
**AN
AMERICAS WATCH
REPORT**



Human Rights
in Guatemala:
No Neutrals Allowed

November 23, 1982

36 WEST 44TH STREET
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(212) 840-9460

H U M A N R I G H T S I N G U A T E M A L A

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An Americas Watch Report

36 West 44 Street
New York, New York 10036
(212) 840-9460

705 "G" Street, S.E.
Washington, D.C. 20003
(202) 546-9336

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PREFACE

This report is largely the result of a mission of inquiry to Guatemala and southern Mexico conducted by four representatives of the Americas Watch. Our delegation spent October 17-24 interviewing Guatemalan refugees and human rights monitors, Guatemalan officials and army officers, U.S. Embassy personnel and a variety of other sources in Guatemala including internal refugees, persons from rural areas and others. Many of our sources have requested anonymity and only general descriptions of the places and incidents they discussed with our delegation. It has not been possible in Guatemala to safely maintain an independent organization to monitor human rights; thus the work of human rights investigators is impeded and the burden of information-gathering falls on individuals or groups that work at significant risk.

The purpose of our mission was to assess the veracity of persistent reports of human rights violations under the current Guatemalan government, which came to power on March 23 of this year, eight months ago. This report combines the delegation's findings and experience with material from other organizations and missions, in order to present the Guatemalan situation as it has developed during this period.

The Americas Watch delegation included:

Orville H. Schell. Chairman of the Americas Watch, Vice Chairman of the U.S. Helsinki Watch. He is senior partner in the New York law firm of Hughes, Hubbard and Reed and was President of the Association of the Bar of the City of New York. Mr. Schell has conducted human rights investigations in Argentina, China, Czechoslovakia, Poland, Romania, the Soviet Union and Sri Lanka.

Russell Karp, Member of the Americas Watch.

Mr. Karp is a businessman and lawyer, and was formerly President of Teleprompter Corporation. He has also served as Vice-Chairman of Westinghouse Broadcasting and as Vice-President and Treasurer of Columbia Pictures Industries.

Robert Kogod Goldman, Member of the Americas Watch.

He is professor of International Law and Director of the International Studies Program at the Washington College of Law of the American University, in Washington, D.C. A former consultant to the Inter-American Commission on Human Rights, he has published numerous articles and reports on human rights in Latin America and has participated in several missions to investigate human rights violations.

Cynthia Brown, Consultant to the Americas Watch.

Ms. Brown is a writer specializing in Latin American affairs. She has published numerous articles on human rights and is the author, for the Americas Watch and the American Civil Liberties Union, of the July 20, 1982 Supplement to their Report on Human Rights in El Salvador.

We would like to thank organizations and individuals that have assisted us in various ways during the preparation of this report: American Friends Service Committee, Amnesty International, Paz Cohen, OXFAM-America, John McAward, Craig Nelson, and the Washington Office on Latin America, as well as a number of journalists whose generosity we acknowledge and appreciate. In addition, we were greatly aided by our conversations with a dozen officials of the U.S. Embassy in Guatemala and the Department of State.

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TABLE OF CONTENTS

Introduction	
Summary and Findings	1
Part I - Human Rights Practices	
Chapter 1 - The Right to life	10
Rural massacres - guns and beans	12
Political murders in Guatemala City	26
The four executions	27
Chapter 2 - Civil and Political Rights	30
The right to personal liberty	32
1. Freedom from arbitrary arrest	32
2. "Disappearances" and kidnappings	35
The right to humane treatment	38
The right to freedom of conscience and religion	40
1. The crime of opinion	40
2. Prejudice against Catholic clergy	41
3. Molding nationalism	42
The right to freedom of expression	44
Political rights	46
Refugee rights	49
1. External refugees	49
2. Internal refugees	53
Part II - The Laws	
Chapter 3 - Guatemala's 1965 Constitution	55
Suspension of Constitutional guarantees	61
Structure and powers of the Judicial branch	63
The role of the Public Ministry	65
Process for amending the Constitution	66
Guatemala's international legal obligations	66
Chapter 4 - Legal Measures of the Rios Montt	
Government that Violate the 1965 Constitution	
and Guatemala's International Legal Obligations	70
Fundamental Statute of Government of	
April 26, 1982	70
Expanded scope of suspendable rights	77
Decree-Law No. 33-82 of June 1, 1982:	
The Amnesty Program	79
Decree-Law No. 45-82 of July 1, 1982	
State of Siege Law	81
Decree-Law No. 46-82 of July 1, 1982:	
Creation of Special Courts	85
Jurisdiction of the Special Courts	92
The Preliminary Investigation	93
Pre-Trial Proceedings	95
The Oral Trial Proceedings	95
Summary of Legal Measures	99

Part III - U.S. Human Rights Reporting	
Chapter 5 - Human Rights Reporting by the U.S. Embassy in Guatemala	101
Verification	103
Unverified information and assigning responsibility	106
Refugee accounts	108
Chapter 6 - A Case In Point: The State Department Critique of Amnesty International	111
Appendix A - The Enders Letter	119
Appendix B - State Department Critique of Amnesty International	123
1. Embassy sources	123
2. The seven incidents	125

INTRODUCTION

Summary and Findings

An Americas Watch delegation went to Guatemala in October to look into reports of persistent, widespread and flagrant violations of civil and political rights. We are aware, of course, that our concern for the protection of these rights must take into account the realities of Guatemala.

Like its Central American neighbors, Guatemala has an elite wealthy caste and an impoverished majority. The existence of a small urban middle class has not mediated the essential dichotomy of very rich and very poor. Because some sixty percent of the population is Indian, or indigena, and has historically been kept marginal in the country's political and economic life, a racial/cultural aspect is added to the problems of wide-spread illiteracy, malnutrition, and inequitable land tenure.

The current economic crisis in this, Central America's richest nation, has brought some of the long-term problems into even sharper relief. The armed conflict has also exacerbated them, most visibly by forcing hundreds of thousands of campesinos from their land and homes. As of April, before the current government's counterinsurgency effort took on its full force, the Catholic Church in Guatemala estimated that one million, of a total seven million Guatemalans, had been displaced by the conflict. The United Nations estimates conservatively 25,000 Guatemalan refugees in border camps in southern Mexico, and church sources inside the country claim

that there are currently upwards of 500,000 displaced persons in the environs of Guatemala City alone.

Against this background, we examined the status of civil and political rights in Guatemala. We came away profoundly disturbed by the policies and attitudes of the Rios Montt government. That government, whose legitimacy and authority derive only from the military, is committed, and has been committed from the outset, to a military solution. Indeed, we believe that the government of President Rios Montt is committed to total war. It asserts that it offers the people of Guatemala "fusiles e frijoles" - guns and beans. In other words, those who are with the government are fed; those who are not with the government are shot. No one is permitted to remain neutral. Those who do not aid the government - by forming civil defense patrols, or by providing information on the whereabouts of guerrillas - may not be allowed to live.

Obviously, such a policy of total war ensures that fundamental rights, such as the right to life, the right to physical integrity, the right to personal security and the right to liberty, will be little respected. Massacres of Indians that may be committed by the Guatemalan armed forces cannot be blamed solely on undisciplined, rogue troops. They flow directly from the announced policies of the Rios Montt government that recognize no neutrals.

The total war policies of the government of President Rios Montt are reflected in its decrees. Those decrees - as

we demonstrate in Chapters 3 and 4 abolish virtually all the rights of Guatemalans. Indeed, our close examination of the decrees promulgated by President Rios Montt since the March 23 coup persuades us that the Guatemalan Government has overtly abandoned the rule of law and that it has overtly substituted a system of government that is both despotic and totalitarian.

How long will the government need to win the war? Defense Minister General Oscar Humberto Mejia Victores told the Americas Watch that victory would come by year's end. But the base commander in Chimaltenango, General Arturo Getella, estimated "at least five to ten years," attributing the conflict to "four centuries of exploitation of the Indians that cannot be quickly overcome."

Vinicio Cerezo, leader of the Christian Democratic party, analogized the Guatemalan conflict to the war in El Salvador - where after three years of conflict the parties of the extreme are just now learning that no one wins; quick victory is impossible and all lose in such a war.

The Rios Montt government's commitment to a military solution is so great that it has foreclosed significant dialogue with civilians. No negotiations are underway to settle the armed conflict. Moreover, despite the formation of an "advisory" Council of State, civilian political leaders lack opportunity to influence the government. The political parties that refused to legitimize the Council of State by joining it are forbidden to function.

In practice, the government of the United States is also opposed to a political solution to the conflict in Guatemala or to a solution shaped by the country's civilian leadership. This is the effect of United States support for the strong man government of President Rios Montt. Far from offering a good chance to return democracy and respect for human rights, that government offers us only President Rios Montt himself who is apparently seen as an acceptable point man in a civil war. By supporting the Rios Montt government, the government of the United States supports President Rios Montt's total war policies which deny the residents of the Guatemalan countryside the right not to choose sides between the Guatemalan armed forces and the Guatemalan guerrillas. The United States also offers Guatemalans a choice of guns or beans.

If, in fact, a political solution to the Guatemalan conflict is desirable it must be asked whether the conditions for such a solution are present. They are not, precisely because human rights are not respected in Guatemala. Though the number of political assassinations in Guatemala City has declined sharply since the Rios Montt coup in March, the human rights situation in the country as a whole is as dismal as ever. The press is permitted to publish no information on the war except that provided by the army. Asked in mid-September when press freedom would be restored, Interior Minister Ricardo Mendez Ruiz publicly replied: "This is freedom of the press."

Most basic, the rights to life, personal liberty and

humane treatment are not respected. The Rector of the University of San Carlos, Dr. Eduardo Meyer Maldonado, told Americas Watch that there had been several disappearances from the university in the previous three months. On the day of that interview, another person disappeared. In the rector's view, the left is responsible for some kidnappings, including that of the Interior Minister's son (since released in return for the publication of a left-wing manifesto). He believes that the great majority, however, are attributable to the security forces. A prominent government official stated that such kidnappings are often the work of the secret police, responsible only to Rios Montt. After some months of relative calm, therefore, Guatemala City is once again the site of serious human rights violations attributable to the government. They are not random, it seems; as U.S. Ambassador Frederick Chapin explained, the university disappearances are an official "preemptive strike."

The rural situation is worse, however. The delegation learned of death threats against campesinos to coerce cooperation with the army; of torture and of soldiers burning entire villages. We learned of campesinos taken from their village in San Marcos department by the army and later found hanging from trees, mutilated. During our visit, some 2500 Indians left their villages in Chimaltenango department to "surrender" to the army, for lack of food and because of army pressure, they told a reporter. Part of that pressure is the army's insistence that villages form supposedly voluntary civil de-

fense patrols under the auspices of government-appointed "military commissioners" (sheriffs) and trained by the army. As the Americas Watch learned in interviews with displaced persons living under army supervision and receiving food from the military, these persons could not return to their villages without army permission, and that permission was contingent on the formation of a civil patrol.

Other forms of pressure on the civilian population amount to terror tactics. An indigena in Chiapas, southern Mexico, told us about soldiers' threats to kill her blind husband and her son unless she gave information she did not have. In the same series of interviews the delegation heard testimony from other refugees, who described army killings in San Marcos department.

We have little doubt that the guerrillas too are guilty of violations of human rights. We base our view that guerrilla violations of human rights have taken place, on hearsay evidence from knowledgeable sources - Guatemalans, U.S. State Department officials, journalists and others - and on kidnappings for which the left has claimed credit. The evidence that the Americas Watch has examined indicates that the armed forces are responsible for most of the killings, disappearances and massacres committed in Guatemala. The Americas Watch condemns all violations of human rights by all parties to the Guatemalan conflict.

We note in particular that neither side appears to take

prisoners. Guatemalan human rights groups advocate the entry into Guatemala of the International Committee of the Red Cross, and we share this position. When we questioned military officials about the possibility of ICRC oversight in Guatemala, we were met with evasion.

One of the most tragic consequences of the conflict in Guatemala is its effect on the indigenous population. Though we do not ascribe to the government any racial motive, the principal casualties of the government's counterinsurgency campaign have been the lives, the cultures, and the traditions of Guatemala's Indians. One of the twenty three linguistic groups, the Ixil in El Quiche, has been all but wiped out as a cultural entity.

The Americas Watch has examined another question: the methodology employed by the United States Department of State in attempting to refute reports by Amnesty International and others of army massacres and widespread torture in the countryside. Part III of this report analyzes that methodology in detail. Here we limit ourselves to stating that we discussed the matter at length with Embassy staff in Guatemala and with State Department officials in Washington and found that they use different standards of proof and judgment concerning alleged army abuses than with regard to alleged guerrilla abuses. We were reminded of the recent statement by Assistant Secretary of State for Human Rights, Elliott Abrams, who told The New York Times: "We think friends of the United States

should get some points for that."

"The subject of human rights," President Rios Montt has said, "is an international topic which they use to annoy a government which is against communism." Under his amnesty program, soldiers guilty of murder, torture and rape were pardoned if their actions took place as part of the counter-insurgency effort. Accordingly, no officer or soldier has been tried for human rights violations by the Rios Montt government.

In and of itself, this stated refusal to punish those guilty of gross human rights violations makes it vain to hope that human rights will improve under the government of President Rios Montt. The Americas Watch objects strenuously to efforts by the U.S. Department of State and its Embassy in Guatemala to paint developments under President Rios Montt in favorable colors. The Americas Watch also objects to the provision of military equipment to Guatemala which the U.S. Embassy staff in Guatemala City stressed as essential to maintain Rios Montt in power and prevent "something or someone worse."

The Americas Watch confirmed in important respects what other human rights organizations have found: that the situation of human rights in rural areas of Guatemala is as terrible now as under the previous government, and that in Guatemala City political violence is again on the rise. We consider the current government mostly to blame for this situation. By adopting a policy of total war, and by abandoning the rule of law, the Rios Montt government has become responsible for

the consistent pattern of gross violations of internationally recognized human rights in Guatemala. Accordingly, as a matter of United States law which forbids military assistance to such governments, the Americas Watch considers the furnishing of such assistance to Guatemala to be illegal.

CHAPTER 1

The Right to Life

"If you are with us, we'll feed you,
if not, we'll kill you."

- Army officer,
Cunen, El Quiche, Guatemala
July 1982*

For the past several years the Guatemalan military has distinguished itself as one of Latin America's worst human rights violators, in particular regarding the right to life. According to Amnesty International, 2,569 Guatemalans were murdered for political reasons in the last six months of 1981.** Disappearances were a common occurrence in both the capital and other areas, and massacres of Indian peasants became increasingly indiscriminate in 1980 and 1981.

The backdrop to this brutality was a combination of land-grabbing and counterinsurgency. Military officials, expanding their large landholdings in the north and northeast, directed the forcible eviction, and if necessary the mass murder, of peasants who refused to be removed.*** At the same time, the military

* New York Times, July 18, 1982, Raymond Bonner

** Amnesty International Report 1982, p. 140

*** The best known example of this pattern is the massacre of some 100 men, women and children in Panzos, Alta Verapaz, in May 1978.

and Guatemala's relatively developed private sector were faced with organized labor protest, a potentially large social-democratic movement and, most threatening, an insurgency that included increasing numbers of Indians.

The coup of March 23, 1982 and the advent of the government now led solely by General Efraim Rios Montt initially raised hopes that, in keeping with statements by the post-coup junta, human rights would be respected, free elections quickly held, dissent permitted. Despite the junta's abrogation of the Constitution and its rule by decree, early signs were construed as positive. Death squad activity, which had been linked directly to the government under the previous regime, fell off sharply in Guatemala City. A number of high-ranking officers were investigated for corruption. The junta's program spoke of reconciliation.

But there were contrary signs as well. Officers associated with past brutality, such as Col. Ricardo Mendez Ruiz, were promoted to key posts.* Though the junta spoke at first of bringing past violators of human rights to justice, it did not do so, and its amnesty decree of late May specifically pardoned those officers and soldiers who had committed murders in performance of their counterinsurgency duties under the previous government.**

* Mendez Ruiz, now Interior Minister, was formerly military commander in Coban, Alta Verapaz, where he earned a reputation for ruthlessness against the Indian population.

** For an examination of this decree, see Chapter 4.

Moreover, information began to emerge within weeks of the coup indicating that massive violations of human rights in the countryside had continued without pause and in continuity with the counterinsurgency plans developed by the previous government. More recently, Guatemala City too has seen indications of a renewal of violence against those considered to be government critics. And finally, the government of Rios Montt instituted the death penalty for political crimes; four presumed guerrillas were executed in mid-September after secret trials.

We here examine three categories of violations of the right to life under the current Guatemalan government: rural massacres (the government's "guns and beans" strategy), selective killings in Guatemala City, and the four executions. We devote the major part of our attention to rural killings because they reflect the nature of military efforts to eliminate unrest and because of the extraordinary proportions of the abuses being committed. For our discussion of the rural situation we have reviewed testimony gathered by reliable sources, gathered testimony and conducted interviews, and reviewed government statements and the press.

Rural massacres - "guns and beans"

Massacres in rural settlements continued steadily after March 23. In April and May, even Guatemala's right-wing press deplored the magnitude and savagery of these murders, and the savagery of these murders, and the conservative Conference of Bishops stated: "Never in our national history has it come to such grave extremes."*

* Statement of the Episcopal Conference of Guatemala, May 27, 1982.

On May 12, campesinos took over the Brazilian Embassy in Guatemala City to protest and publicize repression in the countryside.

Estimates of the number of campesinos (by which must be understood mainly Indians) killed for political reasons since the coup range from the 2,600 reported in October by Amnesty International* to 8,000 according to the Committee for Justice and Peace, a Guatemalan Christian group, and the Guatemalan Commission for Human Rights.** The Americas Watch does not endorse any figure; we have not conducted a case by case study of rural incidents. What we have examined is the pattern of events in Guatemala.***

Reliable sources charge the guerrillas with abuses in the countryside, including cases of intimidation and retaliation against government representatives and actual or presumed informers. We encountered allegations by knowledgeable persons, who did not provide details, that there are instances in which the guerrillas have engaged in massacres. We condemn these actions. Our delegation's visit to Guatemala and our other research have convinced us, however, that most of the killings of campesinos are attributable to the army, and that such extra-judicial executions are a central element in the government's counterinsurgency, or "pacification," strategy.

* Amnesty International press release, October 11, 1982.

** Interviews, Mexico City, October 17, 1982.

*** We have examined the methods of reporting used by Amnesty International, in light of the U.S. State Department's disagreement with AI's earlier findings on Guatemala. We find those methods to be sound. See Chapters 5 and 6.

Much, though by no means all, of the evidence supporting this conclusion comes from the statements of refugees in southern Mexico. Three representative examples serve to describe the nature of army attacks on noncombatants. These three statements recall events in three different departments; they were gathered by three different investigative delegations including our own.

