the Procurator of Human Rights. The Commissioner of Human Rights has the following powers:

- a. To promote the adequate functioning and speeding up of government administration in the area of Human Rights;
- b. To investigate and denounce administrative behavior that is detrimental to the interests of persons;
- c. To investigate every type of denunciation that may be brought by any person regarding the violations of Human Rights;
- d. To recommend privately or publicly to officials that they modify their administrative behavior to which objections are raised;
- e. To issue public censure for acts or behavior running counter to Constitutional rights;
- f. To promote actions or resources, judicial or administrative, in those cases which demand it; and
- g. The other functions and powers assigned to him by law.

The Procurator of Human Rights, routinely or on challenge, will act with due diligence so that, during the regime of exception, fundamental rights whose application may not have been expressly restrained may be fully guaranteed. For the fulfillment of his functions, every day and all hours are considered working hours.

Decree Number 1-86**LAW OF AMPARO,
PERSONAL EXHIBITION AND CONSTITUTIONALITY****TITLE THREE
PERSONAL EXHIBITION
(Habeas Corpus)****CHAPTER ONE
Origins**

Article 82. The Right to (Habeas Corpus) Personal Exhibition. Whoever finds himself illegally imprisoned, detained, or restrained in any other way in the enjoyment of his individual freedom, who is threatened with the loss of same, or suffers ill-treatment, even when his imprisonment or detention is based on the law, has the right to petition for an immediate hearing (Personal Exhibition) before the courts of justice for the purpose of retrieving his liberty, guaranteeing him his release, bringing his ill-treatment to an end, or terminating the constraint to which he has been subjected.

**CHAPTER TWO
Competence**

Article 83. Competence of the Courts. The power of the courts regarding personal exhibition is derived from their role as Tribunals of Protection, however, the power that corresponds to the Constitutional Court will be exercised by the Supreme Court of Justice.

Article 84. Prior Knowledge. The specific power shall not be based solely upon the facts contained in the petition, but depends upon the prior knowledge of the court, and the urgency of the action required.

**CHAPTER THREE
Method**

Article 85. Method for Requesting Personal Exhibition. Personal exhibition may be requested by writing, by telephone or verbally, by the victim or by any other person, without the necessity of proof of any allegation and without any requirement of formality.

Article 86. Knowledge of Office. Any court of justice having knowledge of any kind that a person finds himself in a situation considered in Article 812, confined or simply in custody with a fear that his length of stay is uncertain, is obligated to initiate and advance the personal exhibition.

Article 87. Obligatory Denunciation. The mayor, boss, subordinate, or executor of the establishment or place in which a person is detained, imprisoned, or deprived of his liberty, that had knowledge of an action upon which the petition for personal exhibition is based should denounce it immediately to any court considering the petition under penalty of 50-500 quetzales in fines, without prejudice of legal sanctions.

CHAPTER FOUR Procedure

Article 88. Judicial Decree of Exhibition. Immediately after receiving the petition or having knowledge of an action that gives rise to the request for personal exhibition, the court, in the name of the Guatemalan Republic and without any delay, will issue a decree of exhibition, indicating a time for the hearing and ordering the authority, public official, employee, or the person who is presumably responsible to present to the offended an original or copy of the order upon which the detention was based, in the form of a detailed report containing at least the following:

- a. who ordered the detention or ill-treatment and who executed it, indicating the date and circumstances of the action;
- b. if the detained has been under the immediate custody of the responding official or if he has been transferred to another, give the name of the other, the place, time and motive of the transfer; and
- c. the order that motivated the detention.

Article 89. Time Period for the Exhibition. The amount of time in which the decree [Article 88] to the aggrieved must be made, shall not exceed 24 hours after the petition.

Article 90. Immediate Instruction. When the court has knowledge of the actions that are listed in Article 82, it will immediately order the hearing without delay in the place where the aggrieved is being held; and, if the offended resides outside of the perimeter or municipality of the court, an executor judge will be named, in conformance with the following article.