- Statement of a 21-year old refugee from a village (name withheld) in Huehuetenango department, interviewed by representatives of Survival International USA. He stated that: "On or about June 15, 1982, soldiers whom he previously had seen arrived by truck in his village and surrounded it. They said that all people in the village were guerrillas, even the women and children. He ran and hid, then watched as the soldiers killed fifteen people, including women, with machetes. They set fire to the houses, and sometimes opened the doors to the huts and threw inside hand grenades. In all, fifty people in his village were killed. Soldiers also killed forty-nine people in the nearby town of(), which they burned as well. Two of those killed were his uncles. From a kilometer away, he saw women from the village who were hung by their feet without clothes and left."*

- Statement of two witnesses to a September 13 massacre in Agua Fria, municipality of Rabinal, department of Baja Verapaz, as told to the Justice and Peace Committee: "Fifty soldiers and about 150 forced civilians arrived in the village. The civilians were ordered to surround the dwellings and the walkways while the soldiers gathered the families, some of whom were still sleeping, and began their routine. They divided the women and children from the men and then threw gasoline on everyone and burned them. None of the

* "Guatemalan Refugees in Mexico: Statement of Fact-Finding Mission, August 22-September 3, 1982," Survival International, U.S.A. report based on affidavits of Thomas P. Anderson and Craig W. Nelson; paragraph 21.

civilians could come close; they could only listen to the screams. They [the witnesses] say that the fire lasted about half an hour and began to take things from the houses until the roof caved in. Then the army ate breakfast and began to take things from the houses ...They took clothes, radios, and the results of the harvest. The female witness lost 20 family members in the massacre, 5 adults and 15 children, the oldest of whom was 12 years old. She says that the child pleaded with the soldiers not to kill her and offered to make them tortillas. She was the only one who was not burned because she ran out and they machine-gunned her...The testimony of a third witness coincides with these two. In all, estimates are that this town had 26 houses and about 380 people, mostly children ...(A list of 79 people killed is attached and is identified as a partial list of the dead from 'the few families whose names we could gather.')"*

- Statement of a young man from Buyaj, San Marcos department, interviewed by a representative of the Americas Watch Committee: On or about June 25, 1982 soldiers dressed in camouflage and supported by a helicopter entered Buyaj, firing to intimidate the villagers. He and his father saw them taking people from their houses or away from their work - Vitalino Chavez, Luciano Chavez, Pedro Chavez, Victorino Mejia and an unnamed woman. The soldiers shot Francisco Bartolo as he was weeding his garden. They told the residents to leave, that the village was to be bombed. As the witness and his father fled they saw, hanging from the trees, the bodies of the three Chavezes and Victorino Mejia. Vitalino Chavez's eyes were gouged out, his tongue cut out. Later from a distance they saw planes bombing the village and the flames as the settlement was burning. (Three other refugees from Buyaj supported this account of the bombing and burning.)**

* "Guatemala: Government Against the People - Witnesses of Indian Massacres March-September 1982," document prepared for the conference on Human Rights in Guatemala organized by John Hopkins School for Advanced International Studies and the Washington Office on Latin America, Washington, D.C., October 21, 1982, pp. 25-26

** Interviews conducted in Ejido Cordoba, Union Juarez, Chiapas, Mexico, October 19, 1982.

Some debate has arisen as to responsibility for massacres because the army has accused the guerrillas of wearing olive-green fatigues to deceive the rural population when they attack non-combatants. Refugees, on the other hand, state that the guerrillas do not attack villages, but that the army often operates in civilian dress to appear like guerrillas. For example:

The Army dressed in civilian clothes, saying that they were guerrillas, and asking the neighbors to join them. Sometimes, the peasants would not understand what was happening. The Army would say, "We are guerrillas from a certain organization. Write down how you can help us." Sometimes, people would agree. The "civilians" would leave, taking the name of the family. They went from house to house. Sometime later the Army, this time in uniform, would return to the family's home and accuse it of being in sympathy with the guerrillas. When the family denied it, the Army officials would say, "The guerrillas passed on such and such a day, at this certain time, and you agreed to help them." The peasants would hear this, grow quiet, and the Army would massacre the whole family. This is one method the Army uses...."*

While such a tactic may work in some cases, Indian sources with whom the Americas Watch delegation spoke, as well as knowledgeable persons in the U.S. government and in human rights organizations, maintain that campesinos are not generally

* Testimony gathered by Susan Shawn Roberts and Ernest Norton Tooby and presented in sworn deposition to the Working Group on Indigenous Populations of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities in August, 1982; reproduced in "Guatemala: Government Against the People," op. cit., p. 33.

confused by disguise. Soldiers' identities show in their accents, gestures and the fact that they often do not speak the area's Indian language (there are 23 such languages in Guatemala). Weapons too distinguish the army from guerrillas; campesinos know the word "Galil" for the Israeli-made rifle used by the armed forces, and know the difference between a Galil and the M-16's of the guerrillas. Troop strength and heavy equipment are other signs; the army generally moves in larger units, and any aircraft, heavy vehicle or ground artillery used in the field identifies the force as soldiers.

The Guatemalan government has argued that some killings of unarmed civilians are a necessary cost of counterinsurgency warfare, given that the guerrillas enjoy considerable rural support. As presidential spokesman Francisco Bianchi told one American journalist, Allan Nairn:

The guerrillas won over many Indian collaborators...Therefore, the Indians were subversives, right? And how do you fight subversion? Clearly, you had to kill Indians because they were collaborating with subversion...(T)hey weren't innocent.*

This argument goes to the heart of the Guatemalan army's attitudes toward Indian peasants' right to life. Army methods of distinguishing "subversive" from "non-subversive" individuals or villages can be crude at best. As Indian sources told us, to show fear in the presence of soldiers places a campesino under

* "Guatemala Can't Take Two Roads," New York Times, July 20, 1982, editorial

immediate suspicion, and in immediate danger. Asked how he acts when raiding a village including women and children, if that village is suspected of harboring guerrillas, a soldier in Cunen, El Quiche told Washington Post reporter John Dinges: "When there is a battle, we shoot at everybody alike, even though they don't have uniforms...Practically all of them are guerrillas...so the order is to attack everybody alike."* Another soldier told American journalists recently that those who flee when the army enters a village are considered "subversive collaborators" or "possibly" guerrillas and therefore are pursued and killed. A string of villages in El Quiche were given as examples.

Another way of measuring political sympathy, according to military thinking, is whether or not a village is eager to form a "civil defense" patrol, or army auxiliary force. These forces were conceived as part of the counterinsurgency effort in late 1981 by the previous head of the armed forces. Indians frequently try to impress upon the army that they do not want to be incorporated into the war effort. "We are working people," they explain; their farming demands all their energy. They argue that fighting the guerrillas is the army's task, not theirs. Our delegation learned of several such cases in Huehuetenango and Alta and Baja Verapaz, from Indians and aid workers who all stated that the civil patrols function as much to control the civil population as to fight guerrillas: the patrol watches who

* "Guatemala Organizing Peasant Antirebel Units," Washington Post, July 19, 1982.

enters and leaves a village, monitors the inventories of stores (any missing food is presumed to have gone to the guerrillas) and keeps the village surrounded at night. Villages with civil patrols are considered "white" villages, under army "protection" and sometimes benefiting from army programs of food distribution and housing aid; the others are "red" villages and targets.

Two Indian sources from Huehuetenango provided us with an example: in April, the army began to ask the population of one village to prove it was not pro-guerrilla by forming a civil patrol. The population responded by offering, instead, to fill in trenches that the rebels had dug in nearby roads, as a sign of good faith with the army. They did this, and were left alone for a time. But later the army increased its pressure, calling the villagers into the central square and asking why no one had denounced guerrillas, whom they must have seen in the mountains while farming their lands. After several such meetings, and no denunciations from the peasants, the army threatened in June to bomb the village. The peasants then formed a civil patrol. Thus, even sustained efforts to be neutral in the conflict are not respected.

Yet formation of a civil patrol is not always enough, as is clear from testimony given to Survival International U.S.A.'s delegation in southern Mexico:

Statement of a 44-year-old man from village (name withheld) in Huehuetenango: "On or about July 23, 1982, government soldiers arrived in his village. The same soldiers had been there on two previous occasions to organize a civil patrol, an organization whose sole purpose

he says, was to keep watch on the town. The first time, in early July, they said all the villagers were now soldiers and guns would be put in their hands. The second time, on July 20, they recruited many boys. This time, they called everyone in the village enemies of the government.. They drove off the cattle, killed many peasants, and burned the village. Those who had joined the civil patrol participated in the killing, then were themselves killed by soldiers...He and other residents fled as their village burned..."*

The case of the finca "San Francisco," in the municipality of Nenton, Huehuetenango, deserves particular mention in that it is especially well-documented and well-known. The finca was located in an area known to be largely sympathetic to the guerrillas. Extensive testimony, including a list of over 300 dead, has been given by survivors in Chiapas, southern Mexico. Two of these survivors were interviewed by New York Times correspondent Alan Riding, who reported as follows:

Mr. [Andres] Paiz Garcia, 45 years old, said he was in San Francisco when some 500 soldiers "and six colonels" arrived around 11 AM on Saturday, July 17. Shortly afterward, he recalled a helicopter landed and some men were ordered to help unload the boxes. The soldiers then called all the villagers together, putting women and children in the hamlet's chapel and a nearby house and gathering the men in a wooden building known as the "juzgado"...Mr. Paiz Garcia was among those assigned to collect the cows and escape into the undergrowth surrounding the village...Mateo Ramos Paiz was among the men crowded inside the juzgado. "The war started first with the women in the house," he said in an interview. "With shooting, with pure lead, they killed the poor women.

* "Guatemalan Refugees in Mexico: Statement on Fact-Finding Mission, August 22-September 3, 1982," Survival International U.S.A. op. cit., paragraph 25.

Afterward they burned the house. They then turned on the chapel. No firing, just machetes and knives. We heard the noise of crying women and children and they said our turn was next."...He said the men were taken out of the juzgado in groups of eight and shot...Mr. Ramos said he was pushed into a corner of the juzgado by the other men, who were panicking. "I knelt down, then suddenly I felt how they threw bombs...I felt a stream of blood. Why doesn't it hit me? I asked. I was under about 10 bodies..."He said that in the evening, at about 8 PM, when the soldiers were listening to music on stolen tape recorders, he escaped through the window of the juzgado...*

Mr. Ramos lost his entire family in the massacre.

Survivors from San Francisco also told the Times that they returned more than once to the village. The first time, five days after the event, they found the remains of the massacre. The last time, on September 30, some weeks after reports of the incident had begun to circulate, they found the site cleaned up, the corpses apparently buried nearby.**

If, as these survivors suspect, the army cleared the site for the sake of possible foreign observers, this highlights a problem affecting much human rights reporting inside Guatemala today. In recent months the army has prevented independent observers, like the volunteer medical teams called bomberos, from entering rural sites soon after skirmishes or other incidents as they always have in the past; bodies are buried, however, presumably by the

* "Guatemalans Tell of Murder of 300," New York Times, October 12, 1982.

**Interview, Alan Riding, Mexico City, October 15, 1982.

soldiers themselves. This, combined with the press censorship in force since July, has controlled the flow of information within Guatemala; it permits the army to report the number of dead as it likes, as well as their identity - whether calling them guerrillas or guerrilla collaborators, or members of civil patrols whose presumed loyalty to the government would make them more likely, so the reasoning goes, to be killed by guerrillas than by soldiers. These measures appear to have been taken in response to embarrassing publicity on army massacres, such as one editorial in the daily, El Grafico, which read in part:

To anyone who has any sympathy with his fellow men, the type of genocidal annihilation that is taking place in the Indian zones of the country is truly horrifying...There has been much talk of improving our image abroad, but this image will continue to blacken itself more and more with this new resurgence of blind and absurd violence... This new resurgence of mass murders sends the message that Guatemala is very far from peace, or even a decrease in violence. In the outside world they will once more close their doors to us, because in fact we do not deserve any aid as long as this keeps occurring.*

That editorial, and a similar one which preceded it, were carefully worded not to put a name to the culprits. They were "assassins" - not "soldiers." But the pointed reference to hopes for aid, to image-making and to a "resurgence" of massacres, all pointed the finger of blame at the army. Such press criticism of a military government had not taken place in nearly thirty years.

* El Grafico, May 20, 1982, Editorial signed by Jorge Carpio Nicolle.

The terror these editorials condemned is but one side of a two-sided strategy, the guns portion of "guns and beans." In addition to killing campesinos, the army has selected areas of strong guerrilla support in which it has also burned crops, destroying the Indians' livelihood and the guerrillas' source of food. Displaced populations may flee in time to avoid being murdered, but unless they reach the relative safety of Mexico they face a choice between surrendering and living in hiding, on the edge of starvation. Many have turned themselves over to the army, which offers them food and medical care in centers of military control where they can be watched. According to government officials, these "beans" amount to between 70% and 80% of the "guns and beans" effort.*

The department of Chimaltenango west of Guatemala City offers an example of the process. Since May, there have been persistent reports of army pressure on villages in the area of the San Martin Jilotepeque municipality. In early October, some 5,000 Indians from villages in San Martin turned themselves over to the army.**

Those from this group with whom our delegation spoke in a refugee settlement all echoed the army version of their plight: deceived by the subversives, they had come for food and were happy

* Interview, Minister of Defense and Chief of Staff of the Armed Forces, Guatemala City, October 21, 1982.

** The Americas Watch delegation was unable to confirm a report that 300 of them were executed by the army when they arrived.

being safe. Our interviews also established, however, that they were not free to go back to their villages, although all expressed the desire to do so; they could leave only with army permission, and that permission depended on their forming civil patrols. These had not been "white" villages.

On October 20, 2500 more "came down" from the hills, carrying white flags of surrender. While the group's spokesman delivered a statement about guerrilla coercion, refugees in the crowd told a different story to National Public Radio reporter Julia Preston:

"We decided to surrender," [name unclear] said, "because there was too much killing in our villages. The guerrillas were with us for a time, but they left a month ago..." "Who's doing the killing?" I asked. "Men who look just like those soldiers," he said, pointing to the army troops posted nearby.

The army colonel in charge welcomed the Indians, but objected to their white flags of surrender. "You don't need to surrender to us," he protested, "The army has not been at war with the Indians." But the Indians did not agree. They said army troops had burned houses in their villages three times this year. Many have no place to live. They also said the army had surrounded the area so they had not been able to leave to look for work..."We were afraid to leave because they'd kill us," one woman said. "Some Indians were shot and some had their throat slit," she said. "They killed women and small babies."

The Indians from San Martin said they hadn't had enough food for three months...The final decision to surrender was precipitated by an army patrol last Friday which left three young children dead...*

* Report for National Public Radio, broadcast October 23, 1982.

The deliberate policy of forcing peasants to near starvation - what Guatemalan human rights groups, referring to the burning of crops, call a scorched earth policy - is, we believe, relevant to a discussion of the right to life. Crop-burning, confiscation of harvests, slaughters of animals - these are tactics of war which affect more civilians than combatants.

The food-control policy extends to some "safe" villages as well, suggesting that the army does not trust even those Indians who have declared their loyalty and formed civil patrols. On the basis that extra food kept in houses or brought from market might be destined for the guerrillas, the army and civil patrols in some areas confiscate any amount above the ration allowed. As a rural relief worker told our delegation about Huehuetenango, "The people are frightened even to buy Incaparina [an infant formula]; so many of the babies are sick." An Indian source told the delegation of an incident in Solola, in which a man going to the city to sell sausages was unable to give soldiers the exact address of the market; the soldiers, said this source, put an army uniform on the man, threw him in the back of a truck and "he never appeared again, we think they killed him."

The policy is not entirely new with the current government. There are refugee statements which indicate that food confiscation was an army practice before the coup as well.* The Rios Montt regime, however, has systematized it, in the same way that it has systematized the tests of loyalty and the elimination of non-combatant enemies.

*See, for example, paragraph 37 in "Guatemalan Refugees in Mexico..." Survival International U.S.A., op. cit.

Political murders in Guatemala City

The climate in Guatemala City is not what it was in 1980 and 1981. At that time, political murders were so common that city residents lived in terror of being picked up by the "death squads" known to be directed by the government and manned by security personnel. Today Guatemala City is advertised as safe at night, and this is largely true - although twice in three nights the Americas Watch delegation heard gunfire from nearby streets. The change has led some observers, including the U.S. Embassy in Guatemala, to conclude that the new government has effectively "cleaned up" the death squads. But political murders in Guatemala City have not ceased; they have, rather, declined sharply.

Based on Guatemalan and Mexican newspaper reporting that it regards as incomplete, the Committee for Justice and Peace cites seven cases of political murder in Guatemala City during May and June alone. In every case, the press attributed these murders to "paramilitary groups," to whom they also attributed several kidnappings.

The victims included two teachers (killed together), two students, another youth, and two men whose age and profession are not indicated. In addition to the seven murders, there is a case of attempted murder, reported on June 7, in which a "paramilitary group" tried to burn a man alive.*

* Committee for Justice and Peace, monthly listings. June was the most recent listing available in mid-October.

The reference to "paramilitary groups" may be the press's cautious way of avoiding mention of police or other official forces. Or identification of the attackers may have been impossible. These killings strongly suggest, however, that the so-called death squads did not disband but merely reduced their activity during Rios Montt's early months. The more recent series of disappearances in Guatemala City* supports this analysis.

The four executions

On September 17, four young men were executed by firing squad in a cemetery outside Guatemala City. They had been tried and convicted for crimes against "national security," by a secret military court. The government's announcement of the pending executions, released on September 16, was its first admission that the secret tribunal existed.

According to Defense Minister Gen. Oscar Humberto Mejia Victores, as of mid-October six other "subversives" - of total 40 arrested in preceding months - had been sentenced to death. The remaining 30 had been released.

The four executed were named as Jaime de la Rosa Rodriguez, Julio Hernandez Perdomo, Marcelino Marroquin and Julio Cesar Vasquez Juarez. An army bulletin stated that de la Rosa had been convicted of killing a police officer and another person, as well as lesser charges; the other three were found guilty of

*See Chapter 2.

attempted murder, robbery and threatening national security. Despite pleas from family members, the government has not revealed the locations of the four men's graves.

The court that handed down the death sentence is Special Court, established under Decree Law No. 46-82, which came into force on July 8. Chapter 4 of this report examines the legal ramifications of instituting the death penalty for broadly defined political crimes and the unacceptable procedures followed by the Special Court. Here it is sufficient to note that the procedures permit neither adequate defense nor appeal. The location of the court is secret. Detention may be unlimited.

The government's attitude in response to protests from human rights organizations has ranged from ambiguous to adamant. On October 26 President Rios Montt announced that, in light of protests from the InterAmerican Commission on Human Rights of the OAS, the death penalty had been suspended "temporarily" and that the six sentenced to die were being allowed to appeal. The wording of this announcement offered no guarantee that the death penalty will not be reinstated after the current "review" is complete. Moreover, under the conditions governing the Special Tribunals, it is questionable how effective appeal can be. A more informal indication of attitudes comes from Defense Minister Mejia, the man in charge of the Special Courts. Asked by our delegation whether the government was not disturbed that arbitrary "justice" places it in the category of a totalitarian regime, he replied: "When it is necessary, we must do the

same [as those regimes]."

As we state elsewhere in this report, the death penalty and the conduct of the Special Courts violate both Guatemalan and international legal norms. In light of the four executions, it is sheer cynicism for Guatemalan officials and their apologists to point to the 30 whom the Special Courts did not convict and say that the system shows mercy.

CHAPTER 2

Civil and Political Rights

A sampling from a single Guatemalan newspaper, El Grafico, for a single day, October 29, provides a glimpse of events and abuses taking place in Guatemala City.

- "Four bodies identified:" the bodies of four brothers found in Zone 7 of Guatemala City were identified by relatives; the article notes the four had been abducted from a rural village.

- "Dr. Carlos Padilla Galves freed": the director of a hospital in Solola, kidnapped on August 26, was released by the National Police on October 28; the Special Courts had investigated charges (not made public until his release) that Dr. Padilla had collaborated with and given medical treatment to guerillas.

- "Father of Rios Munoz has 3 days": a group calling itself the Christian Group for the Respect of Life had advised the brother of Rios Montt that it was responsible for the kidnappings of his son, the President's nephew, and that it would release him only if police house raids in Guatemala City were stopped and a "disappeared" woman was released and given safe conduct into exile.

- "Dr. Gustavo Castaneda detained after a search of his house": a prominent pediatrician, father of an assassinated student leader, was arrested on October 28 by the police, on charges unknown.

- "Journalists [speak] before the Council of State": the advisory Council of State held a forum to hear comments from the directors of major news media. Among them Jorge Carpio Nicolle of El Grafico called for "freedom of opinion and dialogue," and for "reform with the goal of pluralism." Pedro Julio Garcia of Prensa Libre protested what the article called "a campaign of hostility" against his paper.

- "Vinicio Cerezo protests the search of the house of Maldonado A.": the Christian Democratic leader characterized as "incomprehensible" the recent search of the residence of a conservative politician who had been a candidate in the March 1982 elections. Cerezo charged that, if the house searches continue, many people including political party leaders will have to leave Guatemala, as has happened under other regimes.

- "Escobar Arguello: The politicians' attitude is unjustified:" the sub-secretary of public relations for the presidency was referring to publications of certain political parties (unnamed in the item, but presumably the four that stand opposed to the government), and he wished to remind them that under the state of siege such publications are restricted. He added that there was no reason for the parties to demand a return to constitutionality, there was no hurry for that.

From this random sampling of publishable items, it is evident that a wide range of civil and political rights are being violated in Guatemala, quite apart from the continuation of

massive rural killings. Several of those violations are discussed below.

The right to personal liberty

1. Freedom from arbitrary arrest

Decree-Law 24-82, the Fundamental Statute of Government promulgated by the junta on April 26, derogates the 1965 Constitution of Guatemala and replaces it as the country's fundamental legal document. The Statute, promulgated in violation of the 1965 Constitution, deletes or fails to protect numerous rights guaranteed in the 1965 charter. Article 23, for example, permits arrest based on a written order from a "competent authority" - defined as a any governmental agency, including armed forces and security forces - for crimes, misdemeanors, or "as a security measure."

Further, the state of siege in force since July 1 suspends all individual rights protected by the Fundamental Statute. Among other provisions, it permits military authorities to arrest, without court order or warrant, "anyone suspected of conspiring against the constituted government." It thus legitimizes arbitrary - and unlimited - detention. President Rios Montt described the purpose of the state of siege succinctly to Raymond Bonner of the New York Times: "When the Constitution was in force, I could not search for someone in a house. So I have to establish a legal framework so I can enter a house.*"

*"Guatemalan Leader Tells His Reasons for the State of Siege," New York Times, July 15, 1982.

For a detailed discussion of these decree-laws, see Chapters 3 and 4 . As for their effects, a few cases suffice.

- Dr. Juan Jose Hurtado, a 56-year-old pediatrician, anthropologist and professor, was arbitrarily detained for 37 days in June and July, and released only after widespread international publicity and protest. A mission of inquiry (that included the Director of the Washington Office of the Americas Watch) sent by several American health organizations to investigate his case, reported:

On June 24, 1982, at approximately 8:00 a.m., Dr. Hurtado was taken by armed men wearing civilian clothes from the street in front of his clinic in Zone 9 of Guatemala City. A week and a half later, on July 4, Guatemalan President Efraim Rios Montt announced in his Sunday television message to the nation that Dr. Hurtado was a prisoner of the government. On July 13, Hurtado's wife was allowed to see him at the National Police Hospital for a 5-minute visit. This visit was filmed and later televised by government communications facilities. The film showed Dr. Hurtado embracing his wife, then collapsing back on the bed, appearing exhausted and weak ... To date [July 27] no charges have been brought against Dr. Hurtado nor has he been allowed access to lawyers*

Dr. Hurtado was accused, if not precisely charged; in his

*"Human Rights in Guatemala Today: The Case of Dr. Juan Jose Hurtado," preliminary report of a mission of inquiry to Guatemala prepared for the American Association for the Advancement of Science, the American Public Health Association, the American Anthropological Association, the National Association of Social Workers, the Public Health Association of New York City and the Institute of Medicine of the National Academy of Sciences; July 27, 1982, by Jonathon Fine, M.D., Robert Hinshaw, Ph.D., and Juan Juan Mendez, Esq., pp. 2-3.

July 4 address, President Rios Montt said of Hurtado, "He is not merely a communist, but a captain of many units." No evidence was offered to support this charge, and the mission of inquiry concluded that, of several possible motives for his arrest, "the most prevalent, and, quite possibly, the most plausible theory is that he was initially seized one day after the kidnapping of the son of the Minister of Interior as a hostage for exchange."* The guerrilla groups, however, evinced no interest in Hurtado.

- Dr. Carlos Padilla Galves, director of a hospital in Solola, whose case has been mentioned above, was detained on August 26 and tried by the Special Courts on charges of collaboration with the guerrillas. After his release on October 28, National Police Chief Ponce Nitsch justified the secrecy under which Padilla had been held by saying that it was necessary to expedite the investigation. At the same press conference, the police chief revealed that among other cases under investigation was that of a professional, Edgar Arnaldo Lopez Straub, detained on October 13 at his office in Guatemala; Ponce Nitsch would not describe the charges against him.**

- Eight middle-level leaders of political parties were arrested in August for violating "laws in force," according to the August 14 government announcement of their arrests. All were affiliated with rightist parties: three from the National

*Ibid, p. 11.

** "Dr. Carlos Padilla Galves liberado," El Grafico, October 29.

Liberation Movement (MLN, which describes itself as the "party of organized violence"); the other five from the National Authentic Central (CAN) and the Popular Democratic Front (FPD), both parties led by military men. The Washington Post reported that they were being held at an Army base in the capital of El Peten, Guatemala's northernmost department.* They were subsequently released.

- Dr. Gustavo Castaneda was taken from his house on October 28, after police searched the house and confiscated "subversive" printed material that had belonged to his late son Oliverio Castaneda de Leon, a national student leader who was assassinated in October 1978. Dr. Castaneda, who is 70 years old, was held without charges for several days.

- According to Guatemalan military officials, in mid-October there were six prisoners being held for trial by the Special Courts; these six remained in detention from a group of 40 arrested between the promulgation of Decree Law No. 46-82 and mid-September. Thirty of that group were released, four were executed. The remaining six have been sentenced to death, although execution of the death penalty has been temporarily suspended.

2. "Disappearances" and kidnappings

The Guatemalan press regularly carries paid advertisements from relatives of "disappeared" individuals who ask the authorities to investigate and inform them of the results. The

* "Guatemala Arrests 8 Civilian Party Leaders," Washington Post, August 17, 1982, John Dinges.

government, for its part, states that it is investigating disappearances, through the National Police, and that it is also concerned about disappearances that occurred under the previous regime. To date, however, this government is not known to have brought any member of the security forces to trial for disappearances prior to March 23, 1982, nor to have disciplined any member of the security forces for recent cases. Moreover, in May, when students at the University of San Carlos attempted to deliver a petition from an association of families of disappeared persons to the government, they were not allowed to do so.

The authorities maintain that most disappearances are carried out by the left. The identities of the disappeared suggest otherwise, however. Youths and students seem to be the urban group most affected, in particular students from the politically-activist University of San Carlos, Guatemala's largest educational institution. In August, the Treasurer of the Economic School at the University - and her three children - were abducted. On September 4, a student of architecture at the University and his younger brother reportedly disappeared.* According to Dr. Eduardo Meyer Maldonado, the government-appointed Rector of the university, 9 students disappeared between May 15 and August 19. In an interview with the Americas Watch delegation, Dr. Meyer attributed these abductions to government security forces. The U.S. Embassy in Guatemala concurs; Ambassador Frederic Chapin told the delegation that the student disappearances are in the nature of a government "pre-emptive strike" to inhibit organized protest at the university.

* Amnesty International, Central America Special Action; November 4, 1982.

In addition to these individual cases of which we are aware, we note that the Committee of the Relatives of the Disappeared, on whose behalf university students have been active, estimated in October that the rate of urban disappearances had increased to 8-10 per day.* Thus, while violences in Guatemala City drastically diminished right after the March coup, unacknowledged detention or "disappearances" are still carried out, apparently by government forces.

Opposition groups too engage in abductions, generally for ransom or in order to bargain for publicity. Two recent cases are the June 23 kidnapping of the son of Interior Minister Mendez Ruiz, and the disappearance of the nephew of President Rios Montt. The Guatemalan Workers Party (PGT), which has a guerrilla arm, released Mendez Ruiz's son on August 12 after the family paid for newspaper publication of a PGT manifesto. As of the end of October, the President's nephew was still missing; his family had heard from the captors - a group calling itself Christian Group for the Respect of Life - that he would be released if the police ended their searches and seizures in Guatemala City neighborhoods and if the government would produce, and guarantee safe conduct into exile for, a "disappeared" woman.

In the countryside disappearance is a great deal more common, according to rural aid workers and the statements of refugees. Indians from Huehuetenango who spoke with the Americas Watch delegation, too, described routine army checks of identity documents that had led to disappearances, and of soldiers stopping buses and detaining selected passengers who later have not reappeared. It is impossible to assess the proportions of

*Special Update, "Guatemala: The Role of Revolution," Washington Office on Latin America, October 1982, p. 13.

this situation, since press access to information from the countryside now has been cut off and human rights monitors work at such risk.

The right to humane treatment

Refugee accounts consistently emphasize the army's brutality. Two examples from Chiapas, southern Mexico:

- Testimony given to a representative of the American Friends Service Committee, concerning a June 21 incident in a village whose name is withheld: "First they came in helicopters and gathered the people together. Then, one by one they took them away and killed them. As for my own family, they killed seven. And after they killed the people they chopped them up and picked at them with machetes. In some cases, they first tortured them, cut them up with machetes, put gasoline on them, and then burned them alive...And as for killing the children, they don't use firearms. They carry guns, but they don't use them on children; they kill them with their hands...What my uncle saw when he saw them kill my seven relatives: he saw them grab the children by their feet and smash their heads against a post, or take a rope, tie it around the child and three pull it in one direction, three in another..."*

- Statement made to the Committee for Justice and Peace by a young girl from Concul, Rabinal, Baja Verapaz, about an incident on July 18, after uniformed soldiers arrived: "They took the young girls to another, more distant house and when it was getting dark, a soldier came and asked what they were going to give them. Then they began raping, beginning with the youngest who were about 12 years old. When the soldiers went off with some of the girls this girl escaped and got into the woods in the dark. In the morning, she didn't see anyone and went to the house to look for her mother and found that everyone had been burned...She found her mother's body, only

* Testimony of Angela Berryman, American Friends Service Committee, before the Subcommittee on International Development Institutions and Finance, House Committee on Banking, Finance and Urban Affairs, August 5, 1982, p. 5

half burned and she heard an old lady cry out, 'kill me one and for all.' She was so afraid that she ran off and passed the house where the young girls had been and saw them spilled in the bush and on the road and around the house...."*

These, which are representative of the content of many refugee statements, make it evident that torture, mutilation, rape and burning of Indians, including burning alive, are methods commonly used by the army.

Interrogation of supposed guerrilla sympathizers who are detained in rural areas is also brutal. Information received by Americas Watch indicates that torture routinely accompanies interrogation in the countryside, ranging from beatings to somewhat more sophisticated methods of pressure.

The state of siege decree authorizes arbitrary, prolonged incommunicado detention. These conditions increase the likelihood that torture may be used to extract information and coerce confession from a political prisoner. We possess little information on cases of torture in Guatemala City. Particularly with regard to the forty prisoners detained to face the Special Courts, however, we are concerned that during their varying periods of confinement they may have been subjected to physical mistreatment. We also note three additional cases:

- Roberto Paz y Paz, a journalist, was abducted by

* "Guatemala: Government Against the People - Witnesses of Indian Massacres, March - September, 1982," document prepared for the conference on Human Rights in Guatemala organized by the John Hopkins School for Advanced International Studies and the Washington Office on Latin America, October 21, 1982, p. 12. (Summary version of testimony).

unidentified men on October 22 outside the University of San Carlos. When he reappeared on November 2, he had been beaten and tortured.

- Dr. Padilla Galves, whose case has already been discussed, was held for two months. The Americas Watch has reliable information that he was physically mistreated during his detention.

- Dr. Juan Jose Hurtado's condition in detention prompted a mission of inquiry to report:

We are seriously concerned that Dr. Hurtado may have been subjected to physical, abuse, psychological terror, and torture. Our suspicions are re-enforced by the refusal of the government to allow daily or regular visits to him and by the refusal to allow us to see him.**

Dr. Hurtado has declined to discuss the conditions of his confinement, on the basis that he had amnesia from the time of his detention until July 13 when his wife visited him in the National Police Hospital.

The right to freedom of conscience and religion

1. The crime of opinion

Guatemala's state of siege law, Decree Law No. 45-82, makes

** "Human Rights in Guatemala Today: The Case of Dr. Juan Jose Hurtado" op. cit. p. 11

persons subject to warrantless arrest if they are considered "persons belonging or having belonged to groups that act in cooperation with or in subordination to international organizations that uphold the philosophy of Marxism-Leninism."* Thus it establishes a "crime of opinion," with ideas or presumed ideas, rather than actions, being sufficient grounds for limitless detention. Thus, the authorities may arrest whom they please solely on the basis of an accusation concerning the detainee's thoughts and philosophy. Moreover, the detainee has no effective legal recourse since the writs of habeas corpus and amparo are suspended during the state of siege.

2. Prejudice against Catholic clergy

Although the Catholic hierarchy in Guatemala is doctrinally and socially conservative, for over a decade local priests in the poorest areas - notably El Quiche and Huehuetenango departments, among others - have supported Indian efforts to organize for economic improvements, agricultural education and literacy, on the basis of a theology of liberation that has identified much of Latin America's Catholic Church with the economic and social aspirations of the poor. Under Lucas Garcia many such priests were either killed by rural security forces and death squads or forced to abandon their parishes and flee the country.

Rios Montt has announced that exiled priests may return to Guatemala - but only on condition that they limit their work

*Article 8

to purely spiritual matters. Priests consulted in Guatemala and the U.S. know of no case in which exiled Guatemalan clergy have accepted this offer.

Local priests and nuns, though emphasizing that under the current regime they feel safer from physical harm, indicate that there is hostility toward the Church from the army stationed in northern provinces. The Americas Watch has both gathered and read direct testimony describing incidents, and a general climate, of harassment based on the army's suspicions that clergy are "subversives."

The official attitude toward socially-concerned sectors of the Catholic Church differs sharply from the official attitude toward fundamentalist Protestantism. This may reflect the personal beliefs of Rios Montt, himself a "born again" Christian, but it is also noteworthy that the religious message brought by some fundamentalists tends to support the counterinsurgency effort. "He who resists authority is resisting that which has been established by God," said a fundamentalist preacher at a military-sponsored rally in El Quiche in July. "He who lacks God in his heart is the one who is unable to love the authorities."

3. Molding nationalism

The Rios Montt government has committed itself to form a new national consciousness, one consistent with its own ideas,

*"Guatemala Organizing Peasant Antirebel Units," Washington Post, July 19, 1982, John Dinges.

to "mold and maintain a nationalism compatible with the traditions of the country,"* according to a confidential document titled "National Security and Development Plan," dated April 1, 1982 and signed by what was, at that time, the three-man governing junta. The plan includes, in the "sociological field," a recommendation

(t)o structure and define nationalism, promote and encourage it in every organization of the State and spread it to the rural area, making sure that it forms part of the process of education and training of the population, as a doctrine opposed to international Communism.**

The junta's attitude toward the purposes of education is also worthy of note; the document advocates that the new government

make sure that programs are conducted, designed to reduce the levels of illiteracy, in order to make the population more receptive to new ideas and augment the feasibility of actions directed at the molding and maintenance of nationalism.***

Whether or not such a plan is feasible in Guatemala, the document indicates the extent to which pluralism in the realm of ideas and education is valued or respected by the nation's current leadership.

*"National Security and Development Plan," Army of Guatemala PNSD-01-82 Guatemala CEM 4/1/82 RLHGCC-82. p. 3.

**Ibid, p. 4

***Ibid, p. 5

The right to freedom of expression

The Guatemalan press welcomed the post-coup junta's promises of more honest government and action against the death squads. After the repression of Lucas Garcia - 15 journalists were killed or "disappeared" between June 1980 and the end of 1981* - the press looked forward to conditions with which it could politically be comfortable. The honeymoon was brief, however, and surprisingly so in light of the press's conservatism and its accomodation of brutal military governments in the past.

In May, the daily El Grafico carried two editorials on rural massacres, and the paper's editor, Jorge Carpio Nicolle, took the unusual step of signing them. Both, while not accusing the army outright, contained a strong implied accusation against the government. The second referred to Rios Montt's effort to obtain U.S. military aid, stating: "This new resurgence of mass murder sends the message that Guatemala is very far from peace, or even a decrease in violence. In the outside world they will once again close their door to us, because in fact we do not deserve any aid as long as this keeps occurring."**

El Impacto also editorialized against the massacres: "The sterile sacrifice of Guatemalan Indians in the western highlands

* "Writers and news media professionals imprisoned, killed or 'disappeared'" Amnesty International, September 154, 1982, AI Index: ACT 71/01/82, p. 6

** El Grafico, May 20, 1982, quoted in special update, "Guatemala: The Roots of Revolution," op. cit., p. 1.

is reaching Dantesque proportions, and the number of innocent victims is growing daily.*

On June 24, the building housing Prensa Libre, a major daily, was machinegunned by unidentified men. The government denied responsibility, but Prensa Libre reported on June 28 that:

Some people believed the attack could have been the result of statements that government officials and the President of the Republic have made against newspapers and journalists, since in some cases it was said that the communications media are "spokesmen for the subversion."*

On June 28, the government announced that all official information would be channelled through the Public Relations Secretary of the Presidency; the press was not to seek information from other government sources. The state of siege imposed three days later prohibits the press from reporting information unfavorable to the government or national security. The government has also specifically prohibited the media from printing any information on the war, or rural conditions, unless that information comes from the presidency's public relations office. On September 14, after four political parties criticized the government, the press was instructed that any reporting on political activity would make media subject to closure. This kind of effective censorship is unprecedented in Guatemala.

* quoted in "Guatemala curbs squads but killing goes on," Boston Globe, September 6, 1982, Stephen Kinzer.