Members of the court who are knowledgeable of the related actions, but not proceeding as ordered in the previous paragraph will be punished as accomplices of the crime.

Article 91. Auxiliary of the Tribunal. When the aggrieved is outside of the municipality of the court presiding over the petition, in absence of the executor judge, the fulfillment of the decree [Article 88] may be commissioned to any other authority or person whose qualities guarantee its accomplishment.

In these cases, the petition will be sent to the executor in the quickest way, who will immediately complete the mandate of the court. To this end, the executor will go without delay to the place in which he will meet the person in control of the petitioner, who will be notified of the decree of the court. It will be required that he immediately exhibit himself to the offended, and make known the charges against him, and he will be ordered to cease the restrictions or persecution to which the offended was being subjected. The executor will immediately make known the results of his commission.

Article 92. Disobedience of the Authority. If the set term passes for the accomplishment of the personal exhibition and return of the decree, and the authority or informed official does not complete it, the court will file and order to show cause to the violating official ordering the immediate liberty of the imprisoned in compliance with the law; in addition, the executor judge will go personally to the detention center or make an exhaustive search for the aggrieved.

In this case the disobedience of the authorities will be made known and the executor will transmit this information by telegraph or by telephone if possible.

Article 93. Right of the Prejudgment of the Authority. If the disobedient authority referred to in the previous article enjoys the right of prejudgment the court will remain obligated, immediately and under strict responsibility, to initiate the prejudgment proceedings before the corresponding organ.

Article 94. Obligation to Present the Personal Exhibition. There is an obligation to present the results of a proceeding to the petitioner, even though he finds himself imprisoned by order of a competent judicial authority. In such a case, the person will be returned and the decrees forwarded.

Article 95. Abducted or Disappeared Persons. When the exhibition has been requested on behalf of an abducted or disappeared persons, the judge who had ordered the exhibition will go personally to look for the subject of the petition in the place where they are presumed to be found, be it in detention centers, jails or any other place where it is suggested or suspected that the person may be held.

Article 96. Hearing in the Place of Detention. When it is requested or the court deems it pertinent, the hearing will be performed in the place where the detained is found, without prior preparation or notification to any person.

Article 97. Liberty of the Affected Person. If from the study of the report and the antecedents it results that the detention or imprisonment is illegal, the liberty of the person affected will be ordered and this person will be given liberty in the same act and place.

Upon petition by the affected or his representative, the judge will order the authorities to deliver the detained to a designated person or to the intervenor in a safe place, and state his order for the record.

Article 98. Witnesses, Experts and Reports. The court may, for the same audience in which the exhibition had been decreed, order the appearance of the witnesses or experts that are considered necessary to clarify the facts, as well as obtain by subpoena any other type of information.

Article 99. Record and Resolution of the Exhibition. The court will make a record of his findings resulting from the request for personal exhibition. Forthwith a resolution will be issued declaring whether or not the decree has a legal basis.

Article 100. Imposition of Costs. There will only be imposition of costs for the petitioner when it is clearly established that the petition was malicious or imprudent, or it has been promoted with the goal of obstructing the administration of justice. The imposition of costs is

obligatory when the exhibition was declared with motive, the court should indicate who is responsible for its payment.

CHAPTER FIVE Of The Executor

Article 101. Office of the Executor. The office of the executor will be "ad honorem".

Article 102. Preeminence and Immunity of the Executor. All of the authorities and inhabitants of the Republic will give the executor, during the time that the fulfillment of this duty lasts, the preeminence and due respect the office deserves. Moreover, during this time he will enjoy personal immunity, not being subject to detention for any cause, except a flagrant crime.

Article 103. Search for the Aggrieved. When the executor appears at the detention center to perform the ordered personal exhibition, and the aggrieved is not to be found, he will search for him personally in every part of the detention center, and continue to search for him anywhere he might be able to be found.

Article 104. Measures of Security during the Exhibition. While the affairs of personal exhibition are being performed, the executor may take, inside of the law, any necessary measures of security that are necessary to prevent the escape of the detained.