** "El Gobierno no ametrallo a Prensa Libre; Prensa Libre June 28, 1982.

The press has reacted against these constraints. Press spokesmen make their feelings known in selected fora, such as the October 28 meeting of the Council of State, where editors were invited to speak. El Grafico's editor stated then that the country needed "a return to authentic democracy" and called for "freedom of opinion and dialogue."*

The assault on press freedom under Rios Montt has been institutional and legal, rather than personal. However on October 22, journalist Roberto Paz y Paz disappeared, and he later reappeared severely beaten and tortured.

The right to due process of law and a fair trial; the right to freedom of association and assembly

The Rios Montt government has legalized the systematic violation of these rights. The relevant decrees are examined in Chapters 3 and 4.

Political rights

Officials of the current government, including and perhaps most emphatically Rios Montt himself, have gone on record criticizing Guatemala's existing political parties - as dishonest,

* "Libertad de opinion y de dialogo," El Grafico, October 29, 1982.

as lacking a true social base, as politically bankrupt. The tendency toward personalism in Rios Montt's style of government is reinforced by this disdain for professional politicos.

Indeed, Guatemala's political parties have not grown in very healthy ground. Political rights have not been respected in Guatemala since the 1954 coup, organized by the CIA, that ended ten years of reformist governments and returned the country to corrupt military rule maintained through electoral fraud. Under Lucas Garcia, death squad assassinations of prominent politicians snuffed out the leadership of the growing social-democratic movement and weakened the Christian Democratic Party. These assassinations, combined with the widespread charges of fraud in the March 1982 elections, helped create an opening in which the March 23 coup could take place and, by many sectors, be welcomed.

The junta promised an early return to constitutional government, including free elections. That position has since been modified. Government officials stress that new laws governing elections and political party organization must first be developed. Exactly who will be capable of running for high office in any future elections is unclear: Article 117 of the Fundamental Statute indefinitely prohibits from holding elective office persons who held, under the previous regime, any one of 17 types of posts, from the

presidency of the republic to deputies of the National Congress, public inspectors, and directors of State entities.

In the meantime, Rios Montt has moved to consolidate his control over local political machinery, replacing all elected mayors with his appointees in mid-June.

At the national level, non-military sectors are currently represented in a 30-member Council of State, which held its first session on September 15. Since the President controls both executive and legislative functions of government, the Council is purely advisory; it is not even empowered to "rubber-stamp" presidential decisions. An indication of its position is the obvious irrelevance of its Human Rights Committee. According to Council President Jorge Serrano, the Committee has received reports on urban disappearances; it has then requested the Interior Ministry to look into those cases; it has made no investigations of its own and has no power to impel investigation. It may suggest, no more.*

*The Council does aspire to a wider role on human rights; on October 28, for example, it unanimously voted to ask the President to dissolve the recently created national Human Rights Commission - composed of high officials - and turn over its function to the Council. The question remains: How can a merely advisory body such as the Council have an effect on human rights, when the laws of the land legalize human rights violations?

Five political parties were invited to name representatives to the Council of State. Four refused: the Christian Democrats and three farther-right parties, the MLN, the CAN and the Party of National Renovation (PRN). When these four formed a Constitutionalist Multiparty Front, demanding early elections, the government warned them that under the state of siege they are forbidden to organize.

Refugee rights

1. External refugees

In June, the Office of the U.N. High Commissioner for Refugees estimated that 9,000 Guatemalans refugees were living in the southern Mexican province of Chiapas. Between July and September, as the Guatemalan army's operations expanded in Huehuetenango, San Marcos and the Verapaces and elsewhere estimate rose to over 13,000. The UNHCR representative in Mexico City, Pierre Jambor, considered 25,000 a reasonable estimate in mid-October.*

These campesinos, nearly all Indians, live in make-shift encampments or with Mexican families near the border with Guatemala's northern and northwestern departments, in many cases not more than a few hundred meters from the frontier. They are aided by the UNHCR, the Mexican government, and

*This is by far the largest concentration of Guatemalan refugees in a single country. UNHCR estimated 300 in Costa Rica and 600 in Honduras, in September.

the Catholic dioceses of southern Mexico. Many are undocumented as well, along the Huehuetenango/Alta Verapaz border and north of El Peten, where the jungle makes both detection and the delivery of aid nearly impossible.

They arrive exhausted and in poor health. Last February, even before the situation reached its current proportions, five Mexican bishops of the southern dioceses jointly issued a plea for assistance to the refugees, citing their "deplorable physical condition...They often arrive sick, malnourished, without sufficient food and suffering from terrible psychological traumas...Many children arrive with neither parents nor relatives."*

Their refuge is not safe, moreover. Guatemalan soldiers have pursued fleeing Indians into Mexican territory.** Guatemalan troops conduct raids of refugee camps. Mexican airspace is routinely violated by Guatemalan military helicopters.

Following the deaths of three Mexican citizens as a result of Guatemalan military incursions, in July 1982 the Mexican government requested that Guatemalan authorities investigate the cases. The only reply was continued raids, which the Mexican government protested through diplomatic channels, until on September 25 Mexico made public an official letter to Guatemala's

* "Refugiados Guatemaltecos en Chiapas: Comunicado de Algunos Obispos de la Region Pastoral 'Pacífico Sur,'" February 27, 1982, p. 1.

** For a July 21 case, see Angela Berryman, op cit, p. 5.

Minister of Foreign Relations which requested that "clear and absolute instructions be given to Guatemalan troops and paramilitary units that operate in the frontier zone to respect scrupulously Mexican territory and to abstain from entering it or firing at persons on the Mexican side of the frontier."*

Subsequent incursions have included an October 14 incident at the El Recuerdo camp, barely 200 meters from the frontier. Guatemalan soldiers, ferried in by helicopter, reportedly shot at the refugees and when they fled, pursued them some 12 kilometers farther into Mexico. The soldiers then returned to the camp, robbed its huts and stores and destroyed what little was in it. According to the local Church's refugee aid committee, two refugees and a Mexican campesino were abducted during that operation.

Such incidents have prompted the Mexican government to plan moving refugees away from the border. Mexico is anxious both to ensure their safety and to avoid military confrontation with Guatemala.

The Guatemalans in southern Mexico do not have formal refugee status; Mexico classifies them, rather, as temporary workers, and issues documents accordingly. In theory, these documents guarantee their residency for the short term. In

*Letter from Foreign Minister Jorge Castaneda of Mexico to Foreign Minister Eduardo Castillo Arriola of Guatemala, dated September 20, 1982; released with press bulletin September 25.

practice, however, refugees do not have even this minimum guarantee. The governor of Chiapas opposes their presence and has promised to evict them, while the chief local immigration official has been repeatedly accused of collaborating with the Guatemalan military.

On October 26 or 27, local Mexican immigration authorities evicted almost 2,000 refugees from one of the largest camps - Rancho Tejas - in violation of official Mexican policy.* Most of the residents of Rancho Tejas were from Huehuetenango and had fled the army offensive in July.

It need hardly be said that the pattern of cross-border raids, helicopter surveillance flights and selective abductions taking place in Chiapas constitutes a gross violation of refugees' rights by the armed forces of Guatemala. Each incident, moreover, exacerbates the danger of a military confrontation with Mexico, despite the Mexican government's efforts to avoid it. According to close observers of the situation, the Guatemalan strategy - both in the northern departments of Guatemala and with respect to refugees - is creating a free-fire zone such that northern peasants can neither stay in their home areas (where the army believes they give aid and comfort to guerrillas) nor cross back from Mexico to farm, nor live securely in Chiapas close to the border with their homeland.

*"Guatemalans Evicted in Mexico," New York Times, October 29, 1982, Alan Riding.

2. Internal refugees

The Guatemalan Conference of Bishops estimated in April that one million people, mostly campesinos, had been displaced by the conflict. That number has unquestionably risen since the intensification of the counter-insurgency campaign in July. (Guatemala's total population is about seven million.)

The government's estimate is far lower. In mid-October, the Americas Watch delegation was told that the official estimate of displaced persons within Guatemala was 250,000.

The army has established food distribution centers in some cities and larger towns where it is more active and - through its "beans and guns" approach - has sought to gather internal refugees in and near these centers. Our delegation was informed that the government's relief effort has a civilian/military coordination and four sub-sections: one for health, food, minimal housing and education; one for the creation of infrastructure - which the refugees build in return for food; one for long-term planning; and one for security. According to the army commander in Chimaltenango, the (government-appointed) mayor in each municipality is in charge of coordinating local relief efforts with an army official.

The Americas Watch delegation visited a camp for displaced persons in Choatalum, San Martin Jilotepeque, department of Chimaltenango. Although the refugees - about 4,000 people - appeared to be receiving regular food supplies, and the area was not fenced or physically sealed off, the people we talked with

were living there under some constraints. They were not, for example, free to return to their villages, and several said in interviews that the army had promised to grant them permission to return home, but only after they had formed civil patrols. Thus it became evident that, at least in the cases of their villages, the army was trading food and "protection" for a proof of loyalty which, up to then, these Indians had not been willing to give.

Evidently some displaced persons already sympathize with the army and seek its protection without being coerced. Our concern, however, is for those who must accept aid from an army that has pressured them to near starvation. The 2,500 Indians from the San Martin Jilotepeque area who "came in" to Chimaltenango on October 20,* are an example. Several stated to a journalist that the army, having surrounded their area, was not allowing them to leave and seek the paid plantation work which, for many, brings essential income. They said they had not had adequate food for three months. And they understood their arrival in Chimaltenango as an act of capitulation.

There is an unknown number of displaced persons who have chosen to remain in the mountains, in various departments, rather than "surrender" and face possible army reprisals. Sources in contact with these people and tryingng to aid them, describe their situation as desperate.

* See Chapter 1.

CHAPTER 3

The Recognition and Protection of Human Rights
in Guatemala's 1965 Constitution

Since the coup of March 23, 1982 Guatemala's military government, by fiat, has drastically modified the country's governmental structure and suspended the free exercise of the most fundamental universally recognized human rights, in particular, the rights to a fair trial and to due process of law in the case of suspected "subversives." To fully appreciate the extent to which the government's extra-legal measures have adversely affected the overall human rights situation, it is necessary to consider briefly the legal regime that had been established under Guatemala's 1965 Constitution to guarantee and to safeguard basic civil and political liberties. The 1965 Constitution has now been expressly abrogated.

I. The 1965 Constitution

On September 15, 1965, Guatemala's elected National Constituent Assembly proclaimed a new Constitution.* Article 1 of this document declares the nation's

*The English translations of the Constitution's provisions are from the official Organization of American States' translation prepared by the Department of Legal Affairs under the direction of the OAS's General Legal Division.

governmental system to be "republican, democratic and representative" composed of three independent branches, the Executive, Legislative and Judicial powers.

The Constitution guarantees to every Guatemalan citizen* the right to vote and to be elected to office, to hold public office, and to be inscribed in the Electoral Register (Article 14). The right to vote is "universal and secret," obligatory for literate electors and optional for the illiterate** (Article 19). Political parties committed to democracy are free to organize and function; however, the Constitution prohibits the formation of parties if they advocate communism or if their doctrinal tendency, methods, or international links threaten the sovereignty or democratic organization of the state (Article 27).

Title II, Chapter I of the 1965 Constitution, entitled "Individual Guarantees and Rights," proclaims the rights to life, physical integrity, dignity, and to the security of the person and his property without distinction based on race, color, sex, religion, birth, economic or social position or political opinions (Article 43). Article 45 provides that "everyone has the right to do what the law does not prohibit. No one is obliged to obey or comply with orders or mandates that are not based on law." The same

*Men and women who are over 18 years old (Article 14).

**Members of the armed forces are denied the rights to petition and to vote (Article 62).

article also prohibits anyone from being "persecuted or molested for his opinions or for acts that do not involve infractions of the law."

Article 57 establishes the inviolability of the home, and states that the law shall establish the formalities for and exceptions to searches and seizures of documents therein. Similarly, personal correspondence, documents, and books cannot be seized or checked without an order issued by a competent judge. Illegally seized documents and correspondence are expressly declared "inadmissible" in trials (Article 58). Article 59 guarantees every person "freedom to enter, remain in, travel through and leave the territory of the republic except for the limitations established by law." Moreover, Guatemalans cannot be expatriated, barred from entering the country, or denied a passport or other identity documents (Article 59).

Freedom of religion (Article 66), the right of peaceable assembly (Article 63), freedom of thought and expression without prior censorship (Article 65), the right to bear arms (Article 68), and the right to personal property (Article 69) are also guaranteed by the Constitution. Article 64 sanctions freedom of association, but expressly prohibits "the organization or operation of groups that function in accordance with or subordinate to international organizations advocating communist ideology or any other totalitarian system."

Clear standards guaranteeing the rights to personal liberty, to due process of law, and to a fair trial are set forth in the Constitution. Article 46 states that, except in cases of fragrante delicto or of fugitives from justice, no one may be arrested or imprisoned without an order issued by a competent judicial authority. Persons under arrest must be placed "immediately" at a judge's disposition and must be held in preventive detention centers, not in regular prisons. Moreover, they may not be held incomunicado (Article 51).

Article 51 requires that every person be questioned (by a judge) within 48 hours of his arrest. At the time of this questioning, the judge must advise the prisoner of the reason for his detention, the name of his accuser and any other facts necessary for his understanding of the punishable act imputed to him. From the time of this proceeding, the prisoner may choose a defense lawyer, who has the right to be present at the hearing and to see his client during "office" hours. The prisoner's preventive detention may not exceed five (5) days. Within this period, the judge must decree either his release or arrest. He may issue such an arrest order only when there is information that a crime has been committed and that there are "sufficient grounds for belief" that the detainee has committed or participated in it (Article 52). Moreover, all trials are limited to two instances (stages) and a judge or magistrate

who has exercised jurisdiction in one of these may not sit in the other instance or in cassation (appeal) for the same matter (Article 245).

Articles 48 and 49 guarantee freedom from ex post facto laws, stating that "the laws shall not have retroactive effect, except in criminal matters when favorable to the guilty party" and "acts or omissions that are not crimes or misdemeanors punishable by a law enacted prior to their perpetration are not punishable." However, Article 49 provides that "any individual or group act of a communist or anarchistic nature or contrary to democracy is punishable."

Standards guaranteeing procedural due process and the right to a fair trial are reasonably specific. Article 53 prohibits trials by special courts or by a commission and guarantees fair trials by "competent and previously established courts or authorities" that observe essential formalities and guarantees. The right against self-incrimination in criminal proceedings is expressly recognized in Article 50.

The Constitution provides that "the death penalty shall be considered extraordinary" and prohibits its application on the basis of presumptions, and to women, minors, those older than 70, those guilty of political crimes, and to persons whose extradition has been granted under this penalty. All existing legal measures may be

interposed against the death sentence, including cassation and clemency.* Only after the exhaustion of all recourses may the sentence be executed (Article 54).

Article 55 prohibits minors from being regarded as criminals and sent to jails or establishments for adults. They must be sent to "suitable institutions under the care of qualified persons for the purpose of obtaining a full education, medical and social assistance and their adjustment to society."

Chapter II of the Constitution provides for the writs of habeas corpus and amparo.** The writ of habeas corpus may be interposed before the courts by or on behalf of those who have been illegally imprisoned, detained or otherwise restricted from or threatened with the loss of freedom, or by those detainees suffering grievances, even when their confinement is lawful (Article 79). The court is empowered to decree the immediate release of persons illegally detained or the cessation of illegal practices against those lawfully confined by authorities.

The right to petition for amparo is available to any person in the following cases: (1) to obtain a declaration

*Writs seeking annulment or pardon are not available in the event the country is invaded, siege of a fort or city, or mobilization for war (Article 54).

**Article 84 provides for the elaboration of constitutional laws regulating the procedures, formalities, and jurisdictional requirements applicable to these writs.

that his enjoyment of constitutional rights and guarantees be respected or restored; (2) to obtain a ruling, in specific cases, that a law or official act that contravenes or restricts any constitutionally guaranteed right cannot bind the petitioner; (3) to obtain a ruling, in specific cases, that an order or resolution that is not purely a legislative act of the Congress and that violates a constitutional right does not apply to the petitioner; and (4) in all other cases expressly established in the Constitution (Article 80).*

The free exercise of the individual rights and guarantees enumerated in Title II of the Constitution is limited only by the necessity for maintaining public and social order (Article 44). And, Article 77 declares null and void ipso jure those laws and governmental measures that diminish, restrict, or distort such rights. Moreover, the Constitution expressly legitimizes "adequate resistance" to protect Constitutional rights and guarantees (Article 78).

Suspension of Constitutional Guarantees

The 1965 Constitution contains specific provisions

*The Extraordinary Tribunal of Amparo, composed of 7 members of the Court of Appeals, has jurisdiction to hear amparo proceedings entered against the Supreme Court of Justice or its members, and against the National Congress and Council of State for acts and measures that are not merely legislative (Article 260). The Law of Amparo, Decree No. 8 (1964) regulates the organization and functions of the other tribunals of amparo.

providing for the suspension of certain individual rights and guarantees during various emergency situations. Article 151 declares that in the event of invasion, grave disturbance of the peace, public calamity or activities against the security of the State, the President of the Republic, by decree may suspend, inter alia, the following constitutional rights: freedom from arbitrary arrest (Article 46), inviolability of the home (Article 57), inviolability of correspondence and records (Article 58), freedom of movement and residence (Article 59), the right of assembly (Article 63), freedom of association (Article 64), freedom of the press (Article 65, para. 1), and the right to bear arms (Article 68). This article also restricts the suspension of guarantees "to the extent strictly necessary in each case." Further, it requires the President to convene the Congress and to specify the reasons for his decree, the right(s) suspended, the territory affected, and its duration. The Congress is empowered to approve, modify, or disapprove his decree within 3 days.* Article 152 limits the suspension of constitutional rights to no longer than 30 days. If prior thereto, the circumstances motivating their

*A decree issued pursuant to Article 151 will automatically trigger application of the Law on Public Order. Ley de Orden Publico, Decreto No. 7, Diario Oficial, Dec. 9, 1967 (Guat.). This law establishes the following 5 states of emergency: 1) state of prevention; 2) state of alarm; 3) state of public calamity; 4) state of siege; and 5) state of war (Article 153, Constitution). All public services may be militarized during these exceptional situations.

suspension "disappear," then the decree "shall be derogated immediately" (Article 152). However, if the circumstances continue beyond 30 days, the President may issue a new decree prolonging the suspensions for a like period.

Importantly, Article 259 of the Constitution provides for the application of military justice only to those civilians who head or are ringleaders of armed actions against public authority. However, Guatemala's Code of Military Justice* apparently authorizes during states of siege military tribunals to try civilians accused of treason, sedition, rebellion, conspiracy against public order, assault and robbery in unpopulated areas, committing, in groups of 3 or more, robberies in town, and disregarding military authorities.**

In this connection, it is noteworthy that the Constitution declares the armed forces to be "essentially apolitical and non-deliberative" and prohibits the organization and functioning of militias outside of the armed forces (Article 215).

Structure and Powers of the Judicial Branch

Title VII of the Constitution declares the administration of justice to be "obligatory, gratuitous and

*Codigo Militar, Decreto No. 214, Diario Oficial, Aug. 1, 1978 (Guat.).

**Id., Article 15.

independent of the other functions of the State" and vests the Supreme Court of Justice and the other courts of ordinary and special jurisdiction with the exclusive exercise of judicial power (Article 240).

The President of the Judiciary,* the magistrates of the Supreme Court of Justice, of the Court of Appeals, of the Courts of Contentious Administration, of the Appellate Court of Accounts, and of the Court of Conflicts of Jurisdiction are elected by the National Congress for a term of 4 years. They can be removed for crimes, notorious bad conduct or manifest incapacity by a two-thirds vote of the Congress (Article 242). Although judges and magistrates "must be" licensed lawyers, the law may provide otherwise** (Article 241). However, they cannot be office holders in political parties or labor unions, or be a minister of any religion.

The Supreme Court of Justice, composed of at least seven magistrates, is empowered, inter alia, to name, remove, substitute, and transfer trial court judges ("de primera instancia"), judges of accounts, and justices of the peace (Article 251). It also determines the number of divisions, location, and jurisdiction of the Court of

*who is also the President of the Supreme Court of Justice.

**Municipal mayors may act as justices of the peace ("jueces menores") in those cases that the law may establish (Article 241).

Appeals (Article 254).

The Constitution also establishes the Court of Constitutionality, consisting of twelve members, which hears appeals attacking the constitutionality, in whole or part, of laws or governmental orders of a general nature. Such appeals may be entered by the Council of State, the Bar Association, the Public Ministry, or any person or entity who is directly affected by the challenged law or measure with the assistance of 10 practicing attorneys (Article 264).*

The Role of the Public Ministry

Another important figure in the administration of justice in Guatemala is the Attorney General.** Charged with exercising the functions of the Public Ministry, he is named and can be removed by the President (Article 221). Among his principal duties are (1) to represent the State and to defend its rights and interests, judicial or extra-judicial; (2) to enforce compliance with the law, execution of sentences, and with judicial decisions and administrative

*At least eight members of the Court must vote affirmatively to declare a law or governmental measure unconstitutional (Article 263). However, an absolute majority is sufficient to suspend the law or measure if its unconstitutionality is notorious or capable of causing irreparable harm (Article 264). The Court must dispose of all such appeals within two months of their submission (Article 263). No such appeals of any kind may be entered against the Court's decision (Article 265).

**He must be a licensed attorney with no less than 10 years in practice or in service in the Judicial branch (Article 221).

dispositions; (3) to take the necessary steps for the just and swift administration of justice and for the investigation of crimes and infringements that disturb the public and social order; and (4) to represent and defend those persons specified by the law (Article 222).

Process for Amending the Constitution

Article 266 of the Constitution stipulates, in part, that the National Congress, by a two-thirds vote of its entire membership, may convoke a National Constituent Assembly for the purpose of revising expressly identified article(s) of the Constitution. The Congress then must call for the election of the deputies* to this Assembly, which must be installed within 90 days thereof (Article 268). Once the constitutional amendment has been adopted and promulgated, the Constituent Assembly must dissolve itself immediately (Article 270). Thus, by implication, the Constitution prohibits such reform by any other method or governmental authority.

Guatemala's International Legal Obligations

Guatemala's 1965 Constitution is not the exclusive standard for judging the legality of the military government's decrees in the area of civil and political

*The eligibility requirements and number of deputies for each of the country's electoral districts are found in Article 269.

liberties. In this regard, it is relevant that Guatemala has ratified the following international human rights and humanitarian law instruments: The American Convention on Human Rights; the Convention on the Prevention and Punishment of the Crime of Genocide; the Geneva Convention Relative to the Treatment of Prisoners of War of 1949 ("Third Geneva Convention"); and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949 ("Fourth Geneva Convention"). These international instruments create legal obligations that directly bind Guatemala and, as such, they also constitute legal standards, in their respective fields of application, against which the government's decrees may be properly judged.

As a State Party to the American Convention, Guatemala is legally bound to ensure to all persons within its territory the free exercise, on a non-discriminatory basis, of the substantive rights and procedural guarantees enumerated in this instrument. In addition, it must give legal effect to these basic human rights under its domestic law both in times of peace and war, although the Convention does authorize the suspension* of certain rights during various

*Article 27 of this Convention, while providing for the suspension of certain enumerated rights under exceptional circumstances, expressly prohibits the suspension of other rights under any circumstances. This Article reads as follows:

(continued)

emergency situations.

Further, given the non-international character of the ongoing armed conflict in Guatemala, the Guatemalan government and the other party to that conflict are absolutely required to apply the provisions of Article 3 common to the Third and Fourth Geneva Conventions of 1949. The provisions of this Article, which have been called "pure human rights law," establish imperative rules guaranteeing humane treatment for all persons who do not directly participate or have ceased to participate in the hostilities and prohibit "summary" justice as the basis for sentencing and executions related to the armed conflict.

Although the individual rights and the legal framework for their protection established in the 1965 Constitution are generally consistent with Guatemala's international legal obligations, that country's military governments, prior to the March 1982 coup, were not noted for their adherence to the rule of law or for uniformly respecting basic civil and political liberties. This view is echoed in the reports* of many human rights organizations that have monitored, over the years, the deteriorating human rights situation in Guatemala. Indeed, the U.S. Department of State in its 1979 report on Guatemala to the Congress stated the following:

*For example, see Amnesty International, 1980 Annual Report, Guatemala, pp. 139-145.

Guatemala's history has been plagued by political violence, and during 1979 a high incidence of political and personal violence continued to seriously affect the exercise of many liberties.

Kidnappings and assassinations by both the extreme right and left continued at about the same level as during 1978. . . .The Government has taken few steps to halt abuses or to undertake serious public investigations.*

In contrast to the nominal compliance of former military governments with the 1965 Constitution, the military junta, installed after the March 1982 coup, and, in particular, the regime of General Rios Montt have broken with that tradition by abrogating the entire text of the Constitution, dissolving the elected National Congress, and by ruling exclusively through decree-laws. The following chapter analyzes those decree-laws that have most directly affected the free exercise of basic human rights and assesses the compatibility of these measures with the 1965 Constitution and with Guatemala's treaty obligations.

*Report on Human Rights Practices in Countries Receiving U.S. Aid, Feb. 8, 1979, p. 327.

CHAPTER 4

Legal Measures of the Rios Montt Government that Violate
the 1965 Constitution and Guatemala's's International
Legal ObligationsFundamental Statute of Government of April 26, 1982

Perhaps the most important legal measure instituted to date by the military junta is Decree-Law No. 24-82, entitled "Fundamental Statute of Government" of April 26, 1982, this decree-law expressly derogates and supplants the 1965 Constitution as the country's fundamental legal document. As such, this Statute is prima facie unconstitutional since it amends the 1965 Constitution by fiat and in violation of the amendatory procedure mandated by Article 266 of the 1965 charter.

In addition, this Statute eliminates, restricts or fails to protect certain basic human rights that are expressly guaranteed in the 1965 Constitution and to which Guatemala under Article 2 of the American Convention must give legal effect under its domestic law. In this regard, Article 118 of the Statute expressly declares all laws that are contrary to its provisions to be "inapplicable." Thus, any law that either recognizes rights not found in, or which accords a greater degree of protection to rights enumerated in the Statute, are no longer legally enforceable. Such a

result is clearly incompatible with Guatemala's legal obligations under the American Convention.

Article 4 of the Statute formally concentrates the powers of the executive and legislative branches in the military junta and authorizes it to legislate by decree in violation of Article 1 of the 1965 Constitution. The guiding principle of the "provisional" military government is declared to be the implementation

of a political-judicial structure in the Nation that will guarantee the movement of the country toward a regime of constitutional legality and that ends in democratic government, based on popular elections. Consequently, the military junta of government must complement, all legislative and executive measures that make feasible an objective standard so that in the shortest time possible an authentic democracy may be installed with security and solidity in the Nation. In turn, in exercising public power, (the junta) shall seek to make the Public Administration function with efficiency and probity, (and) see to it that justice be done and swift. It shall create all mechanisms necessary for the effective and absolute respect and maintenance of human rights so that the integrity of said measures may permit and facilitate the basic goal of the provisional Government. . . . (Article 4).

Despite these statements of intention and principles, Chapter V* of this Decree-Law, entitled "Individual Guarantees" contains provisions that emasculate the rule of law and violate the country's international legal obligations. For example, Article 23, par. 10 erodes the right to personal liberty by stating that "no person shall be arrested

*This chapter consists of a single provision, Article 23, having 20 separately enumerated rights. This Chapter replaces Title II, Chapter I of the 1965 Constitution (Articles 43-78).

except by virtue of a written order issued by a competent authority on account of a crime or misdemeanor or as a security measure." (Emphasis added.) In contrast to Article 46 of the Constitution which limits the issuance of arrest warrants to "judicial authorities," this new provision authorizes any governmental agency, such as the army, police, and special security forces, to arrest a person not only for crimes, but as a "security measure"*--an all-encompassing term devoid of clear legal standards. In addition, this provision, unlike Articles 46 and 51 of the Constitution, does not establish any time limit within which the arrested party must be brought before or questioned by a judge, nor does it establish any limitation on the duration of his detention. This measure also fails to specify any evidenciary standard applicable to the issuance of an imprisonment order. Thus, Article 23, par. 10 effectively can be understood to authorize indefinite, arbitrary and incomunicado detention, without charge or trial, in violation of the 1965 Constitution and, if so applied, will violate Articles 7 & 8 of the American Convention.

Fair trial and minimum due process guarantees, set forth in Article 8 of the American Convention and Articles 51, 52, and 53 of the 1965 Constitution, are accorded

*Article 26, par. 15 empowers the military junta to issue "security measures, in defense of peace, public order, the integrity and security of the State, by whatever means may be pertinent."

similar treatment in Article 23, par. 12 of the new law. This provision, in pertinent part, declares that "no one may be sentenced without having been charged, heard and convicted by trial." Article 53's prohibition against trials by special courts* and its guarantee of a trial "at which the essential formalities and guarantees have been observed" have been eliminated. No provision of this law mentions the right of the accused to be notified of the charge(s) against him, much less of his right to a lawyer at any stage of the proceedings. In addition, the constitutional prohibition on the admissibility in trials of illegally seized documents and correspondence is not contained in Article 23, par. 8 of this law.

All constitutional restrictions on the applications of the death penalty have been removed, as well as the requirement that all legal remedies be exhausted before the sentence is carried out.** By so doing, the Statute contravenes the following provisions of Article 4 (The Right to Life) of the American Convention: "In no case shall

*The elimination of this basic fair trial guarantee, required by Article 8(1) of the American Convention, laid the groundwork for the creation of the special courts established by Decree-Law 46-82 to try "subversives." See discussion, infra.

**Article 26, par. 13 of the decree-law empowers the junta "to decree amnesty for political and related common crimes when it may be convenient for public tranquility and social interest; and to give pardons relative to political and related common crimes."

capital punishment be inflicted for political offenses or related common crimes" Article 4(4); and "Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women" Article 4(5).

This violation of the right to life, expressly made non-derogable under Article 27(2) of the Convention, is particularly flagrant in view of Guatemala's only reservation to that Convention contained in its instrument of ratification. This reservation declares, in pertinent part:

The Government of the Republic of Guatemala, ratifies the American Convention on Human Rights . . . making a reservation with regard to Article 4, paragraph 4 of the same, inasmuch as the Constitution of the Republic of Guatemala, in its Article 54, only excludes from the application of the death penalty, political crimes, but not common crimes related to political crimes.*

The right to vote, to be elected to and to hold public office, as well as the guarantee to freely form and operate political parties have been dropped from the statute in violation of Articles 14 and 27 of the Constitution. Indeed, in spite of its recognition of the "political rights of Guatemalans," Article 112 of this law expressly derogates

*Instrument of Ratification, reservation thereto, signed by Kjell Eugenio Laugerud Garcia and Adolfo Molino Orantes, dated April 27, 1978 in T. Buergenthal and R. Norris, Human Rights: The Inter-American System, Part I, Ch. II at p. 40 (April 1982).

the Electoral and Political Party Law of 1965* and declares all political parties suspended.** These restrictions on the right to participate in government violate the non-derogable provisions of Article 23 of the American Convention.

Article 117 of the Statute indefinitely prohibits from holding future elective office any person who, during the period of the government overthrown on March 23, 1982, occupied any of the following positions:

President and Vice Presidents of the Republic; Ministers and Vice Ministers; Secretaries and Sub-Secretaries of State; Directors General of State Entities; Presidents, Vice Presidents, Managers, Sub-Managers, and Executive Directors of decentralized, autonomous, or semi-autonomous entities; Attorney General of the Republic; Chief of the Office of Comptroller of Accounts; Public Inspectors; Deputies of the National Congress and the Magistrates of the Supreme Court of Justice and of the Court of Appeals.

Although similar restrictions are placed on persons holding these positions in the military government(s) installed on/or after March 23, 1982, these restrictions are expressly modifiable. The application of these individual proscriptions applies to representatives of virtually every Guatemalan political party and retroactively punishes them for merely participating in politics and government. As

*Ley Electoral y de Partidos Politicos, Decreto-Ley No. 386 of 26 October 1965.

**Article 112 states that a law will be drafted regulating the existence, activities and other functions of political entities in accordance with Article 5 of the Statute.

such, these proscriptions not only violate Article 23 of the American Convention, but also constitute the imposition of a penal sanction in violation of Article 9 (Freedom from Ex Post Facto Laws) which may not be suspended under that Convention.

Under the Statute, minors now may be tried as criminals, sent to adult prisons, and executed. The prohibition against expatriation and against denying a right to enter the country, established in Article 60 of the 1965 Constitution, has been eliminated. The law also considerably restricts freedom of thought and expression by no longer authorizing criticism or denunciation of public officials or immunizing the property of the media from seizure, confiscation or closure because of a crime or misdemeanor in the expression of thought. Freedom of association, while recognized in Article 23(6), has also been curtailed. Moreover, the right to peaceable assembly has been deleted in violation of Article 63 of the Constitution.

Rights to petition and obtain writs attacking official acts or laws have been restricted or deleted from the Statute. For example, the right to petition for amparo and the Extraordinary Tribunal of Amparo have been eliminated. In addition, Article 111 of the Statute prohibits writs of amparo "against acts and resolutions based on security measures under this law." Similarly, appeals attacking the constitutionality of laws and government orders, as well as

the Court of Constitutionality established by the 1965 Constitution to hear such appeals, are no longer authorized. The writ of habeas corpus now has as its purpose to "establish the treatment of detainees" (Article 23, par. 19). Competent courts are limited "to ordering the personal appearance of the detainee and to decreeing his freedom" if he ~~was~~ illegally arrested.

The sole limitation on the free exercise of individual rights is no longer "the necessity of maintaining public and social order," but "the security measures that the military junta may dictate" (Article 23, par. 20).

Expanded Scope of Suspendable Rights

In addition to reducing the number and gutting the substantive content of many individual rights and weakening the legal devices for their protection, Decree-Law No. 24-82 considerably expands the discretionary power of the military junta to suspend those rights during emergency situations.

In contrast to Article 151 of the 1965 Constitution which specifically identifies 13 suspendable rights and, by implication, protects the free exercise of all others, Article 26, par. 12 of this Statute specifically identifies 11 nonsuspendable rights* and expressly authorizes the

*Article 26, par. 12 empowers the junta, in the event of invasion, grave disturbance of the peace, or activities against state security, to suspend all individual guarantees enumerated in the Statute except for the right to life and physical security; the right to private property; the
(continued)

suspension of all remaining guarantees. Instead of being limited in time and "to the extent strictly necessary," restrictions under Article 26, par. 12 may be "temporary, partial or total and during the time the situation requires." Moreover, the junta's decree is not subject to scrutiny, much less modification or disapproval, by any other governmental body since the Statute legitimizes the junta's usurpation of the National Congress' powers.

Article 86 of this law empowers the junta to decree the creation of "special courts" with jurisdiction over particular crimes and to declare in determined zones of the country such limitations that may be necessary to maintain public order, peace and security.

Given the number of provisions of this Statute that prima facie violate the American Convention on Human Rights, it is difficult to take seriously the pledge, contained in Article 7 of this law, that "Guatemala . . . shall comply faithfully with its international obligations, adhering, in its relations with other states, to . . . International Treaties and Norms of International Law accepted by Guatemala."

government's non-liability for damage caused by factious groups or disturbances that upset public order or for the means used to subdue them; freedom of religion; the right against self-incrimination; the right to trial; freedom from ex post facto laws; freedom from imprisonment for debt; freedom from torture and cruel treatment; and the right to asylum.

Decree-Law, No. 33-82 of June, 1982: The Amnesty Program

Citing the aim of "obtaining social peace in the Nation" and giving "subversives the chance to reenter society free from criminal responsibility," the military junta issued in late May, 1982 Decree-Law No. 33-82. Article 1 of this law authorizes amnesty to "subversives" for political and related common crimes, including misprision of a felony. The second paragraph of this Article also extends amnesty to "the members of the Security Forces of the State who in fulfilling their duty participated in counter-subversion activities."

Unlike "subversives" who, in order to be eligible for the amnesty, were expressly required by Article 2,* inter-alia, to turn themselves and their weapons over to the nearest military authority within 30 days, no equivalent procedures or conditions were established for members of the security forces. The law's silence in this regard was criticized by Guatemala's Christian Democratic Party** and College of Lawyers. On May 25, junta member, Maldonado Shaad, told the press that the amnesty law was not intended to protect members of the security forces who took the law

*On May, 1982, the law was modified permitting "subversives" to turn themselves over to Departmental governors, municipal mayors, Guatemala's Red Cross, University of San Carlos, and its extensions, private universities, professional schools and churches of all cults.

**See the Party's Boletin de Prensa No. 2-5-82 containing a statement by the Party leader, Vinicio Cerezo.

into their own hands, but was meant to exonerate only those who fought subversion openly in combat. Those who acted on their own, even if they were in positions of authority, he indicated, remained subject to the courts.

Despite this statement and whatever the junta's intention may have been, the law contains no implied or express language limiting the amnesty only to those members of the security forces who did not exceed their authority and/or who did not break laws governing the conduct of military operations. The Christian Democratic Party stated pertinently that "neither we, or the citizenry could ever accept an amnesty for those who, abusing power and using as their sole excuse their membership in the security forces, kidnapped, assassinated, or threatened innocent citizens who in no way were involved in subversion or who only engaged in opposition political activity within the law."*

Thus, as elaborated, this law gives a blanket pardon and immunity from future prosecution to those members of the security forces who, exceeding the combatant's privilege, may have killed, tortured, raped, or committed other illegal acts against innocent civilians or persons no longer actively participating in the hostilities. By so doing, Article 2 of this amnesty decree contravenes numerous non-derogable provisions of the American Convention and is

*See CDP Boletín de Prensa No. 2-5-82, op. cit., p. 3.

utterly inconsistent with the object and purpose of Article 3 common to the Geneva Conventions. This measure also would seem to be somewhat gratuitous in view of the Minister of Defense's assertion to the delegation that the Government's security forces had never committed any such illegal acts.