Article 105. Assistance of Law Enforcement. The court, or the executor, in its place, may request the assistance of law enforcement officials in order to accomplish his resolutions and if the authority requested does not assist immediately, they will become liable according to what is prescribed in the penal code.

CHAPTER SIX General Powers (Dispositions)

Article 106. Gratuity and Priority of the Messages. The telegraphic messages, letters, and telephone calls relative to the personal exhibition, should be transmitted with priority and gratuity, being sent out at the hour they are received.

The heads of the respective offices will be responsible for the lack of completion of this disposition under the penalty of 10-100 quetzales in fines.

Article 107. Inquiry to Establish Responsibilities. Confirming the facts that gave motive to the request for exhibition, the same court, or in its place the executor, will do what is possible to exhaust the inquiry with the goal of finding out those who are directly responsible, which shall be recorded in the decree that the court dictates.

The conduct will be reported to the corresponding court for the liability of those responsible.

Article 108. Sanctions to Those Responsible for Concealing the Detained. The authorities who ordered the concealment of the detained or refused to present him at the respective court, or in any other way abused the guarantees of personal exhibition, will become liable for punishment for the crime, they will be excused from their duties, and sanctions will be applied in conformity with the law.

Article 109. Inquiry in the Case of Missing Persons. If, as a result of the performed business, it is apparent that the person in whose favor the exhibition intervened is disappeared, the court will immediately order an inquiry into the case.

The police authorities are obligated to inform the tribunal, the Procurator of Human Rights, and all other interested parties, about the investigations that have taken place, which should continue until the whereabouts of the disappeared person become known, at the same time the court of Personal Exhibition will submit information about its work and any new information that appears, to the Supreme Court of Justice.

Article 110. Waiver or Cessation of the Process without Subsequent Course. The personal exhibition may not be suspended nor may it desist during the time that the detained, aggrieved, or disappeared is not located.

Article 111. Challenge. If there is a challenge to the official in charge of a personal exhibition, the official process may not be suspended, rather the official must continue performing under his responsibility, in everything that is mandated under the law or that favors the aggrieved, while the case is being transferred to another competent court or the judicial process of the exhibition is exhausted in the same tribunal.

Article 112. Obligatory Procedural Initiative. The judicial process of personal exhibition will not be extinguished with the resolution of the original petition.

In order to declare the completion of a personal exhibition, the courts will order that an investigation be pursued to determine responsibility for the alleged actions.

Article 113. Supplementary Findings. The findings relating to Amparo will be applicable as well to personal exhibition if pertinent and prudent, according to the discretionary power of the courts of justice.



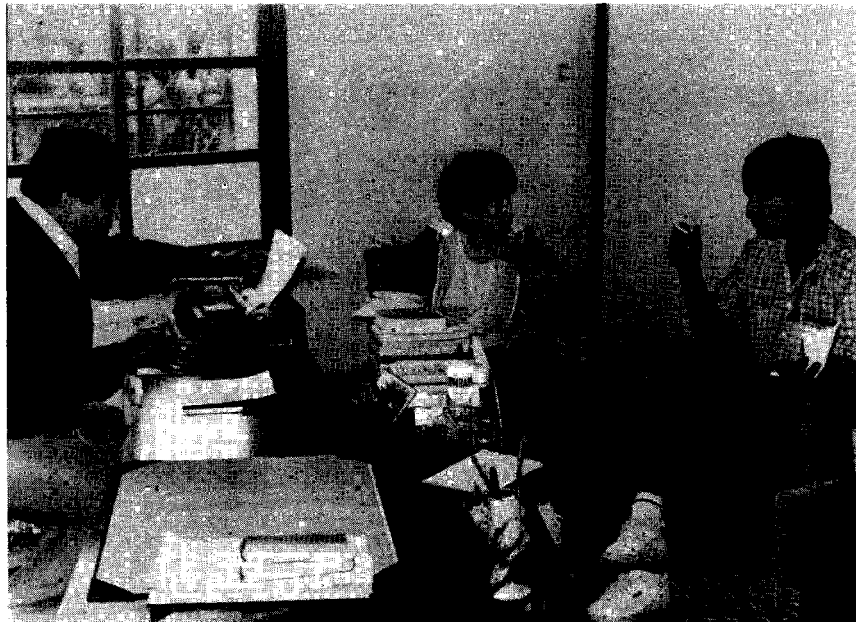
Civil patrol members from Chupol and surrounding communities throwing stones at GAM demonstrators on the road to Sacpulup. (March 2, 1990)