Decree-Law No. 45-82 of July 1, 1982: State of Siege Law

On July 1, 1982, General Rios Montt, the country's self-proclaimed President,* issued Decree-Law No. 45-82 which imposed for 30 days a nationwide state of siege--the first declared since November 13, 1970 and the most sweeping in Guatemala's modern history.

The preambulatory clauses of this law justify this exceptional measure on the grounds that "(n)otwithstanding the good intentions of the Government . . . many of the persons participating as members of [subversive groups] have not only ignored said amnesty but have even spoken out against same, committing new criminal and terrorist acts in various regions of the national territory" and that such criminal activity "has disturbed the peace, tranquility and public order, to the detriment of the honorable and hard-

*On June 9, Rios Montt, President of the military junta, dissolved the junta, stripped the other two junta members of their cabinet posts, and declared himself President and commander-in-chief of the armed forces. Rios Montt, that same day, issued Decree-Law No. 36-82 which amended the Fundamental Statute of Government to permit him to exercise both executive and legislative powers (Article 1) and to exercise all other powers as President vested in the military junta by the Statute.

working people of Guatemala . . ."

Article 2 of this law suspends, during the state of siege, every individual guarantee established in the Fundamental Statute of Government, except for those declared non-suspendable. In this regard, it should be emphasized that as of November 19, 1982, the Government of Guatemala had not yet notified the other States Parties to the American Convention, through the Secretary General of the OAS, of its suspension of rights guaranteed in the Convention, as required by Article 27(3), and, accordingly, is in violation of its obligations under this instrument.

Another provision of this measure permits military authorities to arrest, without court order or warrant, "anyone suspected of conspiring against the constituted government, of disturbing the peace or of performing acts tending toward the same" (Article 8). It also authorizes the military to arrest without warrant "persons belonging or having belonged to groups that act in cooperation with or in subordination to international organizations that uphold the philosophy of Marxism-Leninism."

This article, on its face, legalizes arbitrary and indefinite detention. Not only are the military not required to bring the detainee at any time before any judicial officer, but, as a practical matter, they are absolutely free to arrest whomever they please for whatever reason. Moreover, the detainee, his family and lawyer are

powerless to challenge legally the arrest since the writ of habeas corpus and the already weakened guarantee against arbitrary arrest, set forth in the new Constitution, are suspended during the state of siege.

Regarding the second category of persons subject to warrantless arrest, this article implicitly and conclusively presumes a causal link between the situation precipitating the state of siege and the political philosophy maintained by the detainee - irrespective of whether he in fact had committed a criminal or other act related to that situation. The arrest of such persons for merely what they think or profess and not for what they have done constitutes 'the crime of opinion' in violation of Article 13 of the American Convention.* In this connection, the Inter-American Commission on Human Rights stated the following concerning the extent to which an OAS member state may validly restrict the basic guarantee against arbitrary arrest during the states of siege and other exceptional situations:

". . .no domestic or international legal norm justifies the holding of detainees in prison for long and unspecified periods, without any charges being brought against them for violation of the Law of National Security or another criminal law, and without their being brought to trial so that they might exercise the

*In its Report on the Status of Human Rights in Chile, the Inter-American Commission on Human Rights stated that states of exception do not authorize, inter alia, "the establishment of 'crimes of opinion.'" OEA/Ser.L./V/II. 34 doc. 21 corr 1 (25 Oct. 1974), pp. 2-3.

right to a fair trial and to due process of law.

. . .the Commission has repeatedly pointed out that deprivation of freedom for prolonged periods of time, without justification, is in violation of human rights, because it implies the imposition of a real punishment with denial of the rights to a fair trial and to due process of law, to which all individuals are entitled."

The Commission's dictum is clearly applicable to the situation of those persons who have been arrested under Article 8 of this decree.

Article 9 authorizes the military to search homes or any other enclosed place without a judicial order or the owner's consent, in accordance with the Law on Public Order. General Rios Montt in an interview with New York Times correspondent Raymond Bonner gave the following justification for this provision: "When the Constitution was in force, I could not search for someone in a house. So, I have to establish a legal framework so that I can enter a house."*

The law also suspends all trade union activities (Article 4), imposes censorship on the media by prohibiting the publication of "any information of trouble-making groups" (Article 14), authorizes the suspension of "any entity, group, organization or association, with or without legal status, that contributes directly or indirectly to the

*Guatemalan Leader Tells of His Reasons for the State of Siege, July 15, 1982, The New York Times.

causes giving rise to the Law on Public Order." (Article 5), and empowers the President to militarize public services, and to take over or militarize any other services or activities, including educational institutions (Article 6). In addition, the government may take over or dissolve groups, organizations, entities or associations, with or without legal status, that perform "acts that are subversive or contrary to public order or to the measures taken by the military."

Since July 1, 1982, General Rios Montt has periodically renewed the state of siege, and it continues in effect today throughout the entire country.

Decree-Law No. 46-82 of July 1, 1982: Creation of Special Courts

On July 1, 1982, General Rios Montt also promulgated Decree-Law No. 46-82 which established special courts to try persons suspected of violating the state of siege and criminal laws. These courts have the power to impose the death penalty. To date, operating in total secrecy under the law's draconian procedures, these special courts have sentenced to death four persons, who were publicly executed by firing squad on September 18.

Since Guatemala is a State Party to the American Convention and the Third and Fourth Geneva Conventions of 1949, the fair trial and due process of law guarantees established in these instruments have a direct bearing on the provisions and application of this decree-law.

The rights to due process of law and to a fair trial are specifically defined in and guaranteed by Articles 7* and 8,** respectively, of the American Convention. These

*Article 7. Right to Personal Liberty

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to continuation of the proceedings. His release may be subject to guarantees to assure his appearance at trial.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat. This remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

**Article 8. Right to a Fair Trial

1. Every person shall have the right to a hearing with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights or obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a serious crime has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- a. the right of the accused to be assisted free by a translator or interpreter, if he does not understand or does not speak the language of the
- (continued)

articles set forth universally recognized principles of substantive and procedural law to which Guatemala must give effect under its laws. Apart from the procedural due process standards enumerated in paragraphs 4, 5, and 6 of Article 7 and in paragraphs 2 and 3 of Article 8, this Convention expressly mandates that in a criminal proceeding

tribunal or court;

- b. prior notification in detail to the accused of the charges against him;
 - c. adequate time and means for the preparation of his defense;
 - d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
 - e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
 - f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
 - g. the right not to be compelled to be a witness against himself or to plead guilty; and
 - h. the right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
 4. An accused person, acquitted by a nonappealable judgment, shall not be subjected to a new trial for the same cause.
 5. Criminal procedure shall be public, except insofar as may be necessary to protect the interests of justice.

"every person has the right to a hearing . . . by a competent, independent, and impartial tribunal, previously established by law . . ." (emphasis added).

Although Articles 7 and 8 are not among the specifically non-derogable rights in Article 27(2) of the American Convention, this article prohibits, under all circumstances, the suspension of the "judicial guarantees essential to the protection" of the Convention's non-derogable rights. Article 27(2), thus contemplates that when the right to a fair trial and to due process of law are necessary for safeguarding such non-derogable rights as the rights to life, to humane treatment and to freedom from ex post facto laws, the core elements of these basic rights come within "the essential judicial guarantees" clause of Article 27(2). In a similar vein, Dr. Marco Monroy Cabra, the Chairman of the Inter-American Commission on Human Rights, has written "[Article 27] makes it clear that fair trial guarantees cannot be suspended and always must be granted where they are indispensable for the protection of the rights recognized in the Convention."* In the case of persons charged with capital crimes, trial by an independent, impartial and pre-existing court observing minimum due process guarantees must be regarded as essential to protecting the defendant's right

*Rights and Duties Established by the American Convention on Human Rights, Vol. 30, No. 1. American Un. L. Rev. (Fall 1980) p. 38.

to life.

There is another independent legal ground which precludes the government's suspension of fair trial and related due process guarantees under the American Convention. Article 27(1) of that treaty requires that a State Party's derogation measures not be "inconsistent" with its "other obligations under international law." In addition, another article states that no provision of the Convention shall be interpreted as "restricting the enjoyment or exercise of any right or freedom recognized by virtue . . . of another convention to which one of the said states is a party." (Article 29(b) (emphasis added). In situations of internal armed conflict, the Third and Fourth Geneva Conventions of 1949 require both the State Party and the other party to that conflict to apply, as a minimum, the provisions of Article 3* common to those treaties. The

*Article 3 states:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned

(continued)

obligation to do so is absolute for both parties and independent of the obligation on the other party. The words "as a minimum" are also an invitation to the parties to bring into force other provisions of these humanitarian conventions.**

The category of persons entitled to Article 3's compulsory guarantees includes "members of armed forces who have laid down their arms and those placed hors de combat,

persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (b) taking of hostages;
 - (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

**J. Pictet, Vol. I, Commentary on the Geneva Conventions of 12 August 1949 (1952), p. 52.

by sickness, wounds, detention or any other cause. . . ."

(emphasis added). Article 3 specifically prohibits with respect to these persons

(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized people. (Emphasis added)

Since Article 3 is not subject to derogation under any circumstance and Article 27(1) of the American Convention forbids any derogation inconsistent with the State Party's other international legal obligations, Article 3's more restrictive provisions govern the extent to which a State Party to both the American Convention and the Geneva Conventions may lawfully derogate from comparable articles under the American Convention. Thus, despite the existence of an ongoing internal armed conflict, Guatemala, as a State Party to these treaties, is precluded from suspending basic fair trial guarantees proclaimed in the American Convention.

Although Article 3 does not "reincorporate" all of the fair trial guarantees enumerated in Articles 7 and 8 of the Convention, it unquestionably does mandate trials by impartial and independent courts applying minimum due process, i.e., "all the judicial guarantees which are recognized as indispensable by civilized people." In this regard, many of the provisions of Decree-Law No. 46-82 are prima facie incompatible with these minimum international standards of justice.

When Rios Montt decreed the stage of siege, calling it the beginning of "a merciless struggle," he indicated that the creation of these special courts was a complementary measure "to combat" subversion and stated that he would begin to try all captured rebels, adding "I stress that those whom the courts find guilty of the crimes that I have listed will be sentenced to death."* Pertinently, Article 7 of this law authorizes Rios Montt to appoint the three members of these special courts, who can be army officers without legal training. He also is authorized by Article 26(5)(d) of the Fundamental Statute of Government to remove without cause all of his judicial appointees. In view of Rios Montt's statements and his extraordinary powers under these legal provisions, these special courts hardly can be regarded as impartial or independent.

Jurisdiction of the Special Courts

Articles 3 and 6 of the law vest the special courts with exclusive jurisdiction to try persons charged with committing certain crimes established in the Penal Code,** political crimes not covered therein, and common crimes related to these other crimes. The law requires the court to double the penalty*** for those convicted of violating these laws and mandates the death sentence for those found

*See text of speech by Rios Montt in Central American Newsletter, VI, 2 July 1982.

** crimes included in Titles VII, XI and XII of the Second Book of the Penal Code.

*** Article 4 limits a prison sentence to no longer than 30 years.

guilty of murder, terrorism, sabotage, treason and certain other crimes* (Article 4). Moreover, no sentence of these courts is appealable or subject to presidential clemency (Article 33). The absence of appeal against the death sentence for political crimes violates Article 4(4) of the American Convention, and, as applied to persons so sentenced for other crimes, it deprives them of Article 4(6)'s non-derogable "right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases."

All phases of the trial process are by design extraordinarily summary and its procedures, in most respects, do not accord suspects or defendants the essential judicial guarantees required by Articles 27 and 3 of the American and Geneva Conventions, respectively.

The Preliminary Investigation

The special courts can initiate proceedings ex-officio or on petition of the "offended party" or of the Public Prosecutor's Office (Article 3). Article 13 authorizes the detention of persons "against whom there is a rational

*These include abduction or kidnapping; aggravated arson; defense sabotage; manufacture or possession of explosive materials; railroad disaster; attack on the safety of maritime, river or air transportation; maritime, river or air disaster; attack on other means of transportation; attack on the safety of public services; piracy; air piracy; poisoning of water or of foodstuffs or drugs; direct treason; attacks on the integrity or independence of the State; indirect treason; genocide; terrorism; storage of arms or ammunition; traffic in explosives.

indication of criminality" and immediately thereafter, directs the special court to order his provisional detention and to take his preliminary statement. The text of the law is unclear about when the detainee's right to counsel begins. Furthermore, Article 9 stipulates that defense counsel need not be an attorney, but "persons deemed suitable by the court." The court also is empowered "if necessary" to appoint a defender and its decision is not subject to challenge or appeal.

The court must finish this investigatory stage within three days. At the end of this period, the court makes a detailed study of the case and if it "finds sufficient grounds" for opening the oral trial, it must issue such a writ (Article 14). If, however, there are insufficient grounds to do so, the court is required to annul its provisional arrest order and to release the detainee, but must "order the corresponding investigation to be pursued" (Article 15). The court also may dismiss the case. In its writ opening the oral trial, the court must include "concrete mention of the justiciable facts and of the circumstances thereof appearing in the proceedings and to constitute the object of the trial" (Article 16). It is important to note that the law establishes no time period governing the length of the corresponding investigation mentioned in Article 15. In addition, persons bound over for trial may not be released on bail (Article 37).

Pre-Trial Proceeding

Within 48 hours of being notified by the court, defense counsel (and other parties) must submit in writing to the court his client's "provisional" plea to the charges against him, and a bill of particulars on the justiciable facts and "the grounds for exemption or modification of criminal liability and penalties to be imposed, as well as file the exceptions or pleas of extinguishment of criminal liability" (Article 17). Defense counsel also must offer evidence in this submission. The burden placed on defense counsel by this 48 hour deadline flagrantly contravenes the right of "every person accused of serious crime" to have "adequate time and means for the preparation of his defense" guaranteed in Article 8(2)(c) of the American Convention.

Within this 48 hour period, the court "may decide" to rule on defense counsel's exemptions and pleas. Prior to the start of the oral trial, the court can order ex officio the submission of evidence it deems necessary and may reject the admissibility of evidence offered by the parties it deems not "pertinent"; however, a party may petition the court at the start of the trial to admit previously rejected evidence (Articles 19, 20 and 21).

The Oral Trial Proceedings

It is unclear in Article 19 whether the oral trial must begin within 3 days after the court's issuance of the trial order or within 3 days after the expiration of this 48

hour period. Although Article 23 states that "trial proceedings shall be public, but the court can order private hearings, when it deems necessary," every phase of these special courts' deliberations in all cases to date have been held in total secrecy. Moreover, it should be emphasized that the trial proceedings are oral without any requirement of a complete written transcript. The clerk of the court is merely directed to issue "a record of each hearing, setting down the most relevant facts that have occurred" (Article 30) (emphasis added). Accordingly, the clerk need not transcribe the defendant's plea, motions, or the court's rulings on evidence if he regards such material facts as not "most relevant."

Article 25 requires the President of the court to "clearly and precisely ask the accused whether he confesses to being the perpetrator of the act(s) with which he is charged, demanding a categorical answer." The court is directed to hand down its judgment immediately if the accused should confess to all of the justiciable facts and the circumstances thereof." If the defendant confesses to a capital crime, the court must impose the death sentence and defense counsel is prohibited from pleading in mitigation of that sentence. In the event "there should be several persons indicted and one of them should not confess his guilt, the court must continue the trial" (Article 25). After having heard the evidence, the President of the court

must "ask the parties whether they maintain or alter their respective provisional pleas. In case they should alter the same, [the parties] shall present their summations" (Article 27). At the conclusion of the proceedings, the President must issue a single order adjourning the trial and imposing the sentence.

Although this law permits the parties to present and argue the evidence, the weight accorded to different kinds of evidence is clearly prejudicial to the accused. For example, whereas "judicial confession of the accused" and "authentic public documents that are genuine" constitute "full proof," all other evidence may be evaluated by the court "according to the criteria of their own conscience and sense of equity" (Article 32). Consequently, special court judges are free to weigh all evidence other than confessions and public documents by a wholly subjective standard. Other than this "full proof" provision, the law contains no standard to be applied by the court in rendering a guilty verdict. Furthermore, Article 39 of this law empowers members of the special courts to solve "by analogy" matters not covered by the law. If broadly interpreted, this provision could result in the "legislation" of new crimes by the court.*

*Article 39 states "in cases not provided for by this law, the court shall decide at its reasonable discretion adapting its actions to analogous cases regulated by other laws."

attacks on military and civilian personnel, as well as membership in the clandestine EGP and having participated in terrorist activities such as the distribution of various leaflets and propaganda and causing the violent deaths of various persons. They also confessed to having carried out activities aimed directly at undermining the sovereignty of the republic and national unity.

A public defender was assigned to them and, in the previous case, all the pertinent procedures were complied with until, the judicial action being completed, they were found guilty of crimes that are punishable by death under the laws currently in force in the country.*

The government announced on October 26, 1982 that in response to protests from the Inter-American Commission on Human Rights, it had eliminated the death penalty under Decree-Law No. 46-82 and was studying mechanisms to provide persons convicted under this law with a right to appeal.

Though welcome, this development cannot obscure the act that 40 persons, including the 4 executed, have been subjected to a so-called "legal process" under a law that, on its face and as applied, deprived them of basic fair trial guarantees in violation of Guatemala's international legal obligations. Amending this law is not enough: it must be repealed and replaced by a law guaranteeing a trial by impartial and independent courts that afford "all the judicial guarantees recognized as indispensable by civilized people."

* * * *

*Id.

It is ironic that in its brutal struggle to eradicate Marxist-Leninist subversion the military junta and the Rios Montt regime have promulgated laws that are as arbitrary and devoid of legal safeguards as those that most clearly distinguish democratic from totalitarian societies--respect for human dignity and protection of individual rights.

Yet this is exactly what has happened. The government of President Rios Montt has systematically violated both Guatemala's lawfully adopted 1965 Constitution and its fundamental international legal obligations by:

- 1) repudiating the 1965 Constitution by decree
- 2) suspending guarantees of individual rights by procedures forbidden by that Constitution and its international treaty obligations
- 3) suspending the right to individual liberty
- 4) authorizing arbitrary, limitless, and incommunicado detention
- 5) eliminating judicial supervision of detention
- 6) authorizing the security forces to search anyone's home without judicial authorization
- 7) eliminating any effective right to counsel and the right to a fair trial
- 8) eliminating all constitutional restrictions on the imposition of the death penalty
- 9) establishing secret courts that may impose the death penalty in a broad range of cases. The decisions

of these courts may not be appealed.

- 10) eliminating the independence of all appointed judges
- 11) eliminating the prohibition on the execution of minors and of those accused of "political" crimes
- 12) eliminating legal redress against government officials who abuse citizens
- 13) granting blanket pardons to members of the security forces who murder, torture, rape or otherwise abuse civilian noncombatants
- 14) suspending all trade union activity
- 15) imposing censorship and eliminating all legal protection for the expression of opinion
- 16) eliminating freedom of assembly
- 17) eliminating the right to vote and to form political parties and imposing special disabilities on those who were previously active politically
- 18) authorizing government dissolution of any citizen organization
- 19) eliminating writs of amparo and habeas corpus during states of siege

Taken together, the formal acts of the Guatemalan Government since March 23, 1982, make clear that it has overtly abandoned the rule of law and overtly substituted a system of government that is both despotic and totalitarian.