Injured GAM members flee from the rocks being hurled by civil patrollers in Chupol. (March 2, 1990)



Over 100 civil patrollers gathered to block the GAM demonstration on March 2, 1990. Here the patrollers are seen lingering after chasing away the GAM with stones.



GAM leader Nineth de García and other GAM members giving testimony in the office of the Justice of the Peace in Sacapulas.



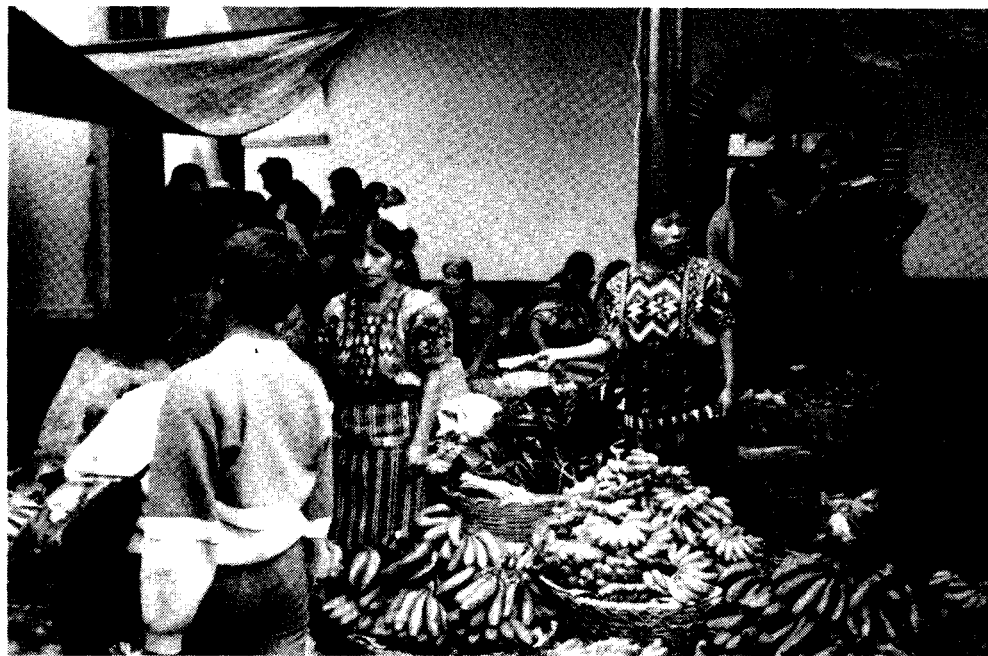
Newly inducted civil patrollers march with rifles in the plaza of Santa Cruz del Quiché.



Guatemalans being inducted into the civil patrol in Santa Cruz del Quiché salute the Guatemalan flag carried by Guatemalan soldiers.



Induction ceremonies of civil patrol in Santa Cruz del Quiché



A busy marketplace in Santa Cruz del Quiché



This family sought refuge in a human rights office in Santa Cruz del Quiché after threats by the civil patrols in Parraxtut.



Civil patrollers in Chupol pose for photo by MLC delegate.

The Minnesota Lawyers International Human Rights Committee is a nongovernmental organization committed to promoting human rights and to investigating human rights violations in the United States and abroad. The Committee was formed in 1983 and now has over 800 members. It advocates against individual human rights abuses, researches and investigates human rights conditions in other countries, encourages the adoption of international human rights standards by all countries, and educates its members, the Bar, political leaders, and the public about human rights issues.

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