CHAPTER 5

Human Rights Reporting by the
U.S. Embassy in Guatemala

In a July 1982 special briefing on Guatemala,* Amnesty International listed 69 massacres of civilians since General Rios Montt came to power. AI estimated that 2,186 civilians in rural areas had died in these incidents. The report analyzed the army's counterinsurgency strategy and concluded, with regard to human rights, that the Rios Montt government was following "a pattern not significantly different from that implemented under previous governments..." A supplemental report in October cited new information and raised the figure on estimated civilian deaths to 2,600.

Assistant Secretary of State Thomas Enders responded to AI's July report on September 15, in a lengthy letter that was circulated here and also appeared in the controlled Guatemalan press. That letter disputed AI's analysis, on the basis of Embassy "comments," and noted that Embassy information on some of the incidents listed in AI's report "appears to contrast greatly" with Amnesty's. It offered the general criticism that "many of the incidents cannot be collaborated (sic) by other sources

*"Guatemala: Massive extrajudicial executions in rural areas under the Government of General Efraim Rios Montt" Amnesty International Special Briefing, July 1982.

such as the press, the Army, the police or intelligence information." Moreover, Enders wrote, "the town where one incident took place (Covadonga, Huehuetenango) doesn't appear on any map of Guatemala available to the Embassy." Seven incidents from the Amnesty report were specifically disputed. The letter stated that Guatemala's new government had "made significant progress."

Based on our own investigations, including interviews with Embassy staff, the Americas Watch has concluded that the State Department/Embassy critique of Amnesty's report evades the central issue of a pattern of official abuse, and that in its specific disagreements with AI the State Department and Embassy have clouded the truth rather than serving it. We believe it is in the interest of responsible human rights reporting to explain the reasons for our conclusion, as the debate involves not only one group's findings but also the credibility of official U.S. information on human rights in Guatemala and the way in which that information is publicly used.

1) Information-gathering by the U.S. Embassy in Guatemala

The Americas Watch delegation discussed with Embassy political officers and other knowledgeable sources the extent to which the Embassy can and does independently verify reports of rural killings and how it assigns responsibility for those killings. It would be unreasonable to expect any group gathering human rights information to have conducted on-site verification

of all reports it has received; the Embassy quite naturally relies on a variety of outside sources.* Embassy officers, however, take the position that the Embassy cannot endorse any report with confidence unless it has conducted an independent investigation and gathered testimony, at least with respect to reported army killings of civilians. For example, while they do receive some information on army atrocities from church sources, Embassy officers consider these reports unverified and disagree with them generally. For this reason, the Embassy's methods of independent verification are of particular interest.

Verification: The military and political sections of the Embassy both gather information on rural killings of civilians, through "people who come" with such information and by sending staff to the sites of reported massacres on a selective basis, to find and interview possible survivors. Staff have also visited areas where displaced persons are living under army supervision. Political officers told the delegation they often travel independently of the army and seek interviews on their own, without an army presence.

While conceding that they "believe" the army is involved in "some violence" against rural civilians, Embassy staff insist they have no testimony verifying this and that they consider these to be isolated cases, if in fact they have occurred. All the witness and survivor testimony the Embassy has gathered

*See Appendix B.

attributes killings to unknowns or guerrillas. Political officers declined to give specific information, however, on the breadth of their inquiries such as the number of villages visited or witnesses interviewed, or the number of witnesses' statements attributing massacres directly to the opposition. It was therefore unclear to the Americas Watch delegation how broad a base of verified information was being cited.

Other knowledgeable sources assert that the base of independent information is, in fact, narrow, that investigations are conducted randomly for the most part and when they are conducted they are extremely superficial. These sources point out, in its defense, that the Embassy has neither the manpower nor the mandate to conduct systematic human rights investigations; one highly-placed source considers the proposition absurd that such investigations should be carried out at all by the Embassy. Some of the Embassy's independently gathered information, say these sources, comes from informants and, as one put it, "you get what you pay for."

The Embassy's investigations are limited by several factors beyond the obvious time constraints of otherwise busy staff. First, security; Embassy staff can investigate only in areas where the army has control, and they cannot go far afield even within these areas because of the possibility of land mines or surprise skirmishes. Second, transport; political officers stress that, given the shortage of functioning army helicopters, private helicopters must be rented at considerable expense, and flights to

remote areas are therefore infrequent. Weather is a third factor affecting travel. Thus, while Embassy staff may be able to investigate in areas accessible by car (or army truck), a significant portion of the massacres reported by human rights groups, especially those which have occurred in northern and north western departments, cannot be investigated systematically.

An example of the Embassy's limitations in this regard is the widely reported case of Finca San Francisco, in northern Huehuetenango, where 302 campesinos were massacred by the army in mid-July, according to survivors. As of mid-October, six weeks after receiving the first reports on San Francisco, the Embassy's political staff had not yet gone to the site or interviewed anyone in nearby villages who might have witnessed the incident. One reason given was that it took time to locate the correct village on a map, as there is more than one "San Francisco."

Guatemala is not an easy place to conduct such investigations. There are the limitations on mobility already mentioned. There is also a question of trust. As one political officer said, witnesses tend to be evasive unless a trust has been established. This appears to be particularly true in places where internal refugees are concentrated under army auspices.

For all these reasons, it is perhaps understandable that the Embassy cannot systematically investigate the human rights situation and obtain the kind of testimony evidence it requires for verifying army responsibility. What is less understandable

is the Embassy's contention, under such conditions, that its lack of information on army responsibility for rural killings should be set against the massive body of testimony gathered by such organizations as Amnesty International, Survival International, the Washington Office on Latin America and others.

Unverified information and assigning responsibility:

The Embassy does, of course, pass on to the State Department information it has received but not independently verified. It also passes on information based on testimony that does not include definite attribution to one side or another. For this information, assigning responsibility is difficult, and the Embassy must deduce responsibility from either "admission against interest" or the identities of the victims. "Admission against interest" includes army or police announcements of their having killed civilians considered subversive, and guerrilla announcements of "executions" of civilians considered to be spies or government collaborators. But in about 60% of the cases, according to a knowledgeable source, the Embassy does not assign any responsibility - lacking sufficient information to do so - and in the remainder it deduces responsibility, primarily based on the victims' identities. This source considers the Embassy's methods of attribution the weakest aspect of its human rights monitoring.

We are not in a position to judge the correctness of Embassy attributions overall, but we find that as a method, deductive

attribution - what one State Department official calls the Embassy's "leaps of logic" - is oversimplified and assumes a set of circumstances more clearly-defined than exists in Guatemala.

For example, Embassy officials stress the murders of civil patrol members who, they say, are bearing the brunt of guerrilla attacks on villages. The army would not kill these people who are on its side, according to Embassy deduction. Human rights groups, journalists, and Guatemalans from three departments with whom the delegation spoke, all give information that shows this argument is disingenuous.

The civil defense patrols, where they exist, technically incorporate every man in a village, including many under 18 years of age. The death of any campesino from such a village, then, under any circumstances, can be registered by the local authorities as the death of a civil patrol member, and deductively attributed to the opposition. By extension, this means that a massacre in any village with a civil patrol can deductively be blamed on the guerrillas, despite the fact, attested by numerous sources, that army repression does not exclude such villages.

Secondly, numerous sources indicate that the civil patrols do not perform solely defensive functions. The army uses civil patrols for its own military purposes, sending some out on forays (often armed with weapons which are later retrieved by the military), and forcing some to enter conflictive situations ahead of regular troops as a shield or cannon-fodder. Deaths resulting

from such situations, no matter how unwilling the participation of civil patrol members, must be considered battle casualties. But the military may well report them otherwise; the Embassy, for the most part, is in no position to check.

Some civil patrol leaders are known to be former death squad members or ideologically of the extreme right and willing collaborators with the army. By the same token, some civil patrols are responsible for the killings of non-combatants in nearby villages, at the army's direction. Given their status as auxiliaries, and in some cases their zealous collaboration in massacres, these patrols are considered fair game by the guerrillas, who may kill them or their leaders in retaliation. The Americas Watch does not condone such killings. Yet we recognize that they may fall into a gray area between combat deaths and human rights violations.

Refugee accounts: The Embassy staff are at the disadvantage of not having visited Chiapas, southern Mexico, to interview refugees there.* Unlike human rights groups, therefore, the Embassy has not, at first hand, received reports from Guatemalans relatively safe from reprisal and able to speak freely. But in discussions with the Americas Watch delegation, Embassy officers

*Two State Department refugee officers visited Chiapas in September, 1982, but their findings have not been made public as of this writing. In addition we stress the Embassy's lack of exposure to refugees. The Enders letter cites exclusively Embassy information.

made it clear that they consider these refugees neither essential sources nor credible ones; they are dismissed, rather, as guerrilla sympathizers creating propaganda against the army. The basis for this characterization appears to be the fact that they fled the army.

Questioned about the findings of human rights groups that have interviewed these refugees, a political officer explained that in the Embassy's view, the "burden of proof" is on the refugees to prove their statements, not on the army of Guatemala to prove its innocence. Told that the delegation had corroborated aspects of refugees' statements with Mexicans in Chiapas, Ambassador Chapin stated that he "wouldn't believe a goddamn thing any Mexican told me." A political officer called into question the testimony of a Finca San Francisco survivor, on the grounds that his account of escaping from beneath a pile of dead bodies was much like the account of escape given by a survivor from another nearby village where a massacre also reportedly took place; the similarity struck this officer as suspicious. As noted above, neither that officer nor anyone else on the political staff had visited San Francisco, nor talked with these two survivors. The opinion therefore reflected assumptions rather than independently verified data; yet it was consistent with the overall attitude of Embassy staff with whom the delegation met.

We find that attitude disturbing, especially in light of the Embassy's importance as a source of human rights information to

policymakers in Washington. The attitude suggests to us that the Embassy's definition of a credible source is based on what the source has to say, that sources bringing bad news are suspect because their news is bad. By extension it assumes that human rights investigators and journalists who have visited Chiapas are naive, easily manipulated by refugees with political motives - that is, unprofessional in their work.

We cannot share that opinion. The delegation's own experience in Chiapas, and our review of the testimony gathered by other concerned organizations and the press, convince us that refugee sources whose statements we have seen are credible. To discount their evidence as the Embassy does, suggests a partisan approach to an issue deserving profound humanitarian concern.

CHAPTER 6

A Case in Point: The State Department
Critique of Amnesty International

Unfortunately, the State Department's critique of Amnesty International's July 1982 special briefing on Guatemala reflects the Embassy's partisanship. AI wrote a careful report consistent with its mandate to examine governments' compliance with their obligations under international human rights law. That report analyzed a pattern of repressive decrees and counterinsurgency strategy, against a background of repression under the previous regime, and concluded:

There have been consistent reports of massive extra-judicial executions in Guatemala since General Efraim Rios Montt took power in March 1982. Following a pattern not significantly different from that implemented under previous governments, Guatemalan security services continue to attempt to control opposition, both violent and non-violent, through widespread killings including the extra-judicial execution of large numbers of rural non-combatants, including entire families, as well as persons suspected of sympathy with violent or non-violent opposition groups...Information available to Amnesty International, including press reports, testimonies of witnesses and official government pronouncements, repeatedly identifies the regular army and civilian army auxiliaries organized as "civil defense" units under the Rios Montt government.

At the same time, AI did not ignore army reports that guerrillas have been responsible for some massacres. The report explains:

Note is made of those occasions when the government attributed blame to the opposition

groups, along with the differing version of events given by other sources when available.

In a list appended to the analytical body of its report, AI provided information on what it considered the most egregious and widespread form of human rights abuse in Guatemala - rural massacres. That listing contained attributions of 15 massacres to the army, four to the guerrillas, and 50 incidents that were either unattributed or involved charges made against both sides.

The Americas Watch did not attempt to verify each of Amnesty's accounts of rural massacres. Rather, we have examined AI's methods of gathering and reporting information in the July 1982 Briefing. We have found these methods to be responsible and conservative.

The Department of State response to this careful document is instructive of attitudes both at the U.S. Embassy in Guatemala and in Washington. According to Assistant Secretary of State Enders's letter of September 15, the Embassy contested AI's findings based on the Embassy's inability to find one particular location (Covadonga, Huehuetenango) on any map; on a lack of corroboration from other sources with regard to four incidents; and on contrasting information on seven incidents, which the letter listed and described in some detail. The letter also stated:

We assume that many of the incidents which we are unable to substantiate...have been reported to you, as they have to others, by the CUC, which seized the Brazilian Embassy on May 12, the FP-31 or similar

groups. Both the CUC and FP-31 are now closely aligned with, if not largely under the influence of, the guerrilla groups attempting to overthrow the Guatemalan government. Accordingly we have reason to suspect the accuracy of their reports.

Nowhere in the letter does Assistant Secretary Enders refute Amnesty's overall analysis of the Guatemalan situation, contest its interpretation of the harsh legal decrees imposed by the Rios Montt government, dispute its reporting on the function of "civil defense" patrols, or deal with Amnesty's reference to the testimony of refugees in Honduras and Mexico, who have consistently charged the army with massive extra-judicial executions in the countryside.

Appendix A presents the full text of the Enders letter. Appendix B is our analysis of the Embassy's corroborating sources and a point by point examination of its arguments on the seven disputed incidents, arguments we find to be flawed and misleading in several respects. Here we limit ourselves to some more general observations on the method and tone of the letter, and how it has been used to discredit AI - and, by extension, other human rights organizations using procedures similar to AI's.

The letter's tone and method are a mixture of confrontation and evasion. The reference to Covadonga, Huehuetenango where AI reported deaths but which the Embassy could not find on a map, is exemplary of the Enders approach: it implies the locale does not exist, that Amnesty reports are fabricated. Yet Embassy officers admitted to the Americas Watch delegation that many fincas

(plantations) and small villages have multiple names and that it is often very difficult and painstaking work to identify locations of reported massacres. Finca San Francisco is one such case; Embassy investigation was delayed, said officials, by difficulty in locating the correct San Francisco. Similarly, there are at least three Covadongas in the general area from which AI received its reports. That the Embassy could not find the precise Covadonga on a map is not to its discredit; the villages are tiny. That this inability was used without appropriate explanation as positive evidence against AI, however, is an example of how the Enders letter uses innuendo and omission rather than present the facts in context.*

Assistant Secretary Enders wrote that Embassy information "frequently contrasts sharply with that provided by Amnesty International" and described seven incidents from the AI report where such contrast apparently existed. The discussion of these incidents occupies the body of his letter.

Yet in three of the seven incidents, AI and Embassy reports have much more in common than in contrast; Embassy accounts tend, in fact, to confirm the accuracy of AI's information. For a fourth incident, too, AI's data is confirmed by the Embassy's, although the Embassy chooses, without hard evidence, to make a conjecture that guerrillas were responsible. Two of the remaining cases were unattributed by AI, while Embassy information pointing to the guerrillas is open to some question. In the final instance, AI based its account - blaming the army - on eyewitness testimony.

* A Congressional staff person recently questioned a U.S. AID contract worker in Guatemala about Covadonga and was told: "Of course that town exists. I've been there myself."

AI's reporting stands up to scrutiny. The Enders response, on the other hand, is a case of false advertising. The "sharply" contrasting information for these seven cases is hardly that. The Embassy's rebuttals appear to have force only because the letter omits explanation of what is being "rebutted." The letter's presentation, in the seven incidents it examines, also implies that, in all but one case, AI accused the army. This is untrue of the AI report's listing as a whole; as noted above, AI listed four incidents citing only army information that blames guerrillas, and more where different sources accused both sides. It is untrue even with regard to these seven incidents, in two of which AI relied on army accusations against the guerrillas, and in four more of which AI could not identify the attackers. The Enders letter thus misleads as to AI's attributions, which constitutes a serious distortion of its findings.

The letter also questions AI's neutrality and professionalism, and in so doing reveals the State Department's own partisanship. Questioning the accuracy of reports from opposition sources, the Enders letter suggests that Amnesty has been misled and may not be checking its information. Reports from sources opposed to the Rios Montt government, according to this logic, are by definition questionable. The charge is manifestly political and yet another example of the letter's use of innuendo rather than fact.

As AI has always openly stated, it receives reports from a wide variety of sources - including governments and opposition

groups. To do otherwise would destroy its neutrality by imposing pre-judged criteria for credibility. Assistant Secretary Enders chooses to ignore the fact that AI, like any responsible human rights organization, evaluates and checks its information - more thoroughly, by all accounts, than can the U.S. Embassy in Guatemala. AI specializes in and stakes its reputation on this work; for the Embassy, it is, as officials admit, a sideline.

Enders' implication, moreover, is that opposition sources are questionable while government sources (which provide much of the Embassy's information) are not. The State Department here is using a different standard of judgment in assessing opposition reports of army killings than with regard to army reports of killings by guerrillas. The Americas Watch delegation noted this double standard in the statements of Embassy officials as well, which suggests that information sent to Washington passes through a screen of Embassy pre-judgments. This type of bias is a methodological flaw that would embarrass any independent human rights group, but about which the Embassy and the State Department appear to feel no discomfort.

Evasion in the Enders letter goes beyond the careful omission of explanations and context. It extends to the paramount issue involved in Amnesty's report: a pattern of army brutality. The Enders letter concedes only that there is a "possibility" that army "units" have violated human rights "in contravention of stated policy."

It is noteworthy, moreover, that while AI attributed 15

massacres clearly to the army, the Embassy challenged only one such attribution. Does this mean that the Embassy cannot refute 14 cases of AI-reported army massacres? If so, AI's overall analysis of army repression is again confirmed, inadvertently, by its critics. If not, the State Department has yet to prove its case for what the Enders letter calls "significant progress" on human rights.

In the current debate over human rights in Guatemala, the Enders letter has played an inordinately - and undeservedly - important role, not only because it takes so confrontational a tone towards a major human rights group's credibility but also because it has been used by the Embassy for political purposes. The letter was distributed as an official U.S. document in Guatemala along with the Embassy's standard press handouts. Its full text appeared in the Guatemalan press. This has permitted Guatemalan officials to criticize AI with the Department of State's seal of approval, as the Americas Watch delegation had ample opportunity to learn. The Embassy too is unabashed in its criticism of AI.

We find this use of the letter unconscionable in light of the risks run by human rights investigators in a political climate like Guatemala's. It also appears to us to be further evidence that the State Department, like the Guatemalan government, admits no neutrals in the Guatemalan conflict; the bringer of bad news becomes, through this reasoning, part of the enemy, to be publicly discredited if possible.

We do not dispute the State Department's right to disagree, however vehemently, with a human rights organization. But there is an issue of responsibility here. The publication and wide circulation of the Enders letter inside Guatemala has contributed to circumstances in which, if Amnesty wished to send a mission to that country, the mission's members - and its sources - would not be safe. We find it ironic at best that, while Embassy officials criticize Amnesty for not sending such a public mission of inquiry, they have been responsible for making that possibility more remote.

This relates to a final point regarding misrepresentation of AI. The Americas Watch delegation was repeatedly told, both by Embassy and Guatemalan officials, that AI had received an official invitation to send a mission of inquiry. The clear implication of Embassy remarks on this subject was that AI had not accepted because it wished to avoid confronting the facts. AI, in fact, has written twice to the Guatemalan government, leaving open the possibility of an invitation and soliciting response to its concerns. Its communications have received no answer. And as of this writing, AI has not received any official invitation. We find it perplexing that, on a matter which has been given so much rhetorical attention by the Embassy and the Guatemalan government, this small fact has been overlooked. We can only conclude that this, too, is a distortion of AI's position, and like the rest of the Embassy's dealings with AI, we consider it shoddy.



ASSISTANT SECRETARY OF STATE
FOR INTER-AMERICAN AFFAIRS
WASHINGTON, D.C. 20520

Ms. Patricia L. Rengel
Director, Washington Office
Amnesty International USA
705 G Street SE
Washington, DC 20003

SEP 15 1982

Dear Ms. Rengel:

Thank you for providing us with a copy of the July 1982 Amnesty International report on Guatemala. We thought you would be interested in some of our Embassy's comments on the list of violent incidents which was attached to the report. The Embassy found that:

-- many of the incidents cannot be corroborated by other sources such as the press, the Army, the police or intelligence information. In fact, the town where one incident allegedly took place (Covadonga, Huehuetenango) doesn't appear on any map of Guatemala available to the Embassy.

-- while other incidents are known to the Embassy, the information provided Amnesty about those incidents appears to contrast greatly with that obtained by the Embassy.

-- finally, Amnesty does not appear to have been informed of a large number of incidents involving terrorist attacks on the Army, civil defense forces and noncombatants.

We assume that many of the incidents which we are unable to substantiate (e.g., March 24, March 24-27, April 2, April 5) have been reported to you, as they have to others, by the CUC, which seized the Brazilian Embassy on May 12, the FP-31 or similar groups. Both the CUC and FP-31 are now closely aligned with, if not largely under the influence of, the guerrilla groups attempting to overthrow the Guatemalan government. Accordingly we have reason to suspect the accuracy of their reports. We would hope that Amnesty would corroborate information received from these groups, whose bias is obvious, before publishing it.

As I mentioned above, the information available to the Embassy frequently contrasts sharply with that provided Amnesty International. For example,

-- Amnesty reported 55 people killed between March 30 and April 3 in or near Chinique, El Quiche. The Embassy reports that the village of Chinbachuc in Chinique was attacked by guerrillas on the morning of April 1. According to press reports, the village civil defense force fought off their attackers with rifles, machetes, or flintlock muskets and clubs. Eleven villagers and two guerrillas were killed. In the wake of this attack, the inhabitants publicly requested army assistance. Witnesses reported that some of the intruders were dressed in olive green, others in civilian clothing. The army sent a patrol to guard the village from further attack.

-- Amnesty reported 40 campesinos killed by unknown men in Ximbaxuc, Chingue on or about April 2. The Embassy reports that several small villages in El Quiche suffered guerrilla attacks in late March and early April. Ximbaxuc was attacked by guerrillas around April 1. The inhabitants resisted and 12 of them were killed. The guerrillas robbed the village of its food supply. Campesinos in the village spoke to reporters on April 2 and stated that the civil defense patrols were giving the guerrillas a great deal of trouble and that support for the insurgents was waning.

-- Amnesty reported 13 campesinos shot to death on April 3 in the village of Nicabaj, Rabinal, Baja Verapaz. The Embassy indicates that on April 3 some 200 guerrillas attacked the village of Nicabaj. Once again, poorly armed civil defense forces attempted to resist; 13 were killed. The guerrillas then assembled the remaining villagers for a brief anti-government propaganda session. On leaving the guerrillas burned 40 houses, leaving 200 people homeless. Survivors again confirmed the army's account of this incident.

-- Amnesty reported campesinos killed in the village of Agua Caliente, San Jose Poaquil, Chimaltenango, on or about April 15. Government sources stated that guerrillas took over the village on April 16 and killed 14 people. Eyewitnesses later spoke to the press and confirmed this account. They added that they did not believe the army was responsible and appealed to the government for protection.

-- Amnesty reported 20 people burned alive in their homes in the village of Chipiacul, Patzun, Chimaltenango on April 26. The survivors stated that 16 civil defense men were gathered in their usual meeting place when 30 unknown and armed men crept into the village on foot and surrounded them. Except for machetes, the defense force was unarmed.

-3-

The intruders shot them to death, covered their bodies with blankets and set them afire. Another man and woman were killed in the same manner inside their house. Two more bodies were located later on the outskirts of the village. There is no mention of eyewitnesses blaming the army and the fact that the civil defense team was the victim of this massacre makes such a presumption even less likely. The press reported the names and ages of all the victims.

-- Amnesty reported that 43 people were killed in the village of Saquilla, Chichicastenango on May 18 by armed men going from house to house. Among the dead were 25 children. Local press accounts confirm this massacre. According to one of the survivors armed men appeared in the early hours of the morning and roused the population with a call to form themselves up and give chase to guerrillas. When the inhabitants gathered to do so, they were surrounded and massacred. We believe it likely that this massacre was carried out by guerrillas posing as security forces to deceive government supporters.

-- Amnesty reported that 20 inhabitants of the village of Salicuin, near Coban, Alta Verapaz were killed in an attack on May 10. Amnesty noted that the Government accused the guerrillas. According to the Embassy, witnesses reported that the guerrillas killed 26 people, including a mother nursing her infant. A civil defense patrol surprised and eventually drove off the guerrillas. Deputy Assistant Secretary for Human Rights Melvyn Levitsky and the Director of the Office of Central American Affairs Craig Johnstone visited this village on August 13. Their interviews confirmed the Embassy account.

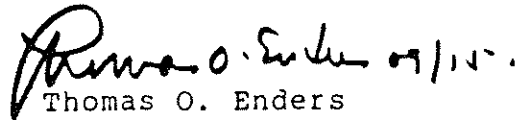
The guerrillas have not hesitated to attack civil defense forces. The very organization and presence of such units belies the impression that the GOG is at war with "the people". This may account for the ferocity of some of the guerrilla attacks on such forces or the villages where they have been organized.

The guerrillas also have waged a sustained and increasingly indiscriminate campaign of terror, arson, intimidation, kidnapping, mayhem, bombing, and murder. Frequently these incidents are ignored or downplayed by organizations focusing on the human rights situation in Guatemala. For example, guerrillas murdered US citizen Jessie Pitts Jarvis in March of this year on his farm near San Cristobal, Alta Verapaz. The guerrillas have also publicly claimed responsibility for the kidnapping of a university student (Mendez Ruiz), a newspaper editor (Alvarez Contreras), and an American businessman (Clifford Bevins), who regrettably did not survive his ordeal. Failure to publicize

these incidents gives the public a one-sided impression of what is happening in Guatemala. Furthermore, it implies that human rights criteria only apply to governments and not to guerrilla groups. We believe a more balanced account of events and application of criticism probably would make foreign governments more responsible to human rights concerns and decrease guerrilla violence against noncombatants.

No one would deny the possibility of units of the military, in contravention of stated policy, having been involved in violations of human rights. What is important is that since March 23 the Government of Guatemala has committed itself to a new course and has made significant progress. But, as we know from our own experience, it takes a long time to change the bias of the past, and to convince people that the new ways are better. We must demonstrate our support for the reforms underway and for those in the government urging further improvement through meaningful, if prudent, acts. Our failure to do so will only lead to a Guatemala where the extremes of the left and the right fight for power over the bodies of innocent noncombatants.

Sincerely,

 09/11/51
Thomas O. Enders

APPENDIX B

State Department critique of Amnesty International

This examination is presented as an accompaniment to Part III, Chapter 6 of this report. We do not, therefore, repeat here the general comments on context and style that have been made above. Rather, we focus on the substance of two aspects of the Enders letter to Amnesty dated September 15, the full text of which appears in Appendix A. Those two aspects are: the sources cited as corroboration for the Embassy's accounts on seven disputed incidents, and the letter's treatment of each of those incidents, in the order in which the letter presents them.

1) Embassy sources: The letter contests AI's findings on grounds that press, Army, police and intelligence information do not corroborate "many" of the incidents Amnesty listed. (It specifically does not mention testimony evidence given to Embassy staff - an interesting omission, in light of Embassy officials' claims to be gathering such testimony.)

With the possible exception of intelligence information - which may or may not have come from Guatemalan official or military sources - all these sources are, by the nature of the Guatemalan situation, unlikely to have endorsed reports of army responsibility for rural civilian deaths. The military and police have an obvious bias. The Americas Watch has seen eyewitness testimony gathered in Guatemala by human rights investigators which shows that, operating in remote areas,

Guatemalan officers report to their superiors that which is convenient about non-combatant deaths for which their men have been responsible; thus from the base up, there is the strong possibility of misinformation from army sources.

The right-wing Guatemalan press has coexisted with successive military governments by ignoring official violations of human rights, especially with respect to attribution. Hard-hit during the Lucas Garcia regime - many journalists were killed, kidnapped or fled the country under threat - the press responded to the apparent opening offered in Rios Montt's early months; newspapers expanded their reporting of rural violence. But newspapers were careful, as in the past, to word attributions of responsibility for massacres to avoid reprisals from the military. AI noted in its July report that even about a number of incidents on which it possessed eyewitness testimony of army abuses, the press printed the official version of events. Thus, the press is useful as a source on the number of deaths involved in incidents to which it had access, an access primarily granted by the army. But the press, even before the official crack-down on its coverage, was not a definitive source; its access was selective and government-controlled in many rural areas, and its own somewhat insecure position encouraged caution. Also, since much reporting was done in army company - that is, not only in areas controlled by the army but in the presence of army soldiers - there is some question as to the extent to which witnesses would have felt comfortable blaming the army, if the army had

been responsible for abuses against their families and neighbors.

The habitual caution of the Guatemalan press makes it especially significant that, prior to the government's restraints on coverage and opinion, a leading daily El Grafico published two editorials condemning rural violence and emphasizing the army in this condemnation. Even Rios Montt has publicly admitted that the first of these editorials pointed the finger of blame at the army. The second editorial which we have quoted above, was even more pointed.

It is reasonable to wonder - if the army were not responsible for human rights violations in the countryside, and if all press attributions absolving the army or veiling attribution had been correct - why these editorials appeared and why the government has restricted the press's rights to cover the conflict independently.

2) The seven incidents: The discussion of Embassy methodology and sources in Chapter 6 is relevant to the way in which Assistant Secretary Enders's letter criticizing AI approaches the incidents it specifically attempts to rebut. The limitations on independent Embassy verification of massacres, and the Embassy's stringent standards of proof where army abuses

are concerned - but not with regard to reports blaming guerrillas - affect the methods of rebuttal employed in the letter. The seven incidents and rebuttal are as follows.

- March 30 - April 3: 55 killed in Chinique, El Quiche. (The letter misquotes this as "in or near Chinique," making AI appear vague.) AI reported that the authorities described this as the result of a guerrilla-civil defense skirmish. No other attribution is given.

The "sharply" contrasting information offered by the Embassy in this case consists of an almost identical account. The only substantive disagreement is over the number of dead: the Embassy account (which deals with a single day and single village in the Chinique area) cites 11 villagers and 2 guerrillas killed in the skirmish.

The Enders letter does not address the remaining 42 deaths; possibly the Embassy had no information about them, which does not necessarily mean they did not occur. In this case, however, AI in effect has suggested the guerrillas might have been responsible for more deaths than the Embassy has. On what basis does Assistant Secretary Enders criticize AI?

- On or about April 2: 40 campesinos, including men, women, elderly and children, killed by "armed men" in Ximbaxuc, Chinique, El Quiche. The men also robbed and burned, according to AI.

Enders responded that the Embassy had attributed late March/early April attacks on "several small villages in El

no information at all? The Enders letter leaves this unclear, being selective in those issues it chooses to address; it thereby ducks the issue of whether AI's figure is credible to the Embassy or not.

- On or about April 3: 13 campesinos shot dead in Nicabaj, Rabinal, Baja Verapaz. AI does not attribute these killings. The names of the victims are given.

The letter says the Embassy attributes the 13 deaths to a guerrilla attack on this village on April 3. The 13, according to the Embassy, were civil defense patrol members who resisted the attack. Its sources are the army and survivors who confirmed the army account. Press and Embassy investigators are not mentioned; thus it is probable that these survivors were interviewed by the army.

The Embassy disagrees with AI on attribution, in that AI did not attribute the killings. But the Embassy's account does not "sharply" contrast with Amnesty's; it supports - with one exception - every detail that Amnesty reported: date, place, number of deaths.

The exception is its identification of the victims as civil defense patrol members, based on the army account. AI lists two women among the dead; clearly they were not civil patrol members. Nor, presumably, was a 70-year-old man whose name appears among the dead. These details cast some question on the army version, and the letter does not deal with this discrepancy, although

Quiche" to the guerrillas. The letter cites no source for the Embassy's information, and El Quiche, it should be noted, is one of Guatemala's larger departments. Thus the reference to "many small villages," besides being of unknown origin, is a flourish; it is irrelevant to AI's report. Since El Quiche has been one of the primary counterinsurgency areas, the Embassy might just as well have noted the army's intensive presence there.

According to the DOS and Embassy, Ximbaxuc "was attacked by guerrillas around April 1. The inhabitants resisted and 12 of them were killed." No source is given for this information.

The only statement in this account that is attributed to any source, is a reference to campesinos' telling the press on April 2 that "the civil patrols were giving the guerrillas a great deal of trouble and that support for the insurgents was waning." The account does not say the campesinos attributed killings to the guerrillas or mentioned a guerrilla attack, which is the centerpiece of the argument here. What the campesinos said, as presented in the letter, was of a general nature and it adds nothing to the case the letter tried to make about Ximbaxuc and AI.

AI could not establish the identity of the attackers; the Embassy believed it had. Here again, however, there are the reported deaths for which the Embassy does not account: 28 in this case. Does the letter wish to imply that these killings did not occur? or does the Embassy have ambiguous attribution for them? or does its information point to soldiers? or does it have

the detailed nature of AI's information on the victims gives it special force.

- April 15 (The letter misstates this as "on or about" April 15): Campesinos killed in Agua Caliente, San Jose Poaquil, Chimaltenango. AI's primary source on this incident is an army report that said guerrillas were responsible for the deaths; the army reported 14 dead, other sources 23. It appears the other sources did not differ with the army as to attribution.

The Enders letter quotes government sources blaming the guerrillas for 14 deaths in this town on April 16, with eyewitnesses later confirming this to the press. On what basis is the State Department challenging AI?

- April 26: 20 people burned alive in their homes in Chipiacul, Patzun, Chimaltenango. Names and ages given. Survivors, AI reported, blamed the army.

According to the Enders letter, survivors attributed the deaths to an attack on a civil defense meeting by "30 unknown and armed men." The Embassy reasoning is that "There is no mention of eyewitnesses blaming the army and the fact that the civil defense team was the victim of this massacre makes such a presumption even less likely." Press reported names and ages of all victims, the letter states.

The disagreement here is between eyewitness testimonies: the one set blaming the army, the other (possibly in the press) citing unknowns. Bearing in mind some realities of the Guatemalan situation - the trust factor in witness interviews

with the press, the inclusion of all village men in the civil patrols - and adding that the Embassy's argument rests on a deduction based on the victims' identities, we question whether this is sufficient rebuttal to positive testimony.

In interviews with numerous Guatemalans from the countryside and closely in touch with the rural situation, our delegation consistently asked whether campesinos could, in fact, distinguish between disguised soldiers and disguised guerrillas. Sources answered with equal consistency that they can; a State Department source takes this for granted, saying that people "would have to be very naive" not to know the difference. By language and accent (guerrillas speak local Indian languages, as many of them are Indians of the region); by demeanor (the military interact with each other like soldiers in a military hierarchy); by weaponry; by their boots (soldiers generally wear the standard issue even when in civilian dress); and most of all by what they say and what they want -- the two sides can be distinguished.

Whether witnesses feel comfortable explaining this to the press, and whether the press feels comfortable printing it, is another matter. It is believable that armed men whom one set of villagers define to the press as unknowns may be recognized by those same villagers and/or their neighbors - and defined to a human rights group, priest, or other trusted investigator - as soldiers.

- May 18: 25 children (4 months - 14 years), 15 women (some pregnant), 3 men killed in Saquila II, Chichicastenango, by armed men.

The Embassy's information was that "local press accounts confirm this incident." The letter gives some additional details: a survivor stated that the armed men roused the population in the early morning, telling them to pursue the guerrillas; when they gathered, they were all killed. Based on this information, the letter offers the conjecture that guerrillas were responsible, posing as soldiers. No source or evidentiary basis is offered for this deduction.

This points to the difference between a conscientious human rights organization and a political entity like the Embassy. AI did not attribute the killings because it lacked sufficient credible evidence for attribution. Apparently the Embassy too lacks the hard evidence. AI, then, used its available information more responsibly in this case, limiting itself only to that information which it possessed, while the Embassy did not.

- May 10: 20 killed in Salicuin, near Coban, Alta Verapaz. AI noted that the authorities blamed the guerrillas, and cited no other evidence of responsibility.

The Enders letter does not quarrel with AI's account except to say that witnesses reported 26 deaths, not 20, and to add more details of the incident. (It also mentions that interviews conducted by two DOS officials in this town on August 13 confirmed the Embassy account. But Deputy Assistant Secretary of State for Human Rights Melvyn Levitsky, one of the two officials, has told the Americas Watch he did not conduct any interviews in Salicuin).

There appears to be no disagreement here. Why does the DOS include this, therefore, in its group of incidents to specifically contest?

In conclusion: for three of the seven incidents, AI and Embassy reports are substantially the same; Embassy information confirms AI's accounts with relatively minor disagreements. This reduces the Embassy's "case" against Amnesty to four incidents. For one of those (May 18), as well, AI's data is confirmed by the Embassy's account, although the Embassy - without citing any evidence - makes a conjecture that guerrillas were responsible.

The three remaining cases:

- April 2: AI attributed to "armed men." The Embassy asserted guerrilla responsibility, although eyewitness testimony does not appear to have referred to this.

- April 3: AI did not attribute. The Embassy did, to guerrillas. The AI evidence on victims here suggests a possible flaw in the Embassy account, while in virtually all respects the Embassy's version supported AI's.

- April 25: AI attributed to the army, based on eyewitness testimony; the Embassy found no evidence to support this, and counterposed eyewitness testimony (presumably given to the press or army) blaming unknowns.

It is difficult indeed to see how, in four of these cases, the State Department can claim that Embassy information "sharply" contrasted with Amnesty's. In the remainder, AI's cautious treatment of its material stands up to examination. Where it could not verify responsibility, AI merely reported what

information it could confirm. The same cannot be said for the Embassy, in its treatment of the May 18 incident.

Even in its own terms, then, the State Department/Embassy rebuttal of Amnesty International is a weak document. It is, moreover, a misleading document, and its shoddy presentation of supposedly contrasting information, which misrepresents AI by implication and omission, does a disservice to responsible human rights reporting.

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136-138

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